

**City of San Marcos
City Council Special Meeting Agenda**



**Monday, December 2, 2024
1 Civic Center Drive
San Marcos, CA 92069
City Council Chambers
3 PM**

Cell Phones: As a courtesy to others, please silence your cell phone or pager during the meeting and engage in conversations outside the Council Chambers.

Americans with Disabilities Act: If you need special assistance to participate in this meeting, please contact the City Clerk at (760) 744 1050, ext. 3145. Notification 48 hours in advance will enable the City to make reasonable arrangements to ensure accessibility to this meeting. Assisted listening devices are available for the hearing impaired. Please see the City Clerk if you wish to use this device.

Public Comment: If you wish to address the City Council, please complete a "Request to Speak" form. Forms are located at the rear of the Council Chambers. Be sure to indicate which item number you wish to address. Comments are limited to THREE minutes, unless you meet the requirements of a formal or informal organization and have registered your organization with the City Clerk in advance. Speakers are asked to fill out a "Request to Speak" form and hand it to staff, although provision of a name, address, or other identifying information is optional.

The Oral Communication segment of the agenda is for the purpose of allowing the public to address the City Council on any matter NOT listed on the agenda. Speakers are limited to one opportunity to address the Council under Oral Communications. The Oral Communication segment is split on the agenda and begins with a 15 minute timed segment during which the Council will hear as many speakers as possible. Upon the conclusion of the 15 minute timed segment, any remaining speakers will automatically be called during the continuation of the Oral Communication segment at the end of the agenda. Subject to very limited exceptions, the City Council is prohibited by state law from discussing or taking action on items NOT listed on the Agenda. However, they may refer the matter to staff for a future report and recommendation. If you wish to speak under "Oral Communications," please complete a "Request to Speak" form as noted above in advance of the start of that portion of the meeting.

Meeting Schedule and Broadcast Information: Regular City Council meetings are held on the second and fourth Tuesday of each month at 6:00 pm in the Council Chambers. City meetings are broadcast LIVE on San Marcos Community Television (SMTV) on Cox Channel 19, Time Warner Channel 24 and AT&T Channel 99. Meetings are also streamed live and archived online at www.sanmarcos.net.

Agenda related writings or documents provided to a majority of the City Council after distribution of the agenda packet will be available for public inspection at the time of distribution in the City Clerk Department located on the second floor of City Hall, 1 Civic Center Drive, San Marcos, CA during normal business hours. The same materials are also posted online at www.sanmarcos.net as time permits.

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

CONSENT CALENDAR

Consent Calendar items are considered routine and will be approved by one motion, with no separate discussion prior to voting unless the public, staff, or Council Member(s) request that specific item(s) be removed from the Consent Calendar for separate discussion or action. Speaker slips for this category must be presented to the City Clerk at the start of the meeting. Speakers are limited to three minutes.

1. ORDINANCE 2024-1552 - SECOND READING OF ORDINANCE REPEALING ORDINANCE 2003-1203 RELATED TO DEVELOPMENT FEE UPDATES
2. ORDINANCE 2024-1553 - SECOND READING OF ORDINANCE AMENDING CHAPTER 17.44 OF TITLE 17 OF THE SAN MARCOS MUNICIPAL CODE RELATIVE TO DEVELOPMENT SERVICES AND PUBLIC FACILITIES EXACTIONS, FEES, AND/OR COSTS

Recommendation: ADOPT (second reading) Ordinance 2024-1552 repealing Ordinance 2003-1203.

Recommendation: ADOPT (second reading) Ordinance 2024-1553 Amending Chapter Title 17.44 of Title 17 of the San Marcos Municipal Code Relative to Development Services and Public Facilities Exactions, Fees, and/or Costs.

ORAL COMMUNICATIONS

Persons wishing to speak on items not on the agenda may do so during this time period. Speakers are limited to three minutes. Please complete a "Request to Speak" form. The first Oral Communication segment consists of a 15 minute timed segment during which the Council will hear as many speakers as possible. Any speakers not heard during the first Oral Communications segment will automatically be called during the continuation of the Oral Communication segment at the end of the agenda. Please note that the City Council is precluded by State law from taking action on any topic that is not included on the posted agenda.

ORDINANCES

3. CONSIDERATION OF INTERIM URGENCY ORDINANCE IMPOSING A TEMPORARY CITY-WIDE MORATORIUM ON THE CONVERSION/CHANGE OF ANY MOBILEHOME PARK EXISTING IN THE CITY FROM A PARK OCCUPIED PRIMARILY OR EXCLUSIVELY BY RESIDENTS AGED 55 YEARS OR OLDER TO A MOBILEHOME PARK ALLOWING RESIDENTS OF ALL AGES AND DECLARING THE URGENCY THEREOF, TO TAKE EFFECT IMMEDIATELY

Recommendation: ADOPT the proposed Interim Urgency Ordinance imposing a temporary City-wide moratorium on the conversion/change of any mobilehome park existing in the City from a park occupied primarily or exclusively by residents aged 55 years or older to a mobilehome park allowing residents of all ages and declaring the urgency thereof, to take effect immediately.

ORAL COMMUNICATIONS - CONTINUED

This portion of the agenda is set aside for continuation of Oral Communications, if needed. Speakers are limited to three minutes. Please note that, subject to very limited exceptions, the City Council is precluded by State law from taking action on any topic that is not included on the posted agenda. Please complete a "Request to Speak" form and place in basket provided in advance of the start of that portion of the meeting.

COUNCIL COMMENTARY**ADJOURNMENT**

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO) SS.
CITY OF SAN MARCOS)

I, PHILLIP SCOLLICK, CITY CLERK OF THE CITY OF SAN MARCOS, HEREBY CERTIFY THAT I CAUSED THE POSTING OF THIS AGENDA IN THE GLASS DISPLAY CASE AT THE NORTH ENTRANCE OF CITY HALL AND ON THE CITY'S WEBSITE ON NOVEMBER 27, 2024, 5:30 P.M.

DATE: NOVEMBER 27, 2024

A handwritten signature in black ink, appearing to read 'Ph Scollick', with a stylized flourish at the end.

PHILLIP SCOLLICK, CITY CLERK



City of San Marcos

1 Civic Center Drive
San Marcos, CA 92069

Staff Report

File #:24-2512

MEETING DATE:

DECEMBER 2, 2024

SUBJECT:

ORDINANCE 2024-1552 - SECOND READING OF ORDINANCE REPEALING ORDINANCE 2003-1203
RELATED TO DEVELOPMENT FEE UPDATES

Recommendation

ADOPT (second reading) Ordinance 2024-1552 repealing Ordinance 2003-1203.

Relevant Council Strategic Theme

Good Governance.

Executive Summary

Second reading of ordinance related City Development Impact Fees, known as Public Facilities Fees (PFF), fund the construction and expansion of public infrastructure. The City adopted Ordinance 2003-1203 which established the Public Facilities Financing Plan to establish public facilities fees to mitigate the impact of development. Staff requested that Ordinance 2003-1203 be repealed and any pertinent provisions related to the City collection of the payment of PFF be incorporated into Resolution 2024-9386 (Item D of agenda item #9 on November 26, 2024 City Council Agenda).

Fiscal Impact

No fiscal impact is anticipated arise as a result of adoption of the proposed ordinance.

Attachments

Ordinance 2024-1552 to repeal Ordinance 2003-1203

Prepared by: Phil Scollick, City Clerk

Approved by: Michelle Bender, City Manager

ORDINANCE NO. 2024-1552

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS REPEALING ORDINANCE 2003-1203 UPDATING THE PUBLIC FACILITIES FINANCING PLAN AND ESTABLISHING AND IMPOSING DEVELOPMENT IMPACT FEES

WHEREAS, on October 28, 2003, the City Council enacted Ordinance No. 2003-1203 Updating the Public Facilities Financing Plan and Establishing and Imposing Development Impact Fees;

WHEREAS, in 2021, Assembly Bill 602 ("AB 602") amended the Mitigation Fee Act of the California Government Code, which governs Development Impact Fees; and

WHEREAS, AB 602 emphasized the need to adopt a Development Impact Fee Nexus Study at a public hearing prior to the adoption of any new or increased Development Impact Fees; and

WHEREAS, the procedure to adopt any new or increased Development Impact Fees is provided for in the Mitigation Fee Act and Ordinance No. 2003-1203 is no longer needed.

NOW THEREFORE, the City Council of the City of San Marcos does ordain as follows:

SECTION 1. Repeal. Ordinance 2003-1203 is repealed in its entirety.

SECTION 2. Effective Date. This Ordinance shall be effective when the City's adoption of the 2024 Development Impact Fees become effective, which is March 3, 2025. Withing fifteen (15) days following its adoption, the City Clerk shall publish this Ordinance, or the title thereof, as a summary as required by state law.

INTRODUCED AND FIRST READ at a regular meeting of the City Council of the City of San Marcos, California, on the 26th of November, 2024.

AND THEREAFTER ADOPTED at a special meeting of the City Council of the City of San Marcos, California, held on the _____ of _____, 2024, by the following vote:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:

Rebecca D. Jones, Mayor
City of San Marcos

ATTEST:

Phillip Scollick, City Clerk
City of San Marcos



City of San Marcos

1 Civic Center Drive
San Marcos, CA 92069

Staff Report

File #:24-2513

MEETING DATE:

DECEMBER 2, 2024

SUBJECT:

ORDINANCE 2024-1553 - SECOND READING OF ORDINANCE AMENDING CHAPTER 17.44 OF TITLE 17 OF THE SAN MARCOS MUNICIPAL CODE RELATIVE TO DEVELOPMENT SERVICES AND PUBLIC FACILITIES EXACTIONS, FEES, AND/OR COSTS

Recommendation

ADOPT (second reading) Ordinance 2024-1553 Amending Chapter Title 17.44 of Title 17 of the San Marcos Municipal Code Relative to Development Services and Public Facilities Exactions, Fees, and/or Costs.

Relevant Council Strategic Theme

Good Governance.

Executive Summary

Second reading of ordinance to amend Title 17.44 of the San Marcos Municipal Code addresses Development Services and Public Facilities Exactions, Fees, and/or Costs. As a result of the repeal of Ordinance 2003-1203 and updates to state law, Title 17.44 was amended to be consistent with these changes.

Fiscal Impact

No fiscal impact is anticipated arise as a result of adoption of the proposed ordinance.

Attachments

Ordinance 2024-1553, amending Chapter 17.44 of Title 17 of the San Marcos Municipal Code Relative to Development Services and Public Facilities Exactions, Fees, and/or Costs.

Prepared by: Phil Scollick, City Clerk

Approved by: Michelle Bender, City Manager

ORDINANCE NO. 2024-1553

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, CALIFORNIA AMENDING CHAPTER 17.44 OF TITLE 17 OF THE SAN MARCOS MUNICIPAL CODE RELATIVE TO DEVELOPMENT SERVICES AND PUBLIC FACILITIES EXACTIONS, FEES, AND/OR COSTS

WHEREAS, Chapter 17.44 of the San Marcos Municipal Code (SMMC), addresses Development Services and Public Facilities Exactions, Fees, and/or Costs; and

WHEREAS, the City adopted Ordinance 2003-1203 establishing the Public Facilities Financing Plan and adopting Public Facilities Fees;

WHEREAS, updates to the Mitigation Fee Act require specific procedures for the establishment and assessment of Development Impact Fees, also known as Public Facilities Fees; and

WHEREAS, Ordinance 2003-1203 will be repealed as part of a comprehensive update to Citywide User Fees and Public Facilities Fees; and

WHEREAS, amendments to Chapter 17.44 are needed to be consistent with updates to state law and updates to Citywide Fees; and

WHEREAS, as a result of the above-described changes to state law, the City desires to amend SMMC Section 17.44.010 to clarify the distinction between Public Facilities Fees and Development Services User Fees; and

WHEREAS, the City further desires to amend SMMC Section 17.44.020 to update the language for the definitions within the chapter; and

WHEREAS, the City further desires to amend SMMC Section 17.44.030, to update Government Code sections and City resolution numbers; and

WHEREAS, the City desires to make minor edits to SMMC Sections 17.44.040 and 17.44.050 to make consistent with other provisions in SMMC Chapter 17.44; and

WHEREAS, the City further desires to amend SMMC Section 17.44.060 to update the scope of the public improvements that are funded by the Public Facilities Fees and to make minor corrections to the language in this Section; and

WHEREAS, the City further desires to amend SMMC Section 17.44.070 relating to the timing of payment of Public Facilities Fees to update language to be consistent with state law and the City's updated policies; and

WHEREAS, the City further desires to amend SMMC Section 17.44.080 relating to the Fee Deferral Program for Public Facilities Fees to make minor corrections and edit language to be consistent with City processes; and

WHEREAS, the City further desires to amend SMMC Sections 17.44.090, 17.44.100, 17.44.110, 17.44.120 and 17.44.130, to edit language to make consistent City processes and policies and other sections of Chapter 17.44 and to update the scope of the public improvements that are funded by the Public Facilities Fees; and

NOW, THEREFORE, the City Council of the City of San Marcos, California, in accordance with the freedom afforded to charter cities generally, and by the Charter of the City of San Marcos specifically, does ordain as follows:

Section 1. The foregoing recitals are true and correct and are incorporated herein as though fully set forth at this point.

Section 2. Existing San Marcos Municipal Code Chapter 17.44 is hereby amended to read as shown in the clean and redlined versions attached hereto as Exhibit "A" and Exhibit "B," respectively, and incorporated herein by this reference.

Section 3. The proposed Text Amendments to Title 17 of the San Marcos Municipal Code are exempt from the California Environmental Quality Act (CEQA) because this is not a project within the meaning of Section 15378 of the CEQA Guidelines because there is no potential for it to result in a physical change in the environment, either directly or indirectly. In the event this Resolution is found to be subject to CEQA, it is exempt from CEQA pursuant to the exemption contained in CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that there is no possibility of a significant effect on the environment.

Section 4. If any section, sentence, clause or phrase of this Ordinance is determined to be invalid, illegal or unconstitutional by a decision or order of any court or agency of competent jurisdiction, then such decision or order will not affect the validity and enforceability of the remaining portions of this Ordinance. The City Council declares that it would have passed and adopted the Ordinance, and each section, sentence, clause or phrase thereof, regardless of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

Section 5. This Ordinance shall be effective on March 3, 2025. Within fifteen (15) days following its adoption, the City Clerk shall certify to the passage of this Ordinance and cause the same to be published, or the title thereof as a summary, in accordance with the provisions of State law in a newspaper of general circulation designated for legal notices publication in the City of San Marcos.

INTRODUCED at a regular meeting of the City Council of the City of San Marcos, California, held on the 26th day of November, 2024.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of San Marcos, California, at a special meeting thereof, held on this 2nd day of December, by the following roll call vote:

AYES:	COUNCIL MEMBERS:
NOES:	COUNCIL MEMBERS:
ABSENT:	COUNCIL MEMBERS:

Rebecca D. Jones, Mayor
City of San Marcos

ATTEST:

APPROVED AS TO FORM:

Phillip Scollick, City Clerk
City of San Marcos

Helen Holmes Peak, City Attorney
City of San Marcos

ATTACHMENT(S):

EXHIBIT A – CHAPTER 17.44 TEXT AMENDMENTS – CLEAN
EXHIBIT B – CHAPTER 17.44 TEXT AMENDMENTS – REDLINED

CHAPTER 17.44 DEVELOPMENT ~~SERVICES~~USER FEES AND PUBLIC FACILITIES EXACTIONS, FEES AND/OR COSTS

17.44.010 Purpose.

(a) Public Facilities Fees or Development Impact Fees

The ~~ongoing~~continued development of real property ~~located~~ within the City's jurisdictional boundaries with ~~various uses including that include~~, but ~~are~~ not limited to, single-family ~~dwelling units~~, and multi-family dwelling units, ~~and~~ agricultural ~~uses~~, commercial ~~uses~~, industrial ~~uses~~, manufacturing ~~uses~~, office ~~and~~ professional ~~uses~~, recreational ~~uses~~, religious ~~uses~~ and storage uses, has resulted in:

- (i) ~~(i)~~ an increased demand on existing public services, facilities, and infrastructure;
- (ii) ~~(ii)~~ the need for expansion of public services, facilities and infrastructure; ~~and/or~~
- (iii) ~~(iii)~~ the need for the installation of new public services, facilities and infrastructure.

To meet ~~such~~ health and safety needs, and in accordance with Government Code Section 66000 et seq., it is the intent of the City Council that each applicant for a grading, construction, building and/or development permit or entitlement shall, ~~prior to the issuance of such permit or entitlement~~, pay the Public Facilities fees described hereafter. The funds generated by the payment of fees described herein shall be deposited by the City into separate funds or accounts that have been established for such purposes.

(b) Development User Fees

The City Council assesses Development User Fees to recover in whole or in part the costs of delivering exclusive-use services that benefit a limited number of users, such as the review, permitting, and inspection of Development Entitlements. Development User Fees may be assessed in accordance with Government Code 66014 and were adopted pursuant to Resolution 2024-9385.

17.44.020 Definitions.

For the purposes of this Chapter 17.44, the following words or phrases shall be construed as defined below, unless from the context it appears that a different meaning is intended:

- (a) **Building** shall mean any structure or tenant improvement built for the support, shelter and/or enclosure of persons, goods, chattels, animals and/or property of any kind.
- (b) **Building Permit** shall mean a permit required by and issued pursuant to the Uniform Building Code as adopted by the City.
- (c) **Development Entitlement** shall mean a permit, approval, license or other evidence of permission processed, issued and/or granted by the City for any planning, grading, construction, building and/or other development or pre-development entitlement activity.
- (d) **Development Services** shall mean the departments and functional divisions Development Services Department of the City of San Marcos involved in the review, processing, issuance and/or inspection of Development Entitlements and its various Divisions, including Building, Planning, and Engineering as well as such related services as may be provided by other City Departments such as Administration,

~~Engineering~~Housing, Parks and Recreation, Finance, Public Works, the Fire Protection District, and the Sheriff's Department.

- (e) **Development ~~Services~~User Fees** shall mean the fees charged by the City to recover ~~in whole or in part the costs, including~~ administration ~~and~~ overhead ~~and costs~~ associated with the processing of ~~grading, construction, building and/or development entitlements by the Development Services Department of the City of San Marcos and its various Divisions, including Building, Engineering, Planning, and Landscape Maintenance, as well as the administrative overhead and costs associated with such related services as may be provided by Administration, Parks and Recreation, Finance, Public Works, the Fire Protection District, and the Sheriff's Department~~Development Entitlements by Development Services, including the ~~CPI~~ annual adjustment factor for such fees adopted pursuant to Resolution 200124-57779389.
- (f) **Dwelling Unit** shall mean each single-family residential dwelling, ~~second unit (granny flat)~~accessory dwelling unit, each pad for a mobilehome or trailer, and each unit of an apartment, duplex or multiple dwelling structure, designed as a separate habitation for one or more persons.
- (g) **Applicant~~Person~~** shall mean every individual, partnership, firm or corporation that is to construct, reconstruct, develop, or redevelop, or is to be responsible for the construction, reconstruction, development, or redevelopment of a dwelling, greenhouse, commercial, office, or industrial structure, as well as those who~~ch~~ may do so through the services of an employee, agent, and/or independent contractor.
- (h) **Public Facilities or Facilities** shall mean facilities, infrastructure, improvements, equipment, improved and/or unimproved real property and/or interests therein that are used, operated and/or otherwise held for general municipal purposes or on behalf of the citizens of the City. Such facilities, infrastructure, equipment and real property interests shall include, but shall not be limited to, ~~streets, highways, curbs, gutters, sidewalks, traffic controls, bridges, over-crossings, street interchanges, flood control and other storm water facilities, lighting facilities, active or passive open space and/or park~~transportation facilities, parks, recreation and trails, fire and EMS facilities, habitat conservation, and storm drainage facilities, and/or ~~advance planning for and~~ appurtenances of the same.
- (i) **Public Facilities Fees** shall mean the ~~exactions and~~Development Impact ~~f~~ Fees charged by the City ~~in accordance with Government Code 66000(b) and pursuant to Resolution 2024-9385-Ordinance 90-856, as amended by Resolution 91-3889 and Resolution 99-5197,~~ and as may be further amended in future.

(Ord. No. 2014-1389, 3-11-2014; Ord. No. 2017-1452, § 3(Exh. B), 10-10-2017)

17.44.030 Development ~~Services~~User Fees.

In addition to the conditions and improvement requirements that are imposed upon ~~grading, construction, building and/or d~~Development ~~e~~Entitlements, Development ~~Services~~User Fees, or applicable components thereof, shall be paid with respect to each such application that is submitted to the City. A schedule of Development ~~Services~~User Fees, including the CPI annual adjustment factor for such fees, has been adopted pursuant to Resolution No. 200124-57779389. The amount of the Development ~~Services~~User Fees, and each component thereof, shall be set from time to time by Resolution of the City Council ~~and set forth in the adopted fee schedule.~~

~~To ascertain the applicable Development Services Fees and the amount of the same, the applicant shall obtain the then current schedule from the Development Services Department and consult said schedule each time an application for a grading, construction, building and/or development entitlement application is submitted to the City.~~The City Manager is authorized to review Development ~~Services~~User Fees and to make adjustments to and exemptions from the imposition of Development ~~Services~~User ~~f~~Fees, or any portion thereof, by reason of economic hardship and/or benefit to the City. Appeal to the City Council from the determination of the City

Manager with respect to adjustments to and/or waivers of Development ~~Services~~User Fees shall be made in writing and submitted to the City Clerk within ten days of the issuance of the City Manager's written determination. Development ~~Services~~User Fee protests shall comply with the provisions Government Code Section 66014 and 66022-29, and any amendments thereto.

(Ord. No. 2017-1452, § 3(Exh. B), 10-10-2017)

17.44.040 Time of Payment of Development ~~Services~~User Fees; ~~Deposits~~.

The applicable components of the Development ~~Services~~User Fees shall be due and payable upon submission to the City of any application for a ~~grading, construction, building and/or development~~ permit or ~~e~~Entitlement by any ~~person~~Applicant, or at the time of permit issuance, as specified by the City. With respect to the payment of hourly rates and/or consultant services associated with certain components of Development Services Fees, the City may require a reasonable amount to be deposited at the initial submission of the application, with additional amounts to be submitted to the City ~~as it may direct the direction of the Development Services Department~~ as the deposit amount is drawn down.

17.44.050 Use of Development ~~Services~~User Fees.

Development ~~services~~User fFees shall be deposited and used to reimburse the City for administrative overhead and costs associated with the processing of ~~grading, construction, building and/or development entitlements by the Development Services Department of the City of San Marcos and its various Divisions, including Building and Planning, as well as the administrative overhead and costs associated with such related services as may be provided by Engineering, Administration, Parks and Recreation, Finance, Public Works, the Fire Protection District, and the Sheriffs Department~~ Development Entitlements by Development Services.

(Ord. No. 2014-1389, 3-11-2014; Ord. No. 2017-1452, § 3(Exh. B), 10-10-2017)

17.44.060 Public Facilities Fees.

~~In addition to the conditions and improvement requirements that are imposed upon grading, construction, building and/or development entitlements, and in addition to the payment of Development Services Fees as provided in this Chapter 17.44, Public Facilities fund the planning, design, construction, and expansion of public infrastructure and ensure that new development projects contribute their fair share towards the costs of necessary public facilities, offsetting the indirect impacts of development.~~ Public Facilities Fees and the appropriate components thereof shall be paid with respect to each such application that is submitted to the City. Public Facilities Fees ~~are determined~~ consistent with Government Code 66000 et seq. ~~and set forth of those components set forth in Ordinance 90-856, as amended and/or supplemented by Resolution 91-3889 and Resolution 99-51972024-9385, as such Ordinance and Resolutions may be further amended in future by the City Council. The components of the Public Facilities Fees shall include, but shall not be limited to, the following: Circulation Element Streets; Flood Control and Habitat Replacement; Parks; State Route 78 and Interchange Improvements; Geographic Information System Transportation Facilities, Parks, Recreation, and Trails, Fire and EMS Facilities, Advanced Planning, Habitat Conservation, Storm Drainage Facilities, and appurtenances thereto.~~ The amount of such Public Facilities Fees, and each component thereof, shall be set from time to time by Resolution of the City Council in accordance with Government Code Section 66000 et seq.

The City Manager's authority to make adjustments to and/or exemptions from the imposition of Public Facilities Fees, or any portion thereof, shall be limited to those situations and circumstances set forth in ~~Ordinance~~Resolution 200324-12039386, Section 14. Appeal to the City Council from the determination of the City Manager with respect to adjustments to and/or waivers of Public Facilities Fees shall be made in writing and

submitted to the City Clerk within ten days of the issuance of the City Manager's written determination. Public Facilities Fee protests shall comply with the provisions of Government Code Section 66020, and any amendments thereto.

(Ord. No. 20~~2403-1203~~9385, ~~101-286-0324~~; Ord. No. 2017-1452, § 3(Exh. B), 10-10-2017)

17.44.070 Time of Payment of Public Facilities Fees.

The applicable Public Facilities Fees components shall be due and payable as required pursuant to Government Code Section 66007 and in accordance with Resolution 2024-9386~~upon the issuance by the City of a building permit~~ for the construction of any dwelling unit, greenhouse or other structure for agricultural use, commercial structure, industrial structure, manufacturing structure, office or professional structure, recreational structure, religious structure or storage structure. With regard to subdivisions, the date of issuance of the building permits, rather than the date of final subdivision map approval or the date of filing of the tentative map, shall be used in the calculation to determine the amount of Public Facilities Fees.

17.44.080 Fee Deferral Program for Public Facilities Fees.

The payment of Public Facilities Fees for construction of new ~~residential~~, commercial or industrial unit(s) may be deferred, and collection thereof ~~by the responsible City agency, department, official or employee~~ delayed, until immediately prior to the release of electrical services. ~~for residential, commercial, industrial units. A written application for the deferral of pPublic fFacilities fFees, as specified in Section 17.44.060 of this chapter,~~ must be filed ~~in writing,~~ on forms prescribed from time to time by the City Manager or ~~his/her~~their designee and must be filed with the ~~City Building Department~~ by or before the issuance of the first building permit for the construction project in question. This application will also include a deferral agreement as explained in Section 17.44.0~~76~~90.

- A. An application will be approved by the ~~Building Division Director~~City Manager or ~~his/her~~their designee, within 15 days of its submittal, unless it is found and determined that one or more of the following factors exist:
1. The application is deemed incomplete.
 2. The applicant and the owner of the property have not properly executed the deferral agreement.
 3. The applicant has not provided security for the payment of the fees to be deferred as provided in Section 17.44.090.

(Ord. No. 2014-1389, 3-11-14)

17.44.090 Deferral Agreements.

As a condition of the deferment of payment of any Public Facilities Fees pursuant to this chapter, and prior to and as a condition of issuance of the building permit, the property owner, and, if applicable, the lessee if the lessee's interest appears of record, must execute a contract to pay the entirety of the deferred Public Facilities Fees prior to release of the electrical services by the City. As part of the City's approval of an application, the owner of the affected real property must enter into a deferral agreement with the City in a form satisfactory to the City Attorney and approved by the City Manager or ~~his/her~~their designee. Such agreement shall, at a minimum, be site specific and provide for the enforcement of the provisions of this chapter. Only one agreement shall be entered into with respect to each project in its entirety, whether or not the applicant for the Public Facilities Fee deferral is the same for multiple projects. Authority to execute such agreements on behalf of the City is hereby delegated to the ~~Building Division Director~~City Manager or their designee.

The obligation to pay the Public Facilities Fees shall inure to the benefit of and be enforceable by the City. The agreement must contain a legal description of the affected property, must be executed in recordable form and [must be](#) recorded in the Office of the County Recorder of San Diego. From the date of recordation, said fee deferral agreement shall constitute a lien for the payment of the deferred Public Facilities Fees, which lien shall be enforceable against the affected property. The agreement shall be recorded in the grantor-grantee index in the name of the City of San Marcos as grantee and in the name of the property owner or lessee as grantor.

The Public Facilities Fees shall be calculated based on the Fee Schedule in effect at the time of payment. In the event that any or all of the above-mentioned Public Facilities Fees are reviewed and increased by an action of the City Council, if the applicant has executed an agreement deferring their respective Public Facilities Fee payments to the City, the applicant is required to and must pay the increased amount of the Public Facilities Fee(s) in question. The applicant may at any time during the deferral period choose to pay their Public Facilities Fees, and must do so prior to the release of electrical services for the property.

(Ord. No. 2014-1389, 3-11-14)

17.44.100 Time of Payment for Deferred Fees and Release.

No electrical services release will be issued to a project with an approved deferral agreement unless the full amount of any deferred Public Facilities Fees has been paid in full in accordance with Sections [17.44.080](#) and [17.44.090](#).

Upon receipt and clearance of full payment of the deferral obligation, the City will record a release of the obligation in the Office of the County Recorder of San Diego County, which release will include a legal description of the property. A certificate of occupancy will be issued for affected projects and properties only after the City's lien is released and recorded.

(Ord. No. 2014-1389, 3-11-14)

17.44.110 Use of Public Facilities Fees.

The Public Facilities Fees shall be utilized to [plan, design, engineer, develop and construct Public Facilities infrastructure, improvements, equipment, improved and/or unimproved real property and/or interests therein that are used, operated and/or otherwise held for general municipal purposes or on behalf of the citizens of the City.](#)

(Ord. No. 2014-1389, 3-11-14)

17.44.120 Other Exactions and Fees (CFDs, ADs, etc.).

In addition to the exactions, fees and costs set forth in this Chapter 17.44, the City may condition the issuance of a ~~grading, construction, building and/or development~~ [e](#)Entitlement, or its agreement to provide public services, upon the participation of the real property in question in a community facilities, assessment or service district organized and adopted by the City in accordance with local, State and/or federal regulations, statutes and ~~or~~ case law, or, if such district has not yet been organized and adopted but the need for [such district](#) ~~which~~ has been identified, upon the execution of an irrevocable offer to annex into such district upon formation of the same. Such districts may include, but are not limited to, those organized pursuant to the Improvement Act of 1911, the Municipal Improvement Act of 1913, the Improvement Bond Act of 1915, the Landscaping and Lighting Act of 1972, the Benefit Assessment Act of 1982, the Parking and Business Improvement Area Law of 1989, the Mello-Roos Community Facilities District Act, and other districts formed pursuant to the City's authority as a Charter City or otherwise provided for by applicable statutes or regulations.

(Ord. No. 2014-1389, 3-11-14)

17.44.130 Insufficiency of Funds.

If payment of an exaction, fee and/or cost referenced in this Chapter 17.44 is made by means of a check or checks that are rejected by the applicable financial institutions for insufficiency of funds, all processing of the application or submittal in question shall cease, and shall not be recommenced unless and until such exaction, fee and/or cost, plus any applicable late fee or processing charge imposed by the Finance Department, is paid in full in cash or by cashier's check. [This section also applies to deferred fees pursuant to Section 17.44.080 that are not paid prior to release of electrical service.](#) Any payments shall be applied first toward reduction or elimination of the late fees or processing charges and then to the exaction, fee and/or cost in question.

(Ord. No. 2014-1389, 3-11-14)

CHAPTER 17.44 DEVELOPMENT USER FEES AND PUBLIC FACILITIES EXACTIONS, FEES AND/OR COSTS

17.44.010 Purpose.

(a) Public Facilities Fees or Development Impact Fees

The ongoing development of real property within the City's jurisdiction including, but not limited to, single-family and multi-family dwelling units, and agricultural, commercial, industrial, manufacturing, office/professional, recreational, religious and storage uses, has resulted in:

- (i) an increased demand on existing public services, facilities, and infrastructure;
- (ii) (ii) the need for expansion of public services, facilities and infrastructure; and/or
- (iii) (iii) the need for the installation of new public services, facilities and infrastructure.

To meet health and safety needs, and in accordance with Government Code Section 66000 et seq., it is the intent of the City Council that each applicant for a grading, construction, building and/or development permit or entitlement shall pay the Public Facilities Fees described hereafter. The funds generated by the payment of fees described herein shall be deposited by the City into separate funds or accounts that have been established for such purposes.

(b) Development User Fees

The City Council assesses Development User Fees to recover in whole or in part the costs of delivering exclusive-use services that benefit a limited number of users, such as the review, permitting, and inspection of Development Entitlements. Development User Fees may be assessed in accordance with Government Code 66014 and were adopted pursuant to Resolution 2024-9385.

17.44.020 Definitions.

For the purposes of this Chapter 17.44, the following words or phrases shall be construed as defined below, unless from the context it appears that a different meaning is intended:

- (a) **Building** shall mean any structure or tenant improvement built for the support, shelter and/or enclosure of persons, goods, chattels, animals and/or property of any kind.
- (b) **Building Permit** shall mean a permit required by and issued pursuant to the Uniform Building Code as adopted by the City.
- (c) **Development Entitlement** shall mean a permit, approval, license or other evidence of permission processed, issued and/or granted by the City for any planning, grading, construction, building and/or other development or pre-development entitlement activity.
- (d) **Development Services** shall mean the departments and functional divisions of the City of San Marcos involved in the review, processing, issuance and/or inspection of Development Entitlements including Building, Planning, and Engineering as well as such related services as may be provided by other City Departments such as Administration, Housing, Parks and Recreation, Finance, Public Works, the Fire Protection District, and the Sheriff's Department.

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- (e) **Development User Fees** shall mean the fees charged by the City to recover in whole or in part the costs, including administration and overhead associated with the processing of Development Entitlements by Development Services, including the annual adjustment factor for such fees adopted pursuant to Resolution 2024-9389.
 - (f) **Dwelling Unit** shall mean each single-family residential dwelling, accessory dwelling unit, each pad for a mobilehome or trailer, and each unit of an apartment, duplex or multiple dwelling structure, designed as a separate habitation for one or more persons.
 - (g) **Applicant** shall mean every individual, partnership, firm or corporation that is to construct, reconstruct, develop, or redevelop, or is to be responsible for the construction, reconstruction, development, or redevelopment of a dwelling, greenhouse, commercial, office, or industrial structure, as well as those who may do so through the services of an employee, agent, and/or independent contractor.
 - (h) **Public Facilities or Facilities** shall mean facilities, infrastructure, improvements, equipment, improved and/or unimproved real property and/or interests therein that are used, operated and/or otherwise held for general municipal purposes or on behalf of the citizens of the City. Such facilities, infrastructure, equipment and real property interests shall include, but shall not be limited to, transportation facilities, parks, recreation and trails, fire and EMS facilities, habitat conservation, and storm drainage facilities, and/or advance planning for and appurtenances of the same.
 - (i) **Public Facilities Fees** shall mean the Development Impact Fees charged by the City in accordance with Government Code 66000(b) and pursuant to Resolution 2024-9385, and as may be further amended in future.

(Ord. No. 2014-1389, 3-11-2014; Ord. No. 2017-1452, § 3(Exh. B), 10-10-2017)

17.44.030 Development User Fees.

In addition to the conditions and improvement requirements that are imposed upon Development Entitlements, Development User Fees, or applicable components thereof, shall be paid with respect to each such application that is submitted to the City. A schedule of Development User Fees, including the CPI annual adjustment factor for such fees, has been adopted pursuant to Resolution No. 2024-9389. The amount of the Development User Fees, and each component thereof, shall be set from time to time by Resolution of the City Council and set forth in the adopted fee schedule.

The City Manager is authorized to review Development User Fees and to make adjustments to and exemptions from the imposition of Development User Fees, or any portion thereof, by reason of economic hardship and/or benefit to the City. Appeal to the City Council from the determination of the City Manager with respect to adjustments to and/or waivers of Development User Fees shall be made in writing and submitted to the City Clerk within ten days of the issuance of the City Manager's written determination. Development User Fee protests shall comply with the provisions Government Code Section 66014 and 66022, and any amendments thereto.

(Ord. No. 2017-1452, § 3(Exh. B), 10-10-2017)

17.44.040 Time of Payment of Development User Fees; Deposits.

The applicable components of the Development User Fees shall be due and payable upon submission to the City of any application for a Development Entitlement by any Applicant, or at the time of permit issuance, as specified by the City. With respect to the payment of hourly rates and/or consultant services associated with certain components of Development Services Fees, the City may require a reasonable amount to be deposited at

the initial submission of the application, with additional amounts to be submitted to the City as it may direct as the deposit amount is drawn down.

17.44.050 Use of Development User Fees.

Development User Fees shall be deposited and used to reimburse the City for administrative overhead and costs associated with the processing of Development Entitlements by Development Services.

(Ord. No. 2014-1389, 3-11-2014; Ord. No. 2017-1452, § 3(Exh. B), 10-10-2017)

17.44.060 Public Facilities Fees.

Public Facilities fund the planning, design, construction, and expansion of public infrastructure and ensure that new development projects contribute their fair share towards the costs of necessary public facilities, offsetting the indirect impacts of development. Public Facilities Fees and the appropriate components thereof shall be paid with respect to each such application that is submitted to the City. Public Facilities Fees are determined consistent with Government Code 66000 et seq. and set forth Resolution 2024-9385, as such Resolution may be further amended in future by the City Council. The components of the Public Facilities Fees shall include, but shall not be limited to, the following: Transportation Facilities, Parks, Recreation, and Trails, Fire and EMS Facilities, Advanced Planning, Habitat Conservation, Storm Drainage Facilities, and appurtenances thereto. The amount of such Public Facilities Fees, and each component thereof, shall be set from time to time by Resolution of the City Council in accordance with Government Code Section 66000 et seq.

The City Manager's authority to make adjustments to and/or exemptions from the imposition of Public Facilities Fees, or any portion thereof, shall be limited to those situations and circumstances set forth in Resolution 2024-9386. Appeal to the City Council from the determination of the City Manager with respect to adjustments to and/or waivers of Public Facilities Fees shall be made in writing and submitted to the City Clerk within ten days of the issuance of the City Manager's written determination. Public Facilities Fee protests shall comply with the provisions of Government Code Section 66020, and any amendments thereto.

(Ord. No. 2024-9385, 11-26-24; Ord. No. 2017-1452, § 3(Exh. B), 10-10-2017)

17.44.070 Time of Payment of Public Facilities Fees.

The applicable Public Facilities Fees components shall be due and payable as required pursuant to Government Code Section 66007 and in accordance with Resolution 2024-9386 for the construction of any dwelling unit, greenhouse or other structure for agricultural use, commercial structure, industrial structure, manufacturing structure, office or professional structure, recreational structure, religious structure or storage structure. With regard to subdivisions, the date of issuance of the building permits, rather than the date of final subdivision map approval or the date of filing of the tentative map, shall be used in the calculation to determine the amount of Public Facilities Fees.

17.44.080 Fee Deferral Program for Public Facilities Fees.

The payment of Public Facilities Fees for construction of new commercial or industrial unit(s) may be deferred, and collection thereof delayed until immediately prior to the release of electrical services. A written application for the deferral of Public Facilities Fees must be filed on forms prescribed from time to time by the City Manager or their designee and must be filed with the City by or before the issuance of the first building permit for the construction project in question. This application will also include a deferral agreement as explained in Section 17.44.090.

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- A. An application will be approved by the City Manager or their designee, within 15 days of its submittal, unless it is found and determined that one or more of the following factors exist:
1. The application is deemed incomplete.
 2. The applicant and the owner of the property have not properly executed the deferral agreement.
 3. The applicant has not provided security for the payment of the fees to be deferred as provided in Section 17.44.090.

(Ord. No. 2014-1389, 3-11-14)

17.44.090 Deferral Agreements.

As a condition of the deferment of payment of any Public Facilities Fees pursuant to this chapter, and prior to and as a condition of issuance of the building permit, the property owner, and, if applicable, the lessee if the lessee's interest appears of record, must execute a contract to pay the entirety of the deferred Public Facilities Fees prior to release of the electrical services by the City. As part of the City's approval of an application, the owner of the affected real property must enter into a deferral agreement with the City in a form satisfactory to the City Attorney and approved by the City Manager or their designee. Such agreement shall, at a minimum, be site specific and provide for the enforcement of the provisions of this chapter. Only one agreement shall be entered into with respect to each project in its entirety, whether or not the applicant for the Public Facilities Fee deferral is the same for multiple projects. Authority to execute such agreements on behalf of the City is hereby delegated to the City Manager or their designee.

The obligation to pay the Public Facilities Fees shall inure to the benefit of and be enforceable by the City. The agreement must contain a legal description of the affected property, must be executed in recordable form and must be recorded in the Office of the County Recorder of San Diego. From the date of recordation, said fee deferral agreement shall constitute a lien for the payment of the deferred Public Facilities Fees, which lien shall be enforceable against the affected property. The agreement shall be recorded in the grantor-grantee index in the name of the City of San Marcos as grantee and in the name of the property owner or lessee as grantor.

The Public Facilities Fees shall be calculated based on the Fee Schedule in effect at the time of payment. In the event that any or all of the above-mentioned Public Facilities Fees are reviewed and increased by an action of the City Council, if the applicant has executed an agreement deferring their respective Public Facilities Fee payments to the City, the applicant is required to and must pay the increased amount of the Public Facilities Fee(s) in question. The applicant may at any time during the deferral period choose to pay their Public Facilities Fees, and must do so prior to the release of electrical services for the property.

(Ord. No. 2014-1389, 3-11-14)

17.44.100 Time of Payment for Deferred Fees and Release.

No electrical services release will be issued to a project with an approved deferral agreement unless the full amount of any deferred Public Facilities Fees has been paid in full in accordance with Sections 17.44.080 and 17.44.090.

Upon receipt and clearance of full payment of the deferral obligation, the City will record a release of the obligation in the Office of the County Recorder of San Diego County, which release will include a legal description of the property. A certificate of occupancy will be issued for affected projects and properties only after the City's lien is released and recorded.

(Ord. No. 2014-1389, 3-11-14)

17.44.110 Use of Public Facilities Fees.

The Public Facilities Fees shall be utilized to plan, design, engineer, develop and construct infrastructure, improvements, equipment, improved and/or unimproved real property and/or interests therein that are used, operated and/or otherwise held for general municipal purposes or on behalf of the citizens of the City.

(Ord. No. 2014-1389, 3-11-14)

17.44.120 Other Exactions and Fees (CFDs, ADs, etc.).

In addition to the exactions, fees and costs set forth in this Chapter 17.44, the City may condition the issuance of a Development Entitlement, or its agreement to provide public services, upon the participation of the real property in question in a community facilities, assessment or service district organized and adopted by the City in accordance with local, State and/or federal regulations, statutes and/or case law, or, if such district has not yet been organized and adopted but the need for such district has been identified, upon the execution of an irrevocable offer to annex into such district upon formation of the same. Such districts may include, but are not limited to, those organized pursuant to the Improvement Act of 1911, the Municipal Improvement Act of 1913, the Improvement Bond Act of 1915, the Landscaping and Lighting Act of 1972, the Benefit Assessment Act of 1982, the Parking and Business Improvement Area Law of 1989, the Mello-Roos Community Facilities District Act, and other districts formed pursuant to the City's authority as a Charter City or otherwise provided for by applicable statutes or regulations.

(Ord. No. 2014-1389, 3-11-14)

17.44.130 Insufficiency of Funds.

If payment of an exaction, fee and/or cost referenced in this Chapter 17.44 is made by means of a check or checks that are rejected by the applicable financial institutions for insufficiency of funds, all processing of the application or submittal in question shall cease, and shall not be recommenced unless and until such exaction, fee and/or cost, plus any applicable late fee or processing charge imposed by the Finance Department, is paid in full in cash or by cashier's check. This section also applies to deferred fees pursuant to Section 17.44.080 that are not paid prior to release of electrical service. Any payments shall be applied first toward reduction or elimination of the late fees or processing charges and then to the exaction, fee and/or cost in question.

(Ord. No. 2014-1389, 3-11-14)



Staff Report

File #:TMP-2206

MEETING DATE:

December 2, 2024

SUBJECT:

CONSIDERATION OF INTERIM URGENCY ORDINANCE IMPOSING A TEMPORARY CITY-WIDE MORATORIUM ON THE CONVERSION/CHANGE OF ANY MOBILEHOME PARK EXISTING IN THE CITY FROM A PARK OCCUPIED PRIMARILY OR EXCLUSIVELY BY RESIDENTS AGED 55 YEARS OR OLDER TO A MOBILEHOME PARK ALLOWING RESIDENTS OF ALL AGES AND DECLARING THE URGENCY THEREOF, TO TAKE EFFECT IMMEDIATELY

Recommendation

ADOPT the proposed Interim Urgency Ordinance imposing a temporary City-wide moratorium on the conversion/change of any mobilehome park existing in the City from a park occupied primarily or exclusively by residents aged 55 years or older to a mobilehome park allowing residents of all ages and declaring the urgency thereof, to take effect immediately.

Board or Commission Action

Not Applicable

Introduction

Federal and state law permit the regulation of housing for persons aged 55 years or older ("older persons", or "seniors") by local governments, and additionally state law permits adoption of an urgency ordinance to protect public safety, health, and welfare. Affordable housing for older persons and seniors is vital, yet limited in San Marcos. This interim urgency ordinance protects public safety, health, and welfare by preserving affordable senior housing at mobilehome parks in the City.

Discussion

Federal and state law allows cities to create housing for older persons through an exercise of zoning authority. See, 42 USCA § 3607; *Putnam Family Partnership v. City of Yucaipa*, Cal., 673 F.3d 920 (C.A.9 (Cal.), 2012). This use of local zoning authority does not violate federal law because creation of senior housing does not constitute discrimination as to familial status under the Federal Fair Housing Act and amendments thereto, or under state law as provided by Government Code § 12955.9.

As used herein and in associated documents, "housing for older persons" means housing that is intended and operated for occupancy by persons 55 years of age or older and at least 80 percent

of the occupied units are occupied by at least one person who is 55 years of age or older.

Government Code Section 65858

City Council may approve a zoning regulation without following procedures otherwise required by an ordinance approved in due course when the ordinance protects public safety, health, and welfare. If adopted by a 4/5 vote, the proposed interim urgency ordinance will be effective for 45 days but may be renewed. The purpose of the urgency ordinance is to protect the public safety, health, and welfare by preserving the status quo while city staff evaluates the preservation of affordable housing stock for seniors represented by mobilehome parks, and to ensure possible action thereon does not conflict with the City's General Plan.

San Marcos has a vested interest in the preservation of affordable senior housing. This interest is set forth in the Housing Element of the City's General Plan and is reflected in this Policy, which preserves affordable housing stock for seniors in mobilehome parks. Stable and affordable housing in mobilehome parks supports the community by reinforcing the well-being, independence, and overall health and safety of older residents.

San Marcos currently has twelve age-regulated (senior) mobilehome parks: Casitas Del Amigos, Casitas Del Sol, El Dorado, Foothills of San Marcos, Lakeview Estates, La Moree Estates, Madrid Manor, Palomar Estates East, Palomar Estates West, Rancho Vallecitos, San Marcos Mobile Estates, and Valle Verde. These parks provide approximately 2700 spaces reserved for seniors, and provide a vital source of affordable senior housing in the City. The conversion of senior mobilehome parks to mobilehome parks allowing occupancy by persons of all ages will result in the loss of existing affordable senior housing within the City and associated environmental effects relating to the placement of all-ages into facilities designed for and operated as senior housing. These effects present a threat to, and a specific adverse impact upon, public health, safety and welfare and the City's ability to provide safe and decent housing opportunities to seniors.

Lakeview Mobile Estates ("Lakeview") has distributed updated Rules and Regulations that recite that it remains a park for older persons; however, the park additionally reserves the right to change that park to one that houses "all age," and it does not covenant that the park will remain a community for older persons at all future times. The City's requests for clarification from Lakeview ownership regarding intent and timeframes for the potential change to an all-ages park have been challenged and characterized as something in which the City can have no involvement. The City is therefore unable to predict if or when Lakeview ownership will act on the demonstrated interest in removing the age restriction from the Rules and Regulations to change the Park to an all-ages park. If and when Lakeview takes action to create an all ages park, the City will have no option to preserve the senior housing currently available at Lakeview.

File #:TMP-2206

Due to the time constraints and risk to a vulnerable housing population, staff recommends that the City act pursuant to Government Code Section 65858 to impose a city-wide moratorium to maintain age regulations at all mobilehome parks currently operating as age-regulated parks, or senior parks, while the City studies whether a “senior only” mobilehome park zoning ordinance is needed. An ordinance considered and passed in due course may miss the window to act if Lakeview ownership moves quickly to remove age regulations and change the park to all ages.

Fiscal Impact

No fiscal impact is anticipated as a result of the proposed Ordinance.

Environmental Review

This Ordinance is not a project within the meaning of Section 15378 of the California Environmental Quality Act (“CEQA”) and has no potential to result in a direct or reasonably foreseeable indirect physical change to the environment because it places a moratorium on the change of land use. (Cal. Code Regs., tit. 14, § 15378.) Furthermore, even if the action were considered subject to CEQA, it would qualify for the Commonsense Exemption, as it can be stated with certainty that there is no possibility the action may have a significant effect on the environment (Cal. Code Regs., tit. 14, § 15061(b)(3)).

Attachment(s)

INTERIM URGENCY ORDINANCE

Map of Senior Mobilehome Parks

Correspondence dated October 24, 2024 from Dowdall Law Offices, counsel for Lakeview Mobile Estates

Prepared by: Jacqueline Paterno, Deputy City Attorney

Approved by: Michelle Bender, City Manager

ORDINANCE NO. 2024-_____

AN INTERIM URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, CALIFORNIA, IMPOSING A TEMPORARY CITY-WIDE MORATORIUM ON THE CONVERSION/CHANGE OF ANY MOBILEHOME PARK EXISTING IN THE CITY FROM A PARK OCCUPIED PRIMARILY OR EXCLUSIVELY BY RESIDENTS AGED 55 YEARS OR OLDER TO A MOBILEHOME PARK ALLOWING RESIDENTS OF ALL AGES AND DECLARING THE URGENCY THEREOF, TO TAKE EFFECT IMMEDIATELY

WHEREAS, pursuant to Article XI, section 7 of the California Constitution, the City has the police power to make and enforce ordinances to regulate the use of land within its jurisdictional boundaries; and

WHEREAS, California Government Code Section 65800 et seq. authorizes the adoption and administration of zoning laws, ordinances, rules and regulations by cities as a means of implementing the General Plan; and

WHEREAS, twelve mobilehome parks (Casitas Del Amigos, Casitas Del Sol, El Dorado, Foothills of San Marcos, Lakeview Estates, La Moree Estates, Madrid Manor, Palomar Estates East, Palomar Estates West, Rancho Vallecitos, San Marcos Mobile Estates, and Valle Verde) located within the City of San Marcos ("City") operate and maintain their status as age regulated mobilehome parks providing housing for older persons; and

WHEREAS, the City has an interest in preserving affordable housing for persons aged 55 years or older (referenced hereafter as "older persons" or "senior residents") to support the well-being, independence, and overall health and safety of such older residents; and

WHEREAS, as set forth in the Housing Element of the City's General Plan, an important goal for the City is to preserve the existing senior housing stock, which is represented in part by affordable mobilehome housing (see, San Marcos Housing Element, pp. 35-38; Programs 4, 7, 14, 19); and

WHEREAS, mobilehome parks represent one of the few affordable housing options left for older persons that permit exclusive residence in a detached dwelling older persons; and

WHEREAS, Lakeview Mobilehome Estates (“Lakeview”) has recently published new Rules and Regulations reserving the right to rescind any age regulation, and reserving to the owner the right to change the Park to persons of “all age,” and does not covenant that the Park will remain a community for older persons; and

WHEREAS, when requested to confirm or acknowledge that the language utilized in its recent rules change recognized a need for a future rules change and attendant notice and processing prior to implementation of an all-ages park, counsel for Lakeview did not confirm that was the case; and

WHEREAS, converting mobilehome parks from housing for older persons to an all ages park would reduce the number of housing units available to those persons aged 55 years and older (hereinafter “housing for older persons” or “senior housing”); and

WHEREAS, there exists a current and immediate threat to the public health, safety, and welfare arising from the lack of housing options for persons aged 55 and older in and around the City; and

WHEREAS, Government Code Section 65858 expressly authorizes the City Council, in order to protect the public health, safety and welfare, to adopt an interim urgency ordinance prohibiting a use that is in conflict with a contemplated general plan, specific plan, or zoning proposal that the legislative body, planning commission, or the planning department is considering or studying or intends to study within a reasonable time, provided that the urgency measure shall require a four-fifths vote of the legislative body for adoption, and shall be of no further force and effect forty-five (45) days from its date of adoption, unless duly extended; and

WHEREAS, the Federal Housing Amendments Act (“FHAA”) in 42 USCA § 3607 and California Government Code § 12955.9 provide an exception for housing for older persons, such that discrimination on the basis of familial status does not violate the FHAA or the California Government Code if the senior exemption applies; and

WHEREAS, the 9th Circuit of Appeals has upheld the right of a municipality to create housing for older persons so long as all statutory requirements pursuant to 42 USCA § 3607 are met; for example, the case of *Putnam Family Partnership v. City of Yucaipa*, Cal., 673 F.3d 920 (C.A.9 (Cal.), 2012) held that a City may create housing for older persons through an exercise of zoning authority if the city ensures maintenance of an eighty-percent senior population, publishes and

adheres to policies that demonstrate an intent for housing for older persons, and complies with age verification rules. *Id.* at 931.

NOW, THEREFORE, the City Council of the City of San Marcos finds and declares as follows:

Section 1: Declaration of Findings Constituting Urgency:

- a. The City Council hereby incorporates the recitals set forth above and affirms the same as findings, and based thereon declares that such recitals and findings evidence facts constituting urgency as required under the law for the subject action.
- b. The City's Housing Element addresses senior housing as a special housing need that calls for targeted program responses. As such, programs and policy are developed that align with and support this need.
- c. The City's Housing Element additionally addresses the risk of displacement for protected classes, including seniors, underscoring the need for proactive policies that protect the reliance interests of older persons who purchased homes in existing senior housing parks.
- d. Residents of mobilehome parks face particularly precarious housing dynamics due to multilayered and unique vulnerabilities. Residents typically own their homes but lease the land on which they are placed. Additionally, mobilehomes are rarely moved owing to high transport costs, difficulty in logistics, and low rent space availability in nearby areas. These factors create a distinct susceptibility that highlights the need to protect seniors living in the City's mobilehome parks.
- e. The City has limited senior housing in mobilehome parks. Only twelve, including Lakeview Mobile Estates, maintain status as parks for older persons, constituting approximately 2700 spaces for mobilehome coaches. The conversion of housing for older persons, or age restricted mobilehome parks, to mobilehome parks allowing occupancy by persons of all ages will result in the loss of limited existing affordable senior housing within the City, and the associated environmental effects relating to the placement of all ages into facilities designed for and operated as senior housing. These effects present a threat to, and a specific adverse impact upon, public health, safety and welfare and the City's ability to provide safe and decent housing opportunities to seniors.
- f. Lakeview's updated Park Rules and Regulations indicate an interest in removing the age restriction which would allow the Park to change to an all ages park and reduce the already scarce senior housing in the City.

- g. The City's request for clarification from Lakeview ownership regarding intent and timeframes for the potential change to an all ages park have been refused, and the park owner's attorney has simply asserted the lack of City jurisdiction over the issue. The City is therefore unable to predict if or when Lakeview ownership will act on their demonstrated interest in removing the age restriction from the Rules and Regulations and changing the Park to an all ages park. If Lakeview is left to take the next step to create an all ages park, the City will have no options to preserve the senior housing currently available at Lakeview.
- h. Due to the time constraints and risk to a vulnerable housing population, the City must act pursuant to Government Code Section 65858 to impose a city-wide moratorium to maintain age regulations at all mobilehome parks currently operating as housing for older persons, or senior parks, while the City studies whether a "senior only" mobilehome park zoning ordinance is needed. Given the exigency of the circumstances and the time-consuming process associated with zoning regulations considered in due course, it may not be possible to consider and enact an ordinance by such means if Lakeview ownership moves quickly to remove age regulations and change the park to all ages.
- i. An urgency ordinance pursuant to Government Code Section 65858 allows the City to ensure housing stability for vulnerable seniors, and therefore protect the public health, safety, and welfare of residents by adopting an interim emergency moratorium to maintain age regulations at all mobilehome parks, City-wide, that are currently operating as age regulated parks, or senior parks to allow time to study whether certain land uses should be allowed, prohibited, and/or regulated under the City's zoning ordinance.

Section 2: Imposition of Moratorium

- a. The City currently does not have a "senior only" mobilehome park zoning ordinance in place, but such a zoning ordinance may be needed in the immediate future to preserve affordable housing options left to the City's senior citizens.
- b. The City has a compelling interest in protecting the public health, safety and welfare of its senior community in preserving housing stability, preventing displacement, and promoting existing community relationships. The adoption of this Ordinance is necessary on an urgency basis because of the current and immediate threat to senior housing security in the City.
- c. The City requires time to study and decide;

- a. If such a zoning ordinance passed in due course would have adverse effects upon the general housing market and particularly the senior and affordable housing market in the City.
- b. To ensure the ordinance aligns with the City's General Plan.
- d. Given the harm that would be caused to the community by the removal of mobilehome parks for older persons, this moratorium is being established to preserve the status quo to provide time to seek clarification of the law, and permit City staff to develop appropriate regulations consistent with the requirements of the law.
- e. To ensure the immediate protection of the public health, safety and welfare in accordance with Government Code Section 65858 and based on the findings set forth above in Section 1 of this Ordinance, as well as additional verbal and written information presented to the City Council, from and after the date of this Ordinance, a city-wide moratorium is hereby imposed on the conversion/change of any mobilehome park existing in the City from a mobilehome park occupied primarily or exclusively by residents aged 55 years or older to a mobilehome park allowing residents of all ages, until such time as the City Council repeals or otherwise modifies this Ordinance. By "currently operating," we include Lakeview Mobile Estates within the purview of this Ordinance, as the owner of which has promulgated rules and regulations that acknowledge the current older persons status but also purport to reserve the right to change to an all-ages park.
- f. This moratorium shall become effective on the date of adoption of this Ordinance and shall remain in effect for 45-days, unless extended by the City Council as provided for in Government Code Section 65858.
- g. Ten days prior to the expiration of the moratorium or any extension, the City Council shall issue a written report describing the steps and/or regulations for these land uses taken by the City.

Section 3: Severability If any section, sentence, clause or phrase of this Ordinance is determined to be invalid, illegal or unconstitutional by a decision or order of any court or agency of competent jurisdiction, then such decision or order will not affect the validity and enforceability of the remaining portions of this Ordinance. The City Council declares that it would have passed and adopted the Ordinance, and each section, sentence, clause or phrase thereof, regardless of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

Section 4: CEQA This Ordinance is not a project within the meaning of Section 15378 of the California Environmental Quality Act ("CEQA") and has no potential to result in a direct or

reasonably foreseeable indirect physical change to the environment because it places a moratorium on the change of land use. (Cal. Code Regs., tit. 14, § 15378.) Furthermore, even if the action were considered subject to CEQA, it would qualify for the Commonsense Exemption, as it can be stated with certainty that there is no possibility the action may have a significant effect on the environment (Cal. Code Regs., tit. 14, § 15061(b)(3)).

Section 5: Effective Date This Ordinance shall take effect immediately upon adoption as an urgency measure. The temporary moratorium shall be of no further force and effect forty five (45) days from the date of the adoption of this Ordinance, unless, prior to its expiration, following a noticed public hearing in accordance with Government Code Section 65090, the City Council extends the Ordinance pursuant to Government Code Section 65858.

Section 6: Publication Within fifteen (15) days following the adoption of this Ordinance, the City Clerk shall publish this Ordinance, or the title thereof, as a summary as required by State law.

PASSED, APPROVED AND ADOPTED AS AN INTERIM URGENCY ORDINANCE at a special meeting of the City Council of the City of San Marcos held on the 2nd of December, 2024 by the following roll call vote:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

APPROVED:

Rebecca D. Jones, Mayor
City of San Marcos

ATTEST:

APPROVED AS TO FORM:

Phillip Scollick, City Clerk
City of San Marcos

Helen Holmes Peak, City Attorney
City of San Marcos

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Writer's Direct Dial:

Terry R. Dowdall, Esq.
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October 24, 2024

Original via First Class Mail

Jacqueline Paterno
Deputy City Attorney
LOUNSBERY FERGUSON ALTONA & PEAK, LLP
960 Canterbury Place, Suite 300
Escondido, California 92025-3870

RE: Lakeview Mobile Estates Rules and Regulations

Dear Ms. Paterno:

Thank you for your October 21, 2024 correspondence, to which I reply.

It appears that your inquiry is solely tied to a claim of municipal authority asserted, ostensibly, pursuant to the Housing for Older Persons Act (HOPA)¹, with specific reference to the Code of Federal Regulations promulgated by the Department of Housing and Urban Development ("HUD").

After reversal of *Chevron, U.S.A., Inc. v. Natural Res. Def Council, Inc.*, 467 U.S. 837 (1984), it is clear that HOPA will once again uniformly vest the park owner with the exclusive election to pursue the narrow exemption of "older persons" housing. *E.g., U.S. v. Hayward* (1992) 805 F.Supp. 810, *Mobile Home Village Inc. v. Township of Jackson*, No. 95-0004 (D.N.J. 6-14-95) P-H Prentice Hall Fair Housing Fair Lending Reporter ¶ 16,018 ("The language of § 3607 (b)(2) indicates that owners and managers are the only ones who can claim the exemption"), *Cedar Hills Developers, Inc. v. Township of Wyckoff*, Civil No. 89-5391, Fair Housing-Fair Lending (P-H) ¶ 15,675 (D.N.J. Dec. 11, 1990) (Judge Politan held that the Township of Wyckoff could not force a housing provider to meet the FHA's "housing for older persons" exemption). A more complete explanation of this issue is discussed in the article entitled "*Chevron Tanked by Supreme Court*" which appeared in the August, 2024 issue of the "WMA Reporter" (attached). This issue is of significant interest to the manufactured housing industry. Since Congress never empowered HUD to bestow local government (entities subject to compliance with FHAA² mandates) with the election to pursue "older persons" housing status, the 1999 Code of Federal Regulations is *pro tanto* void. Cities may not force owners to provide "older persons" housing. Indeed, litigation is pending in different areas of the state for

¹ Section 1 of Pub.L. 104-76, Dec. 28, 1995, 109 Stat. 187, provides: "This Act [amending §3607 of this title] may be cited as the 'Housing for Older Persons Act of 1995'" ("HOPA").

² Fair Housing Amendments Act of 1988, Pub.L. 100-430 (Sept. 13, 1988, 102 Stat. 1619) ("FHAA").

DOWDALL LAW OFFICES
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ATTORNEYS AT LAW

Jacqueline Paterno
LOUNSBERY FERGUSON ALTONA & PEAK, LLP
October 24, 2024
Page 2

the purpose of re-establishing the original intent Congress ascribed to HOPA.³

The authority of the park owner here, in respect to the Mobilehome Residency Law in all respects including its articulation of “older persons” housing (Civil Code §798.76) is manifestly clear. The power vested in the park owner pursuant to HOPA, as intended by Congress, is also clear.

May I inquire whether the city of San Marcos intends to continue to enforce the HUD regulations purporting to designate local government as a “housing provider” for purposes of compelling compliance with “older persons” housing?

May I inquire as to the authority under which you are acting on behalf of the city of San Marcos with respect to the demands made in your previous correspondence?

Thank you for your attention to this matter and your anticipated cooperation.

Very Truly Yours,

/s/
Terry R. Dowdall
For
DOWDALL LAW OFFICES, A.P.C.
LAKEVIEW_MMXXIV_23_OCT_V_1.wpd

ENCL. WMA Reporter, August, 2024,” “Chevron tanked by Supreme Court”

cc: Paul Beard, Esq.
WMA Committee to Save Property Rights

³ Among other things, when Congress replaced “owner or manager” with “housing facility or community,” it did not change the fact that the exemption can be invoked only by individuals or entities actually providing housing—not a government entity enacting zoning laws. A “housing facility,” for example, is simply “something that is built, installed, or established to serve” the purpose of housing. Merriam-Webster Dictionary. The 1995 amendments explicitly address the issue of intent, and specify that the relevant intent remains, as before, that of the on-site housing provider. Only that party can publish and adhere to the on-site “policies and procedures” that Congress has tied to the intent rule ever since 1988. Governments do not write “policies and procedures” for private housing facilities and communities; private entities do. These and several other attributes of the legislative history prove the original intent excludes any notion of transference of power to a municipal entity to compel a housing provider to provide older persons housing or all age housing.



reporter

August
2024

WMA



TAKE A WALK IN YOUR PARK
— *and Discover Community*

ANNOUNCING
the 2024 WMA
Convention & Expo
M Resort Spa Casino
Henderson, Nevada
October 14 – 17

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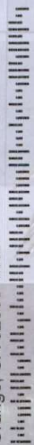
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Terry R. Dowdall, Esq. | Dowdall Law Offices, A.P.C.

Chevron Tanked by Supreme Court

Introduction

During WMA's 1988 Convention, a courier rushed a new HR 1158 to my hotel room. The task fell upon me to digest and outline it for Brent Swanson's (my boss) seminar, the next day. I virtually inhaled it into the night. Revelations aplenty. "Adult only" now violated civil rights law. One clause was singularly troubling: 55+ housing would require "significant services and facilities" ("... the existence of significant facilities and services specifically designed to meet the physical or social needs of older persons ..."). A *litigation sink-hole*. I would urge "family park" status soon enough.

The Federal Fair Housing Act of 1988 ("FHAA") introduced a new protected class known as "familial status." Families with a child under 18 were given the same protection as color, race, national origin, and religion. A narrow exemption was also provided for senior housing (all occupants 62 years of age and older) and "older persons" (one person 55 or over in 80% of the total housing units), included at the last minute. The exemption reflects an intense effort by housing associations, including WMA.

HUD then passed wildly draconian regulations that confirmed our predictions for an unwieldy, unworkable law. It all but totally asphyxiat-

ed senior housing nationwide. *The result?* Congress was shocked.¹ To address the crisis, the Housing for Older Persons Act ("HOPA") was passed, which eliminated HUD's asphyxiating regulations. Essentially, HOPA made two big changes to the FHAA:

- First, it expanded availability of senior housing exemptions by deleting "significant services and facilities" requirements.
- Second, HOPA introduced legal immunity for housing providers to safeguard those who unsuccessfully try to offer "older persons housing" in good faith.

Congress never authorized local government to hijack family housing.² HOPA did not speak to

zoning.³ HOPA merely relaxed senior housing requirements of the FHAA and nullified HUD's regulatory frolic that nearly killed senior housing nationwide. Obviously, private housing providers were regulated by the FHAA and HOPA. The FHAA was a private exemption. HOPA was a remedial fix.

Recent developments in case law may lead to productive interchange with local governments in a cooperative spirit for consensual adjustments with owners who may agree to voluntarily offer 55+ housing.

Senior Zoning Guidelines for Municipalities?

In the wake of HOPA, HUD continued its regulatory overreach with new regulations, including a senior housing example: a local municipality that usurps the landlord's choice of family housing to impose senior zoning. But confiscation of choice by housing providers (including mobilehome parkowners) *was not approved by Congress*. There's no sacrifice of "familial status" choice on an altar of senior zoning.

¹ Senate Report, Calendar 231, Report 104-172, REPORT, HR 660, at page 3 ("Interpreting and implementing the 'significant facilities and services' standard has been very troublesome ... it has been unclear what the phrase 'significant facilities and services' means ... There have been so many lawsuits that the exemption Congress intended is now being revoked as a practical matter by threat of litigation.").

² Senate Report, Calendar 231, Report 104-172, REPORT, HR 660, at 2 ("I. Purpose. The purpose of HR 660 is to eliminate the burden of the 'significant facilities and services' requirement ... This legislation is needed to provide a clear, bright-line standard of when a seniors' housing community is in fact 'housing for older persons' for purposes of the Fair Housing Act. HR 660 is intended to clear up this problem and return to the original intent of the Fair Housing Act exemption ... HR 660 is designed to make it easier for a housing community of older persons to determine whether they qualify for the fair 'Housing Act exemption.'")

³ "What this legislation says is that if you are legitimately a community that has set itself aside for older people only, you can be certified for that purpose and not worry about discrimination, because you are trying to live up to that ..." (Congressional Record — House of Representatives, Proceedings and Debates of the 104th Congress, 1st Session, December 18, 1995, *H14966 HOUSING FOR OLDER PERSONS ACT OF 1995).

HUD's senior zoning examples in the *Federal Register*⁴ are not codified: just an illustrative exemption from "familial status." Senior housing by compulsory zoning represents an ultra vires departure from the FHAA's mandate, which assigns the choice-the-election-for senior housing to the housing provider as amplified by HOPA.

Senior housing requires a requisite "intent." Absent intent, a housing provider is disqualified and must revert to the FHAA's "familial status." Courts have decided that compulsory zoning trumps the choice to rent to families. HUD has been, almost comically, imbued by the courts as empowered to generate requisite "intent." Congress never said that. Moreover, municipalities have undertaken no effort whatsoever to enforce HOPA on an ongoing basis in areas where it has imposed senior zoning. Now, HUD's involuntary coercion appears doomed by the U.S. Supreme Court, which just decided *Loper Bright v. Raimondo*⁵ annulled the "Chevron doctrine."

***Chevron v. Natural Resources Defense Council*⁶**

In 1984, the court decided *Chevron USA v. Natural Resources Defense Council*. "Chevron deference" required courts to take a backseat to bureaucratic (agency) say-so

⁴ The Federal Register chronicles daily life in Washington: it is the official journal of the U.S. that contains government agency rules, proposed rules, and public notices every weekday. Final rules are ultimately reorganized by topic or subject matter and codified in the Code of Federal Regulations (CFR), which is updated quarterly. See *About the Code of Federal Regulations*. National Archives. August 15, 2016

⁵ *Loper Bright Enterprises v. Raimondo* (2023) ____ U.S. ____ [143 S.Ct. 2635, 216 L.Ed.2d 1223].

⁶ *Chevron U.S.A. Inc. v. Natural Resources Defense Council* (1984) 468 U.S. 1227 [105 S.Ct. 28, 105 S.Ct. 29, 82 L.Ed.2d 921].

interpreting federal law that was deemed ambiguous. At the time of the 1984 decision, Chevron received support as a strike in favor of deregulation. At the time, the Reagan administration's Environmental Protection Agency interpreted the Clean Air Act in favor of business.

Over the course of time, observations morphed. *Chevron* has come to be a symbol of massive bureaucratic over-regulation, with passage of imposing regulations never approved by Congress. Opponents now argued that the courts, not federal agencies, should control legal meaning of ambiguous federal statutes. In overturning *Chevron*, Justice Roberts noted the *Chevron doctrine* "allows agencies to change course even when Congress has given them no power to do so."

Does This Affect Mobilehome Parkowners?

YES. Many owners are satisfied with regulations for 55+ parks and desire to offer senior housing. Conversely, many owners object to zoning regulations that impose a requirement for senior housing by force. The question is whether the statute, which specifies senior housing as an election to be made by the housing provider, can be forced upon property owners by local government. HUD has allegedly imposed regulations that impermissibly add legal burdens that only legislation can impart — and which Congress never approved.

Various disputes now challenge the governmental overreach, compelling parkowners to operate senior parks as being invalid *ab initio*. Federal agencies, including HUD,

must follow plain language when the law is clear.

***Loper Bright v. Raimondo*⁷**

In *Loper Bright v. Raimondo*, the Supreme Court overturned *Chevron*, holding that federal courts are required to rely on their own interpretation of ambiguous statutes instead of deferring to bureaucratic administrators. This is a dramatic truncation of power and influence by federal agencies to interpret and expand on federal laws they implement. Commenters opine that *Loper Bright* will reverberate nationwide, perhaps proving to be unworkable absent further congressional remediation. Justice Kagan dissented, arguing that invalidation of *Chevron* has created a "jolt to the legal system."

A New World?

Justice Roberts noted that courts are legally directed to "decide legal questions by applying their own judgment" and therefore "makes clear that agency interpretations of statutes — like agency interpretations of the Constitution — are not entitled to deference." He added "... it thus remains the responsibility of the court to decide whether the law means what the agency says."

Going forward, the court will take a more active, intrusive role in declaring federal legal interpretation. The court held that judges are better able to decipher the meaning of vagueness found in federal statutes. Even when the issue is scientific or abstruse. "Congress expects courts to handle technical statutory questions." Courts also have the

⁷ *Loper Bright Enterprises v. Raimondo* (2023) ____ U.S. ____ [143 S.Ct. 2635, 216 L.Ed.2d 1223].

benefit of briefing from the parties and “friends of the court.”

Retroactive upheaval of previous precedent is not expected. Justice Roberts indicates that *Loper Bright* will not require reliance on *Chevron* to be reversed: “... to say a precedent relied on *Chevron* is, at best, just an argument that the precedent was wrongly decided.” More will be required.

However, if a regulation is outside the scope of regulatory power and changes or adds to the meaning of the statute in a way Congress did not authorize, the case is not just wrongly decided; it is an unauthorized and unenforceable quasi-legislative action with no mooring to express direction by Congress.

Threat to Compulsory Senior Zoning

The courts may no longer abdicate judicial power to bureaucratic whim. Agencies cannot unilaterally supplement statutes by cavalier frolic. Thus, the demise of mandated senior zoning is, now, vulnerable to challenge. The Ninth Circuit’s position, that senior zoning is permissible due to an illustration of senior zoning contained in uncodified examples of senior housing printed in the Federal Register, is shaky and likely to be re-examined in light of *Loper Bright*.

Ending *Chevron deference* takes away any excuse to defend senior zoning. It should not apply in the first place, because HOPA is not ambiguous (in respect to the defi-

nition of “housing provider”). It is beyond HUD’s powers to create new classes of housing provider. In previous cases, management’s arguments were rejected (that management is the only entity with the right to pursue an exemption for senior housing, of its own voluntary volition, and to be protected from liability for good faith non-compliance). This decision is now open to reinterpretation by the court, where consistency between the statute and promulgated regulations setting up supplementary housing provider classes can be scrutinized.

Who Is in Charge of Maintaining Compliance with HOPA?

Ongoing compliance with HOPA’s “intent” requirement is necessary. Failure to budget for compliance efforts and absence of procedures proves municipalities abandon enforcement integral to senior housing. HOPA calls for demonstrable intent to operate as senior housing. Regulations requiring senior housing contradict the voluntary choice Congress gave to private property owners. HUD may not have a power to transfer that authority to local government by redefining “housing provider.” Congress did not intend this. Senior zoning is nowhere discussed in the statute or its history of the FHAA. Consider one case decided against a large Southern California county.

A federal court adjudged a county liable for imposing age restrictions on a zoning district for senior ten-

ants absent the 80% occupancy. The county had cavalierly ignored any procedures designed to make sure the zoned area was reserved for seniors (another case held that “... [i]t is not enough that the person claiming the exemption published a policy demonstrating its intent to provide housing for persons 55 years of age or older if the entity did not adhere to a procedure demonstrating the same intent”). The county had taken “no action to verify the ages of residents,” nor had it enforced the zoning restriction.

Conclusion

Currently, a local government that does not follow the requirements for implementation of 55+ housing stated in the CFR’s (as-is) may be challenged for non-compliance with HOPA. Also, if FHAA/HOPA do not allow for local government to impose “senior housing” at all, the entire illustration (and supportive precedent) is void *ab initio*. Canceling *Chevron deference* may lead to new hope for overdue curtailment of unauthorized regulations. It may mean reinstatement of free choice and family housing options.

Developments in this area of the law may also well lead to new opportunities to work with local governments for agreement to continue to choose 55+ housing. ■

Terry Dowdall specializes in mobilehome park law and has represented parkowners for over 40 years. He is an advisor to WMA’s Legislative Committee and Committee to Save Property Rights. He can be reached at 714.532.2222 phone; 714.532.3238 fax; or by email at trd@dowdalllaw.com.



NEWS & INFORMATION

Doug Johnson | Executive Director

Our Fight to Save Long-Term Leases

On August 31, 2020, Governor Gavin Newsom signed AB 2782 into law. This codified Civil Code Section 798.17 and spelled the beginning of the end of our industry's decades-old, long-term lease exemption from local rent control. Starting on January 1, 2025, all mobilehome park long-term leases will become subject to current and future rent control ordinances. Since 1985, parkowners have made many costly concessions to residents in order to secure these long-term leases. Something had to be done to stop this illegal action.

In late December 2022, WMA and a Petaluma parkowner agreed to sue the State of California in an effort to invalidate the law and to preserve a rent control protection granted decades ago and now taken away — unconstitutionally — by the Legislature. *Western Manufactured Housing Communities Association & Sandalwood Estates LLC v. Governor Gavin Newsom & Attorney General Rob Bonta* claims AB 2782 violates the contract clause of the U.S. Constitution and due process protections of the federal and state constitutions.

Nine months later, Sacramento County Superior Court Judge Christopher E. Krueger allowed our law-

suit against the long-term lease destroying AB 2782 to move forward to trial. The State of California attempted to have the case thrown out of court by filing a demurrer, but the judge ruled: "The court finds that the FAC (First Amended Complaint) sufficiently alleges a substantial impairment of a contractual relationship."

Paul Beard, our attorney in this case and formerly with the Pacific Legal Foundation (PLF), was quoted in the Los Angeles Daily Journal hailing the decision: "Today's ruling was an important victory for parkowners in California, as they continue to suffer under an ever-intensifying onslaught of unconstitutional attacks on their industry by the Legislature and governor. Today, the court rightly rejected the attorney general's plea to 'look the other way' and simply rubber-stamp this outrageous law, which purports to retroactively hollow out long-term leases that have benefited both parks and their residents for decades."

Now the state will have to prove — with arguments and evidence — that a significant and legitimate purpose supports this law and can override the constitutional prohibition on legislative impairments to private contracts."

We are set to go to trial next year and in the meantime, our legal team is working on a motion for preliminary injunction to stop the law from going into effect on January 1, 2025. This hearing will be held in Sacramento County Superior Court on November 9 at 9:00 a.m.

Have you made your contribution to this important property rights cause? If so, will you consider giving more? WMA's Committee to Save Property Rights (CSPR) contributed \$50,000 and parkowners from all over California have also given generously. Checks should be made out to CSPR with "AB 2782 Lawsuit" written on the memo line and mailed to WMA at our new office address: 2295 Gateway Oaks Drive, Suite 240, Sacramento, CA 95833. ■

Welcome New Members

Del Prado Mobile Home Park,
Yuba City

Macs Trailer Park, Grimes
Magnolia Gardens

Mobile Home Park, Lemoore
Midstate Mobile Manor, Fresno
Ridge Wireless Inc., Cupertino
San Joaquin Estates, Fresno
Sierra Springs, Bass Lake

Doug Johnson is WMA's Executive Director and can be reached at 2295 Gateway Oaks Drive, Suite 240, Sacramento, CA 95833; phone 916.448.7002, extension 4025; fax 916.448.7085; or email doug@wma.org.

PROOF OF SERVICE

I am employed by the law firm of DOWDALL LAW OFFICES, A.P.C. located at 284 North Glassell Street, Orange, California 92866. I am over the age of 18 and not a party to this action.

I am readily familiar with DOWDALL LAW OFFICES' practice for collection and processing of documents for mailing with the United States Postal Service, and that practice is that the documents are deposited with the United States Postal Service the same day as the day of collection in the ordinary course of business.

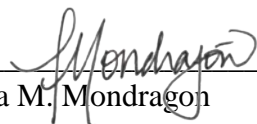
On this date, October 25, 2024, I caused to be served the within: **CORRESPONDENCE DATED OCTOBER 24, 2024, RE: LAKEVIEW MOBILE ESTATES RULES AND REGULATIONS** on the interested parties in this action, delivering a true and correct copy to the following:

Jacqueline Paterno
Deputy City Attorney
LOUNSBERY FERGUSON ALTONA & PEAK, LLP
960 Canterbury Place, Suite 300
Escondido, California 92025-3870

[X] (By First Class Mail) I caused each sealed envelope with postage fully prepaid, to be placed in the United States Mail at Santa Ana, California to the address listed above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

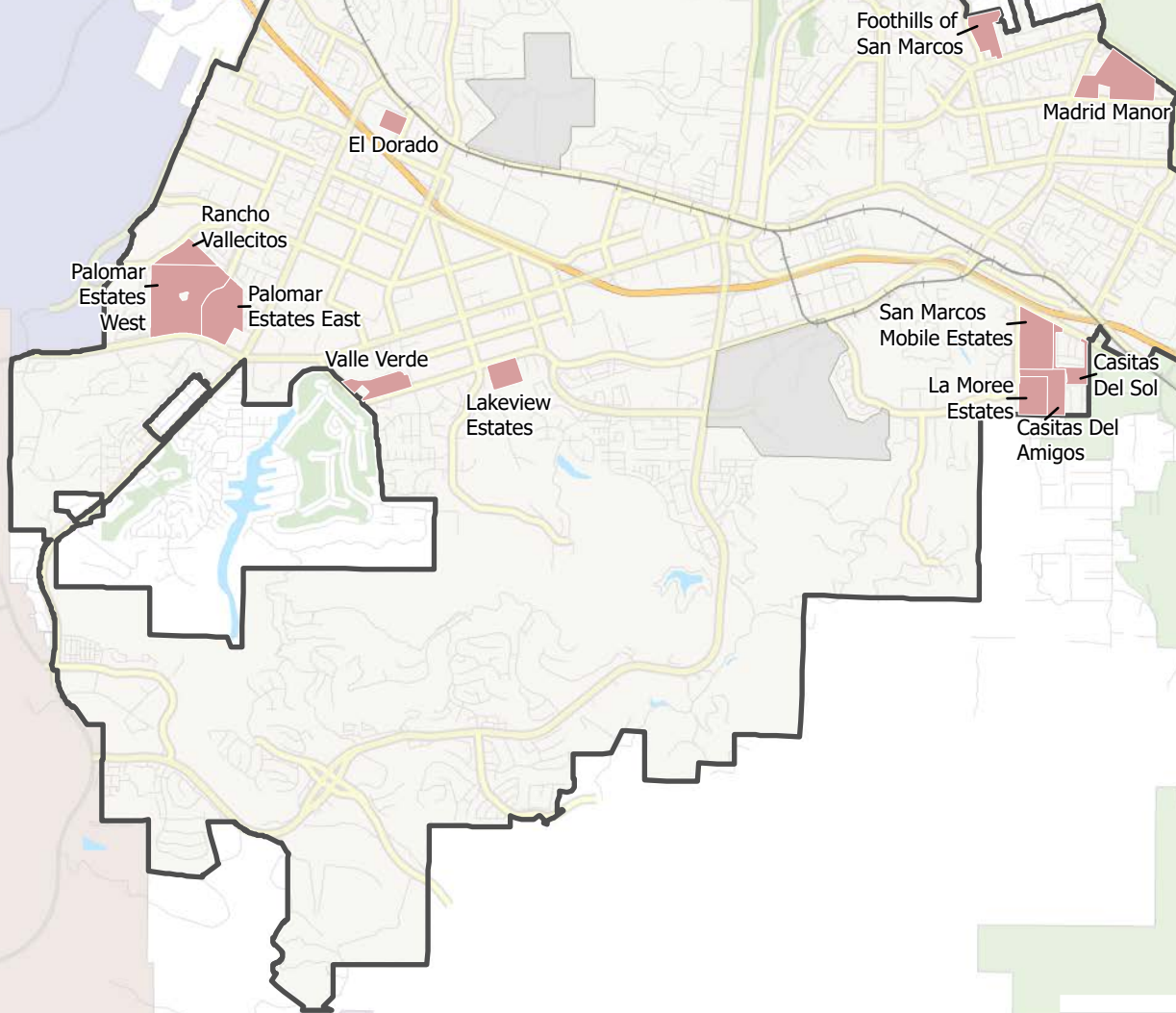
Executed this day, October 25, 2024, at Santa Ana, California.



Ana M. Mondragon



C:\Users\iceba\OneDrive - City of San Marcos\Helpdesk\HD289 Request for GIS map for Senior mobile home parks\SeniorMHP.aprx 10/29/2024 12:13 PM



Legend

Senior MHP

Every effort has been made to assure the accuracy of the maps and data provided; however, some information may not be accurate or current. The City of San Marcos assumes no responsibility arising from use of this information and incorporates by reference its disclaimer regarding the lack of any warranties, whether expressed or implied, concerning the use of the same. For additional information see the Disclaimer on the City's website.

Senior (+55 Years old) Mobile Home Parks

As of 11/1/2024

0 1,500 3,000 6,000
Feet

1:63,050

CREATED BY: City of San Marcos GIS
DATA SOURCES: SanGIS

AGENDA ITEM

#3.19