

**ORDINANCE NO. 634**

**AN ORDINANCE OF THE CITY OF WILSONVILLE CONCERNING THE REGULATION OF MOBILE HOME PARK CLOSURES, AMENDING THE WILSONVILLE CODE BY ADDING SECTIONS 6.301 THROUGH 6.401 RELATING TO MITIGATING PUBLIC HEALTH AND WELFARE IMPACTS OF FORCED EVICTIONS ASSOCIATED WITH CLOSURE OF MOBILE HOME PARKS, AND DECLARING AN EMERGENCY.**

WHEREAS, on October 2005 and January 2006, the Wilsonville City Council adopted Ordinances 600 and 603 to regulate closures of Manufactured dwelling (mobile home) parks in the city by amending Wilsonville Code sections 6.300 through 6.400 to require that park owners mitigate the impacts of park closure on home owners; and,

WHEREAS, the City was enjoined from enforcing those ordinances based upon a ruling by Clackamas County Circuit Court that the ordinances were preempted and violated the substantive due process clause of the Fourteenth Amendment, U.S. Constitution; and,

WHEREAS, the City appealed the matter to the Court of Appeals where the matter is still pending; and,

WHEREAS, recent legislation, HB 2735, as amended, subject to the Governor's signature, authorizes local governments to adopt or amend mobile home park closure ordinances to apply prospectively as long as the adoption occurs on or before July 1, 2007; and,

WHEREAS, the City Council believes the public health, safety and welfare concerns that attended Ordinances 600 and 603 persist and warrant the adoption of the terms of the Ordinances, with some amendments, whether or not the matter on appeal is resolved in the City's favor on appeal. Pending appeal, Ordinances 600 and 603 are invalid and unenforceable. However, should the city prevail on appeal, those ordinances will likely be declared valid as of the date of adoption, and will therefore be applied by the city to closures commenced under them. Consistent with the General Judgment in the litigation of Ordinances 600 and 603, nothing

in this ordinance is intended to constitute action to enforce the invalidated ordinances, including against Thunderbird Mobile Club, LLC. This ordinance features significant amendments to requirements of the challenged Ordinances that were allegedly "unduly oppressive" to park owners; is intended to apply prospectively, and will not apply retroactively to any closures commenced prior to its effective date.

WHEREAS, to that end, the council wishes to adopt the below recitations and findings of the earlier ordinances; and,

WHEREAS, the rising value of land in the Portland Metropolitan area has increasingly resulted in the sale, closure and conversion of mobile home parks for alternative uses. Closure of mobile home parks necessarily involves termination of the rental agreements mobile home owners have for spaces in the park, resulting in the forced eviction and displacement of park residents. Mobile home parks provide housing affordable for low and moderate income persons, and market forces suggest that when mobile home parks are closed, that kind of affordable housing inventory is lost forever. Most mobile home park residents own the mobile home in which they live, and the closure of the park forces most of them to abandon their mobile homes without recovery of the home's value. Current state and local law does not give sufficient recognition to the fact that mobile home park closures affect a particularly vulnerable portion of our society. Relying on impact studies, Census figures, State Department of Revenue and State Housing and Community Services data, the Council finds as follows:

- Forty seven mobile home parks were closed in Oregon between 2001 an 2005, resulting in a loss of 1,317 individual spaces.
- The average household income of mobile home residents in 1999 ranged between \$27,000 and \$45,000. Residents are typically poorer than the average renter household, with incomes of only roughly two thirds the renter level.
- Mobile home tenants are more likely to be older and hence more likely to live on fixed incomes than their apartment renter counterparts.
- About 82% of mobile home units are owner occupied: 18% are renter occupied.
- The average assessed value of a mobile home in FY 2003-04 was \$26,000.
- "Mobile homes," originally resembling and named after the recreational travel trailers of today, are rarely mobile, being designed for permanent placement, often being double-wide and triple wide, costing, if road worthy, substantial sums in the unsealing,

- mechanical separation, removal of porches and similar fixtures, disconnection of utilities, and often moved, in sections, by permit and specially trained movers.
- Many older mobile homes which are mechanically capable of being moved, do not meet design requirements and restrictions of potential receiving parks, resulting in abandonment in place.
  - Once placed in a park, only a small percentage of homes are ever moved during the lifetime of the home.
  - When mobile homes are sold, they are almost universally sold in place to a new resident who buys the mobile home from the current owner and becomes the new renter of the park space. Closure of a mobile home park, and the practical immobility of the home, results in the owner's loss of the value of that home.
  - Traditionally, mobile home residents are stable, being long time residents of the park, and commonly report that their current location is the first mobile home residence they have had. As noted above, many of the residents are elderly, whose friends, contacts, and community have centered on the park for years, if not decades, and;

WHEREAS, the foregoing demonstrates that in the event of park closure, the owners of mobile homes are not only forced from the park, but forced from their homes, and therefore lose their major asset. This is an especially serious problem in that a significant proportion of the owners of established parks are elderly and on fixed incomes, and;

WHEREAS, state law currently requires written notice to tenants of mobile home park spaces when the tenancy for a facility is terminated because the park is to be closed and the land or leasehold converted to a different use. No moving costs and set-up expenses are owed if the landlord provides more than 365 days notice of termination. When notice is provided between 180 and 365 days prior to termination, the statutes require that the landlord pay the cost of moving and set-up expenses or \$3500, whichever is less. HB 2389, enacted this session and effective 1/1/2006, provides that a qualified owner of a mobile home valued at less than \$110,000 may take a personal income tax credit of up to \$10,000 over three to five years if the mobile home is involuntarily moved because of park closure. The amount of the credit is the lesser of \$10,000 or the actual moving costs. Qualified homeowners are individuals who earn no more than \$60,000 on the date that the mobile home is moved. If the homeowner earns less than

200% of the Federal Poverty Level, the entire amount of the moving expense is a credit against income tax liability in the year of the involuntary move. If the tax liability is less than the credit and tax prepayment amounts, the difference will be refunded to such taxpayer; and,

WHEREAS, current state law, as it will be amended, places a low cap on moving expenses, and, as found below, does not come near the actual costs of moving and set-up expenses occasioned by the forced relocation of the mobile home

The primary deficiency in the state law respects the lack of assistance to the owner who is not able to relocate the home. The current law does not require compensation *in any form* to the owners who, in the course of eviction, must abandon their homes in place. Proposed amendments to state law inadequately address compensation. Council finds that, especially for the older parks, such individuals comprise the majority of park residents – many of whom are elderly, disabled, and on fixed incomes and stand to lose the entire value of their life's primary asset. State law therefore does not assist what is perhaps the most needy and vulnerable segment of the park population; and,

WHEREAS, state law only requires notice of termination of a rental agreement. It does not require notice to and involvement of tenants at a time and for the purpose of meaningful negotiation and sale to the tenants or tenant organization. Additionally, state law only encourages mobile home park landlords to inform the state of available spaces. Nothing requires the owner of a park being closed to analyze or assist displaced residents with information about space availability in comparable parks, to otherwise provide relocation assistance, or to compensate for the loss of home through forcible eviction and involuntary conversion; and,

WHEREAS, in addition to the private costs assumed by displaced park residents and their families, closure of mobile home parks involve substantial public costs, including increased utilization of tax-supported state and local housing assistance, and costs for welfare, medical and social services; and

WHEREAS, the Council recognizes that the provisions of this ordinance place added burdens and obligations on owners of mobile home parks. It is the singular act of closing the park that causes the kind of third party impacts which the public health and welfare demands be mitigated and become part of the closure decision. Nevertheless, the Council also recognizes that these provisions place significant burdens and responsibilities on a discrete group of individuals, and that in fairness and reason, these regulations must not be oppressive or impose

undue burdens on affected property owners. Consequently, the proposed chapter provides a process for relief from those requirements to ensure that this ordinance is lawful on its face and as applied; and

WHEREAS, the Council finds that these provisions comport with applicable law and determines that the ordinance is not preempted by state law, does not constitute a land use regulation within the meaning of Measure 37, does not operate to be a barrier to conversion to a different land use, is rationally based, and is otherwise lawful; and,

WHEREAS, upon consideration of evidence presented to and adduced at the public hearings on ordinances 600 and 603, and in consideration of the foregoing findings of fact, Council declares that it is in the public health, safety and welfare interests of the City to provide that closure of an existing mobile home park is preceded by adequate notice, that the social and economic impacts of the proposed closure are adequately defined and mitigated prior to such closure and that relocation and other assistance is provided park residents.

NOW, THEREFORE, THE CITY OF WILSONVILLE ORDAINS AS FOLLOWS:

Section 1. Findings.

The above-mentioned recitals are incorporated as findings of the City Council. The Council further adopts as finding of fact those staff reports previously adopted for ordinances 600 and 603, which reports are attached hereto and incorporated herein.

Section 2. Order.

That Wilsonville Code Chapter 6 is amended by adding the following sections thereto:

**MOBILE HOME PARK CLOSURES**

6.301. Purpose and Intent.

(1) The purpose of these provisions is to restrict activities for the protection of public health and safety. The provisions are intended to mitigate the adverse impacts of mobile home park closures on park residents by ensuring that the closure is preceded by adequate notice, that the social and economic impacts of the involuntary relocation of tenants associated with the closure are adequately defined, and that relocation and other assistance is provided park residents.

6.311. Definitions.

(1) The following words, terms and phrases have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

“Closure of a mobile home park” means to stop or cease leasing spaces in a mobile home park, to terminate mobile home space rental agreements for all or a portion of the park spaces, or to otherwise engage in activity to effect termination of rental agreements or leases or to evict tenants. Termination of tenancy under ORS 90.400, provision of notice under 90.630, sale or conveyance of the park, or actions required by the exercise of eminent domain or by order of State or local agencies shall not constitute closure of a mobile home park.

“Comparable mobile home park space” means any space, lot, or parcel of land within 100 miles of the park that is (1) decent, safe, and sanitary; (2) adequate in size to accommodate the manufactured dwelling; (3) within the financial means of the displaced tenant; (4) functionally equivalent; (5) in an area not subject to unreasonable adverse environmental conditions; and (6) in a location generally not less desirable than the location of the displaced tenant’s space with respect to public utilities, facilities, services, and the displaced tenant’s place of employment.

“Mobile home” means a manufactured home, mobile home or residential trailer as these terms are defined in ORS 446.003(26).

“Mobile home park” means place where four or more mobile homes are located, the primary purpose of which is to rent space or keep space for rent to any person for a fee.

“Owner” means a mortgagee in possession and means one or more persons, jointly or severally, in whom is vested all or part of the legal title to a mobile home park; or all or part of the beneficial ownership and a right to present use and enjoyment of the mobile home park. Owner includes an authorized representative of the Owner.

“Relocation costs” means and includes actual reasonable expenses in moving the tenant’s manufactured dwelling and possessions to a comparable replacement space. Such expenses include:

1. Removal and reinstallation of skirting;
2. Disconnecting utilities;
3. Disconnecting and removing awning(s) and deck(s) from the manufactured dwelling;
4. Trip permit and public inspection fees;
5. Transportation costs;
6. Set up charges;
7. Utility connection expenses and fees;
8. Unit improvements to meet destination facility space standards;
9. Costs for packing and unpacking manufactured dwelling or residential vehicle contents as necessary for unit relocation for elderly and disabled persons, as defined in OAR 813-005-0005 and 813-060-0010, respectively;

10. Temporary housing and meals for the tenant and permanent occupants during unit relocation and set up; and
11. Landlord expenses to secure the relocation space acceptable to the tenant from the time of tenant acceptance until the date the relocated manufactured dwelling or residential vehicle is approved for occupancy.

Notwithstanding the above, relocation costs shall not include, and shall be off set by, relocation assistance received, including, but not limited to financial incentives to move into a new park, from a person or entity other than the owner.

“Tenant” means a person who owns and occupies a manufactured dwelling in a mobile home park. For the purpose of this chapter, a tenant does not include a tenant who has accepted an earlier termination date or contracted with the landlord as provided in ORS 90.630(6)(a) or (b).

#### 6.321. Mobile Home Park Closure Permit.

(1) Permit Required. No person may close a mobile home park unless a mobile home park closure permit has been obtained. Provided, however, that nothing in this section is intended to limit a person’s ability 1) to apply for and obtain a plan amendment, zone change, or other land use decision pursuant to the City’s Comprehensive Plan or Zoning Ordinance; 2) sell, convey or transfer a mobile home park; or 3) provide notification under ORS 90.630(5).

(2) Scope of Permit Requirement, Construction. These provisions shall apply to all closures commenced by provision of statutory closure notice on or after June 27, 2007. These provisions shall be construed as not to conflict with state law, and shall be applied in a manner such that the provisions and state law operate concurrently.

(3) Application Filing. Applications for closure permits shall include the following and any additional relevant information as may be necessarily required by this chapter and the City Manager or City Manager’s designee:

- (a) A detailed narrative description of and timetable for the proposed closure.
- (b) A report on the impact of the closure of the mobile home park on its residents pursuant to section 6.330.
- (c) The Relocation Plan pursuant to section 6.340.
- (d) Notice pursuant to 6.350.
- (e) The application filing fee in an amount established by the City Council.

(4) Application processing. Upon receipt of a complete application, the City Manager or Designee shall review the application and forward a recommendation in the permit to City Council for final action. The Permit shall require a public hearing following the procedures set forth in W.C. 2.560.

#### 6.331. Closure Impact Report.

(1) Any person filing an application for a Closure Permit shall file a Closure Impact Report on the impact of the closure change of use, or cessation of use upon the residents of the mobile home park. At a minimum, the Closure Impact Report shall include the following, as well as any other information deemed necessary and appropriate by the City Manager or Designee.

- (a) A detailed description of the mobile home spaces within the mobile home park, including but not limited to
  - 1) The total number of mobile home spaces in the park and the number of spaces occupied,
  - 2) The length of time each space has been occupied by the present resident(s) thereof,
  - 3) The age, size, and type of mobile home occupying each space,
  - 4) The monthly rent currently charged for each space, including any utilities or other costs paid by the present resident(s) thereof,
  - 5) Name and mailing address of the primary resident(s) and owner if different than occupant of each mobile home within the mobile home park.
- (b) A list of all comparable mobile home parks spaces within the City of Wilsonville and within at least three parks that are within up to 25 miles of the City. This list shall include the age of the mobile home park and the mobile homes therein, a schedule of rents for each park listed, a listing of the vacancies in the parks and the criteria of the management of each park for acceptance of new tenants and used mobile homes.
- (c) A detailed analysis of the economic impact of the relocation on the tenants including comparisons of current rents paid and rents to be paid at comparable mobile home parks within the relocation area, the estimated costs of moving a mobile home and personal property and any direct or indirect costs associated with a relocation to another mobile home park.
- (d) A list of the names, addresses and telephone numbers of one or more housing specialists, with an explanation of the services the specialists will perform at the applicant's expense for the residents to be displaced. These services shall include but not be limited to assistance in locating a suitable replacement mobile home park, coordination of moving the mobile home and personal property, and any other tasks necessary to facilitate the relocation to another comparable mobile home park.

#### 6.341. Relocation Plan.

(1) A Relocation Plan for tenants of the mobile home park shall be submitted for review and approval as part of the application for a Closure Permit. The Relocation Plan shall provide, at a minimum, for the following:



- (a) The Relocation Plan shall provide for the owner to pay all reasonable relocation costs to a comparable mobile home park space within 25 miles to any tenant who relocates from the park after City approval of the closure Permit. When any tenant has given notice of their intent to move prior to City approval of the Use Permit, eligibility to receive moving expenses shall be forfeited.
- (b) The relocation plan shall identify those mobile homes that cannot be relocated to a comparable mobile home park space within 25 miles. The owner shall be required to offer to purchase any mobile home that cannot be relocated in conformance with this chapter. The offer to purchase the mobile home will be made at the real market value of the home as reported on the most recent property tax assessment roll.
- (c) In order to facilitate a proposed closure, the tenants and owner(s) may agree to mutually satisfactory conditions. To be valid, however, such an agreement shall be in writing, shall include a provision stating that the tenant is aware of the provisions of this ordinance, shall include a copy of this ordinance as an attachment, shall include a provision in at least twelve-point type which clearly informs the tenants that they have the right to seek the advice of an attorney of their choice prior to signing the agreement with regard to their rights under such agreement and shall be drafted in the form and content otherwise required by applicable state law.

Should the owner provide evidence demonstrating to the City that two-thirds of the tenants have executed such agreements, and that the balance of tenants have been offered comparable agreement terms, the provisions of this Chapter shall not apply to the closure involving all tenants. Such evidence may include an agreement with or a sale to a tenant association or tenant non-profit corporation representing two-thirds or more of the tenants.

#### 6. 351. Required Notifications.

- (1) In the event the owner intends to sell the mobile home park, the owner shall notify, in writing, the tenants and the City of Wilsonville within 10 days of receipt of any written offer received by the owner or agent of the owner to purchase the park which the owner intends to consider or any listing agreement entered into by the owner to effect the sale of the mobile home park.
  - (a) The notice shall contain the name, address and phone number of the owner and the owner's representative, if any, who is authorized to negotiate the sale of the mobile home park.
  - (b) Within 90 days of the delivery by or on behalf of the owner of the notice required herein, a tenant may notify the owner by certified mail or personal service at the address disclosed in the notice that the tenant or a tenant supported nonprofit organization is interested in purchasing the mobile home park.

- (c) Upon delivery of the notice required herein, the owner shall negotiate in good faith with the tenant or organization and provide the tenant or organization an opportunity to purchase the facility as the owner would any bona fide third party potential purchaser.
- (d) The section does not apply to those sales and transfers described in ORS 90.820(4) or to any offer or listing agreement made before this section was adopted.

6.361. Required Findings.

- (1) In approving a Permit for a mobile home park closure, the City Council shall find that the proposed closure meets the following requirements in addition to the other requirements of this Chapter.
  - (a) That the tenants of the mobile home park have been adequately notified of the proposed closure, including information pertaining to the anticipated timing of the proposed closure.
  - (b) That the age, type size, and style of mobile homes to be displaced as a result of the closure will be able to be relocated into other comparable mobile home parks within a 100 mile radius of the City of Wilsonville, or that the owner has agreed to purchase any mobile home that cannot be relocated at its in-place value as provided for in this Chapter.
  - (c) That any mobile home tenants displaced as a result of the closure shall be compensated by the owner for all reasonable relocation costs, excluding the value of tax credits owing the tenant under state law.
  - (d) That if the owner files a tentative plat or plan for a land division to be created from the closure of a rental mobile home park, the owner provides tenants such offers and other information required by law.

6.371. Conditions of Approval.

- (1) The City Council may impose any necessary and appropriate conditions of approval to satisfy and implement the intent, purpose, and content of this Chapter. In addition, any other necessary and appropriate conditions of approval to protect the health, safety and welfare of the residents of the City of Wilsonville may be imposed. The Council shall not deny, but may approve or conditionally approve, the permit involving the closure of the park or cessation of the use of the land as a mobile home park, provided the applicant has properly complied with the requirements of this ordinance and there is no evidence that the applicant or prior owners have attempted to evict or otherwise cause the removal of residents for the purpose of avoiding the requirements of this Chapter. Conditions

may be precedent or subsequent to acts of closure, which acts may include, but are not limited to, eviction of tenants or changes in land use.

#### 6.381. Owner Relief.

The owner of a mobile home park may apply for relief from the requirements of this Chapter. Compliance with the terms of this ordinance shall not be a precondition to such application. Upon receipt of an owners application for relief setting forth facts demonstrating how application of the ordinance is unduly oppressive under the circumstances then and there existing, together with an application filing fee in an amount established by City Council, the City Manager shall make a recommendation to the City Council, and based upon the record of a public hearing pursuant to the procedures of W.C. 2.560, the City Council shall determine the extent to which application of this Chapter, or portions thereof, is unduly oppressive. In making that determination, the Council shall consider the amount and percentage of value loss, the extent of remaining uses, past, present and future, the seriousness of the public problem caused by the owner's acts of closure, the degree to which these provisions mitigate the problem and the feasibility of less oppressive solutions. The Council shall consider other factors as may be relevant or necessary to achieve a lawful application of these provisions. The Council shall make written findings, supported by substantial evidence, of the extent to which application of these provisions are unduly oppressive, and articulate those requirements or payments that the owner need not bear to avoid such oppression. As to these requirements or payments, the owner shall be relieved. As to the remaining owner obligations, the Council shall, considering the record of the proceedings, the unmitigated impacts upon the tenants, and the intent and purpose of this Chapter, declare the manner in which such obligations shall appear in the Relocation Plan or other conditions of the mobile home park closure permit.

Appeal of Council action under this Section shall be by Writ of Review or other appropriate procedure.

#### 6.391. Enforcement.

(1) Violations. Any person who closes a mobile home park without a permit, who fails to comply with the requirements of this chapter or the conditions of the permit, or who willfully makes an untrue or misleading statement of material fact or willfully omits to provide required information in the process of application or whose actions, through the raising of rent or otherwise, objectively manifests a intent or effort to avoid the requirements to this Chapter, shall be guilty of a violation. Notwithstanding any other provision of this code, the penalty for any such violation shall be \$1,000. Each day of non compliance shall constitute a separate violation.

(2) Private Right of Action. Except with respect to relief granted by the City Council under the provisions of 6.380 or 6.340(1)(C) any tenant of a mobile home park, or any owner of a mobile home in a park subject to closure shall have a right of action in a court of competent jurisdiction for such equitable and legal remedies as the court may grant,

and shall be entitled to recover reasonable attorney fees, expenses, costs and other disbursements reasonably incurred.

(3) Cumulative Remedies. The foregoing is in addition to any other remedies that may exist at law or in equity.

6.401. Rulemaking Authority.

(1) The City Manager or Designee is authorized to promulgate any rules necessary for the implementation of this Chapter of the code.

Section 3. Severability, No Implied Repeal.

If any section, subdivision, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof. Nothing in this Ordinance shall be construed to repeal Ordinances 600 or 603.

Section 4. Emergency Clause.

There is an immediate need to enact the foregoing provisions to address imminent park closures and act within timelines provided by state law, so as to protect the public health, safety and welfare. As such, this Ordinance shall take effect on the date of passage.

SUBMITTED to the Wilsonville City Council and read the first and second time at special meeting thereof on the 27th day of June, 2007, at the hour of 12:30 p.m. at the Wilsonville City Hall, 29799 Town Center Loop E., Wilsonville, Oregon.

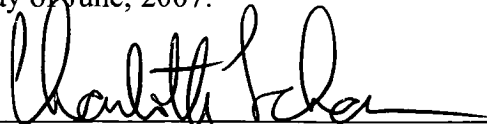
  
SANDRA C. KING, MMC, City Recorder

ENACTED by the City Council on the 27th day of June, 2007, by the following votes:

Yes: -5-      No: -0-

  
SANDRA C. KING, MMC, City Recorder

DATED and signed by the Mayor this 28<sup>th</sup> day of June, 2007.

  
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CHARLOTTE LEHAN, MAYOR

SUMMARY OF VOTES:

Mayor Lehan	Yes
Councilor Kirk	Yes
Councilor Núñez	Yes
Councilor Ripple	Yes
Councilor Knapp	Yes

Attachments:

Exhibit A. Staff reports dated October 3, 2005 and January 12, 2006.

MEMORANDUM

**TO:** Honorable Mayor and City Council  
**FROM:** Paul A. Lee, Assistant City Attorney  
**RE:** Ordinance No.600 Relating to Mitigating Impacts of Mobile Home Park Closures.  
**DATE:** October 17, 2005

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I. Introduction.

Proposed Ordinance No. 600 regulates the closure of mobile home parks by requiring the park owner to mitigate the cost of relocation or abandonment of homes as a result of the closure. In light of the increasing number of mobile home park closures across the region, the proposed closure of a mobile home park in Wilsonville, and the perception that current state law does not adequately address the needs of tenants forced to relocate, the City Council directed that an ordinance be drafted and considered at a public hearing.

II. Background.

Mobile home park tenants generally own their own mobile homes, but they lease from the park owner the spaces upon which the mobile home rest. As owners of homes and renters of spaces, these individuals face particularly difficult financial burdens when parks are closed. When forced to relocate from a closing park, these residents face the expensive tasks of moving not only themselves but also their homes to other sites.

While these homes are called "mobile," in fact they are a form of immobile prefabricated housing that has been constructed in a factory and transported to its site. The cost of moving these structures and setting them up in their spaces is substantial. Where the costs are not a consideration, it still may be extremely difficult to move the home. As a practical matter, many mobile homes and mobile home owners are thus completely dependent on the right to keep the mobile home "in place." Closure of mobile home parks necessarily involves termination of the rental agreements mobile home owners have for spaces in the park, resulting in the forced eviction and displacement of park residents, and often the complete loss of the home's value.

The average household income of mobile home residents are typically below that of the average renter household, with incomes of only roughly two thirds the renter level. Mobile home tenants are more likely to be older and hence more likely to live on fixed incomes than their apartment renter counterparts.

Mobile home owners are in a unique, and uniquely vulnerable, position. They cannot pack up and leave when rents rise. The economic necessities of low cost homeownership requires that the home be sited on land owned by another. Because of this split estate, the limited supply of mobile home spaces, and the homeowners' "sunk" investment on-site, park owners have a controlling economic power over the equity of mobile home owners in their home. The interests of mobile home owners and park owners are in direct opposition. Mobile home owners desire to preserve their investments and the affordability of their home while park owners desire to maximize their return on the underlying land. The rising value of land in the Portland Metropolitan area has increasingly resulted in the sale, closure and conversion of mobile home parks for alternative uses. Once mobile home parks are closed, the most affordable and most predominant form of unsubsidized housing is often lost to the low income, elderly, poor and infirm.

Concern over the forced relocation of mobile home park tenants has caused states to step in to provide protection of mobile home park tenants during their tenure and upon closure of the mobile home park. Most provide notice periods and relocation benefits. Oregon state law (ORS Chapter 90) currently requires written notice to tenants of mobile home park spaces when the tenancy is terminated. The statutes require the owner to pay the cost of moving and set-up expenses in an acceptable space or \$3500 whichever is less. No relocation costs are owed if the notice exceeds a year. No provision is made for mobile home cost recovery if the mobile home cannot be relocated. As the result of recent amendments, mobile home park tenants meeting certain income limitations who must involuntarily move because of a park closure may take a personal income tax credit of the lesser of \$10,000 or the actual moving costs.

Costs for moving mobile homes and setting them up in spaces typically range well in excess of the state relocation benefit. Expenses for modern homes can reach \$25,000, given the costs of disconnection of the structure for the original site, the cost of movement of the structure over highways, and the costs of placement of the mobile home in its new space. As noted, state law does not assist the homeowner who, because of the nature of the mobile home, the scarcity of receiving spaces, or other reason, loses the entire equity in the home.

The Thunderbird Mobile Home Park in Wilsonville is currently for sale. The 60-plus acre, 270-space park is inhabited by senior citizens. Many are on fixed incomes. Many are infirm. The devastating effects of forced eviction, relocation and the abandonment of homes have been described to Council and are incorporated as Ordinance findings.

There are four mobile home parks in Wilsonville. The requirements of the proposed ordinance has differential impact on the various owners, but it is clear that its terms will require a few individuals to bear substantial burdens in providing relocation assistance to displaced tenants. A one-size-fits-all prescription of required mitigation obligations may not be fair for all owners. It may be made more reasonable to tie the park owners obligations to the particular circumstances of the owner and the mobile home park closure.

### III. The Proposed Ordinance.

Ordinance 600 is designed to extend the protections of state law and provide for additional mitigation of the impacts of mobile home park closure. It also recognizes the interests and circumstances of the individual park owner who is obliged to meet these obligations by providing for the fair and reasonable adjustment to owner responsibilities under the ordinance.

The Ordinance involves the addition of new sections to the Public Health and Welfare chapter of the Wilsonville Code. A summary of the provisions of each section follows.

6.300. Purpose and Intent. The purpose of the ordinance is to restrict the activities of mobile home park owners/landlords for the protection of public health and safety, by ensuring that park closure is preceded by adequate notice and attendant economic impacts mitigated through relocation and other assistance to park residents.

6.310. Definitions. "Closure of a mobile home park," "Comparable space" "Relocation costs" and other primary terms used in the ordinance are defined.

6.320. Permit Required. This section requires a permit for the closure of a mobile home park. Permits are required for all closures initiated after the effective date of the ordinance, or for those actions concluding a closure decision that is four months or more from finalization.

Details of the application filing, content and processing are provided, with the process concluding with a recommendation of the City Manager and action by the City council following an evidentiary public hearing.

6.330 Closure Impact Report. One of the requirements of an application and permit is the "Closure Impact Report." This report describes the mobile home park to be closed, lists comparable mobile home park spaces within 100 miles of the city, and analyses the economic impact of the relocation on the tenants of the park.

6.340 Relocation Plan. Another requirement of an application and permit is a Relocation Plan which provides for the owner to pay all reasonable relocation costs for tenants relocating to a comparable mobile home park space within the 100 mile area. Those mobile homes that cannot be relocated to a comparable space must be identified and an offer made to purchase the mobile home at its in-place market value. A method for resolution of disputes about market value is provided.

Alternatives to the application of a relocation plan to a particular tenant or to the tenants as a group, which enables the owner to avoid payment of relocation costs or home values under the ordinance are provided as follows: 1) by informed and mutual agreement between the tenant and owner, and 2) by agreements with two-thirds of the tenants (as a group of individuals or an organization representing two-thirds of the tenants) and evidence that the balance of tenants have been offered agreements with comparable terms.



6.350 Required Notifications. This section requires the owner to notify the tenants of written offers to purchase the park or any listing agreements to effect park sale. Specified notice periods and the requirement for good faith negotiation with a tenant/tenant organization is provided.

6.360. Conditions of Approval. Following a public hearing on the permit, the Council approves or conditionally approves the permit, if the code is followed, or denies the permit if there is a violation. This section authorizes the Council to attach necessary conditions of approval to protect the public health, safety and welfare.

6.380. Owner Relief. This section provides owners with a procedure by which the owner is relieved of obligations under the Ordinance. Upon the owner's demonstration of the manner in which requirements are "unduly oppressive" under the circumstances, the Council determines and finds the extent of such "undue" effect. This demonstration, receipt of rebutting evidence, and Council determination is made at a public evidentiary hearing. The Council's decision is based upon established criteria (e.g., impact on the owner of the value loss, extent of the problem left unmitigated, feasibility of less oppressive solutions, etc.) and is supported by findings based upon substantial evidence. To the extent Council determines the permit requirements or payments are unduly oppressive, the owner is relieved. As to the balance of obligations that are appropriate, the Council declares the manner in which such obligations appear in the permit conditions.

6.390 Enforcement. Noncompliance with the Ordinance is made a violation with a penalty of a \$1000.00 fine. Additionally, any tenant of the affected park is authorized to bring a Private Right of Action in a court of competent jurisdiction. Other legal remedies are reserved.

6.400. Rulemaking Authority. The City Manager or Designee is authorized to adopt implementing rules in keeping with the Ordinance.

#### IV. Comment on Selected Features of the Ordinance.

Several aspects of this Ordinance are noteworthy.

1. First, there is the extent to which the provisions go beyond state law. These include the required payment of all reasonable relocation costs, the amount of which is only partially covered by state law: Importantly, the Ordinance requires the owner to offer of purchase of mobile homes not relocate-able under the terms of the ordinance. This feature specifically addresses the problem of the "im-mobility" of the mobile home, and the problem faced by home owners forced to abandon a major life asset upon eviction.

The Ordinance adds to state law requirements for notification and good faith bargaining with tenants and tenant-supported organizations, by making mandatory that which is non-mandatory in the statutes.

2. The addition of the Private Right of Action is not seen in many other mobile home park closure regulations. Its presence reflects the social welfare nature of ordinance by

providing those harmed by violations of the ordinance a cause of action in a court with power to adjudicate private disputes arising under Oregon municipal law.

3. The Owner Relief provision. This provision reflects the recognition that the Ordinance places burdens upon a discrete group of individuals who may not be entirely responsible for the problems the Ordinance addresses. While it is true that closing a mobile home park is the immediate cause of the need for relocation assistance, there are other reasons not within the responsibility or control of the owner (unavailability of low income housing, low income status of tenants, etc) that make that assistance necessary. The owners articulate an issue of whether they should shoulder a burden that in fairness should be shared by society in general.


The intent of the relief section is to ensure that the regulations are reasonable and fair. It enables the Council to modify the application of the Ordinance to the circumstances of the particular owner to avoid undue oppression, tailoring the means used to advance the public purposes in a reasonable fashion.

#### V. Conclusion and Recommendation.

Staff has endeavored to draft an Ordinance that gives substantial added protections to tenants displaced by the closure of the mobile home park, while ensuring that the owners of such parks are not unduly burdened by its requirements. Staff recommends adoption of Ordinance 600.

## MEMORANDUM

**TO:** Honorable Mayor and City Council

**FROM:**  Paul A. Lee, Assistant City Attorney

**RE:** Amendments to Ordinance No. 600 Relating to the Scope of the Mobile Home Park Closure Regulations

**DATE:** January 12, 2006

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## 1. Introduction.

Ordinance No. 603 makes “housekeeping” amendments to the city’s mobile home park closure regulations. These regulations, codified as W. C. 6.300 – 6.400 and adopted by Ordinance 600 on October 19, 2005, require that mobile home park owners mitigate certain social and fiscal impacts of mobile home park closures. The ordinance supplements state law requirements in the compensation of owners of mobile homes who are forced to relocate or abandon their homes as a result of park closure by 1) increasing the amount of relocation costs, 2) requiring compensation for units that must be abandoned and 3) requiring more information and analysis of the mobile home park closure.

The ordinance is the first of its kind in Oregon. As often occurs with ground breaking legislation, post-adoption experience with the law illuminates aspects of the law that can be improved or clarified to more fully achieve the intent of the legislation. The proposed amendments serve that purpose by clarifying how the regulations are to be construed relative to state law. In summary, the amendments add verbiage to show that the regulations are not meant to conflict with state law, but are meant to operate concurrently with it. Also proposed is a minor modification of the manner in which mobile home values are determined.

## 2. Background.

Following adoption, Ordinance 600 was challenged in Clackamas County Circuit Court, the Oregon Tax Court and the Oregon Land Use Board of Appeals. The circuit court case involves a challenge to the city council’s authority to adopt the regulations (state law on mobile home park owner/tenant relations preempt any local enactments in the area) and seeks to invalidate the regulations as an unconstitutional taking, a violation of due process, equal protection, and impairment of contract, among other interests. In responding to this litigation, the city attorney’s office has encountered differences in the interpretation of the ordinance. While the city council intended the ordinance to supplement state law, others have interpreted the code to make compliance with state law impossible. For instance, the council envisioned the regulations to apply to mobile home

park closures that have been initiated under state statute. ORS 90.630 (5) requires landlords to give mobile home park tenants a minimum of 180 or 360 days notice of lease termination, depending upon whether the facility owner pays certain moving and set up expenses. The act of notification is the necessary first step in initiating a park closure. Nevertheless, there are those who interpret the regulations to require a park closure permit (and compliance with all the impact reporting, relocation planning and compensation of tenants) *prior* to the giving of notice of lease termination under state statute. The ordinance has even been interpreted to apply to the mere *sale* of the mobile home park.

Under these readings, the ordinance certainly *would* be a barrier to compliance with, or enjoyment of rights under, state law. However, in enacting the mobile home park closure regulations, the council intended that the mitigation obligations address perceived deficiencies of state law by adding to, but not displacing, the state law. The council envisioned that, once the park closure was initiated under the ORS Ch 90 notice, the owner would need to comply with the local ordinance during the 6 months or year closure proceedings, and that the two laws would operate concurrently. The ordinance provides, for instance, that payments given tenants under state law are to be subtracted from payments owing the tenant under the ordinance. See, definition of "relocation costs," W. C. 6.130. Obviously, the amount owing under state statute is not required and cannot be known until after the statutory notice is given.

Numerous other provisions in the ordinance support the interpretation that the local code supplements, rather than supplants, state law. While litigants have been advised of this interpretation and intent, various filings in the case continue to rely on alternative readings. It would not appear to be in anyone's interest, least of all the judge in the litigation, to have the parties argue about what the ordinance says, rather than focusing on whether the ordinance violates the law. Accordingly, the proposed amendments are proposed to clarify to all concerned how the ordinance is to be construed and applied.

Ordinance clarification to track intent also offers an occasion to simplify its terms. Since enactment of the ordinance, staff has received comments on the "workability" of the ordinance. One of the concerns, staff believes, is well taken and should be accommodated at this time. It relates to the amount the park owner must offer to purchase a mobile home that cannot be relocated under the ordinance. Current provisions require that the appraised value of the home be based upon an assumption that the mobile home park will continue as it is, without considering a change of use. In operation, this assumption creates an artificial – some would say false -- construct, requiring an appraiser to assume the park will never close. This in turn causes homes on rental sites to be equated more with homes on owned sites. The result is the practical elimination of the "comparable sales" appraisal method, the likelihood of skewed values and creation of many disagreements. Staff believes the parties involved would benefit from a simpler valuation method that is objective, easy to derive and administer, and still reflect the intent that home owners receive reasonable value for the home. Accordingly, under the draft ordinance, language in code section 5.340 concerning valuation based on these artificial assumptions is replaced with language which requires the owner offer to purchase the non-relocateable mobile home unit at the market value of the home as reported on the most recent property tax assessment roll.

### 3. The Amendments.

Ordinance No 603 is attached. It features bolded and strike through language to show additions and deletions.

The first amendment modifies the section of the ordinance generally requiring a closure permit. The section currently provides that the regulations do not affect land use applications for the property. The proposed language adds that the ordinance does not limit a person's ability to "sell, convey or transfer a mobile home park" or "provide notification under ORS 90.630 (5)." Again, these acts were not considered to be actions requiring a permit in advance.

The second amendment modifies the "Scope" section of the ordinance by providing that the provisions "shall be construed as not to conflict with state law, and shall be applied in a manner such the provisions and state law operate concurrently." This language clarifies that while the ordinance requires an owner to do more than the statute requires, complying with the ordinance does not interfere with an owner's ability to meet the statute's requirements. Stated differently, the studies, reports and amounts of payment to tenants are different under each law, but the laws are not contradictory, as both may be complied with.

Following statutory notice of closure, there is ample time to for an owner do the extra planning and provide the extra compensation under the ordinance while adhering to the requirements and timelines under state law. Under the amendment language, the ordinance is to be understood to recognize the rights of the owner, not only to give notice under state law, but to exercise contractual and statutory rights in general – e.g., to maintain an FED action to address holdover tenants or to convert the park to another use. Again, the ordinance requires more assistance to tenants than under state law, but the ordinance is not to be construed to change the law of contracts or property or make impossible the pursuit of any statutory process.

Finally, code section 3.340 (1) (a) is amended to provide that the owner must offer to purchase any mobile home that cannot be relocated "at the real market value of the home as reported on the most recent property tax assessment roll." Because this figure is readily accessible and represents a reasonably objective indication of value, the provisions specifying those home features to be appraised based upon the artificial assumption that the park use continues to exist, the assumptions themselves and the provisions for competing appraisals and dispute resolution, are all deleted as unnecessary.

#### Conclusion.

The proposed amendments serve to simplify the ordinance and clarify the intent of the council to add to, but not frustrate, state law. Passage of Ordinance 603 will assist in the interpretation, application and judicial review of the regulatory scheme.