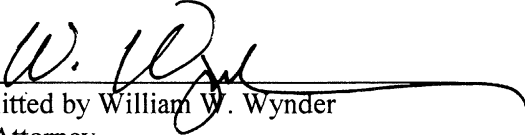




# City of Carson Report to Mayor and City Council

June 7, 2011  
New Business Consent

**SUBJECT: CONSIDERATION OF RESOLUTION NO. 11-074 COMMENDING THE CITY OF GOLETA, CALIFORNIA, FOR THE SUCCESSFUL OUTCOME IN THE SO-CALLED "GUGGENHEIM" LITIGATION**

  
Submitted by William W. Wynder  
City Attorney

  
Approved by Clifford W. Graves  
Interim City Manager

## **I. SUMMARY**

This item is on the agenda at the request of the entire City Council and with the full support of the Office of the City Attorney. The city of Goleta, California, has been locked in a protracted litigation over the constitutionality of its rent stabilization ordinance.

Having incurred substantial legal fees and costs in defending the constitutionality of rent control in California, and notwithstanding initial legal setbacks, the city of Goleta has persisted in defense of rent control for all California cities, and is to be commended for its efforts and congratulated on the important published federal 11-judge decision upholding the constitutionality of rent control for all communities with such ordinances.

## **II. RECOMMENDATION**

WAIVE further reading and ADOPT Resolution No. 11-074, "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA, COMMENDING AND CONGRATULATING THE CITY OF GOLETA, CALIFORNIA, FOR ITS EFFORTS IN SECURING AN IMPORTANT LEGAL VICTORY IN DEFENDING THE CONSTITUTIONALITY OF RENT CONTROL LAWS IN CALIFORNIA."

## **III. ALTERNATIVES**

TAKE no action on this recommendation.

## **IV. BACKGROUND**

On October 6, 2009, this office briefed the Council in closed session regarding a very unfavorable ruling from a 3-judge panel of the Ninth Circuit that the city of Goleta's mobilehome rent control ordinance was an unconstitutional "taking" of property in violation of the Fifth Amendment of the U.S. Constitution.

We considered with the Council how that case would negatively impact the then-pending federal lawsuit brought by Colony Cove Properties, LLC, in which Colony Cove similarly claims that the city of Carson's mobilehome rent control

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June 7, 2011

ordinance is an unlawful taking. We also warned that, if not reversed or modified, the 3-judge panel decision might well spell the end of rent control laws within the Ninth Circuit of the federal court system.

This 3-judge decision was of such importance that, in March 2010, the Ninth Circuit voted to rehear the case “*en banc*” – meaning before an 11-judge panel. The Council authorized our office to file an amicus brief in support of mobilehome rent control on behalf of the League of California Cities and the California State Association of Counties. Our office filed that brief and the case was reheard in Pasadena on June 22, 2010.

We were thrilled to report that on December 22, 2010, the 11-judge *en banc* panel **reversed** the 3-judge panel’s decision. In an 8-3 decision, the *en banc* court held that when a parkowner purchases the park already subject to rent control, ***the rent control ordinance is not a “taking”*** on its face because there has been no interference with the parkowner’s “distinct, investment-backed expectations.” This critical ruling meant that existing rent control ordinances, like the one in Carson, would remain the law and would continue to be applied.

The *en banc* court recognized that ***“Ending rent control would be a windfall to [parkowners], and a disaster for tenants*** who bought their mobile homes after rent control was imposed in the 70s and 80s.” “[Tenants] would lose, on average, over \$100,000 each if the rent control ordinance were repealed. The tenants . . . have invested an average of over \$100,000 each in reliance on the stability of government policy. ***Leaving the ordinance in place impairs no investment backed expectations of the [parkowner], but nullifying it would destroy the value these tenants thought they were buying.***”

As the Council may recall, the Colony Cove federal lawsuit involves, in substantial part, an identical attack upon the Carson rent control ordinance. Further, like in *Guggenheim*, Mr. Jim Goldstein, Colony Cove’s owner, purchased the park long after Carson’s rent control had been adopted. While *Guggenheim* was pending, we filed a motion in federal court to dismiss the Colony Cove federal damages case, and we prevailed in District Court on largely procedural grounds (“ripeness” and “statute of limitations” issued) without ever reaching the merits of the underlying “takings” claim. As the Council also knows, the Colony Cove federal damages lawsuit is now on appeal before the Ninth Circuit.

The parkowner in *Guggenheim* sought review by the United States Supreme Court which was recently denied by the High Court. That means that the Ninth Circuit’s 11-judge decision is final and binding, and that its analysis can be cited by lawyers to other court. The Council is also aware that, as a direct result of the *Guggenheim* decision, the city was greatly strengthened in its arguments involving the Colony

Cove \$36 million dollars damages case. That case was ultimately resolved in favor of the city on all grounds in a written and published decision.

The community of Carson is indebted to the city of Goleta for its courage and fortitude in “fighting the good fight” on behalf of all communities in California with rent stabilization laws. This resolution is our small token of appreciation to that community, its City Council, and its legal team.

**V. FISCAL IMPACT**

None.

**VI. EXHIBITS**

- 1. Resolution No. 11-074. (pgs. 4-5)

Document1

Prepared by: William W. Wynder, City Attorney

TO:Rev010511

Reviewed by:

|                                      |                             |
|--------------------------------------|-----------------------------|
| City Clerk                           | <u>City Treasurer</u>       |
| <u>Administrative Services</u>       | <u>Development Services</u> |
| <u>Economic Development Services</u> | <u>Public Services</u>      |

|                                     |              |
|-------------------------------------|--------------|
| <b>Action taken by City Council</b> |              |
| Date _____                          | Action _____ |
|                                     |              |

RESOLUTION NO. 11-074

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA, COMMENDING AND CONGRATULATING THE CITY OF GOLETA, CALIFORNIA, FOR ITS EFFORTS IN SECURING AN IMPORTANT LEGAL VICTORY IN DEFENDING THE CONSTITUTIONALITY OF RENT CONTROL LAWS IN CALIFORNIA

WHEREAS, the community of Goleta, California, has been embroiled in a lengthy and costly litigation which attempted to challenge the constitutionality of rent stabilization laws in the State of California; and

WHEREAS, the community of Goleta, California, has incurred substantial legal fees and costs in defending important constitutional legal principles that, had they been resolved adversely to that city, would have significantly undermined the legal viability of rent stabilization ordinances throughout California; and

WHEREAS, initially, the community of Goleta received a very unfavorable ruling from a 3-judge panel of the Ninth Circuit that its mobilehome rent control ordinance was an unconstitutional “taking” of property in violation of the Fifth Amendment of the U.S. Constitution; and

WHEREAS, this initial ruling, if not reversed or modified, might well have spelled the end of rent control laws within the Ninth Circuit of the federal court system; and

WHEREAS, this 3-judge decision was of such importance that, in March 2010, the Ninth Circuit voted to rehear the case “*en banc*” – meaning before an 11-judge panel; and

WHEREAS, on December 22, 2010, the 11-judge *en banc* panel **reversed** the 3-judge panel’s decision. In an 8-3 decision, the *en banc* court held that when a parkowner purchases the park already subject to rent control, **the rent control ordinance is not a “taking”** on its face because there has been no interference with the parkowner’s “distinct, investment-backed expectations.” This critical ruling meant that existing rent control ordinances, like the one in Carson, would remain the law and would continue to be applied; and

WHEREAS, the *en banc* court recognized that **“Ending rent control would be a windfall to [parkowners], and a disaster for tenants** who bought their mobile homes after rent control was imposed in the 70s and 80s.” “[Tenants] would lose, on average, over \$100,000 each if the rent control ordinance were repealed. The tenants . . . have invested an average of over \$100,000 each in reliance on the stability of government policy. **Leaving the ordinance in place impairs no investment backed expectations of the [parkowner], but nullifying it would destroy the value these tenants thought they were buying;**” and

WHEREAS, the parkowner in *Guggenheim* sought review by the United States Supreme Court which was recently denied by the High Court. That means that the Ninth

Circuit's 11-judge decision is final and binding, and that its analysis can be cited by lawyers to other court; and

WHEREAS, as a direct result of the *Guggenheim* decision, the City was greatly strengthened in its arguments involving the Colony Cove \$36 million dollars damages case. That case was ultimately resolved in favor of the City on all grounds and in a written and published decision.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the city of Carson, California, hereby expresses its indebtedness to the city of Goleta for its courage and fortitude in "fighting the good fight" on behalf of all communities in California with rent stabilization laws. The City Council further congratulates the Goleta City Council, the Goleta City Attorney, and the legal team defending this community for the successful outcome of this important litigation.

**PASSED, APPROVED and ADOPTED** this \_\_\_\_\_ day of June, 2011.

\_\_\_\_\_  
Mayor Jim Dear

ATTEST:

\_\_\_\_\_  
City Clerk Helen S. Kawagoe, MMC

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney