

# City of San Rafael, California – Rent Control Ordinance Held Unconstitutional



**Robert Coldren**

In a decision that has been anticipated for months (indeed years), Judge Vaughn Walker of the United States District Court, San Francisco, California has issued an 80-page opinion setting forth, in detail, why the City of San Rafael's mobile home park rent control ordinance is unconstitutional.

The ruling of Judge Walker is indeed epic in proportions.

The litigation that has led to this ruling was initiated many years ago. There were two (2) trials (in 2002 and 2007) and the court heard testimony from many witnesses, including experts called by the park owner (Equity LifeStyle Properties), the City of San Rafael and the residents who were represented by counsel. This is probably the most thoroughly litigated mobile home park rent control dispute in history.

The "end result" is that the court has concluded that the City's ordinance is unconstitutional as a regulatory taking of private property and enforcement will be enjoined. An integral finding is that the offending provisions of the ordinance cannot properly be "severed" from the ordinance as a whole and therefore the entire ordinance is unconstitutional. Judgment to carry out the court's extensive findings of fact and conclusions of law is being prepared and should be entered soon. No one knows if the city will appeal the decision to the 9th Circuit Court of Appeals.

Judge Walker is highly respected in the legal community, and he took great care in addressing the issue of constitutionality. The court noted, for example, that the mobile home park in question is effectively the only parcel of real property in the City of San Rafael actually impacted by the City's rent control ordinance, that the mobile home park contains less than 2% of the housing units in San Rafael and less than four tenths of 1% of the housing stock available in Marin County. The court found that resale prices for mobile homes within the mobile home park, as well as space rents, are controlled by the housing market as a whole and that prices and rents are limited by actual housing alternatives. The court exhaustively sets forth the beginnings of the City's rent control ordinance, its amendments over time, as well as the procedural history of the litigation. The case had a delay of several years while the U. S. Supreme Court heard and

considered related cases, including the *Lingle v. Chevron U. S. A.*, a case decided by the United States Supreme Court in 2005. The *Lingle* decision dramatically changed the law as to how rent control ordinances are to be viewed and analyzed when constitutionality is at issue.

Judge Walker found that the City's amendments to the rent control ordinance limited the rent increases available to such an extent that fully 75% of the park's value was taken by the regulation and that the value of the park itself was so dramatically impacted, that applying the factors set forth in *Penn Central* led to the result that there was a regulatory taking of property. The court's analysis specifically addressed the many rationales typically advanced by municipalities to justify the imposition of rent control. Those were: (1) protection of mobile home owner equity; (2) protection of fixed income residents; and (3) creation of more affordable housing. The court's decision exhaustively analyzed each of the justifications and whether they were supported in law, fact or logic. It found they were not. Judge Walker noted: "The court must look to the regulation's operation, not just its aim, to ascertain its true nature."

Congratulations and thanks to ELS for continuing to press this matter for these many years. There were setbacks along the way. For example, at one point the city agreed in writing to repeal the offending portions of its rent control, only to renege when it came time for the final vote at a public hearing before the city council. Bill Dahlin and Rob Coldren worked extensively on the case, and David Bradford and Brad Yusim of the Chicago firm Jenner and Block were trial counsel.

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