APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

COLONY COVE PROPERTIES, LLC, a Delaware limited liability company, *Plaintiff-Appellee*, v. CITY OF CARSON, a municipal corporation; CITY OF CARSON MOBILEHOME PARK RENTAL REVIEW BOARD, a public administrative body, *Defendants-Appellants*.	No. 16-56255 D.C. No. 2:14-cv-03242-PSG-PJW OPINION

Appeal from the United States District Court
for the Central District of California
Philip S. Gutierrez, District Judge, Presiding

Argued and Submitted February 9, 2018
Pasadena, California

Filed April 23, 2018

Before: Susan P. Graber and Andrew D. Hurwitz, Circuit Judges, and Edward R. Korman,* District Judge.

Opinion by Judge Hurwitz

* The Honorable Edward R. Korman, United States District Judge for the Eastern District of New York, sitting by designation.

SUMMARY**

Civil Rights

The panel reversed the district court's judgment and remanded with instructions to enter judgment in favor of defendant in an action brought by the owner of a mobile home park who alleged that defendant, the City of Carson, engaged in an unconstitutional taking in violation of the Fifth Amendment when it approved a lower rent increase than plaintiff had requested.

Applying the factors set forth in *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104 (1978) the panel first held that plaintiff did not present sufficient evidence to create a triable question of fact as to the economic impact caused by the City's denial of larger rent increases. The panel then held that plaintiff failed to present sufficient evidence supporting its investment-backed expectations claim. Finally, the panel held that the character of the City's action could not be characterized as a physical invasion by the government. The panel concluded that based on the evidence, no reasonable finder of fact could conclude that the denials of plaintiffs requested rent increases were the functional equivalent of a direct appropriation of the property. Accordingly, the panel held that the district court should have granted the City's motion for judgment as a matter of law.

** This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

COUNSEL

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Christine Van Aken, Chief of Appellate Litigation; Dennis J. Herrera, City Attorney; City Attorney's Office, San Francisco, California; for Amici Curiae League of California Cities and California Chapter of the American Planning Association.

Navneet Grewal and Sue Himmelrich, Western Center on Law and Poverty, Los Angeles, California; Shirley Gibson, Legal Aid Society of San Mateo County, Redwood City, California; for Amici Curiae California Rural Legal Assistance Inc., California Coalition for Rural Housing, Community Legal Services of East Palo Alto, The Golden State Manufactured-Home Owners League Inc., Housing California, Legal Aid Foundation of Los Angeles, Legal Aid Society of San Mateo County, National Housing Law Project, Public Advocates, Public Counsel Law Center, The Public Interest Law Project, Tenants Together, Western Center on Law and Poverty, and Theresa L. Forsythe.

OPINION

HURWITZ, Circuit Judge:

The Takings Clause of the Fifth Amendment, made applicable to the States by the Due Process Clause of the Fourteenth Amendment, provides that "private property" may not "be taken for public use, without just compensation." The issue in this case is whether a California city engaged in an unconstitutional taking when it approved a lower rent increase for a mobile home park than the park had requested.

After a jury trial, the district court entered a judgment finding an unconstitutional taking and awarding the park more than $3 million in damages. We reverse and instruct that the district court enter judgment in favor of the City.

I. Background

A. The Rent Control Ordinance

In 1979, the City of Carson adopted a "Mobile Home Space Rent Control Ordinance," establishing a seven-member Rent Review Board to "hear and determine applications of property owners for rent adjustments." The ordinance directs the Board to grant property owners a "fair, just and reasonable" rent increase, one that both "protects Homeowners from excessive rent increases and allows a fair return on investment to the Park Owner."

To balance these competing concerns, the ordinance lists several factors to be considered when evaluating a proposed rent increase, including changes in the Consumer Price Index ("CPI"), rent

at comparable parks, capital improvements conducted since the last increase, and changes in operating and maintenance expenses. The listed factors, however, are neither exclusive nor dispositive.

To assist the Board, the City Council adopted Implementation Guidelines in 1998. The original Guidelines permitted, but did not require, the Board to conduct a "Gross Profits Maintenance Analysis" ("GPM Analysis") in evaluating a rent increase application. A GPM Analysis "compares the gross profit level expected from the last rent increase granted to the park prior to the current application . . . to the gross profit shown by the current application." The Analysis "provide[s] an estimate of whether a park is earning the profit estimated to provide a fair return, as established by the immediately prior rent increase, with some adjustment to reflect any increase in the CPI." Acquisition debt service can be a relevant expense under the GPM Analysis "if the purchase price paid was reasonable in light of the rents allowed under the Ordinance and involved prudent and customary financing practices." But the Guidelines expressly state that a GPM Analysis "is not intended to create any entitlement to any particular rent increase."

In October 2006, the City amended the Implementation Guidelines to permit the Board also to conduct a "Maintenance of Net Operating Income Analysis" ("MNOI Analysis") when considering applications for rent increases. The MNOI Analysis "compares the net operating income (NOI) level expected from the last rent increase granted to a park owner and prior to any pending rent increase application . . . to the NOI demonstrated in any pending

rent increase application." "[C]hanges in debt service expenses are not to be considered in the" MNOI Analysis.

B. Colony's Purchase of the Mobile Home Park and Requested Rent Increases

On April 4, 2006, Colony Cove Properties, LLC ("Colony") purchased Colony Cove Mobile Estates ("the Property"), a mobile home park in Carson, for $23,050,000; $18,000,000 of the purchase price was obtained through a loan. The annual debt service on that loan—$1,224,681—far exceeded the prior owner's annual profit of $718,240.

At the time of purchase, the Implementation Guidelines provided only for the GPM Analysis. Colony first filed an application for a rent increase in 2007, after the Guidelines were revised to also allow an MNOI Analysis. That application sought a rent increase of $618.05 per space; it was later amended to seek only $200 per space. The Board's GPM Analysis suggested a rent increase of $200.93 per space, driven largely by the post-acquisition debt service. The Board's MNOI Analysis, which did not account for the debt service, suggested a rent increase of only $36.74. The Board adopted the MNOI Analysis and approved the $36.74 increase. In 2008, Colony requested a $342.46 rent increase. The Board again conducted both a GPM and an MNOI Analysis, adopted the latter, and granted an increase of $25.02.

C. Colony's Previous Litigation

In 2008, Colony sued the City, asserting facial and as-applied takings and due process claims with respect to the Board's 2007 decision. *See Colony*

Cove Props., LLC v. City of Carson, 640 F.3d 948, 953-54 (9th Cir. 2011). The district court dismissed the facial attack as time-barred and the as-applied takings claim as unripe; we affirmed. *Id.* at 956-57, 959.

The same day it appealed the first district court order, Colony also "filed a petition for writ of administrative mandate seeking review of the Board's 2008 determination of its September 2007 rent increase applications" in state court; Colony later filed a similar second petition concerning the 2008 application. *See Colony Cove Props., LLC v. City of Carson*, 163 Cal. Rptr. 3d 499, 515 (Ct. App. 2013). The state trial court denied Colony's petitions, and the California Court of Appeal affirmed, holding that state law allowed use of MNOI Analysis and that the Board's failure to take debt service into account did not deprive Colony of a fair rate of return. *Id.* at 521-24, 530. The California Supreme Court denied review.[1]

D. The Current Litigation

Having exhausted its state-law claims,[2] Colony returned to federal court, alleging that the 2007 and

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[1] The state trial court struck Colony's *England* reservation of its federal takings claims, but the Court of Appeal reinstated the reservation. *Colony Cove Props.*, 163 Cal. Rptr. 3d at 529-30; *see England v. La. State Bd. Of Exam'rs*, 375 U.S. 411, 421 (1964).

[2] A "writ of administrative mandate" is a judicial avenue for relief from rent control decisions created by the California Supreme Court. *See Kavanau v. Santa Monica Rent Control Bd.*, 941 P.2d 851 (Cal. 1997). If the writ is granted, the property owner may seek a future rent adjustment "that takes into consideration past confiscatory rents." *Id.* at 866. "[T]he *Kavanau* adjustment process" satisfies the exhaustion requirements of

2008 Board decisions were an unconstitutional taking and violated Colony's substantive due process rights. The district court dismissed all of Colony's claims except for an as-applied regulatory takings claim premised on *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104 (1978).

Over the City's objection, the district court allowed a jury trial. At trial, Colony presented expert testimony that the Board's use of the MNOI Analysis and the consequent failure to take debt service into account in setting the 2007 and 2008 rents would cause Colony to lose rental income of approximately $5.7 million. Colony's owner, James Goldstein, also testified that, when he bought the Property, he expected the Board to consider debt service in future rent increase determinations, and he would not have paid $23 million for the park absent that expectation.

The City moved for judgment as a matter of law after both the close of Colony's case and the close of evidence. After the district court denied the motions, the jury found that the Board's 2007 and 2008 decisions were regulatory takings and awarded Colony $3,336,056 in damages. The City then filed a renewed Federal Rule of Civil Procedure 50(b) motion for judgment. The court denied the motion and awarded Colony prejudgment interest, attorneys'

Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City, 473 U.S. 172, 195 (1985). *See Equity Lifestyle Props., Inc. v. Cty. of San Luis Obispo*, 548 F.3d 1184, 1192 (9th Cir. 2008).

fees, and costs, entering a final judgment of $7,464,718.41.[3]

The City timely appealed. We have jurisdiction under 28 U.S.C. § 1291, and we review de novo the district court's denial of a motion for judgment as a matter of law. *United States ex rel. Hopper v. Anton*, 91 F.3d 1261, 1268 (9th Cir. 1996). In doing so, "[w]e must view the evidence in the light most favorable to the nonmoving party . . . and draw all reasonable inferences in that party's favor." *Ostad v. Or. Health Scis. Univ.*, 327 F.3d 876, 881 (9th Cir. 2003). "Judgment as a matter of law is proper when the evidence permits only one reasonable conclusion and the conclusion is contrary to that reached by the jury." *Id.*

II. Discussion

"The Takings Clause of the Fifth Amendment provides that private property shall not 'be taken for public use, without just compensation.'" *Murr v. Wisconsin*, 137 S. Ct. 1933, 1942 (2017). Although the paradigm of an unconstitutional taking is the direct appropriation of property, the Supreme Court has long acknowledged that "if regulation goes too far it will be recognized as a taking." *Penn. Coal Co. v. Mahon*, 260 U.S. 393, 415 (1922).

"[T]he Court for the most part has refrained from elaborating . . . definitive rules" about when regulation goes so far as to become a taking. *Murr*, 137

[3] In the final judgment, the district court noted its agreement with the jury's verdict: "Having independently weighed and considered the evidence, the Court agrees with the jury's finding that a taking occurred, as well as the amount of damages that the jury awarded . . . ."

S. Ct. at 1942. Judicial decisions considering regulatory takings claims are typically "characterized by essentially ad hoc, factual inquiries, designed to allow careful examination and weighing of all the relevant circumstances." *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency*, 535 U.S. 302, 322 (2002) (internal quotation marks and citations omitted). The goal is to determine whether regulatory actions "are functionally equivalent to the classic taking in which government directly appropriates private property." *MHC Fin. Ltd. P'ship v. City of San Rafael*, 714 sF.3d 1118, 1127 (9th Cir. 2013) (quoting *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 539 (2005)).

The *Penn Central* factors ground our regulatory takings analysis. *Penn Central* instructs us to consider "[1] the regulation's economic impact on the claimant, [2] the extent to which the regulation interferes with distinct investment-backed expectations, and [3] the character of the government action." *MHC Fin.*, 714 F.3d at 1127. The question is whether Colony presented sufficient evidence on these factors to allow a reasonable finder of fact to conclude that the Board's denials of Colony's requested rate increases were the functional equivalent of the direct appropriation of the Property. We address each factor in turn.

A. Economic Impact

In considering the economic impact of an alleged taking, we "compare the value that has been taken from the property with the value that remains in the property." *Keystone Bituminous Coal Ass'n v. DeBenedictis*, 480 U.S. 470, 497 (1987). *Penn Cen-*

tral stresses that, "[i]n deciding whether a particular governmental action has effected a taking, this Court focuses rather both on the character of the action and on the nature and extent of the interference with rights in the parcel as a whole." 438 U.S. at 130-31. If "an owner possesses a full 'bundle' of property rights, the destruction of one 'strand' of the bundle is not a taking, because the aggregate must be viewed in its entirety." *Andrus v. Allard*, 444 U.S. 51, 65-66 (1979).

The jury concluded that Colony would have received approximately $3.3 million in additional income over an 8-year period if the Board had adopted the alternative GPM Analysis and factored debt service into the 2007 and 2008 rent increases. But the mere loss of some income because of regulation does not itself establish a taking. Rather, economic impact is determined by comparing the total value of the affected property before and after the government action. *See MHC Fin.*, 714 F.3d at 1127. Projected income streams can contribute to a method for determining the post-deprivation value of property, but the severity of the loss can be determined only by comparing the post-deprivation value to pre-deprivation value. *Id.*

Not every diminution in property value caused by a government regulation rises to the level of an unconstitutional taking. "Government hardly could go on if to some extent values incident to property could not be diminished without paying for every such change in the general law." *Penn. Coal Co.*, 260 U.S. at 413. Although no litmus test determines whether a taking occurred, we start from the premise that the *Penn Central* factors seek "to identify regulatory actions that are functionally equivalent

to the classic taking in which government directly appropriates private property or ousts the owner from his domain." *See Lingle*, 544 U.S. at 539. Thus, we have observed that diminution in property value because of governmental regulation ranging from 75% to 92.5% does not constitute a taking. *MHC Fin.*, 714 F.3d at 1127-28. The Federal Circuit has noted that it is "aware of no case in which a court has found a taking where diminution in value was less than 50 percent." *CCA Assocs. v. United States*, 667 F.3d 1239, 1246 (Fed. Cir. 2011). Nor are we.

There was no evidence before the district court allowing a comparison of the pre-deprivation and post-deprivation values of the Property. Colony purchased the Property for approximately $23 million, and we assume that this number establishes the pre-deprivation value. But Colony presented no evidence, expert or otherwise, about the Property's post-deprivation value. Rather, the only evidence concerned the amount of rent claimed to be lost over an 8-year period because of the Board's refusals to approve higher increases. Even assuming that the lost rental income asserted by Colony—$5.7 million—equates to diminution in property value, that reduction would only be 24.8% of the assumed $23 million pre-deprivation value of the Property, far too small to establish a regulatory taking.[4]

Colony argues that post-deprivation "sale value is *not* the only permissible basis to consider economic loss." We agree—for example, the discounted

[4] The jury, whose award Colony does not challenge on appeal, found that the lost rental income was only $3 3 million, which would equate to a 14.3% reduction in the Property's value.

future cash flows produced by an income-producing property can provide an appropriate valuation methodology. *See*, *e.g.*, *Cienega Gardens v. United States*, 503 F.3d 1266, 1282 (Fed. Cir. 2007) (determining economic impact by "compar[ing] the lost net income due to the restriction (discounted to present value at the date the restriction was imposed) with the total net income without the restriction over the entire useful life of the property (again discounted to present value)"). But Colony presented no evidence, by virtue of analyzing diminished income streams or otherwise, of the post-deprivation value of the Property.

Colony also asserts that the Board took its property because it suffered annual operating losses in 2007 and 2008. But those losses resulted directly from Colony's decision to incur a large debt when purchasing the property and cannot alone establish a taking. Even if Colony's decision to borrow was commercially reasonable, it serves only to establish that the purchase price of $23 million is the pre-deprivation value. The post-deprivation value of the Property cannot be dictated by debt service; otherwise, two identical mobile home properties would have different values, depending on how their owners chose to finance the acquisitions. *See Colony Cove Props.*, 163 Cal. Rptr. 3d at 521 (praising the MNOI Analysis "for its fairness and ease of administration" in contrast to the GPM Analysis, which can be "problematic to administer, because an owner's equity can be greatly affected by individual differences in methods and costs of financing" (internal quotation marks omitted)).

Thus, on the first *Penn Central* prong, Colony did not present sufficient evidence to create a triable

question of fact as to the economic impact caused by the City's denial of larger rent increases. We therefore turn to the second prong.

B. Distinct Investment-Backed Expectations

Colony argues that, when it acquired the Property, it had a distinct investment-backed expectation that the Board would use the GPM Analysis and account for debt service in determining future rent increases. It is this expectation, Colony argues, with which the City interfered, and the jury therefore properly awarded Colony the rent increases it expected. Even accepting Colony's argument that we should focus only on the lost rental income, rather than the post-deprivation value of the Property as a whole,[5] the argument fails.

To form the basis for a taking claim, a purported distinct investment-backed expectation must be objectively reasonable. *See CCA Assocs.*, 667 F.3d at 1247; *see also Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1035 (1992) (Kennedy, J., concurring in the judgment) (noting that investment-backed "expectations protected by the Constitution are based on objective rules and customs that can be understood as reasonable by all parties involved"); *Chancellor Manor v. United States*, 331 F.3d 891, 907 (Fed. Cir. 2003) (holding that courts must use "an objective analysis to determine the reasonable investment-backed expectations of the Owners"). Colony claims that, when it purchased the Property, it

[5] *Cf. Penn Cent.*, 438 U.S. at 130 n.27 (stating that in determining whether a regulatory taking occurred, the government's action is measured against "the parcel as a whole").

reasonably expected that debt service would be recognized in future rent increases because (1) the existing Implementation Guidelines then provided only for a GPM Analysis; (2) the Board had always recognized debt service as a factor when granting rent increases on another mobile home park owned by Goldstein; and (3) two California Court of Appeal opinions—*Palacio de Anza v. Palm Springs Rent Review Commission*, 257 Cal. Rptr. 121 (Ct. App. 1989), and *Carson Gardens, L.L.C. v. City of Carson Mobilehome Park Rental Review Board*, 37 Cal. Rptr. 3d 768 (Ct. App. 2006)—required consideration of debt service. We address each argument in turn.

1. The Implementation Guidelines—even before the 2006 Amendment allowing MNOI Analysis—clearly could not have formed the basis for an objectively reasonable expectation that the Board would always account for debt service in considering future rent increases. The Guidelines plainly stated that "[n]o one factor in the Ordinance is determinative and the facts must be considered together and balanced in light of the purposes of the Ordinance and all the relevant evidence." More importantly, the Guidelines stressed that the GPM Analysis "is not intended to create any entitlement to any particular rent increase." Indeed, Colony concedes that "Carson does not permit an automatic rent increase based on a set formula."

2. Goldstein's experience as an owner of another mobile home park in Carson in the two decades before his purchase of the Property did not establish a reasonable expectation that the Board would consider debt service in all rent increase applications. As a general matter, an investor must account for

"the burden of rent control" in its expectations about future increased rental income. *Guggenheim v. City of Goleta*, 638 F.3d 1111, 1120-21 (9th Cir. 2010) (en banc). And, the Implementation Guidelines, adopted in 1998—long before the purchase of the Property—made plain that use of a GPM Analysis created no expectation to a particular rent increase. Moreover, the Board did *not* consider acquisition interest expenses in Goldstein's first application for a rent increase at his other park. Goldstein initially applied for a $57.85 rent increase for that park, $41.38 of which related to increased debt service. The Board, however, granted only a $12 rent increase, which did not account for the debt service. Thus, an objectively reasonable person could not have expected that all future rent increase applications seeking increases because of debt service would be granted.[6]

3. Colony's contention that the two California Court of Appeal decisions require "the City to take debt service into account in considering rent-increase applications, and . . . preclude[d] the City from . . . using MNOI," misreads both opinions. Neither mandates that a rent control board account for debt service in determining rent increases. Rather, both merely hold that a Board must conduct the analyses it represented it would conduct, without

[6] Colony's purported expectation of a $200 increase in 2007 would have resulted in a 49.5% per-space rent increase for Colony Gardens. Such an increase would have been twice as large as the largest increase ever previously granted by the Board and significantly larger than the largest increase Goldstein's other properties ever received—$58.70.

requiring the adoption of a particular method of analysis.

Palacio de Anza simply required a rent control board to apply its guidelines when considering a rent increase application. 257 Cal. Rptr. at 124. There is no contest that the Board did so here. And, in *Carson Gardens*, the Court of Appeal expressly held:

> [N]othing in the [City of Carson's] ordinance requires the Board to apply any particular formula or methodology without deviation. Indeed, the city's Guidelines specifically state that the [GPM] analysis 'is an aid to assist the Board in applying the factors in the Ordinance and is to be considered together with the factors in [the ordinance], other relevant evidence presented and the purposes of the Ordinance,' and is not intended to create any entitlement to any particular rent increase.

37 Cal. Rptr. 3d at 777 (fourth alteration in original). At most, *Carson Gardens* compels the Board only to *consider* a GPM Analysis, *see id*. at 776-77, and in affirming the trial court's dismissal of Colony's petition, the Court of Appeal here expressly acknowledged that the Board did precisely that in evaluating both the 2007 and 2008 Colony applications, *see Colony Cove Props*., 163 Cal. Rptr. 3d at 504-11.[7]

In *Carson Gardens* the plaintiff sued the Board, claiming in part that the Board did not conduct a

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[7] The Court of Appeal also noted that "the MNOI approach has been upheld by every court to have considered it." *Colony Cove Props*., 163 Cal. Rptr. 3d at 522.

GPM Analysis. 37 Cal. Rptr. 3d at 770-76. A trial court ordered the Board to conduct the analysis and remanded the case, but the Board failed to conduct the GPM Analysis on remand. *Id*. at 772-73. On the second challenge, the trial court granted the plaintiffs proposed rent increase based on its GPM Analysis, but the Court of Appeal reversed. *Id*. at 774-75, 777. Although the initial trial court's order required consideration of debt service costs, the Court of Appeal remanded the case "so that the Board c[ould] exercise its discretion on the question of whether passing through the entire amount of debt service costs was necessary to provide a fair return." *Id*. at 776.

No objectively reasonable person confronted with this evidence in 2006 could have expected that the Board would always account for debt service when determining rent increases.[8] Colony failed to present sufficient evidence supporting its investment-backed expectations claim under Penn Central's second prong.

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[8] Colony also claims that its expectations were reasonable because a former City employee testified that the Implementation Guidelines were "more important, at least for day-to-day operation[s]" than the ordinance. But the Guidelines, even before their amendment, made clear that a property owner had no right to a rent increase based on the GPM Analysis. And Colony does not contend that it relied on this statement, which was made in a deposition in this litigation, in determining whether to purchase the Property.

C. Character of the Government Action

Penn Central instructs that "[a] 'taking' may more readily be found when the interference with property can be characterized as a physical invasion by government than when interference arises from some public program adjusting the benefits and burdens of economic life to promote the common good." 438 U.S. at 124 (citation omitted).[9] The City's rent control ordinance is precisely such a program, striving to "protect[ ] Homeowners from excessive rent increases and allow[ ] a fair return on investment to the Park Owner." This central purpose of rent control programs "counsels against finding a *Penn Central* taking." *MHC Fin.*, 714 F.3d at 1128.

Citing *Lingle*, 544 U.S. at 539, and *David Hill Development, LLC v. City of Forest Grove*, No. 3:08-CV-266-AC, 2012 WL 5381555 (D. Or. Oct. 30, 2012), Colony argues that the 2006 amendment to the Guidelines should be characterized as a taking because it targeted Colony's acquisition of the Property and the consequent large debt service. But these cases are inapposite. *Lingle* simply held that a plaintiff could not claim that a regulation constituted a taking merely because it did not substantially advance a legitimate state interest. 544 U.S. at 547-48. And *David Hill* dealt with an express ex-

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[9] The Supreme Court also stressed that the first two *Penn Central* factors are the most important. *See Lingle*, 544 U.S. at 538-39 ("Primary among those factors are the economic impact of the regulation on the claimant and, particularly, the extent to which the regulation has interfered with distinct investment-backed expectations." (internal quotation marks and brackets omitted)).

action. 2012 WL 5381555, at *9-12. More importantly, government action is legitimately prompted by changes in regulated areas. Even assuming that the 2006 Amendment to the Guidelines was prompted by the large amount of debt service involved in Colony's acquisition and the City's realization that a more sophisticated analysis than the GPM might be needed to address requests for rent increases, the character of the government regulation remains the same. The third *Penn Central* prong therefore is not satisfied.

III. Conclusion

On the evidence in this case, no reasonable finder of fact could conclude that the Board's denials of Colony's requested rent increases were the functional equivalent of a direct appropriation of the Property. Accordingly, the district court should have granted the City's motion for judgment as a matter of law. We therefore **REVERSE** the judgment of the district court and **REMAND** with instructions to enter judgment in favor of the City.[10]

[10] We therefore need not consider the City's alternative argument that a district court, not a jury, is the appropriate finder of fact in regulatory takings cases.

APPENDIX B

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

COLONY COVE PROPERTIES, LLC, a Delaware limited liability company, *Plaintiff-Appellee*, v. CITY OF CARSON, a municipal corporation; CITY OF CARSON MOBILEHOME PARK RENTAL REVIEW BOARD, a public administrative body, *Defendants-Appellants*.	No. 16-56255 D.C. No. 2:14-cv-03242-PSG-PJW Central District of California, Los Angeles ORDER

Before: GRABER and HURWITZ, Circuit Judges, and KORMAN,* District Judge.

The panel has voted to deny the petition for panel rehearing. Judges Graber and Hurwitz have voted to deny the petition for rehearing en banc, and Judge Korman so recommends. The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The petition for panel rehearing and rehearing en banc, **Dkt. 78**, is **DENIED**.

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* The Honorable Edward R. Korman, United States District Judge for the Eastern District of New York, sitting by designation.

APPENDIX C

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Case No. CV 14-3242 PSG (PJWx) Date August 8, 2016

Title: Colony Cove Properties, LLC v. City of Carson, *et al*.

Present: The Honorable Philip S. Gutierrez, United States District Judge

Wendy Hernandez	Not Reported
Deputy Clerk	Court Reporter
Attorneys Present for Plaintiff(s):	Attorneys Present for Defendant(s):
Not Present	Not Present

Proceedings (In Chambers): Order DENYING Motion

Before the Court is Defendants' "Renewed Motion for Judgment as a Matter of Law." Dkt. #205. The Court finds the matter appropriate for decision without oral argument. *See* Fed. R. Civ. P. 78(b); L.R. 7-15. After having read and considered the moving, opposing, and reply papers, the Court DENIES Defendants' motion.

In its opposition, Plaintiff requests that the Court "make a direct finding in support of the jury's factual and legal conclusions." *Opp*. 25 n.17. After considering Plaintiff's request and Defendants' response, *see Reply* 11–12, the Court finds that Plain-

tiff's request is well taken. The Court will thus ensure that the judgment states at the end: "Having independently weighed and considered the evidence, the Court agrees with the jury's finding that a taking occurred, as well as the amount of damages that the jury awarded."

IT IS SO ORDERED.

APPENDIX D

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

COLONY COVE PROPERTIES, LLC, a Delaware limited liability company, Plaintiff, v.	Case No. CV 14-03242 PSG (PJWx) **~~[PROPOSED]~~ AMENDED JUDGMENT *NUNC PRO TUNC*** Courtroom 880

CITY OF CARSON, a municipal corporation; CITY OF CARSON MOBILEHOME PARK RENTAL REVIEW BOARD, a public administrative body; and DOES 1 to 10, inclusive, Defendant.	Judge: Hon. Philip S. Gutierrez

On April 28, 2014, Plaintiff Colony Cove Properties, LLC commenced this action against Defendants City of Carson and City of Carson Mobilehome Park Rental Review Board seeking damages and declaratory relief under 42 U.S.C. § 1983 for a regulatory taking without just compensation in violation of the Fifth Amendment to the United States Constitution. Beginning on April 28, 2016, Plaintiff's claim for relief was tried to a jury. On May 5, 2016, the jury duly rendered a unanimous verdict in Plaintiff's favor. (Dkt. No. 194.)

On May 16, 2016, the Court entered judgment in Plaintiff's favor on the jury's verdict. (Dkt. No. 200.) On June 10, 2016, Plaintiff filed a motion to alter or amend the Judgment pursuant to Rule 59(e) of the Federal Rules of Civil Procedure to increase the amount of damages awarded by the jury and award prejudgment interest. (Dkt. No. 206.) The same day, Defendants filed a renewed motion for judgment as a matter of law under Rule 50(b) and a motion for relief from the Judgment under Rule 60(a). (Dkt. Nos. 203, 205.) On August 8, 2016, the Court denied Defendants' renewed motion for judgment as a matter of law and amended the Judgment to add the language set forth in paragraph 6, below. (Dkt.

No. 221.) On August 10, 2016, the Court granted Plaintiff's motion to alter or amend the Judgment to include an award of prejudgment interest. (Dkt. No. 222.) It denied Plaintiff's motion to the extent it sought an increase in the jury's damages award and also denied Defendants' motion for relief from the Judgment. (*Id*.) On August 15, 2016, the Court granted in part and denied in part Plaintiff's motion seeking attorneys' fees and costs incurred through the completion of trial. (Dkt. No. 225.) Accordingly,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

1. That Defendants City of Carson's and City of Carson Mobilehome Park Rental Review Board's (collectively, "Defendants") decisions with respect to Plaintiff Colony Cove Properties, LLC's ("Plaintiff") rent-increase application submitted in September 2007 constituted a regulatory taking without just compensation in violation of the Fifth Amendment to the United States Constitution;

2. That Defendants' decisions with respect to Plaintiff's rent-increase application submitted in September 2008 constituted a regulatory taking without just compensation in violation of the Fifth Amendment to the United States Constitution;

3. That Plaintiff recover $3,336,056 in damages, jointly and severally, from Defendants;

4. That Plaintiff recover prejudgment interest at a rate of 4.5% annually for the delay in payment of just compensation between December 1, 2008, and May 16, 2016—representing

$1,119,543.83 in prejudgment interest—jointly and severally, from Defendants;

5. That Plaintiff recover $2,910,299.62 in attorneys' fees and $98,818.96 in costs incurred through trial, jointly and severally, from Defendants; and

6. Having independently weighed and considered the evidence, the Court agrees with the jury's finding that a taking occurred, as well as the amount of damages that the jury awarded subject to the Court's post-trial motion awarding prejudgment interest.

IT IS SO ADJUDGED

DATED the 25th day of August, 2016.

/s Philip S. Gutierrez
The Honorable Philip S. Gutierrez
United States District Judge

APPENDIX E

RELEVANT CONSTITUTIONAL PROVISIONS

The Fifth Amendment Provides:

* * *

[N]or shall private property be taken for public use, without just compensation.

The Seventh Amendment Provides:

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

The Fourteenth Amendment Provides:

* * *

[N]or shall any State deprive any person of life, liberty, or property, without due process of law . . .

APPENDIX F

* * *

GUIDELINES FOR IMPLEMENTATION OF THE MOBILEHOME SPACE RENT CONTROL ORDINANCE

These Guidelines are intended to assist the Board in implementing the Ordinance. However, the purpose of the Ordinance and the provisions of the Ordinance are controlling.

I. Purpose and General Principles

A. The purpose of the Ordinance is to protect the homeowners who rent spaces in mobilehome parks in the City from excessive rents and to allow Park Owners to earn a "just and reasonable" or "fair" return on investment. Mobilehome owners ("homeowners") are a uniquely vulnerable group of tenants due to the investment made in purchasing and maintaining their homes and the high cost and difficulty involved in attempting to move a home. Additionally, many of the homeowners in the City are seniors on fixed incomes and many have low or moderate incomes. Unlike apartment tenants, homeowners cannot just pack their personal belongings and move if rents increase to a level they cannot afford. In order not to lose the considerable investment made in purchasing and maintaining their homes, they must either sell their home in place in the park or move their home if they cannot afford the rent. However, it is very costly to move a home and even when vacant spaces are available in the surrounding area, the parks having those vacant spaces often restrict them to rental by new mobilehomes and will not accept homes being relocated

from another park. Thus, moving the mobilehome is not generally a feasible alternative. A homeowner who can no longer afford the rent must sell the home quickly to avoid being evicted or defaulting on the mortgage on the home. However, excessive rents make a home difficult to sell and often require the homeowner to sell the home at a price which is insufficient to allow recovery of the investment made in the home.

B. Prior approval of the Board is required before any rent increase may be charged unless a specific exception is provided in the California Mobilehome Residency Law, Civil Code § 798, et seq. That Law exempts spaces subject to long term leases meeting its requirements from local regulation. It also exempts increases in utility charges under certain circumstances and exempts newly constructed spaces, as defined by the Mobilehome Residency Law.

C. The Ordinance assumes that the profit earned by park owners when the Ordinance was adopted provided a fair return because it was based on rents chosen by the owners prior to regulation. (see §I(F) re rebutting this assumption) The Ordinance, therefore, uses the factors in § 4704(g) to focus on changes in a park's income, expenses and circumstances, including changes in the general economy, to determine whether a rent increase is appropriate to allow the owner to keep earning a fair return; and when a rent increase is appropriate to determine the amount of that increase. The factors also require the Board to consider any changes in the maintenance, services and amenities provided and rents for spaces in comparable mobilehome parks in the City and any change in the Consumer

Price Index ("CPI") since the last hearing on an application by a park. A decrease in, or elimination of, services, maintenance or amenities may constitute a de facto rent increase in violation of the Ordinance and increases in the CPI may, in certain circumstances, indicate the need for a rent increase to offset the erosion of profit by inflation.

D. No one factor in the Ordinance is determinative and the factors must be considered together and balanced in light of the purposes of the Ordinance and all the relevant evidence. The Ordinance does not mandate the use of any formula or guarantee increases equal to the increase in the CPI, or any percentage of the CPI.

E. Each park owner had the right to rebut the assumption that the rents set before the Ordinance was adopted provided a fair return when the park owner applied for the park's first rent increase, but cannot challenge the decisions of the Board except by legal challenge as provided in Ordinance §4798(c). When the Board grants a rent increase it is making a determination that the rent approved is "fair, just and reasonable." In other words, the Board determined that the rent approved was not excessive and allowed the park owner a fair return. The Board cannot reconsider its decisions on a rent adjustment application after they have been embodied in a formal written resolution setting forth the findings of the Board. Therefore, each rent increase application after the first application is evaluated only on the basis of changes in income, expenses, profit, the CPI, maintenance, amenities and services that have occurred since the date of the last increase approved by the Board. A park owner or homeowner who wishes to challenge the decision

may do so by seeking review in the courts, as set forth in §4708(c) of the Ordinance.

F. Notwithstanding Section D above, each park owner has the right to apply for an increase on the ground that existing rents do not allow the park owner to earn a fair return, as set forth in §IV below, in addition to an increase based on the factors in § 4704(g).

II. Income, Operating Expenses And Profit

A. An applicant must provide the most current data which is reasonably available concerning its income, expenses and profit. In general, an application should include expenses, income and profit documentation for all years subsequent to those for which data was supplied with the last application through at least six months prior to the date of the application. An application that does not provide income, expense and profit data for the period between the date of the data submitted for the last increase application through six months prior to the date of the current application will be deemed incomplete unless satisfactory reason is shown why such data cannot be supplied. (For example, records destroyed by fire, flood, etc., new owner cannot obtain files going back to date of last application.) The necessary data may be provided by calendar year, fiscal year or any other 12 month period selected by the applicant provided that the same 12 month period is used for all data supplied and the applicant utilizes the same 12 month period (e.g., July 1, 1993 through June 30, 1994, January 1, 1993 through December 31, 1993, April 1, 1993 through March 31, 1994) each time it applies for a rent increase. If an applicant changes the 12 month reporting period

used, the applicant will have to supply calendar year data for the years since the last increase as well as data presented according to the newly selected 12 month reporting period.

1. Income includes rents, fees for services not included in the rent such as RV parking, cable TV, security, etc., and any other income derived from the Park. Income from utilities is not income within the meaning of the Ordinance. No fee may be charged in addition to the rent for a service that was included in the rent charged when the Ordinance was adopted, except as otherwise provided in the Mobilehome Residency Law.

2. Examples of operating expenses are taxes, utility costs paid to a public utility if not billed separately, maintenance (except maintenance of utilities which is to be paid for from utility income pursuant to PUC ruling), repairs, management and accounting services. All expenses may be reviewed for reasonableness.

a. Owner performed labor is generally an allowable operating expense so long as the amount and type of labor performed is documented and is not duplicated by expenses paid to others.

b. Fees paid to management companies not in excess of 5% of gross rents are generally allowable; higher fees are not generally allowed unless justified by the applicant. Costs incurred for resident managers are allowable in addition to off-site management expenses so long as there is no evidence of duplication of services.

c. Land lease payments are generally an allowable operating expense only when paid to a landowner other than the park owner. Lease payments made by a park owner to an entity owned by the park owner will generally be deemed profit rather than an operating expense.

d. Debt service incurred prior to adoption of the Ordinance to purchase or operate the park is generally an allowable operating expense.

e. Debt Service necessarily incurred to operate the park after adoption of the Ordinance is generally an allowable operating expense if the financing arrangements were prudent and consistent with customary business practice.

f. Debt service incurred after adoption of the Ordinance to purchase a park may be an allowable operating expense if the purchase price paid was reasonable in light of the rents allowed under the Ordinance and involved prudent and customary financing practices. An applicant shall have the burden of establishing the reasonableness of the purchase price and financing procedures. If the applicant relies on an appraisal, the appraiser must be available for questioning at the hearing. Any other person relied upon must also be available at the hearing. When it is determined that some increase in debt service was reasonably necessary to acquire the park, but that the amount incurred was not reasonable in light of the Ordinance and customary and prudent financing practices, then only the appropriate portion of the debt service incurred may be allowed as an operating expense. The reason for these general rules is that passing on increased debt service due to purchases at prices above those that can be justified by the income

earned by the park under rent control or incurred by unusual financing methods, such as 100% financing, would defeat the purpose of rent control.

g. Debt service incurred in making capital improvements to a park may be recovered pursuant to the Capital Improvement Rent Increase provisions set forth below and is not an allowable operating expense.

h. Principal payments on a mortgage are not an allowable operating expense.

i. Reasonable attorneys' fees directly incurred in operating a park are generally allowable operating expenses. Attorneys' fees incurred in presenting applications to the Board, for enforcing court rules or for eviction are examples of fees that are allowable operating expenses. Examples of attorneys' fees which are not allowable are those incurred in connection with challenging the Ordinance or decisions of the Board or in connection with litigation seeking to recover damages or reimbursement from third parties or the City.

j. Charitable and political contributions are not allowable operating expenses.

k. If the operating expenses submitted for a park show a significant increase in expenses which is not due to the increased cost of regular operating expenses, is for an item which is not normally recurring, or is due to accumulating significant expenses in a single year instead of spreading them pursuant to a regular maintenance schedule, or if the expenses for a year are unusually low, the Board may consider the average of the park's last three years, of expenses.

The Board may consider the pattern of a park's income and expenses instead of focusing on the income and expenses for a single year in order to avoid unreasonable results.

l. An operating expenditure which covers expenses for more than one year may be pro-rated over the years to which it is attributable even if the cost thereof is paid all in one year in order to avoid unreasonable results. An example of such an operating expense is an insurance premium which covers two or three years. An operating expense which is financed shall also be pro-rated over the life of the loan by which it was financed.

B. Gross Profits Maintenance Analysis. In evaluating a rent increase application, the Board may consider, in addition to the factors specified in §4704(g) of the Ordinance, a "gross profits maintenance analysis," which compares the gross profit level expected from the last rent increase granted to the park prior to the current application ("target profit") to the gross profit shown by the current application. This analysis will be included in the staff report to the Board in addition to analysis concerning the eleven factors when there is sufficient data to permit such an analysis.

The analysis is intended to provide an estimate of whether a park is earning the profit estimated to provide a fair return, as established by the immediately prior rent increase, with some adjustment to reflect any increase in the CPI. The analysis is an aid to assist the Board in applying the factors in the Ordinance and is to be considered together with the factors in §4704(g), other relevant evidence presented and the purposes of the Ordinance. The

analysis is not intended to create any entitlement to any particular rent increase.

III. Comparable Parks and Changes in Services, Maintenance and Amenities

A. Comparable Parks. The Ordinance directs the Board to consider rents in comparable parks in the City. Consideration of the rents for spaces in comparable mobilehome parks can assist the Board in determining the range of reasonable rents for-a particular park. The reason the Ordinance specifies parks in the City is that comparison to rents in parks outside the City which are not subject to rent control would promote the excessive upward pressure on rents that the Ordinance is designed to avoid. Rents in unregulated markets are the result of the unequal bargaining power which arises from the shortage of spaces for relocating homes and the cost and difficulties inherent in trying to relocate a home. The Ordinance is designed to prevent the excessive rents that can occur in such a market absent regulation. Even if evidence were submitted showing a park in a neighboring jurisdiction with rent control to be comparable in quality, amenities, services and location, evidence would be required concerning the nature of the rent control regulations in effect in that jurisdiction during the period from 1979 to the present before the Board could determine whether the park was comparable within the meaning-of the Ordinance. Parks subject to the Los Angeles County mobilehome rent regulation ordinance have not been subject to rent regulation at all times since the adoption of the Carson Ordinance and were not and are not now subject to similar rent regulation. Therefore, rents in spaces in parks in unincorporated areas of Los Angeles County are not

comparable within the meaning of the Ordinance. Newly constructed spaces, as defined by the Mobilehome Residency Law, are also not comparable spaces within the meaning of the Ordinance even when they are located in City because the rents for those spaces are exempt from rent control and have never been subject to rent regulation.

B. Changes in Park Amenities, Services and Maintenance. There is a range of rents or zone of reasonableness which will permit a fair return. Decreases in amenities, services and maintenance may indicate that a lesser increase within the zone of reasonableness is appropriate and increases in services, amenities and maintenance may indicate that a greater increase within the zone of reasonableness is appropriate. Further, the elimination of or decrease in maintenance, services and amenities may constitute a de facto rent increase imposed without the approval of the Board in violation of the Ordinance and may, in some circumstances require a decrease in the rent increase that might otherwise be granted or the denial of a rent increase.

IV. OTHER RELEVANT EVIDENCE AND FAIR RETURN

A. The Ordinance is based on the assumption that the rents in effect before the adoption of the Ordinance provided a fair return and park owners attempted to rebut that presumption when they first applied for an increase. Most applications submitted to the Board have been based on the factors in the Ordinance and Park Owners rarely offer evidence concerning their investment in a park, the return being earned on the park or the return being earned by comparable mobilehome parks. However,

an applicant may file an application based on the claim that a rent increase is necessary because the park cannot earn a fair return without an increase greater than that permitted by application of the factors in the Ordinance as well as on the grounds provided by the factors in the Ordinance. Such an application must be made at the same time as a regular rent increase application and must include the following information, including supporting documentation and testimony, as well as the information concerning income, expenses and profit which is ordinarily required:

1. The date the applicant purchased the park and the purchase price of the park. If the park was purchased after the adoption of the Ordinance, the applicant shall also provide the rents charged, the net operating income of the park prior to the purchase and an appraisal of the park at the time of purchase. Net operating income means gross income minus allowable operating expenses (as set forth above) minus debt service. The appraiser performing the appraisal and preparing any appraisal report will be required to attend the hearing on the rent increase application.

2. Any down payment made upon purchase of the park and the total amount of equity in the park on the date of the application. Any refinancing of the park since the date of purchase and whether the proceeds of the refinancing were used to improve the park or for other purposes.

3. Any capital improvements made to the park, the cost thereof and whether that cost was recovered by a capital improvement rent increase.

4. The Overall Rate of Return (ratio of net operating income to purchase price) being earned by

comparable mobilehome parks in jurisdictions with and without rent control at the time of the application. The Overall Rate of Return being earned by the applicant's park (after making any adjustments to the purchase price necessary as a result of purchase after the adoption of rent control). Other measures of the rate of return being earned on the applicant's park and comparable parks and other evidence considered relevant by the applicant may also be submitted, but the Board is concerned with return on investment. It will not consider return based on the current fair market value of a park or the value of park property for purposes other than use as a mobilehome park. Any expert relied upon concerning the return being earned by the applicant or comparable parks or investments must be available for testimony and questioning at the hearing. Since mobilehome parks are unique investments, it is unlikely that the return on other types of investments would be found relevant by the Board. Thus, the return on investments which do not have the potential for appreciation in value are not relevant. Similarly, comparison to the return being earned by other residential rental property is not likely to be relevant since the owners of such properties must maintain the actual housing units whereas the owners of mobilehome parks do not have this responsibility or expense because mobilehome owners are responsible for maintaining them and the spaces which they rent. The owners of apartment complexes incur expenses in re-renting vacant units which are not incurred by mobilehome park owners and apartment owners experience a much higher vacancy rate. In the case of mobilehome parks, the existence of a vacant space is uncommon since homes are usually sold in place and rent is generally paid on a space so

the home can remain on the space until it is sold even if the owner has moved out. Further, the residents of mobilehome parks invest in improvements which enhance the applicant's investment and this does not occur in other types of residential rental properties.

V. MISCELLANEOUS

A. Evidence concerning the income of the park owner from sources other than the mobilehome park is not relevant and will not be considered. Evidence of the income of homeowners will generally not be considered because the need to protect low income homeowners is one of the reasons for adopting the Ordinance, which is designed to protect them and all homeowners from excessive rents.

B. Evidence concerning expenses, income, profit or changes in services, maintenance and amenities that was considered at the last hearing on a rent increase application by a park will not be reconsidered.

C. The Board cannot grant an increase greater than that specified in the application. Considering a larger increase could deprive affected homeowners of an opportunity to oppose the larger increase. Residents are given notice of the specific increase requested and decide whether to submit written opposition or appear to testify concerning the application based, in part, on the amount of the increase noticed. Although a resident might not oppose the noticed increase and not be present to testify at the hearing for that reason, that resident might have appeared to oppose a larger increase.

VI. Capital Improvement Rent Increases

A. Definition and Examples. Capital Improvement is defined by Section 4701(c) of the Mobilehome Space Rent Control Ordinance to mean "improvements to a mobilehome park and major rehabilitation of a mobilehome park that involve more than ordinary maintenance and repairs."

1. Normal routine maintenance and repair of a park is not a capital improvement. For example, patching of potholes and slurrying of asphalt streets and roadways constitute ordinary repairs and are not capital improvements within the meaning of the Ordinance.

2. Replacement or major reconstruction of an existing facility or improvement constitutes a capital improvement. For example, the replacement and/or reconstruction of streets or roadways, constitute capital improvements. Repairs to common areas where such work is part of a major rehabilitation, refurbishment, reconstruction, or remediation project, are also examples of capital improvements.

3. Addition of new facilities in a park, such as a new office or utility room, a sauna, jacuzzi, pool or an addition to a recreation room, are also examples of capital improvements.

4. The costs of major rehabilitation or refurbishment necessitated by acts of nature (earthquake, fire, flood, storm) or major remediation work such as environmental clean-up are also examples of capital improvements.

5. Capital improvements which would otherwise form the basis for a capital improvement rent increase cannot be the basis of such an increase if the

park owner charges a fee for the use of the improvement. For example, additional washers and dryers installed for the use of residents cannot be the basis for a capital improvement rent increase if the tenants must pay to use them.

6. Portable items, such as pool furniture and landscaping or gardening equipment, do not constitute capital improvements, unless they are part of a major rehabilitation or refurbishment.

7. Costs of any capital improvement that have been recovered by the owner through any insurance claim, litigation, or other right of indemnity shall be excluded for purposes of determining the amount of any capital improvement.

B. Determination of Allowable Increases.

1. Amortization Periods. In amortizing capital improvements, the following schedule shall be used to determine the amortization period of the capital improvement. For those items not listed, the amortization period for an improvement which has similar characteristics shall be used. The amortization period below may be increased or decreased depending upon the quality of the improvement, the conditions placed upon it or any other relevant factors affecting amortization. The Board may rely upon Department studies or reports it deems appropriate in establishing a greater or lesser amortization period or an amortization period for any item not listed below:

Expenditure	Years
Appliances	
Major Appliances, residential	10-18
Garage door openers	8-11
Garbage disposers, washing machines	6-12

Home electronics	5-12
Telephone systems	9-12.
Vacuum-cleaning system	12-17
Exterior	
Awnings and window screens	3-9
Canopies and patio covers	12-19
Exterior paint	3-7
sealers, silicone, etc.	1-5
Fireplaces, chimneys, masonry	35-55
metal	20-35
Shutters	3-7
Storefronts	18-25
entrance doors, automatic	7-20
Floor Covering	
Access (Computer) floor	10-18
Carpet and pad	4-10
Carpet tiles	5-10
Ceramic, quarry, precast terrazzo tile/pavers	25-40
Indoor-outdoor carpet	3-10
Linoleum	10-20
Rubber mats	3-6
Terrazzo, bonded or epoxy	25-50
Vinyl composition tile or sheet	7-19
Vinyl or rubber tile or sheet	12-24
Wood flooring	20-35
Hazardous Waste Removal/ Environmental Clean-up	10-20
Interior	
Acoustical ceiling tiles or panels	8-15
Cabinets	15-35
Countertops, laminates	10-35
Doors, hollow core	18-25
solid	25-50
shower	5-25

Drapery	6-12
Lighting	15-35
Paint	3-10
Tile, glazed	20-45
Vertical blinds	5-16
Wallpaper	7-18
Heating, Ventilating and Air Conditioning	
Solar-heating systems	5-15
Exhaust and ventilating fans	6-18
Air ducts, galvanized steel	17-30
aluminum	15-32
fiberglass	14-28
duct insulation	12-24
Fans and motors	14-20
Heating and cooling coils.	10-17
Plumbing	
Plumbing fixtures	17-30
enameled steel	5-14
fiberglass	10-20
Faucets and valves	8-16
Water heaters, residential	3-12
commercial	8-20
Pumps, sump and well	8-15
Pipe, galvanized	12-30
copper	20-35
plastic	15-33
Sprinkler and fire protection systems	20-30
residential smoke detectors	10-17
smoke and heat detectors	13-20
fire hose and misc. equip	7-13
Miscellaneous pumps, motors, controls	3-10
Rehabilitation Expenses (Earthquake, fire, flood, storm)	
Architectural and Engineering Fees	3-5

Emergency Services Clean-up	3-5
Fencing and Security	3-5
Management	3-5
Tenant Assistance	3-5
Structural Repair and Retrofitting	
Foundation Repair	5-10
Foundation Replacement	15-20
Foundation Bolting	15-20
Iron or Steel Work	15-20
Masonry-Chimney Repair	15-20
Shear Wall Installation	5-10
Grading	15-20
Roofing	
Built-up tar and gravel	10-20
Composition shingles	12-30
Elastomeric	12-25
Metal	13-45
Slate or copper	50-60
Tile, concrete or clay	30-50
Wood shakes	20-35
Wood shingles	16-30
Exposed insulation	19-24
Gutters and downspouts	10-30
Site Improvements	
Bulkheads, concrete	30-40
steel	25-35
wood	20-30
Culverts, concrete	30-40
Curbing, concrete	15-25
Flagpole	16-30
Fencing, chain link	13-20
masonry walls	20-35
wood	6-12
wind screens	4-7

Landscaping, decorative shrubs, trees, etc.	7-20
Outdoor furniture	3-10
Outdoor lighting fixtures	10-20
Parking lot bumpers	3-7
guard rails	7-13
Paving, asphalt	5-17
concrete/brick	10-20
Railings	5-10
Signs	8-14
Sprinklers, galvanized pipe	10-25
plastic pipe	15-28
controllers and pumping systems	8-13
Stairway and decks, wood	7-15
cement composition	12-25
Structural Additions (utility room, offices, guardhouses)	10-20
Swimming pool, commercial, concrete	15-30
Mechanical equipment	10-20
Spas	3-12
Solar pool equipment	7-20
Synthetic sports surfaces	3-8
Tennis court	18-25
asphalt/colored concrete resurfacing	3-7
nets	1-3
Underground sewer and water lines	22-32

2. Calculation

The monthly rent increase for each mobilehome space based on a capital improvement shall be calculated according to the following formula: Cost of the capital improvement, including interest, divided by the amortization period; the result of that calculation divided by twelve (12) months; and the result of that calculation by the number of all spaces.

For example, the allowable capital improvement rent increase for a street replacement, (paving) costing $10,000 (including interest) and having a useful/amortizable life of ten (10) years is calculated as follows:

$ 10,000.00 / 10 years	=	$1,000.00 annual amortization cost.
$ 1,000.00 / 12 months	=	$83.33 monthly amortization cost.
$ 83.33 / 30 spaces	=	$2.78 monthly rent increase per space for ten years

3. In general, a capital improvement should not be amortized over a period which would yield a monthly per space increase of over ten percent (10%). In such a case, a longer amortization period may be appropriate. The percent increase represented by a particular capital improvement rent increase shall be calculated by dividing the proposed capital improvement rent increase by the amount of the existing base rent. Thus, in the case of the above street replacement example, the percent increase is calculated as follows:

$2.78 (proposed capital improvement rent increase) / $130 (existing base rent)	=	2.1% (rent increase)

In cases where a longer amortization period is used to avoid a monthly per space increase of over

ten percent (10%), interest at the legal rate of interest shall be allowed over the entire amortization period.

4. Notwithstanding the subsections above, based upon the circumstances of a particular case, the Board shall have the discretion to determine capital improvement costs or appropriate amortization in any alternative manner necessary to protect the residents of the mobilehome park from excessive rents while ensuring the park owner receives a fair return.

C. Cost, of the Capital Improvement. The applicant shall provide documentary evidence of the actual cost incurred for the capital improvement. The cost thereof shall include the interest expense incurred on money borrowed to pay for the capital improvement. In those cases where the park owner finances the capital improvement or a part thereof with his/her own funds, interest at the legal rate of interest computed over a reasonable amount of time shall be included as a part of the capital improvement cost. In determining the reasonable amount of time over which interest shall be allowed, the Board shall be guided by the current practices of state and federally chartered banks and/or savings & loan associations as to the length of time for repayment of improvement loans, provided, however, that the time shall not exceed the amortization period used in calculating the allowable capital improvement rent increase. The staff report shall provide data to the Board concerning the reasonable amount of time over which interest shall be allowed.

D. Application Procedures.

1. An applicant may, but is not required to, submit an application for a capital improvement rent

increase at the same time as the application for a general rent increase. However, if an application for a general rent increase and an application for a capital improvement rent increase for the same park are submitted together they will be considered on the same hearing date except in unusual circumstances.

2. An application for a capital improvement rent increase is to be evaluated and heard separately from an application for a general rent increase. A separate application form must be submitted for each type of rent increase application. When a general rent increase application and a capital improvement rent increase application are filed together, the capital improvement rent increase application shall be heard first.

3. A fee shall be charged for each rent increase application. However, if an application for a capital improvement rent increase and an application for a general rent increase for the same park are submitted together, only one fee will be charged.

4. When the owner submits an application for both a general rent increase and a capital improvement increase at the same time and they are set for hearing on the same date, the notice to tenants prepared and sent by staff shall indicate that both increases are requested and will be heard on the same hearing date but will be heard separately. On the hearing date set to consider the applications the Board shall hold a separate public hearing on each application and the capital improvement rent increase application shall be heard first.

APPENDIX G

RESOLUTION NO. 06-149

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA, AMENDING RESOLUTION NO. 98-010 ADOPTING REVISED GUIDELINES FOR IMPLEMENTATION OF THE MOBILEHOME SPACE RENT CONTROL ORDINANCE, CHAPTER 7, ARTICLE IV, OF THE CARSON MUNICIPAL CODE

WHEREAS, the City Council hereby finds that it is necessary to assure the supply of affordable housing within the City of Carson, and that one important source of such affordable housing are the various mobilehome parks located throughout the community; and

WHEREAS, the City Council hereby finds that is appropriate to amend the current guidelines that govern the administration of the City's mobilehome space rent control ordinance, and to do so as to better assure that residents of mobilehome parks are protected from excessive rent increases that could reduce the supply of affordable housing in the community; and

WHEREAS, the City Council hereby finds that amendment of the current guidelines that govern administration of the City's mobilehome space rent control ordinance will provide additional analytical tools to evaluate pending applications for rent increase, and that such analytical tools will also help to assure that the mobilehome park owners within the City receive a constitutional fair return on their investments.

NOW, THEREFORE, the City Council of the City of Carson, California, does hereby FIND, DETERMINE, and RESOLVE as follows:

1. The foregoing recitals are true and correct.

2. Resolution No. 98-010, entitled "A Resolution of the City Council of the City of Carson Adopting Revised Guidelines for Implementation of the Mobilehome Space Rent Control Ordinance, Chapter 7, Article IV, of the Carson Municipal Code and Replacing the Policy Guidelines for Capital Improvement Rent Increase," shall be, and the same hereby is, amended to add a new Section II.C., to read, in its entirety, as follows:

> "C. Maintenance of Net Operating Income (MNOI) Analysis. In addition to the analysis set forth in Sub-Section II.B., above, the Board may also consider, a "maintenance of net operating income analysis," which compares the net operating income (NOI) level expected from the last rent increase granted to a park owner and prior to any pending rent increase application (the so-called "target NOI) to the NOI demonstrated in any pending rent increase application.
>
> 1. Where relevant to any pending rent increase application, a MNOI analysis shall be included in the staff report to the Board, along with the analysis set forth in Sub-Section II.B., above, and in addition to the analysis considering and evaluating the eleven (11) factors set forth in Municipal Code § 4704(g), and where there is sufficient data submitted by the applicant to permit such an analysis.

2. An MNOI analysis is intended to provide another method to estimate whether any applicant for a rent increase is earning a constitutional fair return, as established by the immediately prior rent increase, with appropriate adjustment(s) to reflect changes in the CPI, and is a methodology approved by the courts in which changes in debt service expenses are not to be considered in the analysis (unlike a gross profits maintenance analysis, where such changes may be considered). The analysis is another aid to assist the Board in applying the factors in the Ordinance, and is to be considered in company with the factors in Municipal Code § 4704(g), and all other relevant evidence presented and the statutory purposes of the mobilehome space rent control ordinance. An MNOI analysis is not intended to create any entitlement to any particular rent increase."

3. Resolution No. 98-010, entitled "A Resolution of the City Council of the City of Carson Adopting Revised Guidelines for Implementation of the Mobilehome Space Rent Control Ordinance, Chapter 7, Article IV, of the Carson Municipal Code and Replacing the Policy Guidelines for Capital Improvement Rent Increase," shall be, and the same hereby is, amended to add a new Section VII. to read, in its entirety, as follows:

"VII. Assuring a Constitutional Fair Return. Notwithstanding any other provision of these guidelines, nothing shall preclude the Board, either in the exercise of its sound discretion during review of any petition for a rent

> increase, including any fair return adjustments, or in response to a court order, from granting an increase that is necessary in order to meet constitutional fair return requirements and to take into account factors that must be considered in making a fair return determination."

4. Resolution No. 98-010, entitled "A Resolution of the City Council of the City of Carson Adopting Revised Guidelines for Implementation of the Mobilehome Space Rent Control Ordinance, Chapter 7, Article IV, of the Carson Municipal Code and Replacing the Policy Guidelines for Capital Improvement Rent Increase," shall be, and the same hereby is, amended to revise the 4th full sentence in Section VI.B.3., to read, in its entirety, as follows:

> "In cases where a longer amortization period is used to avoid a monthly per space rent increase of over ten percent (10%), the allowable interest rate shall equal to the average rate for thirty year fixed rate for mortgages plus one (1%) percent. The average rate shall be the rate Freddie Mac last published in its weekly Primary Mortgage Market Survey (PMMS) as of the date of the initial submission of the rent increase application."

5. Resolution No. 98-010, entitled "A Resolution of the City Council of the City of Carson Adopting Revised Guidelines for Implementation of the Mobilehome Space Rent Control Ordinance, Chapter 7, Article IV, of the Carson Municipal Code and Replacing the Policy Guidelines for Capital Improvement Rent Increase," shall be, and the same hereby is, amended to revise the

3rd full sentence in Section VI.C., to read, in its entirety, as follows:

> "The allowable interest rate for capital improvements shall equal the average rate for thirty year fixed rate for mortgages plus one (1%) percent. The average rate shall be the rate Freddie Mac last published in its weekly Primary Mortgage Market Survey (PMMS) as of the date of the initial submission of the rent increase application."

PASSED, APPROVED, and ADOPTED this 31 day of October, 2006.

/s Jim Dear
Mayor Jim Dear

ATTESTED:

/s Helen S. Kawagoe
City Clerk Helen S. Kawagoe

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP

/s
City Attorney

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.
CITY OF CARSON)

I, Helen S. Kawagoe, City Clerk of the City of Carson, California, do hereby certify that the whole number of members of the City Council is five; that the foregoing resolution, being Resolution No. 06-149 was duly and regularly adopted by said Council at a special joint meeting duly held on the 31st day

of October, 2006, and that the same was passed and adopted by the following vote:

AYES:	COUNCIL MEMBERS:	Mayor Dear, Ruiz-Raber, Santarina, Williams and Gipson
NOES:	COUNCIL MEMBERS:	None
ABSTAIN:	COUNCIL MEMBERS:	None
ABSENT:	COUNCIL MEMBERS:	None

s/ Helen S. Kawagoe
City Clerk Helen S. Kawagoe