



Memorandum

TO: COMMUNITY & ECONOMIC
DEVELOPMENT COMMITTEE

FROM: Jacky Morales-Ferrand

SUBJECT: SEE BELOW

DATE: January 13, 2016

Approved

Kia Walsh

Date

Jan. 14, 2016

SUBJECT: MOBILEHOME "OPT-IN/STAY IN BUSINESS" CONCEPT

RECOMMENDATION

It is recommended that the Committee accept the report on the Opt-in/Stay in Business concept for mobilehome parks and provide input to the full City Council on February 9, 2016 as to whether the Housing Department should continue to work with stakeholders to further refine and analyze this concept or if the Department should cease work on this item.

BACKGROUND

The City Council has recognized mobilehome parks as an important source of housing for families, seniors, and other low and moderate income residents. To further the protection of mobilehome parks in the City of San José, the City Council directed staff to research and recommend possible policy changes. On June 22, 2015 staff presented a proposed work plan on the Mobilehome Park Preservation Policies/Conversion Ordinance Update to the CED Committee. The workplan recommended three land-use related policy and ordinance changes: text amendments to the Envision San José 2040 General Plan (General Plan), amendments to Title 20 of the San José Municipal Code (the Zoning Code) including the Mobilehome Conversion Ordinance in Chapter 20.180, and a new City Council Policy on the Conversion of Mobilehome Parks to Other Uses.¹ The Committee accepted the work plan and directed staff to meet with MHP owners and operators to include their input into the work plan prior to presenting it to Council for discussion and action.

Staff facilitated two focus group meetings with MHP owners and operators on July 16 and 23, 2015. In addition, two focus groups with residents were held by staff on July 30 and August 6, 2015. The CED report and the work plan that staff proposed was presented at a Council hearing held on August 11, 2015. In response to recommendations made by Councilmembers in two

¹ For more information on these proposed land use changes please refer to the Planning Commission memorandum dated January 4, 2016.

separate Councilmembers' memoranda submitted prior to the hearing, the City Council adopted two motions as follows:

1. The report was accepted, including the joint memorandum from Mayor Sam Liccardo, Vice Mayor Rose Herrera and Councilmembers Chappie Jones, Manh Nguyen and Tarn Nguyen, dated August 7, 2015, to (1) accept staff's report and work plan to further the preservation of mobilehome parks; and (2) direct staff to return in two weeks with an urgency ordinance, and with a standard ordinance to establish a moratorium on mobilehome park conversions for six months.
2. Acceptance of Councilmember Johnny Khamis' recommendations including: (a) direct Housing staff to meet with stakeholders and MHP owners, to discuss their "Opt-In; Stay in Business" proposal regarding alternative methods of maintaining mobile home inventory, and (b) return to Council with a review of the 2040 General Plan to examine MHPs with Urban Village designations and the implications for MHP residents with respect to conversion.

The "Opt-in/Stay In Business" concept was proposed by Brandenburg, Staedler & Moore in consultation with other park owners. These owners indicated that another ordinance, the City's Mobilehome Rent Ordinance (Chapter 17.22 of the San José Municipal Code), was too onerous and made repair or replacement of aging infrastructure in their parks difficult to do while also operating their parks as a profitable business. Other park owner stakeholders have commented that although their parks do make a fair return they have no reason to make new investments because those investments do not yield additional financial returns. Park owner stakeholders also commented that the amount of the annual increase on rents remains the same regardless of the level or type of new investment. Generally speaking, the Opt-in/Stay In Business concept would provide mobilehome park owners with additional financial incentives in exchange for making needed capital improvements and keeping their parks operating for a certain period of time. The current proposal requires a twenty year time period or through the implementation timeframe of the current General Plan.

Under the current Mobilehome Rent Ordinance, automatic annual space rent increases are limited to 75% of Consumer Price Index, with a 3% floor and a 7% ceiling. Park owners are allowed to "pass-through" capital infrastructure costs to park residents in the form of space rents above the annual allowable space rents. In order to obtain a pass-through, the owners must file a petition for a hearing at which a Hearing Officer will review the capital costs and determine the associated rent increases that may be charged to the residents. To be eligible to receive the pass through, the owners must show that they are not able to maintain the inflation-adjusted level of financial return that they received before the imposition of rent control. The Housing Department administers the Mobilehome Rent Ordinance through the Rental Rights and Referral Program. Staffing for the Mobilehome portion of the Program is funded through fees paid by park owners, of which 50% can be passed on to residents.

In the Fall of 2015, a group of park owners met with City staff several times to refine the Opt-in/Stay In Business concept sufficiently for further discussion with stakeholder focus groups. A draft summary of the concept was posted on the Housing Department's webpage on November 23, 2015. It is included with this document as an attachment.

The objectives listed in the Opt-In/Stay In Business concept summary were (a) to encourage mobilehome park owners to stay in business by providing them with economic incentives, (b) to facilitate capital infrastructure improvements in aging mobilehome parks, and (c) to provide housing stability for existing mobilehome residents for twenty years. The proposed economic incentives included an alternate capital improvement pass-through process in lieu of the existing petition process described in the Mobilehome Rent Ordinance. The process currently in use requires park owners to substantiate capital expenses, to show that they are not able to maintain the inflation-adjusted level of financial return, and a hearing officer to determine how much of the costs can be passed through to park residents in the form of space rent increases. This hearing also provides the only opportunity for residents to obtain relief for service reductions. The park owner's concept would make it significantly easier for owners to pass through capital improvement costs as no review of the owner's books or determination of resident benefit would be required. The park owners' concept also includes a Capital Improvement Assistance Program whereby a portion of a park's low-income residents would not have to pay for an additional capital improvement pass-through.

In addition, the Opt-In/Stay In Business concept proposes allowing an increase to the rent (to market rate or a lesser amount) when a mobilehome owner sells their home to another owner-occupant and the home remains at its current space. This is not allowed under the Mobilehome Rent Ordinance. The Opt-In/Stay In Business concept proposes that implementation of their proposal would be overseen by the Housing Department and funded with full cost recovery through fees paid by mobilehome park owners.

Stakeholder Input

In December 2015 and January 2016, City staff conducted two focus groups for park residents and two for park owners. The goal of the stakeholder outreach was to receive input from mobile home residents who either represented mobile home communities or who were already involved in the preservation discussions. The outreach was limited to allow for more focused discussion and to further develop the concept before conducting more extensive outreach. The input received in writing is provided as an attachment to this memo. A summary of the input received in writing and at the meetings is provided below.

Mobilehome Park Owner and Representative Input

A total of 24 park owner representatives attended the focus group meetings and several others submitted written comments. The park owners stated that many parks, especially older ones, have aging infrastructure and that it costs more each year to maintain versus replace infrastructure. Some park owners stated that the annual 3% rent increases were insufficient to cover needed maintenance. Another participant indicated that capital improvement pass-throughs were not an attractive option given the current petition process. Several owners stated they would prefer to replace old infrastructure to lower their operating costs and to write off capital improvements on their income taxes. Attendees supported vacancy decontrol, which would allow rents to be raised to market rate upon transfer or sale of a mobilehome. The park owners indicated this was important because the Mobilehome Rent Ordinance constrains rents well below market value and inflates the market value of mobilehomes in San José. Park owners stated that new mobilehome owners are buying a home as well as the right to live in a rent-

controlled park. By allowing limited vacancy decontrol, park owners argued they would receive some of the value that rent control has created.

In a letter to the Mayor dated December 23, 2015, a group of park owners who indicated that they represented half of all park owners in San José, stated that they were withdrawing from the “Opt-In/Stay In Business” public process citing concerns with the “draft Council Policy on the Conversion of Mobilehome Parks to Other Uses” that was posted on the Housing Department’s webpage on December 10, 2015. No park owners participated in the second focus group meeting scheduled for January 4, 2015. As a result, some key feedback was not received that would have facilitated the resident stakeholder discussion. For example, owners agreed to limit the amount of the capital improvement pass-through and the level of the increase when a mobile home is sold. The owners agreed to return with proposed monthly limits, but this did not occur because the park owners withdrew from the public process. This information would have greatly enhanced the resident discussions because the residents feared the monthly limits would be too high.

Mobilehome Park Resident and Representative Input

A total of 114 mobilehome park residents attended the focus group meetings. The majority of park residents who attended the focus group meetings and who submitted written comments opposed moving forward with the Opt-In Stay in Business concept. Many of these resident stakeholders expressed their opinion that this concept would mostly benefit park owners and offered few advantages to park residents. Attendees representing mobilehome park residents commented that a twenty-year commitment to stay in business as a mobilehome park was not sufficient. They stated that vacancy decontrol would decrease their home values, that the owner’s proposal was complex and that it was clouded with too many unknowns. In addition some participants resented the idea of paying park owners more for maintenance that residents felt should have already been done, and the lack of transparency that an expedited pass-through approval would entail.

Input Summary

The following table summarizes the input received from mobilehome park owners and residents on the key concepts of the Opt-In/Stay In Business concept.

Opt-In Proposal	Park Owners Comments –	Park Residents Comments
The owner is the only party required to make the decision on whether to opt-in.	There was a concern that if park residents were allowed to vote then the Opt-In would never be feasible because park residents would oppose the program. It would be too difficult to obtain their support.	An affirmative vote by the majority of park residents must be required. The level of support varied from a simple majority to a super majority to 100% support.
20 year period.	Some owners said 15 years was too long, others supported up to 20 years.	The period should be longer.

		Many felt 20 years was not long enough for families and recently retired residents.
Easier Capital Improvement Pass-Throughs: Owners would no longer have to prove they are not receiving a fair return as required by the Mobilehome Rent Ordinance.	Park owners supported the proposed process.	Concerns expressed that many residents cannot afford to pay more rent; Comments that it is unjust to make residents pay for improvements without considering if park owners are getting a fair return as required by the Mobilehome Rent Ordinance.
Capital Improvement increases would be allowed via an expedited administrative approval process.	IRS guidelines are less subjective than the standards in the Mobilehome Rent Ordinance. Some owners also agreed to limit the amount of the capital improvement increase but did not specify the limit.	Concern that IRS guidelines are too open and that residents should have a say in what gets approved. Some expressed a concern that only a staff review would be needed. One suggestion was to add an owner and resident to the review process.
Resident Assistance to low income tenants for extra pass through costs	Assist up to 10% of homes in a given park by not imposing the additional capital improvement pass through increase.	10% is not enough because more than 10% of park residents may be low income. Should be determined by need.
Increase Base Rent when a home is sold to a new owner occupant. (Limited Vacancy Decontrol)	Raise the rent by some amount when an in-place transfer occurs. Some owners agreed to place a cap on the increase but did not specify the cap.	Concern it would lower the resale value of mobilehomes and make financing difficult. Concern it would lead to a net loss of relatively affordable housing stock.

ANALYSIS

The City Council directed the Housing Department to meet with park owners and residents to develop the park owners' Opt-In/Stay In Business concept. After several meetings, it is clear that park owners and residents do not agree on many of the key elements of the concept. In particular, the residents want a voice in whether their park participates in any opt-in program. However, it may be possible to make more progress on the concept if there was additional specificity to the concept – such as a definition of what a capital improvement is and if numbers

were added to the limits on increases. Unfortunately, because the park owners withdrew, staff have been unable to confirm what limits the park owners would agree to.

Staff is not aware of any jurisdictions that have an ordinance implementing an opt –in concept that ties changes in rent regulation to an agreement not to seek a discretionary land use entitlement. Thus, staff will need to work with the Attorney’s Office to better understand whether and how the concept might be implemented. Given that it could result in significant changes to the Mobilehome Rent Ordinance and might result in changes to rent regulation in the majority of the City’s mobilehome parks, another key issue is how to ensure that the opt-in period would be enforceable.

Under the existing Mobilehome Rent Ordinance, park owners can obtain many of the benefits listed in the Opt-In Concept by entering into voluntary long term leases with their residents. A space rented under long-term lease is not subject to the Mobilehome Rent Ordinance during its term.

If the Housing Department is directed to continue to work on the Opt-In Concept, then a workplan and timeline would be developed to further refine and analyze this concept. This should be done through the City’s priority setting process. However, without park owner participation, it is unlikely that the staff could successfully develop an Opt-In Program.

PUBLIC OUTREACH

Public outreach was conducted in two phases. The first phase focused on three land-use related policy and ordinance changes: text amendments to the Envision San José 2040 General Plan (General Plan), amendments to Title 20 of the San José Municipal Code (the Zoning Code) including the Mobilehome Conversion Ordinance in Chapter 20.180, and a new City Council Policy on the Conversion of Mobilehome Parks to Other Uses. City staff mailed postcards to 10,949 mobilehome residents announcing three large public meetings, providing City staff contact information, and a link to a project webpage for future updates. In addition staff maintained a data base of email addresses and sent email announcements regarding meetings and documents being posted on the webpage. To date there have been twelve focus group, public meetings and hearings relating to this topic.

The second phase of public outreach focused on the “Opt-in/Stay In Business” concept. On November 23, 2015, City staff posted information about the Opt-In/Stay In Business concept on the Housing Department’s mobilehome park webpage and sent email blasts to more than 220 residents and letters to park owners. The Housing Department hosted two focus group meetings intended for park owners (12/3/15 and 1/4/16) and two for park residents (12/7/15 and 1/5/16). This item is scheduled to be heard at the Housing and Community Development Commission (HCDC) meeting on January 14, 2016.

COORDINATION

This reported was coordinated with the City Attorney’s Office and the Department of PBCE.

CEQA

Not a Project, File No. PP10-069 (a), Staff Report.

COMMISSION RECOMMENDATION

This item will be heard by the Housing and Community Development Commission (HCDC) on January 14, 2016. The Commission's recommendation will be included in a supplemental memo to this memo.

CEQA

Not a Project, File No. PP10-069 (a), Staff Report.

/s/
Jacky Morales-Ferrand
Director, Department of Housing

For questions, please contact Adam Marcus, Acting Policy and Planning Manager, at
(408) 975-4451.

Attachments

1. Mobilehome Opt-In Stay In Business Summary DRAFT
2. Public Correspondence