



DATE: January 7, 2010

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

FROM: Neighborhood Services Department

SUBJECT: REQUEST FOR HEARING ON EXEMPTION FROM RENT CONTROL AS TO CERTAIN SPACES AT MIRA MAR MOBILE COMMUNITY

## SYNOPSIS

Staff recommends that the Manufactured Home Fair Practices Commission approve the request of the owner and property manager for the Mira Mar Mobile Community (the "Park") for 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, upon the 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.

## BACKGROUND

### Requests for Hearings before the Commission

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 any interested party may make a written request for a hearing on any issue relevant to Chapter 16B. Per the Guidelines, the request should be directed to the presiding commissioner (i.e., the chair of the Commission), who must present the request to the entire Commission for consideration at the next regularly scheduled meeting.

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 Mira Mar Mobile Community, 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. A copy of the request for a hearing is attached and hereby presented to the Commission for consideration. The issue before the Commission at this time is not whether the three spaces at issue are exempt from the rent setting provisions of Chapter 16B, but only whether a hearing should be granted to make that determination.

#### Mira Mar Litigation

Pertinent to the Park owner's request for a hearing is the fact that the Park owner and manager are currently involved in litigation with the Mira Mar Mobile Community Homeowners Association, Inc. (the "HOA") and several individual Mira Mar residents, which includes the matter of determining whether some park spaces (including Space Nos. 14, 94 and 158) are exempt from the rent setting provisions of Chapter 16B of the Oceanside City Code pursuant to California Civil Code section 798.21. The City of Oceanside is also a party to the litigation.

The lawsuit was commenced 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. At the HOA's request, the court issued a preliminary injunction on March 13, 2009, restraining the Park owner and manager from raising rents pending resolution of the lawsuit. The Park owner and manager have appealed the preliminary injunction; the matter is pending with the Court of Appeal.

Also pending in the trial court is a motion for summary adjudication filed by the HOA seeking a determination that the exemption from rent control does not apply to spaces at Mira Mar because the residents' rental agreements limit or prohibit subleasing. The trial court has stayed his ruling on this motion, pending a decision from the Court of Appeal regarding the preliminary injunction.

The City has filed a motion for summary judgment in the trial court, seeking a declaration, among other things, that the Second Home Exemption does not apply to any spaces at Mira Mar that are being actively marketed for sale. At the Park owner's request, the City has continued the hearing on that motion to April 16, 2010, to await a decision on the preliminary injunction from the Court of Appeal.

#### Registration Fees

City Code Sections 16B.5 and 16B.6 and related resolutions require manufactured home park owners to register their parks with the City annually and to pay a registration fee of \$80.14 per regulated space, a portion of which may be passed on to the residents. Registration fees are due November 12 of each year. As of December 22, 2009, the owner of Mira Mar had not registered the Park or paid registration fees. City staff has advised the Park owner that it may pay under protest the fees for those spaces

that it contends are subject to the Second Home Exemption, which fees will be refunded as applicable, if and when the spaces are determined to be exempt in the pending litigation.

## ANALYSIS

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 has asked the Commission to hold a hearing in order to make a determination that three spaces in the Park are subject to the Second Home Exemption. This is a matter that is not already established by Chapter 16B and/or the Guidelines, and, absent the pending litigation, making this determination would enable the Commission to establish space rent ceilings in the Park according to Chapter 16B. But for the pending litigation, City staff would recommend that the Commission hold the requested hearing as long as the Park's registration is current.

However, the determination requested by the Park owner falls precisely within the scope of the matters being decided in the pending litigation. Accordingly, to avoid the possibility of conflicting rulings, staff recommends that the Commission conduct the requested hearing upon confirmation that the Park's registration is current, only after the trial court and the Court of Appeal have provided guidance on the matters before them that are common to the matters encompassed by the Park owner's hearing request.

## FISCAL IMPACT

There is no fiscal impact at this time. If the Commission determines at a later date that the spaces are exempt from Chapter 16B, revenues from registration fees would be decreased in the amount of approximately \$240 annually for the three spaces. Residents of the affected spaces could receive rent increases, and could be liable for rent arrears back to the original rent increase date of February 1, 2009.

## CONCLUSION

Staff recommends that the Manufactured Home Fair Practices Commission approve the request of the owner and property manager for the Mira Mar Mobile Community for 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, upon the 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.

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