

DATE: January 6, 2011

TO: Chairman and Members of the Manufactured Home Fair Practices Commission

FROM: Neighborhood Services Department

SUBJECT: EXEMPTION FROM RENT CONTROL AS TO SPACE NOS. 14, 94 AND 158 IN MIRA MAR MOBILE COMMUNITY

SYNOPSIS

Based on evidence provided to date, staff recommends that the Manufactured Home Fair Practices Commission determine that Space Number 158 in Mira Mar Mobile Community is exempt from the rental rate restrictions of Chapter 16B of the Oceanside City Code pursuant to Section 16B.16(d)(4) thereof and California Civil Code section 798.21, and that the request for a determination as to Space Numbers 14 and 94 is currently moot in light of recent rulings by the San Diego Superior Court in pending litigation.

BACKGROUND

Mira Mar Litigation

The owner and manager of Mira Mar Mobile Community (the "Park") are currently involved in litigation with the Mira Mar Mobile Community Homeowners Association, Inc. (the "HOA") and several individual Mira Mar residents. The lawsuit was commenced in January, 2009 by the HOA and Park resident Norm Kelley in response to (among other things) a 90-day rent increase notice delivered October 30, 2008 by Park management to homeowners in over 45 spaces at the Park. The attempted rent increase was based on the Park owner's determination that the affected residents do not occupy their Mira Mar homes as their principal residence and are therefore exempt from rent control pursuant to the "Second Home Exemption" described in California Civil Code section 798.21. Among the matters to be decided in the litigation is whether the Second Home Exemption from rent control applies to certain spaces in the Park (including Space Nos. 14, 94 and 158). The City of Oceanside is also a party to the litigation.

Park Owner's Request for Hearing

On November 16, 2009, City staff received a copy of a letter to the Chair of the Manufactured Home Fair Practices Commission from the owner and property manager of the Park, requesting that the Commission conduct a hearing to determine whether

Space Numbers 14, 94 and 158 in the Park are exempt from the rental rate restrictions of Chapter 16B of the Oceanside City Code pursuant to Section 16B.16(d)(4) and California Civil Code section 798.21 (i.e, the Second Home Exemption). A copy of the request for a hearing is included as Attachment 1.

Prior Commission Action on Park Owner's Request for Hearing

The Commission considered the Park owner/manager's request for a hearing at its January 7, 2010 meeting. The Commission voted 4-1 to approve the request, upon occurrence of the following:

- 1) Confirmation that the Park has registered and paid registration fees pursuant to City Code Sections 16B.5 and 16B.6;
- (2) Final decision by the Court of Appeal regarding the Park owner's challenge to the trial court's March 13, 2009 order granting preliminary injunction;
- (3) Decision by the trial court regarding the residents' motion for summary adjudication; and
- (4) Decision by the trial court regarding the City of Oceanside's motion for summary judgment.

At its October 7, 2010 meeting, the Commission, having been advised that the preceding actions had occurred, scheduled a hearing date on January 6, 2011 at 6:00 p.m. to consider the Park owner's request for a determination that Space Numbers 14, 94 and 158 in Mira Mar Mobile Community are exempt from the rental rate restrictions of Chapter 16B of the Oceanside City Code, pursuant to Section 16B.16 (d) (4) and California Civil Code section 798.21. The Commission's decision also specified that "any written materials must be submitted to the Commission Staff no later than thirty days prior to the hearing." A copy of the Commission Notice of Decision is provided as Attachment 2.

Superior Court Ruling on Plaintiffs' Motion for Summary Adjudication

On November 2, 2010, the Superior Court in the Mira Mar litigation ruled, among other things, that Space 14, occupied by Norm Kelley, was not exempt from rent control under the Second Home Exemption, because there is evidence that Space 14 is his primary residence and because his rental agreement limits or prohibits subletting. A copy of the Court's ruling is provided as Attachment 3. The Court further ruled that all HOA members who have a rental agreement like Mr. Kelley's, which prohibits subletting, are also entitled to an adjudication that their spaces are not subject to the Second Home Exemption from rent control.

Additional Submissions from Park Owner and Residents

On December 6, 2010, Commission staff received a copy of a letter to the Chairman of the Commission from the Park owner's representative, C. William Dahlin, of Hart, King & Coldren. The letter states that the essential documents in support of the application were submitted with the letter of November 12, 2009 (Attachment 1), but states that the Park owner would reserve the right to introduce, if necessary, documentation concerning the legislative history of Civil Code section 798.21 and, if relevant, pleadings

from the ongoing litigation by and between the park owners and the residents. In addition, Mr. Dahlin requested, as a separate administrative determination, “that the Commission affirmatively determine whether the park owner or a resident has standing, under the City’s rent control ordinance, to request a determination whether a space is exempt from the ordinance pursuant to Civil Code section 798.21.” A copy of the letter is provided as Attachment 4.

On December 13, 2010, Commission staff received a copy of a letter and additional documentation addressed to the Chairman of the Commission from Lowell Robert Fuselier, an attorney representing the HOA and individual residents (plaintiffs and cross-defendants in the Mira Mar litigation). The letter points out that Judge Maas has already made the determination that Mr. Kelley’s space (Space 14) is not subject to the Second Home Exemption from rent control and that a similar ruling with respect to Gregory Mumper (Space 94) and Teresa Doran (Space 158) has been requested from the Court. The letter additionally states that a hearing on that motion took place on December 10, 2010 and was, at that time, still under consideration by the Court. The letter requested that “the Commission reschedule the hearing until some time after Judge Maas issues his ruling on the pending motion and that we are able to review and analyze the Court’s opinion and then offer our considered recommendation as to the appropriate action of the Commission.” A copy of the December 13, 2010 letter is provided as Attachment 5.

On December 22, 2010, the City of Oceanside received a Minute Order from the Court’s December 10, 2010 hearing. A copy of the Minute Order is provided as Attachment 6. The Court’s order granted the residents’ motion with respect to Greg Mumper (Space 94), noting that Mr. Mumper’s lease is substantially similar to Mr. Kelley’s. Therefore, the Court ruled that Space 94 is not subject to the Second Home Exemption from rent control, because Mr. Mumper’s rental agreement limits or prohibits subletting. The motion was denied as to Space 158 (Teresa Doran).

In light of the Court’s December 10, 2010 Minute Order, Commission staff requested that the residents update their submission in connection with the scheduled January 6, 2011 hearing before the Commission. In response, on December 28, 2010, Commission staff received a letter from David J. Hart, attorney for the HOA and residents. Mr. Hart advised that his firm intended to ask the Court to clarify its ruling with respect to Ms. Doran (Space 158). He pointed out that the court had found “there were insufficient facts, *at this time*, for the Court to conclude that Ms. Doran is forever exempt from rent control.” Thus, he concluded, “Ms. Doran’s exemption from rent control is still pending before the Court, and will be resolved either in the Court’s clarification of its order or at trial.” Mr. Hart requested that the Commission defer the hearing on Ms. Doran’s status until her issues are resolved by the Court. A copy of the December 28, 2010 letter is provided as Attachment 7.

ANALYSIS

Legal Standing to Request a Determination re Exemption from Rent Control

The Park owner has requested “that the Commission affirmatively determine whether the park owner or a resident has standing, under the City’s rent control ordinance, to request a determination of whether a space is exempt from the ordinance pursuant to Civil Code section 798.21.” (See Attachment 4.) Staff submits that it is beyond the scope of the Commission’s role and responsibilities under the Ordinance to address the Park owner’s specific legal question regarding standing. As such, staff recommends that the Commission refrain from making a determination, one way or another, in that regard.

However, staff notes that the Commission has already granted the Park owner’s request for a hearing to determine whether the three spaces at issue are exempt from the City’s rent control ordinance. That task is presently before the Commission and is the subject of this staff report. The Ordinance specifies the Commission’s duties to include “[making] adjustments in space rent ceilings as provided for in this chapter,” and [making] such studies, surveys and investigations, [conducting] such hearings, and [obtaining] such information as is necessary to carry out its powers and duties.” (Oceanside City Code section 16B.4(m)(3) and (4).) Moreover, the Oceanside City Council adopted Administrative Procedural Guidelines (“Guidelines”) for the Administration and Enforcement of the Manufactured Home Fair Practices Act in accordance with section 16B.4(f)(1) of the Oceanside City Code. Section 9.01(c) of the Guidelines provides that when an interested party requests a hearing, the Commission may order a hearing “only if (1) the matter at issue is not already established by Chapter 16B and/or the Guidelines, and (2) the Commission believes that such a hearing would better enable the Commission to render a proper decision in the matter at issue.” The Park owner’s request for a hearing has been granted pursuant to these provisions.

Second Home Exemption

The Park owner has requested that the Commission make a determination that Space Numbers 14, 94 and 158 in Mira Mar Mobile Community are exempt from the rental rate restrictions of Chapter 16B of the Oceanside City Code, pursuant to Section 16B.16(d)(4) of the Ordinance and California Civil Code section 798.21 (the Second Home Exemption).

Space Nos. 14 and 94

As noted above, the Superior Court, in the context of the Mira Mar litigation, has ruled that Spaces 14 and 94 (occupied by Mr. Kelley and Mr. Mumper, respectively) are not subject to the Second Home Exemption from rent control. Accordingly, the Park owner’s request for a determination as to those spaces is moot at this time, and staff recommends that the Commission refrain from rendering a decision as to Space Nos. 14 and 94.

Space No. 158

The Park owner has also requested that the Commission determine that Space 158, rented by Ms. Doran, is exempt from the City’s Ordinance because she does not occupy her Mira Mar home as her principal residence. As explained above, the Court has not yet determined whether the Second Home Exemption applies to this space. Based on

the evidence submitted to date (which is contained in the Attachments to this staff report), staff has tentatively concluded that Space 158 is exempt from the City's Ordinance pursuant to the Second Home Exemption. The Commissioners may reach different conclusions based on this evidence, as well as on any additional evidence and argument that may be presented at the hearing on this matter. Staff's analysis in reaching its conclusion follows.

The Park owner contends that Ms. Doran's tenancy is exempt from rent control under Civil Code Section 798.21, because she is not a principal resident. Section 798.21(a) provides in pertinent part, "if a mobilehome space within a mobilehome park is not the principal residence of the homeowner and the homeowner has not rented the mobilehome to another party, it shall be exempt from any ordinance, rule, regulation, or initiative measure adopted by any city, county, or city and county, which establishes a maximum amount that the landlord may charge a tenant for rent..."

Subsection (c) of Civil Code section 798.21 provides: "For purposes of this section, a mobilehome shall be deemed to be the principal residence of the homeowner, unless a review of state or county records demonstrates that the homeowner is receiving a homeowner's exemption for another property or mobilehome in this state, or unless a review of public records reasonably demonstrates that the principal residence of the homeowner is out of state." Subsection (d) requires that before modifying the rent, management must notify the homeowner in writing of the proposed changes and "provide the homeowner with a copy of the documents upon which management relied."

The Park owner states that it conducted the investigation and notice required by Civil Code Section 798.21 with respect to Ms. Doran's space (158) (see Attachment 1). Although a copy of the notice to Ms. Doran was not submitted in connection with these proceedings, there is ample evidence in the Court file indicating that this notice was sent on or about October 30, 2008. According to the statute, Ms. Doran then had 90 days to review and respond to the notice.

Subsection 798.21(e) provides in part that management may not raise the rent "if the homeowner provides documentation reasonably establishing that the information provided by management is incorrect or that the homeowner is not the same person identified in the documents." That subsection further states, "nothing in this subdivision shall be construed to authorize the homeowner to change the homeowner's exemption status of the other property or mobilehome owned by the homeowner."

In order to determine if Ms. Doran's tenancy is exempt under the Second Home Exemption, commission staff has reviewed other documents previously submitted. Copies of two documents were provided to the City regarding Ms. Doran's residency status: (1) a County of San Bernardino Homeowner's Exemption Cancellation Card, apparently signed by Ms. Doran on November 10, 2008, stating she moved out of the San Bernardino residence prior to January 1, 2009 (Attachment 8); and (2) a California Department of Motor Vehicles Change of Address form, apparently signed by Ms.

Doran on November 12, 2008, providing a new address of 900 N. Cleveland, Space 158 (Attachment 9).

In addition, staff has reviewed a copy of a letter dated December 15, 2008 from Joe Orlandini, agent for the Park, to Ms. Doran, advising, "Your letter states that your 'Homeowners' Exemption' for your primary residence was removed after the date of the Park's Notice of Exemption and Rent Increase, to wit October 30, 2008. Based on our review, the Park has determined that you and your space are still subject to the rent increase." (A copy of Mr. Orlandini's letter is included as Attachment 10). Based on this evidence, staff concludes that Space 158 in the Park was not Ms. Doran's principal residence at the time of the October 30, 2008 rent increase notice.

This conclusion, however, does not end the inquiry. There are three exceptions to the Second Home Exemption, two of which may be applicable in this case: the "Sublease Exception" and the "For Sale Exception."

The Sublease Exception is set forth in Civil Code Section 798.21(f)(1) and provides that the Second Home Exemption from rent control does not apply where:

"The homeowner is unable to rent or lease the mobilehome because the owner or the management of the mobilehome park in which the mobilehome is located does not permit, or the rental agreement limits or prohibits, the assignment of the mobilehome or the subletting of the park space."

No evidence has been provided to the Commission showing that Ms. Doran's Mira Mar home is being rented to another party. No evidence has been provided to show that she is unable to rent the home because the Park owner does not permit subletting or because her rental agreement limits or prohibits subletting. The documentation provided indicates that Ms. Doran's rental agreement does not unreasonably prohibit or limit subletting of the park space. A half-page Rental Agreement, apparently signed by Ms. Doran on July 4, 1984, is attached as the last page of supporting material to Mr. Fuselier's December 13, 2010 letter (Attachment 5). With respect to subletting, the agreement states, "This tenancy is not transferable in any way and the premises cannot be sublet unless the Owner first approves in writing. Lessee agrees to use said Lot only as the residence of the undersigned for only the members of the family listed below by name."

The Park owner has pointed out that "the Park's current Rules and Regulations promulgated on or about March 15, 2008... allow subletting." (See Attachment 1.) Moreover, Ms. Doran's rental agreement allows subletting with prior Park owner approval. No evidence has been provided to the Commission showing that Ms. Doran requested the Park owner's permission to sublet her home or that she is otherwise unable to sublet her Mira Mar home because the Park owner has denied permission to sublet. As such, based on the evidence presented to date, staff concludes that the Sublease Exception to the Second Home Exemption does not apply to Space 158.

The For Sale Exception is set forth in Civil Code Section 798.21(f)(2), and provides that the Second Home Exemption does not apply where:

“The mobilehome is being actively held available for sale by the homeowner, or pursuant to a listing agreement with a real estate broker licensed pursuant to Chapter 3 of Part 1 of Division 4 of the Business and Professions Code, or a mobilehome dealer, as defined in Section 18002.6 of the Health and Safety Code. A homeowner, real estate broker, or mobilehome dealer attempting to sell a mobilehome shall actively market and advertise the mobilehome for sale in good faith to bona fide purchasers for value in order to remain exempt pursuant to this subdivision.”

The Park owner has provided evidence that Ms. Doran listed her unit for sale as of January 17, 2009. The Park owner contends that once it gave notice of its intent to raise the rent under the Second Home Exemption, the homeowners were precluded from invoking the For Sale Exception by placing their homes for sale. Staff disputes this contention, and the City has sought declaratory relief from the Court on this point in the Mira Mar litigation. The Park owner contends that even if the homeowners are allowed to defeat the Second Home Exemption by placing their homes for sale after receiving the rent increase notice, the For Sale Exception still does not apply to Ms. Doran's space, because she is not actively marketing and advertising it for sale in good faith to bona fide purchasers, as required by the statute.

In this regard, the Park owner points to portions of Ms. Doran's deposition transcript (Exhibit 7 to the Park's November 12, 2009 letter [Attachment 1]) from her deposition that occurred on July 29, 2009. According to the transcript, Ms. Doran stated that she listed her mobilehome with Empire Realty Associates, beginning January 17, 2009 and ending July 17, 2009 for an initial amount of \$300,000. She stated that about two months prior to the deposition she had dropped the asking price to \$170,000. She also stated that she did not know if there was an appraisal completed on her mobilehome, and her broker did not provide her with any estimate of value. No information regarding Ms. Doran's efforts to market and advertise her mobilehome for sale in good faith has been provided to the Commission by Ms. Doran or on her behalf. Therefore, based on the evidence submitted to date, Commission staff concludes that the For Sale Exception to the Second Home Exemption does not apply to Ms. Doran's tenancy.

Summary of Staff's Conclusions

In summary, Commission staff has concluded that because the Court has already found that the Second Home Exemption does not apply to Spaces 14 and 94, the Park owner's request for a determination of the same issue by the Commission is moot and need not be taken up by the Commission at this time. Based on the evidence provided to date by the Park owner and on Ms. Doran's behalf, staff tentatively concludes that the Second Home Exemption from rent control applies to Space 158.

FISCAL IMPACT

If the Commission determines that Space 158 is exempt from Chapter 16B, revenues from registration fees would be decreased in the amount of approximately \$106.24 annually.

CONCLUSION

Based on the evidence provided to date, staff recommends that the Manufactured Home Fair Practices Commission determine that Space Number 158 in Mira Mar Mobile Community is exempt from the rental rate restrictions of Chapter 16B of the Oceanside City Code pursuant to Section 16B.16(d)(4) thereof and California Civil Code section 798.21, and that the request for a determination as to Space Numbers 14 and 94 is currently moot in light of recent rulings by the San Diego Superior Court in pending litigation.

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Attachments

- Attachment 1 Park Owner's Request (via H,K&C) for Hearing, November 12, 2009
- Attachment 2 Commission Notice of Decision for October 7, 2010 meeting
- Attachment 3 Superior Court Order After Hearing, filed November 2, 2010
- Attachment 4 Park Owner's Letter (via H,K&C), December 6, 2010
- Attachment 5 HOA Letter (via Kaloogian & Fuselier), December 13, 2010
- Attachment 6 Superior Court Minute Order, December 10, 2010 Hearing
- Attachment 7 HOA Letter (via Kaloogian & Fuselier), December 28, 2010
- Attachment 8 Doran Homeowner's Exemption Cancellation form, November 10, 2008
- Attachment 9 Doran DMV Change of Address Form, November 12, 2008
- Attachment 10 Letter to Doran denying primary resident exemption, December 15, 2008