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Re: *Reconsider and Repeal Urgency Ordinance 1059, Reject Additions to Chapter 2.18 and Abstain from Second Reading of Ordinance 1060*

Dear Ms. Zutler:

Our firm has been retained by Cabrillo Mobile Home Estates ("Cabrillo") and its principals. We are writing to you on their behalf concerning the City of Capitola's City Council ("City") recent adoption and application of Urgency Ordinance 1059 and first reading of Ordinance 1060 for addition of Chapter 2.18 to the Capitola Municipal Code. As such, please direct all future communications relating to this matter to our office.

We respectfully urge the City to reconsider and repeal Urgency Ordinance 1059 and refrain from a second reading of Ordinance 1060 at the forthcoming City Council meeting on June 8, 2023. We predicate our request on the following reasons:

1. Cabrillo's Vested Rights:

As you may be aware, Cabrillo served Notice of Rent ("Notice") Increase at Cabrillo Mobile Home Estates in February 2023, in accordance with Mobilehome Residency Law, Civil Code Section 798.30 ("MRL"). This rent increase was due to come into effect on June 1, 2023. Under MRL section 798.30, "The management shall give a homeowner written notice of any increase in his or her rent at least 90 days before the date of the increase." As such, Cabrillo complied with the MRL and upon service of the valid Notice, Cabrillo had a vested right to collect the rental amount properly noticed. This is based on the principle that a new law or ordinance should not retroactively affect rights or obligations that arose prior to its enactment, unless the law explicitly provides for retroactive application. Here, the Urgency Ordinance 1059 does not explicitly provide for retroactive application. However, the Urgency Ordinance 1059 purports to retroactively invalidate the Notice.



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2. Lack of Notice

The City held a meeting on May 11, 2023 and May 25, 2023 regarding potential changes to Chapter 2.18 of the Capitola Municipal Code, affecting mobile home owners within the City and more specifically, affecting Cabrillo exclusively. However, Cabrillo did not receive notification from the City regarding these meetings and, in part, their subject, Urgency Ordinance 1059 or Ordinance 1060. Rather, Cabrillo was not made aware of the May 25th meeting until the day of the meeting. Cabrillo became aware of the meeting from a third party and not the City, nor a representative from the City.

3. Violation of Government Code sections 36934 and 36937

Under Government Code sections 36934 and 36937, ordinances can take effect immediately if they are for the immediate preservation of the public peace, health or safety, contain a declaration of the *facts* constituting the urgency.

Urgency Ordinance 1059, Section 6 states: "The City Council finds and declares that this ordinance is required for the immediate protection of the public peace, health and safety, and incorporates the recitals herein by reference. Without this ordinance, City of Capitola tenants could suffer potentially irreversible displacement resulting from sudden and excessive rent increases. The Council, therefore, adopts this ordinance to become effective immediately, pursuant to California Government Code Section 36937."

The City merely states in conclusory fashion that City tenants *could* suffer potentially irreversible displacement resulting from sudden and excessive rent increases. However, the City fails to provide a declaration of the *facts* constituting the urgency required under Government Code sections 36934 and 36937 rather than speculation. The one line statement above does not constitute a declaration of facts. On the contrary, no eviction was imminent to any of the tenants at Cabrillo. Furthermore, Cabrillo's attorney was in the midst of working with the tenant HOA and had a meeting on May 2, 2023 to discuss the rent increase effective June 1, 2023, and to offer assistance and potential deferral program should the need arise. At the same time HOA representatives were communicating with the City on this new legislation thus the City was aware of potential resident assistance measures. This is contrary to the City's unfounded speculation that there could be irreversible displacement. That was simply not the case here.

4. Violation of 14th Amendment (Due Process) 42 U.S.C. Section 1983

Cabrillo believes the City acted in an arbitrary, capricious fashion and acted in violation of Cabrillo's rudimentary due process rights under the Fifth and Fourteenth Amendments to the United States Constitution and 42 U.S.C. section 1983, as well as the companion provision in the California Constitution.

5. Denial of 14th Amendment (Equal Protection) 42 U.S.C. Section 1983

Cabrillo believes the City's actions and positions in applying the Urgency Ordinance 1059 were designed to deprive and deny Cabrillo equal protection under the law as guaranteed by the



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Fourteenth Amendment of the United States Constitution and 42 U.S.C. section 1983. The City's adoption of Urgency Ordinance 1059 purports to single out Cabrillo, and that the City acknowledges that the Urgency Ordinance 1059 shall not apply to any mobilehome park owner or operator located within the City of Capitola, except Cabrillo.

6. Violation of 5th Amendment (Taking) 42 U.S.C. Section 1983

Based on the actions by the City at its meeting on May 25, 2023, Cabrillo believes the adoption of Urgency Ordinance 1059 constitutes a taking of a property and is contrary to the Fifth and Fourteenth Amendments of the United States Constitution and 42 U.S.C. section 1983. Cabrillo believes the City and has unlawfully taken property (rent increase) belonging to Cabrillo.

Given the uncertainty and confusion caused by the adoption of Urgency Ordinance 1059, we believe that prompt remediation is crucial. Therefore, we request a response from the City by the close of business Monday, June 5. If we do not hear back by then, we will act in the best interest of our client and proceed accordingly.

Should you have any questions, please feel free to contact my office.

Very truly yours,

HART KIENLE PENTECOST

A handwritten signature in black ink, appearing to read 'Robert G. Williamson, Jr.', is written over a horizontal line.

Robert G. Williamson, Jr.

cc: Cabrillo Mobile Home Estates