

## **Mobile Home Park Owners Not Constitutionally Entitled to Receive Market Rate Rent**

Mobile home park owners were not entitled to raise rents to market rates under the terms of the city's rent control ordinance or the constitution, even though those rates may not be "excessive," according to the court in *Besaro Mobile Home Park v. City of Fremont*.

The city denied the park owners' request for a rent increase finding the owners were receiving a "fair return." The owners challenged the city's decision, claiming the city violated the ordinance and the owners' constitutional rights. The trial court ruled for the city and the court of appeal upheld that decision.

The appellate court first found the city complied with its mobile home park rent control ordinance and properly considered the nine factors it is required to weigh under the ordinance. The court rejected the claim a hypothetical "higher use of property" could be grounds for circumventing the rent ceiling in the ordinance, where the owner was already receiving a fair return on its investment. It also found no basis for the claim the ordinance only barred rents exceeding market rates, noting that the very purpose of the ordinance is to address the "imbalance between landlords and tenants" that make mobile home owners "captive" to rent increases while allowing park owners to receive the "fair rate of return that is constitutionally required."

The court also rejected the park owners' constitutional claims, concluding that, among other things, the city's denial of the rent increase application did not effect a taking, violate the owners' rights to due process or equal protection, or constitute a "gift of public money" to the tenants. Municipalities may use their police powers to adopt rent control ordinances "reasonably calculated to eliminate excessive rents" and courts will generally uphold such a regulation so long as it does not deprive investors of a fair return, thereby becoming "confiscatory."

On March 14, 2012 the court of appeal granted the City's request to certify the case for publication. *Besaro Mobile Home Park v. City of Fremont*, 204Cal. App. 4th 345 (2012)

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