

## **Ninth Circuit Holds that Rent Control Board's Denial of a Mobile Home Owner's Request for Rent Increase Is Not an Unconstitutional Taking**

The Ninth Circuit held that the City of Carson's mobile home rent control board's decision not to factor in debt service increases in the adjustment of a rental rate for a mobile home park did not result in a regulatory taking of the mobile home park owner's property. *Colony Cove Props., LLC v. City of Carson*, 888 F.3d 445 (9th Cir. 2018).

2018)

The plaintiff purchased a \$23 million rent-controlled mobile home park in the City of Carson, \$18 million of which was financed through a loan. When the plaintiff acquired the property, the City Rent Review Board's application review guidelines required the Board to consider certain expenses submitted by property owners against the property's income to determine what rents would give the owner a fair return on their investment. At the time the plaintiff purchased the property, these expenses included debt service, which are interest payments made on a loan to purchase the rent-controlled property. Subsequently, the City revised its guidelines for considering rent increases and the City's new rent control formula no longer factored in debt service expenses. The plaintiff twice petitioned the city's Rent Review Board for a several hundred-dollar rent adjustment, per space. Applying the new guidelines, the City only granted a rent increase of \$36.74. The plaintiff sued the City, contending the Board's decision was an unconstitutional taking. The jury awarded the plaintiff over \$3 million in damages and the City appealed the decision. The Ninth Circuit engaged in a regulatory takings analysis, governed by the factors set out in *Penn Central v. Transportation Co. v. City of New York*, 438 U.S. 104 (1978), which instructs courts to evaluate: 1) the regulation's economic impact; 2) the extent to which the regulation

interferes with distinct investment-backed expectations; and 3) the character of the government action. First, citing prior cases finding that a diminution in property value in excess of 75% did not amount to a taking, the court found that the denial of the plaintiff's requested rent increase was not a legally sufficient economic impact. The plaintiff's diminution in value "would only be 24.8% ... far too small to establish a regulatory taking." Second, the plaintiff argued the change interfered with an investment-backed expectations because the City's implementation guidelines at the time plaintiff purchased the property included a debt service calculation in the rent increase. The court rejected this argument as the guidelines explicitly stated the current analysis would not create an entitlement to a specific rent increase. The court further concluded that the owner's reliance on the City continuing its past practice of calculating debt service in future rent increases did not create a reasonable investment-backed expectation. Lastly, the court reasoned that the City's rent control program should be characterized as a public program, rather than a physical invasion, as the rent control program is intended to protect homeowners from rent increases. The court found that the "[t]his central purpose of rent control programs counsels against finding a *Penn Central* taking." The Ninth Circuit therefore found that no reasonable finder of fact could conclude the plaintiff successfully presented a regulatory takings claim and reversed the district court's judgment.

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