SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

SB 940 (Laird)
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Fiscal: No
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TSG

SUBJECT

Mobilehome parks: local ordinances

DIGEST

This bill modifies the definition of new mobilehome construction and thereby narrows the circumstances in which state law preempts the application of local mobilehome rent control laws to recently developed mobilehome sites.

EXECUTIVE SUMMARY

Should they choose to exercise it, local jurisdictions in California have the authority to impose limitations on how much mobilehome parks can increase their residents' rent. However, existing state law exempts "new" mobilehome construction from any such local rent control. The idea is to ensure that local rent control laws do not inadvertently discourage the construction of new mobilehome sites by limiting developers' potential return on investment. The problem is that existing law rather arbitrarily defines "new" mobilehome construction as any mobilehome space initially offered for rent on or after January 1, 1990. As a result, current law treats mobilehome spaces that are several decades old, and growing older, as "new construction." In an effort to address this problem without impairing existing contracts or discouraging the production of new mobilehome sites, this bill revises the state preemption of local rental control for new mobilehome construction in three ways: (1) for any mobilehome spaces first held out for rent between January 1, 1990 and January 1, 2023, it allows the application of local rent control ordinances effective when the lease for the space is next renewed, extended, or terminated; (2) for mobilehome spaces added to existing mobilehome parks after January 1, 2023, it allows the immediate application of local rent control ordinances; and (3) for mobilehome parks newly established on or after January 1, 2023, it creates a ten-year rolling window during which any local rent control ordinances do not apply.

The bill is sponsored by the Golden State Manufactured Homeowners League. Support comes from tenant advocates, who emphasize the importance of local rent control for maintaining housing affordability. Opposition comes from park owners who contend the bill will discourage the construction of new mobilehome sites.

PROPOSED CHANGES TO THE LAW

Existing law:

1) Establishes the Mobilehome Residency Law (MRL) which regulates the rights, responsibilities, obligations, and relationships between mobilehome park management and park residents. (Civ. Code §§ 798 *et seq*.)

2) Preempts the application of local ordinances regulating mobilehome rent to "new construction," defined as any newly constructed space initially held out for rent after January 1, 1990. (Civ. Code §§ 798.45 and 798.7.)

This bill:

1) Redefines "new construction," for purposes of the MRL, to mean any newly constructed spaces initially held out for rent after January 1, 1990, and before January 1, 2023.

2) Defines "new mobilehome park construction," for purposes of the MRL, to mean a mobilehome park initially held out for rent on or after January 1, 2023, measured by the last date upon which at least one space in that park's original construction was initially held out for rent.

3) Provides that "new construction" shall be exempt from local mobilehome rent control laws only until the first date following January 1, 2023, on which the rental agreement for that space is renewed, extended, or terminated.

4) Provides that "new mobilehome park construction," shall be exempt from local mobilehome rent control laws for a period of 10 years from the last date upon which at least one space in that park's original construction was initially held out for rent.

COMMENTS

1. Policy rationale for rent control exemptions for new construction

A key criticism of blanket rent control measures is that they have the potential to discourage the construction of new housing. The idea is that developers may shy away from building new rental housing units if they know that rent control could limit the return they can get for their investment.

For this reason, many rent control laws, both state and local, contain an exception for newly constructed housing. For example, AB 1482 (Chiu, Ch. 597, Stats. 2019), the statewide prohibition on sudden, large rent increases enacted by the Legislature in 2019

includes an exception for any housing for which a certificate of occupancy was issued in the past 15 years. (Civ. Code § 1947.12(d)(4).) Similarly, Civil Code Section 1954.52, also known as "Costa-Hawkins," prevents local jurisdictions from applying rent control to rental housing built after February 1, 1995.

Like these examples, existing state law governing mobilehomes contains a provision preempting the application of local mobilehome rent control laws to "new construction." (Civ. Code § 798.45.) That provision, enacted by the Legislature in 1989, defines "new construction" as any mobilehome space initially held out for rent on or after January 1, 1990. (SB 1241 (Leonard, Ch. 412, Stats. 1989.)

From the author and sponsors' point of view, that definition of "new" mobilehome contstruction is problematic. In the first several years after enactment, this definition made logical sense, since any spaces constructed in those years were, at the time, new. Obviously, however, defining "new" relative to a fixed date means that, in time, even construction that is rather old still qualifies as "new." As a result, older mobilehome parks remain exempt from local rent control even though the developer may long since have achieved the return on the original investment that motivated construction of the park in the first place.

In an attempt to address this problem while avoiding the discouragement of new mobilehome park development, this bill maintains the concept of protecting "new" mobilehome parks from the imposition of local rent control ordinances, but replaces the definition based on an arbitrary date with a rolling window. Under the bill, what constitutes a "new" mobilehome park would automatically update with the passage of time. Accordingly, recently built mobilehome parks would be exempt from local rent control, but would eventually lose that exemption as they age beyond the rolling window.

2. <u>Selecting the right rolling window length to avoid discouraging new mobilehome construction</u>

As previously discussed, the policy rationale behind exempting new construction from rent control laws is to help housing developers feel confident that they will be able to achieve sufficient return on their investment to make it worthwhile financially. Assuming that this policy rationale is sound – as this bill and many rent control laws do – the next logical question is how long this exemption should last. Too short a period could risk discouraging the construction of desperately needed housing supply; too long a period would likely undermine the meaningful expansion of housing that is sustainably affordable.

As it is currently written, this bill creates a 10-year exemption period for new mobilehome construction. The author and sponsors selected that length of time after consulting with a number of people knowledgeable about, and experienced in,

mobilehome financing. According to these sources, the author and sponsor report, 10 years is generally a safe estimate for how long it will take a park developer to realize a reasonable return on the investment.

For their part, the opponents of the bill believe that a 10-year rolling window is too short and would still discourage the development of new mobilehome parks. They point out that the Legislature ultimately settled on a 15-year rolling exemption for new construction when it enacted statewide anti-rent-gouging laws in the context of "stick built" (that is, non-mobilehome) rental housing. If anything, the bill's opponents contend, new mobilehome parks developments require longer to realize a return than stick built housing. According to the Western Manufactured Homeowners Association (WMA):

> Unlike apartment communities, mobilehome parks often require months or years to build spaces, populate spaces and begin to receive a profit on investments made. While an apartment community can fully rent units in a new development in a manner of weeks, and be fully occupied on day 1, mobilehome parks require homes to be manufactured, delivered, and installed on a space-by-space basis. […] Unless the owner completely tries and gouges the incoming resident, it would be impossible for that landlord to make back his or her investment in 10 years before rent control overlay would be implemented.

Ultimately, however, how much impact local rent control ordinances actually have on the development of new mobilehome parks is debatable. Both the proponents and opponents of the bill agree that new mobilehome park construction has been anemic in California for many years. They draw opposite conclusions from that fact, however. Opponents of this bill argue that allowing local rent control to apply more widely will only exacerbate the problem. The author and sponsors of this bill, conversely, point to the same lack of recent new mobilehome construction and conclude that local rent control must not be the real obstacle. After all, they highlight, state law has preempted the application of local rent control to new mobilehome construction since 1990, so local rent control measures cannot be the explanation for the dearth of new mobilehome construction since that time.

3. Eliminating differences in the application of local rent control within parks

In addition to the fact that existing law defines "new construction" in relation to a fixed date, another aspect of the current state preemption of local mobilehome rent control troubles the author and sponsor of this bill. The current preemption on local rent control ordinances applies not just to new mobilehome parks, but also to new mobilehome spaces added to existing parks. That means that, in parks built prior to 1990, local rent control laws applicable to the original part of the park do not apply to

any post-1990 additions. As a result, neighbors may pay very different amounts in rent for the same basic amenities, depending only on when their particular spaces were incorporated into the park. For example, one of the supporters of this bill, the Mesa Dunes Homeowner's Association, Inc., reports that:

> Our park opened in 1974 with 186 spaces; 118 spaces were added in 1999. We have mobile homes under rent control protection next to and/or across the street from homes not covered by rent control. This inequity seriously impacts those living in more recently constructed spaces. Because park owners have required new residents to sign leases only about 30 of the original 186 spaces are under rent control. None of the newer 118 spaces qualify for rent control and rents are escalating at an unbelievable rate.

To eliminate this sort of intrapark disparity in the application of rent control going forward, the bill treats entirely new mobilehome parks differently from new mobilehome spaces added to existing parks. Starting in 2023, entirely new mobilehome parks would be subject to the 10-year rolling exemption from local rent control. Mobilehome spaces newly added to an existing park would not. From the author and sponsors' point of view, treating the two scenarios differently can also be justified based on the relatively low cost of adding a new mobilehome space to an existing park in comparison with building out all the infrastructure required for an entirely new park.

On the other hand, if the immediate imposition of local rent control really does discourage investment, then the predominant effect of bill's proposal to exclude park expansions from the rolling 10-year preemption window might be to dissuade parkowners from pursuing such expansions altogether.

4. <u>Locals maintain discretion about whether or not to enact local mobilehome rent control in the first place</u>

The bill would narrow the circumstances in which state law preempts the application of locally enacted mobilehome rent control ordinances. In that regard, it can be correctly characterized as increasing local control. At the same time, it is important to note that the bill is entirely neutral on the question of whether local jurisdictions should or should not impose mobilehome rent control in the first place. Nothing in the bill requires or encourages local jurisdictions to enact or maintain such ordinances. Local jurisdictions would retain complete discretion to impose mobilehome rent control or leave mobilehome rental rates in the hands of market forces, as they deem appropriate for their communities.

5. Constitutional considerations

The Contracts Clause of the U.S. Constitution provides that "[n]o state shall … pass any Law impairing the Obligation of Contracts." (U.S. Const. Art. I, § 10, cl. 1). The California Constitution, similarly, declares that "[a]… law impairing the obligation of contracts may not be passed." (Cal. Const., art. 1, § 9.) Because the two provisions are parallel, the same legal analysis applies to both. (*Campanelli v. Allstate Life Ins. Co.* (9th Cir. 2003) 322 F.3d 1086, 1097, citing *Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal.3d 805.)

Newly applying local rent control to an existing mobilehome lease might constitute the sort of contractual interference that would trigger constitutional concern. However, the bill appears to be carefully crafted to avoid any such interference. The bill would not operate to apply local rent control to any existing lease agreements. Rather, where an existing lease is already in place, the bill would have no impact. Instead, any local rent control law applicable to the space would only have effect upon the renewal, extension, or termination of that existing lease. In other words, the bill does not apply local rent control to any *existing* lease; it applies local rent control to the *next* lease agreement that governs the space.

Despite this, opponents of the bill contend that it would deprive mobilehome park owners of a "vested right" to charge market rates. The implication seems to be that the owners of mobilehome parks constructed after 1990 are somehow permanently entitled to be able to charge market rate rents – perhaps on due process grounds – because that is what the law currently allows. Court have repeatedly rejected this claim, however. Instead, courts have consistently upheld the power of government to impose rent control so long as the mechanism assures that landlords can achieve a reasonable return on their investment. (*Kavanau v. Santa Monica Rent Control Bd.* (1997) 16 Cal.4th 761; *Fisher v. City of Berkeley* (1984) 37 Cal. 3d 644, *Carson Mobilehome Park Owners' Ass'n v. City of Carson* (1983) 35 Cal.3d 184; *Birkenfeld v. Berkeley* (1976) 17 Cal.3d 129.) Of course, a local rent control ordinance which fails to meet that standard would be vulnerable to constitutional challenge. So long as the underlying local rent control ordinance passes constitutional muster, however, the fact that state law no longer preempts the application of that ordinance would not seem to raise constitutional concern.

6. Clarifying when the clock for the rolling window starts

At the same time, the current bill language makes it somewhat difficult to ascertain when the clock starts for the ten-year exemption from local rent control for new construction. The bill states that the ten-year period starts "from the last date upon which at least one space in that park's original construction was initially held out for rent." It is not crystal clear what this phrasing means. Does this mean the date when the last of the park's original spaces was initially held out for rent? Or does this mean the date when the first of the park's original spaces was initially held out for rent? Or something else? To avoid confusion and future disputes, the author proposes the

amendments set forth in Comment 6, below, to clarify exactly when the ten year exemption period starts.

7. Proposed amendments

In order to address the issues set forth in the Comments, above, the author proposes to incorporate amendments into the bill that would:

- clarify that the clock starts on the 10-year exemption from local rent control for new mobilehome parks when at least one mobilehome space in the original construction is held out for rent for the first time.

A mock-up of the amendments in context is attached to this analysis.

8. Arguments in support of the bill

In summary, proponents of the bill assert that it promotes housing affordability; increases local control; and retains sufficient incentives for construction of new mobilehome parks.

According to the author:

> Mobilehomes are among the last forms of unsubsidized affordable housing in California. The state must do all we can to protect and preserve this type of housing for seniors, working families, veterans, and other community members on fixed incomes. Senate Bill 940 advances California's affordable housing goals by allowing locally passed rent protections to apply towards newly constructed mobile home spaces, and maintains an incentive for new mobilehome park construction by allowing for a 10-year exemption for spaces in those parks. This bill strikes the right balance among local governance, housing affordability and the creation of new housing units by retaining an incentive for the building of new mobilehome parks.

As sponsor of the bill, the Golden State Manufactured Homeowners' League writes:

> SB 940 asks the Legislature to ensure mobilehomes remain affordable by eliminating an outdated, state-imposed loophole created over thirty years ago that denies the ability of local jurisdictions to protect those homeowners from excessive rent increases.

In support of the bill, the Mesa Dunes Homeowner's Association, Inc., writes:

> This legislation should correct the inequity that now exists and help our local jurisdictions protect mobile home owners from excessive rent increases. […] Under SB 940 mobile home spaces added to parks after 1990 will now have the same protection from excessive rent increases as the other spaces in the park.

9. Arguments in opposition to the bill

In summary, the opponents of this bill contend that it discourages the construction of new mobilehome spaces; punishes park owners who have added new spaces in recent years; and treats mobilehome park developers differently than other types of rental housing providers.

For example, in opposition to the bill, the California Mobilehome Parkowners Alliance writes:

> Mobilehome parks are unique in the context of rent control. Mobilehome parkowners face a number of legal restrictions which make operating a park extremely challenging. This is reflected in the fact that while apartments and other forms of housing continue to be built, virtually no new mobilehome parks have been built in California in the last 60 years. Despite this, there are still opportunities to expand existing parks by constructing new spaces. This is important as housing in mobilehome parks is widely recognized as one of the few affordable housing options left in California. However, if SB 940 passes it is unlikely that parkowners will expand their parks. The prospect of new spaces being subject to rent control after only ten years leaves parkowners little opportunity to build and rent spaces in time to recuperate the cost of their investment let alone realize the same returns that they might if they invested in other less accessible forms of housing. That disincentive is not needed at a time when the state needs to expand its housing supply more than ever.

In further opposition to the bill, Western Manufactured Housing Communities Association writes:

> Unlike apartment communities, mobilehome parks often require months or years to build spaces, populate spaces and begin to receive a profit on investments made. While an apartment community can fully rent units in a new development in a manner of weeks, and be fully occupied on day 1, mobilehome parks

> require homes to be manufactured, delivered, and installed on a space-by-space basis. […] Unless the owner completely tries and gouges the incoming resident, it would be impossible for that landlord to make back his or her investment in 10 years before rent control overlay would be implemented.

SUPPORT

Golden State Manufactured Homeowners League (sponsor)
Mesa Dunes Homeowner's Association, Inc.

OPPOSITION

California Association of Realtors
California Mobilehome Parkowners Alliance
Western Manufactured Housing Communities Association

RELATED LEGISLATION

Pending Legislation: AB 2240 (Muratsuchi, 2022) expresses an intent to enact legislation to amend existing tenancy and rental rate increase protections for tenants applicable to mobilehome parks. AB 2240 is currently pending referral before the Assembly Rules Committee.

Prior Legislation:

AB 978 (Quirk-Silva, Ch. 125, Stats. 2021) restricted mobilehome parks located in, and governed by, more than one incorporated city from increasing the space rent that mobilehome owners must pay by more than three percent plus inflation, up to a maximum cap of five percent, annually. The bill also extended to tenants renting park-owned mobilehomes the same protections against arbitrary eviction and rent-gouging that tenants in other types of residential rental housing possess.

SB 999 (Umberg, 2020) would have repealed a provision in state law that exempted mobilehome leases from any otherwise applicable local rent control ordinance if, among other specified conditions, the lease term is greater than one year. SB 999 failed passage in the Assembly Housing and Community Development Committee.

AB 2690 (Low, 2020) would have repealed the exemption from local rent control laws for new mobilehome construction in its entirety. AB 2690 was never heard in the Senate Judiciary Committee due to COVID-19-related bill limitations.

AB 2782 (Stone, Ch. 35, Stats. 2020) among other things, repealed a provision in state law that exempted mobilehome leases from any otherwise applicable local rent control ordinance if, among other specified conditions, the lease term is greater than one year.

AB 2895 (Quirk-Silva, 2020) would have limited increases in mobilehome park rent to no more than five percent plus inflation in a 12-month period and would have applied the same cap to individuals who sublease their mobilehome to another individual. AB 2895 died in the Senate Judiciary Committee.

AB 1482 (Chiu, Ch. 597, Stats. 2019) established the Tenant Protection Act of 2019 which, among other things, limited residential rent increases outside of the mobilehome context to no more than five percent plus inflation over a 12-month period, with specified exceptions, including for new housing brought onto the market within last 15 years.

SB 1241 (Leonard, Ch. 412, Stats. 1989) preempted the application of local mobilehome rent control laws to "new construction," defined as any newly constructed spaces initially held out for rent after January 1, 1990.

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Amended Mock-up for 2021-2022 SB-940 (Laird (S))

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 798.7 of the Civil Code is amended to read:

798.7. (a) "New construction" means any newly constructed spaces initially held out for rent after January 1, 1990 and before January 1, 2023.

(b) "New mobilehome park construction" means a mobilehome park initially held out for rent on or after January 1, 2023.~~,~~ A mobilehome park shall be considered "initially held out for rent" on the ~~measured by the last~~ date when ~~upon which~~ at least one space in that park's original construction is ~~was initially~~ held out for rent for the first time.

SEC. 2. Section 798.45 of the Civil Code is amended to read:

798.45. (a) Notwithstanding Section 798.17, "new construction," as defined in subdivision (a) of Section 798.7, shall be exempt from any ordinance, rule, regulation, or initiative measure adopted by any city, county, or city and county, which establishes a maximum amount that a landlord may charge a tenant for rent, until the first date following January 1, 2023, that the rental agreement for that space is renewed, extended, or terminated, whichever is earlier.

(b) Notwithstanding Section 798.17, "new mobilehome park construction," as defined in subdivision (b) of Section 798.7, shall be exempt from any ordinance, rule, regulation, or initiative measure adopted by any city, county, or city and county, which establishes a maximum amount that a landlord may charge a tenant for rent for a period of 10 years from the ~~last~~ date ~~upon which~~when at least one space in that park's original construction was ~~initially~~ held out for rent for the first time.