Katherine Douglas Public Comment

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From: Paul Beard II <paul.beard@pierferd.com>
Sent: Friday, November 1, 2024 3:33 PM
To: sbcob; Supervisor Das Williams; Laura Capps; Steve Lavagnino; Joan Hartmann; Supervisor Nelson; Rachel Van Mullem
Subject: Nov 5, 2024 BOS Meeting / Public Hearing Item No. 5 (Moratorium to Prohibit Conversions of Mobile Home Parks to All-Ages
Attachments: 11-1-24 Letter to Board Re Moratorium.pdf

Good afternoon,

This law firm represents Del Cielo Manufactured Housing Community, LLC, with respect to Item No. 5 on the agenda for Tuesday's BOS meeting (senior-overlay moratorium). Our comment letter regarding that item is attached for your review. Please ensure it is made a part of the record.

Sincerely,

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November 1, 2024

VIA ELECTRONIC MAIL

Board of Supervisors
Santa Barbara County
Email: sbcob@countyofsb.org

Re: Public Hearing Item No. 5 (Moratorium to Prohibit Conversions of Mobile Home Parks to All-Ages

Dear Supervisors,

This law firm represents Del Cielo Manufactured Housing Community, LLC ("Del Cielo MHC, LLC"), which owns Del Cielo Mobile Estates ("Del Cielo"), a mobile home park located in unincorporated Santa Barbara County. This comment letter concerns Item No. 5 on the agenda for the County Board meeting set for Tuesday, November 5.

The proposed moratorium, which purports to force Del Cielo to convert to a "seniors only" park, is illegal under federal and state laws. If the County were to adopt the moratorium with the intent of enforcing it against Del Cielo,[1] the County would be inviting a costly and time-consuming lawsuit. We are confident we would prevail in such a challenge, making us entitled to Del Ciel's costs and attorneys' fees. (Civ. Proc. Code § 1021.5 (allowing the award of attorneys' fees to prevailing plaintiff in public-interest litigation)). (Earlier this year, we filed lawsuits against the Cities of Petaluma and Cotati after they unwisely enacted senior-overly ordinances purporting to convert our clients' "all ages" parks into "seniors only" parks. The Sonoma County Superior Court overruled the cities' demurrers, and the Court of Appeal denied the cities' emergency appeals.[2])

We urge the County to reject the path of litigation, and drop the moratorium and all efforts to prohibit parks—including Del Cielo—from discriminating against families and from serving all members of the community.

Today, Del Cielo Is Lawfully Operating As an All-Ages Park

With adequate notice to and consultation with residents, mobilehome parks in California have the right to amend their rules and regulations, including rules concerning resident-eligibility criteria. (Civ. Code § 798.25). Under that statutory authority, and in exercise of its rights, Del Cielo

[1] Del Cielo can only assume that the County will enforce the moratorium and any subsequent senior overlay ordinance against it, because in staff's materials in support of the moratorium, staff lists Del Cielo as one of the targeted parks.

[2] *Youngstown MHP LLC v. City of Petaluma*, Sonoma County Superior Court, Case No. 24CV00250; *Countryside MHP LLC v. City of Cotati*, Sonoma County Superior Court, Case No. 24CV00804.

undertook the long and costly process of changing its park rules to expressly allow people of all ages to apply for residency at the park:

- Residents received notice of the proposed rule change on April 16, 2024.
- A meeting with residents regarding the proposed rule took place on May 13, 2024.
- The final rule—allowing all ages at the park—was adopted and mailed to residents on May 14.

It should be noted that, while park rules once stated that the park was a "seniors only" park, none of the leases executed at the park ever guaranteed that the park would perpetually ***remain*** a "seniors only" park. And, indeed, the park never verified the ages of its residents as required by federal law to maintain legal status as a "seniors only" park.

The new park rule allowing all ages to apply will become effective as to ***non-consenting*** residents on November 16, 2024 (six months after the May 13 meeting day with residents). (Civ. Code § 798.25(b)). However, the new rule already became effective as to ***consenting*** residents, as well as to applicants desiring to reside at Del Cielo, immediately following that May 13 meeting. (*Id.*). It is worth underscoring that unlike other rule changes that a mobilehome park might propose, the new rule allowing all ages to reside at the park did not alter any contract or other rights held by existing residents; if anything, the new rule is a boon to residents who are now able to house, and rent or sell their homes to, a much wider array of individuals. Residents who did not consent to the rule change are free to house, or rent or sell their homes to, seniors only. Such residents are not bound by the new rule and are free to ignore it.

If Adopted and Enforced Against Del Cielo, the Moratorium Would Violate State and Federal Law

For the reasons explained in detail below, the moratorium, as applied to Del Cielo, would violate federal law prohibiting housing discrimination against families. It would also violate state law concerning urgency ordinances.

A. Federal Law Prohibits Parks from Discriminating Against Families

As originally enacted, the federal Fair Housing Act prohibited, among other things, discrimination in the rental or sale of a dwelling on the basis of race, color, religion, sex, or national origin. 42 U.S.C. § 3604(a). In 1988, Congress enacted the ("FHAA"), which amended the Fair Housing Act to prohibit discrimination on the basis of familial status. (42 U.S.C. § 3604). The amendments defined "familial status" as "one or more individuals (who have not attained the age of 18 years) being domiciled with—(1) a parent or another person having legal custody of such individual or individuals; or (2) the designee of such parent or other person having such custody, with the written permission of such parent or other person." (*Id.* § 3602(k)). The prohibition applies to a mobilehome park that leases spaces to mobilehome owners.

The FHAA's prohibition does not apply to "housing for older persons." *Id.* § 3607(b)(1). This so-called "senior exemption" "permit[s] communities satisfying certain requirements to discriminate on the basis of familial status." (*Balvage v. Ryderwood Improvement & Serv. Ass'n*, 642 F.3d 765, 769 (9th Cir. 2011)). The senior exemption is an affirmative defense, which the discriminating defendant has the burden of proving. (*Id.* at 776 (citing *Massaro v. Mainlands Section 1 & 2 Civic Ass'n*, 3 F.3d 1472, 1475 (11th Cir. 1993))). Such a defendant must show all "exemption" requirements were met *at the time of the alleged discriminatory act*—in this case, at the time of County's enactment of the moratorium that purports to mandate housing discrimination against families. (*Id.*)

As amended by the Housing for Older Persons Act of 1995 ("HOPA"), federal law defines "housing for older persons" to include housing "intended for, and solely occupied by, persons 62 years of age or older." It also includes housing "intended and operated for occupancy by persons 55 years of age or older" if "(i) at least 80 percent of the occupied units are occupied by at least one person who is 55 years of age or older; (ii) the housing facility or community publishes and adheres to policies and procedures that demonstrate the intent required under this subparagraph; and (iii) the housing facility or community complies with rules issued by the [U.S. Housing and Urban Development ('HUD')] Secretary for verification of occupancy, which shall—(I) provide for verification by reliable surveys and affidavits; and (II) include examples of the types of policies and procedures relevant to a determination of compliance with the requirement of clause (ii). Such surveys and affidavits shall be admissible in administrative and judicial proceedings for the purposes of such verification." (42 U.S.C. § 3607(b)(2)). As provided for under 42 U.S.C. § 3607(b)(2), if a "housing facility or community"—such as a mobilehome park—lacks the intent to invoke the "older persons" exemption from the prohibition on "family status" discrimination, and has not otherwise complied with HUD rules regarding verification of occupancy by older persons, then the exemption does not apply, and federal law prohibits the park from engaging in "familial status" discrimination in the leasing of park spaces.

A park that does not satisfy the requirements for the "older persons" exemption, but nevertheless is compelled to discriminate against families with children, violates federal law and exposes itself to substantial legal liability. Among other things, the park may be subject to federal investigation and administrative enforcement, and state or federal litigation filed by aggrieved persons (e.g., families denied park spaces) or the federal government. (42 U.S.C. §§ 3610, 3613, 3614). Such actions can result in serious penalties, including actual and punitive damages. (*See, e.g.*, 42 U.S.C. §§ 3613(c), 3614(d)). "[A]ny law of a State, a political subdivision, or other such jurisdiction that purports to require or permit any action that would be a discriminatory housing practice under this title shall to that extent be invalid." (42 U.S.C. § 3615).

On pain of prosecution, the County's proposed moratorium would require Del Cielo to become a "seniors only" park and to thereby discriminate against families with children. This, despite the fact that Del Cielo has intended to operate, and has been operating, its park as an ***all-ages*** park, and has never been entitled to invoke the senior exemption under federal law; again, to

invoke the exemption, the housing provider must have the intent to operate as a "seniors only" park and periodically verify the ages of its residents to ensure that the park is in fact operating as such—criteria that Del Cielo, the housing provider in this case, does not satisfy. 42 U.S.C. § 3607(b)(2) (requiring age-verification to invoke the senior exemption under federal law)). The County's proposed effort to nevertheless compel Del Cielo to engage in familial-status discrimination violates the federal prohibition against familial discrimination. (42 U.S.C. § 3617).

The Ninth Circuit's decision in *United States v. Hayward* (9th Cir. 1994) 36 F.3d 832 is instructive. Following the FHAA's enactment prohibiting discrimination based on familial status, a mobilehome park owner in the City of Hayward terminated the park's adults-only status. In response, the city passed a law requiring the owner to reduce the rent to tenants. The United States sued the City of Hayward in federal court, and the Ninth Circuit concluded that "the rent reduction constituted interference with the mobilehome park owner on account of its action in encouraging families with children to live in the park." (*Id.* at 835). Significantly, the Ninth Circuit held: "Exemptions from the Fair Housing Act are to be construed narrowly, in recognition of the important goal of preventing housing discrimination." (*Id.* at 837). Like the City of Hayward, the County seeks to interfere with Del Cielo's completed conversion, consistent with federal anti-discrimination law, to an "all ages" park by passing a law forcing it to discriminate. The County's moratorium could not survive section 42 U.S.C. section 3617, especially as the senior exemption must be "construed narrowly."

County counsel is likely to urge you to ignore federal law and the *Hayward* decision. Counsel may argue that it does not matter that Del Cielo lacks the requisite intent to operate—and in fact does not operate—as "housing for older persons." All that matters, your counsel are likely to argue, is the ***County's*** intent and desire to have mobilehome parks within its jurisdiction discriminate against families. Some municipalities who have enacted senior overlay ordinances have relied on another Ninth Circuit decision, as well as a Housing and Urban Development ("HUD") regulation cited therein, to shield their illegal acts. That Ninth Circuit decision—popular among such municipalities—is *Putnam Family Partnership v. City of Yucaipa* (9th Cir. 2012) 673 F.3d 920. But *Putnam* would not shield the County's moratorium or any subsequent senior overlay ordinance.

Putnam involved a city law requiring an ***existing*** "seniors only" park that had the requisite intent and operated as such to ***remain*** a seniors-only park. As the Ninth Circuit in *Putnam* explained, "Putnam currently meets the requirements for the federal senior exemption and operates as senior housing," in part because "an eighty-percent senior population, adherence to published policies and procedures, and compliance with HUD age-verification rules . . . . are currently met." (*Putnam*, 673 F.3d at 927 n.3). The Ninth Circuit decided to "leave . . . for another day" the question of whether an "all ages" park—such as Del Cielo—could be forced to engage in familial-status discrimination in violation of federal law.

At least one federal court has answered that question. In *Waterhouse v. City of American Canyon*, No. C 10-01090, 2011 U.S. Dist. LEXIS 60065, 2011 WL 2197977 (N.D. Cal. June 6,

2011), the City of American Canyon enacted moratoria preventing a "seniors only" mobile-home park from changing its status to an all-age park. Although, like Del Cielo, the park had a policy limiting its occupancy to elderly residents, it had never taken any steps to enforce that restriction and frequently had a substantial population of nonelderly residents. The district court concluded that, because the park did not qualify for the HOPA exemption at the time the moratoria were enacted, the city's policies could not qualify for the exemption. Like American Canyon, the County here cannot invoke HOPA's senior exemption.

Even if *Putnam* were applicable to Del Cielo's circumstances, the decision's reasoning is flawed. Finding the FHAA ambiguous as to its senior-exemption provision, and invoking the now-overruled[3] judicial-deference doctrine in *Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 842-43 (1984), the court in *Putnam* just blindly deferred to HUD's interpretation (as reflected in a regulation) purporting to make "[a] municipally zoned area" a kind of "housing facility or community" that can qualify for the senior exemption. (*Putnam*, 673 F.3d at 928-29). Conceding the lexical difficulty of equating a government-zoned area as a "housing facility," the *Putnam* court nevertheless found that a government entity can invoke the senior exemption because of deference to HUD. (*Id.*).

The statutory provisions governing the senior exemption are unambiguous. When Congress replaced "owner or manager" with "housing facility or community," it did not change the fact that the senior exemption can be invoked only by ***a person or entity that actually provides housing***. Of course, a government agency may own and operate a housing facility or community, but that is decidedly not the case here. The County does not own any mobilehome parks, including Del Cielo, which is privately owned and operated. To argue that the County nevertheless is a "housing facility or community" is to do violence to those statutory terms and to deprive them of their "ordinary and usual meaning." (*In re Friend* (2021) 11 Cal.5th 720, 730 ("When we interpret statutes, we usually begin by considering the ordinary and usual meaning of the law's terms, viewing them in their context within the statute.")). Other text in the senior exemption points in the same direction. The 1995 amendments explicitly address the issue of intent, and specify that the relevant intent remains, as before, that of the on-site housing provider. Only the housing provider can publish and adhere to on-site "policies and procedures" that Congress has tied to the intent rule ever since 1988. Governments write laws, not "policies and procedures" for a "housing facility or community."

B. Under State Law, the County Can Establish No "Urgency"

The moratorium would also violate state law. Government Code section 65858(a) authorizes a county to enact an "urgency" ordinance under limited circumstances." That provisions

[3] This past term, the United States Supreme Court overruled *Chevron. See Loper Bright v. Raimondo*, 144 S. Ct. 2244 (2024). , and *Relentless v. Department of Commerce*, No. 22-1219. The upshot is that courts are no longer to defer to federal agencies in their interpretation of federal statutes.

states: "Without following the procedures otherwise required prior to the adoption of a zoning ordinance, the legislative body of a county, city, including a charter city, or city and county, to protect the ***public safety, health, and welfare***, may adopt as an urgency measure an interim ordinance prohibiting any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the legislative body, planning commission or the planning department is considering or studying or intends to study within a reasonable time."

Courts have struck down municipal urgency ordinances based on false or unsupported declarations of public emergencies that do not exist. (*See, e.g., California Charter Schools Asn's v. City of Huntington Park* (2019) 35 Cal. App. 5th 362 (a city's urgency ordinance to prohibit new charter schools was invalidated under section 65858 because "mere inquiries, requests, and meetings [on establishment and operation of charter schools] do not constitute a current and immediate threat"); *Building Indus. Legal Defense Fund v. Superior Court* (1999) 72 Cal. App. 4th 1410 (invalidating an ordinance enacted under section 65858 prohibiting the formal processing of land use applications on the ground that the threat posed by the development was not imminent).

This is one of those cases where the County is invoking section 65858 under the false pretext of a public-health or public-welfare emergency. Nothing in the materials presented by staff in support of the moratorium establishes that making housing available to all ages is a "public safety, health, and welfare" problem, let alone an "urgent" one requiring a moratorium. Indeed, given the affordable-housing crisis, the exact opposite is true: A law purporting to ***restrict*** housing to a small subset of the jurisdiction's community imperils the general public's health and welfare, especially because the law shuts out qualified individuals—including families with children—from affordable-housing options, like Del Cielo.

III.
CONCLUSION

The County should reject the moratorium. At a minimum, it should make clear that, as a lawful "all ages" park, Del Cielo is not among the existing "seniors only" parks to which any such moratorium or subsequent senior-overlay ordinance would apply.

Very truly yours,

PIERSON FERDINAND

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