

**Council Meeting: April 7, 2009**

SUBJECT: 2008-0482 Determine the Enforceability of CC&Rs for Violations to City Code and Project Approvals (Study Issue)

REPORT IN BRIEF

The purpose of this study is to address growing concerns by residents of residential common interest developments (CIDs) that homeowners associations (HOAs) are not enforcing their covenants, conditions and restrictions (CC&Rs). CC&Rs are private agreements between owners that govern all present and future owners' use of property in the CID. The City Council selected this study to determine what the most common complaints are in residential CIDs, how the complaints can be better addressed and the level of involvement the City could undertake in the enforcement of CC&Rs (see Attachment A). CID residents face many challenges in managing their communities, and have come to the City for assistance when issues regarding CC&Rs arise.

This report considers five main issues which resulted from the common complaints received from residents of CIDs:

1. Parking and maintenance of garage spaces;
2. Trash containers in public view;
3. Minor modifications to individual properties;
4. Installation of exterior mechanical equipment; and
5. HOA enforcement challenges.

A main issue is to determine the authority the City has in enforcing CC&Rs, and staff has researched State law to determine the extent of the authority of public agencies in enforcing these private agreements. The State of California gives legal authority to HOAs and individual homeowners to enforce CC&Rs. Public agencies have limited authority in these matters. The City could only get involved if an issue that arises within a CID is determined to be a public nuisance or a direct violation of a City code. This includes violations to the conditions of approval (COAs) of CIDs. Similar to other cities throughout Santa Clara County that staff researched, this is the current extent of the City's involvement in enforcement issues within CIDs.

On November 10, 2008, the Planning Commission considered the study issue and voted unanimously to recommend the Council adopt the staff recommendations with a minor modification. This study issue was originally

scheduled before the City Council on December 16, 2009, but was continued at the request of the City Manager for further study.

Staff recommends that the standard COAs required of new CIDs be revised so that they could be more easily enforced by community associations. Staff also recommends developing tools for HOA education and assistance to aid CID homeowners in facing the challenges of managing their community and carrying out their responsibilities more successfully.

BACKGROUND

This study issue ranked number one on the Community Development Department Study Calendar for 2008. The purpose of this study is to determine what the most common complaints are in residential CIDs, how the complaints can be better addressed and the level of involvement the City could undertake in the enforcement of CC&Rs.

Since the 1960s, CIDs have become an increasingly popular form of real estate and lifestyle. As defined by state law, a CID is created whenever a separate property interest is coupled with an interest in the common area. CIDs can take the form of residential multi-story buildings or complex, single-family detached homes, attached townhomes, or industrial or commercial condominiums. Common property can include landscaped areas, recreational facilities, private streets or the exterior walls and roof of a condominium. In Sunnyvale, there are over 150 HOAs with known contact information. The City does not currently keep track of HOAs but staff estimates that over 250 CIDs exist in the City.

As required by the Subdivision Map Act, the city or other local agency reviews all subdivision projects for compliance with all applicable rules and regulations, including the general plan and zoning ordinance. Conditions are placed on the approval of a project to assure compliance with the Subdivision Map Act and local rules and regulations. Attachment B contains a list of standard conditions of approval for subdivision proposals (some conditions may not be applicable to every project), which as been revised over time for clarification and to capture new requirements.

Over time, the City has required CIDs to include the COAs in the CC&Rs as part of the development approval, which is then recorded with the title of each property. This is to ensure that common areas within these developments are maintained to a certain standard as required by the city code and that every individual owner is aware of the COAs. This process also enables owners associations to enforce operational conditions such as maintenance of garage and guest parking spaces. The CC&Rs are legally enforceable by the association and individual owners. They may contain higher maintenance standards than city codes, but any provisions still have to abide by federal,

state and local laws. Violation of CC&Rs could result in a penalty imposed by the HOA and might include fines, liens on the property or a lawsuit by the association. Individual homeowners can also sue the association. State law, however, requires that the affected parties engage in some form of alternative dispute resolution before filing a lawsuit asking the court to enforce the CC&Rs. If the dispute cannot be resolved between the two parties, the association “*shall make maximum, reasonable use of available local dispute resolution programs involving a neutral third party, including low-cost mediation programs such as those listed on the Internet Web sites of the Department of Consumer Affairs and the United States Department of Housing and Urban Development.*” Civil Code §1363.820(b).

Owners of residential CIDs have come to the City with a number of complaints regarding CC&Rs and other issues within their respective CIDs, some of which relate to City code and the conditions of approval.

Study Issue: Parking Requirements for Residential and Commercial Developments

One of the most common complaints from residents is the use of parking in CIDs, especially in newer CIDs. In response to these concerns, Council considered a study issue to review the City’s parking requirements, and on February 26, 2008, made a series of policy decisions to better accommodate parking needs in both residential and commercial developments (RTC 08-061). Among the changes is the requirement of a parking management plan for any new mixed use, multi-family residential or commercial shopping center development. Planning staff is also completing a handout with a variety of tools to assist new and existing multifamily developments to manage parking. The ordinance to implement these changes was adopted by the City Council on September 30, 2008 (RTC 08-285).

EXISTING LAWS AND POLICIES

STATE LAW

The primary statute governing CIDs in California is the Davis-Stirling Common Interest Development Act of 1985 (Civil Code § 1350-1378). The Davis-Stirling Act governs the creation and operation of CIDs and provides homeowners with a system of self-governance and dispute resolution through the requirement of a homeowners association and an elected board of directors. Every property owner is required to be a member of the association. The California Law Revision Commission is currently engaged in a multi-year study of the Davis-Stirling Common Interest Development Act. The objective of the study is to set a clear, consistent policy with regard to CID formation and management, and determine to what extent common interest housing developments should be subject to regulation.

Other key statutes include the Subdivision Map Act (Government Code § 66410-66499), Subdivided Lands Act (Business and Professions Code § 11000-11200) and the Nonprofit Mutual Benefit Corporation Law (Corporations Code §7110-8610). The Subdivision Map Act requires and authorizes local agencies to review developers' proposals for subdivisions, including CIDs, to assure compliance and consistency with a local agency's general plan, zoning and other regulations.

Government Code §66411

Regulation and control of the design and improvement of subdivisions are vested in the legislative bodies of local agencies. Each local agency shall, by ordinance, regulate and control the initial design and improvement of common interest developments as defined in Section 1351 of the Civil Code and subdivisions for which this division requires a tentative and final or parcel map. In the development, adoption, revision, and application of such ordinance, the local agency shall comply with the provisions of Section 65913.2.

The following section of the Davis-Stirling Act identifies the enforcement authority of CC&Rs in CIDs.

Civil Code §1354. Enforcement Rights, Attorneys' Fees:

(a) The covenants and restrictions in the declaration shall be enforceable equitable servitudes, unless unreasonable, and shall inure to the benefit of and bind all owners of separate interests in the development. Unless the declaration states otherwise, these servitudes may be enforced by any owner of a separate interest or by the association, or by both.

(b) A governing document other than the declaration may be enforced by the association against an owner of a separate interest or by an owner of a separate interest against the association.

(c) In an action to enforce the governing documents, the prevailing party shall be awarded reasonable attorney's fees and costs.

GENERAL PLAN AND MUNICIPAL CODE

The following City policies are relevant to the discussion of CIDs, HOAs and CC&Rs. A full list of the Sunnyvale Municipal Code (SMC) provisions pertaining to the City's enforcement authority is found in Attachment C.

Land Use and Transportation Element:

Policy N1.1: Protect the integrity of the City's neighborhoods; whether residential, industrial or commercial.

Action Statement N1.1.2: Foster the establishment of neighborhood associations throughout Sunnyvale to facilitate community building.

Action Statement N1.1.5: Establish and monitor standards for community appearance and property maintenance.

Policy N1.4: Preserve and enhance the high quality character of residential neighborhoods.

Housing and Community Revitalization Sub-Element:

Policy C.2: Continue to encourage and assist property owners to maintain existing developments in a manner that is aesthetically pleasing, free from nuisances, and safe from hazards.

Policy C.2.a: Continue to offer technical assistance to homeowners to aid them in maintaining, upgrading and improving their property.

Policy C.3: Improve and continue to implement a citizen-oriented, proactive education program regarding neighborhood preservation.

Community Engagement Sub-Element:

Policy 7.2B.3: Support local and neighborhood organizations and strengthen contacts between the City and community groups.

Policy 7.2B.4: Encourage and support the development of greater community self-reliance for problem solving through effective and community and neighborhood organizations.

Policy 7.2D.3: Provide reasonable and fair citizen access to information and services within budgeted resources.

DISCUSSION

In order to understand the various aspects of this study and to determine viable options, staff considered current City practices and extent of city authority; surveyed other cities' practices (a list of questions asked and summary of findings are located in Attachment D); and spoke with CID property managers and associations, officers and residents regarding both their challenges and successes in CC&R enforcement. The following is a discussion

of staff's findings, including five most common issues HOAs face and options for both the City and CID residents to address them.

CITY AUTHORITY

The authority of a city to enforce land use laws stems from its police power to protect the general health, safety and welfare of the public. A local agency may make and enforce within its limits all local, police, sanitary and other ordinances and regulation. Such laws may not take precedence over state or federal laws, or abridge constitutionally protected rights such as the right to privacy and due process under law. The City does not have the legal authority to directly enforce CC&Rs, but it can enforce local laws.

The City also has the authority to act if the issue is deemed a public nuisance. A public nuisance is "one which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal." Civil Code §3480. The remedies for public nuisance are indictment, civil action or abatement action. Civil Code §3491. Because the litigation process is time-consuming and costly, public agencies generally file such actions only when the public nuisance is extremely offensive.

In regards to perceived violations in a CID, the City can only, and does, get involved if it has been determined that a direct violation has been made to the SMC. This includes violations to the conditions imposed on applicable developments at approval by the Planning Commission or the City Council, which the City requires to be included in the CC&Rs. This requirement serves to ensure that all common areas and other aspects of the development are maintained to a certain standard, as approved by the decision makers, and to ensure every property owner is aware of the COAs.

For any code violations, Neighborhood Preservation staff will pursue compliance with the business or the property owner based on a determination of the most effective way to achieve compliance. A citation may be issued to the person determined to be responsible for creating or correcting the violation. For commercial and industrial properties, compliance is most frequently pursued with the responsible party, such as the operations manager, facilities manager, marketing manager or the person on record for the business license. If a violation occurs within a CID, Neighborhood Preservation staff would first determine whether the violation is on common area or on an individual's property to determine the responsible party. If the violation is on individual property, enforcement would generally be pursued with the property owner, but staff would also notify the HOA. If on common area, enforcement would primarily be pursued with the HOA.

OTHER CITIES' PRACTICES

Staff surveyed other cities throughout Santa Clara County regarding their involvement in CC&R enforcement issues. A list of questions asked and the summary of the findings are shown in Attachment E. Not all cities in the county were able to comment. Those who did respond revealed that their involvement is similar to that of the City of Sunnyvale. These cities would only get involved if the issue is in direct violation of a project condition of approval or to the city code. None of the jurisdictions proactively keep track of the HOAs or any changes in officers or contact info.

Staff also went beyond Santa Clara County to research whether other cities have further involvement with HOAs and other issues pertaining to CC&Rs beyond project approval. As shown in Attachment D, Chandler, Arizona, has devoted resources in assisting HOAs and individual homeowners with understanding their roles and responsibilities in living in a CID.

COMMON ENFORCEMENT ISSUES IN CIDs

Homeowners have come to the City for assistance in resolving certain matters within CIDs, regardless of whether a perceived violation is enforceable by the City or if it is a private matter between owners. Neighborhood Preservation Division staff practice is to investigate complaints, limited to those that violate City code or COAs. Over the last two and ½ years, the Neighborhood Preservation Division has documented 15 phone calls received from homeowners in CIDs (see Attachment E) that have prompted an investigation. Not all phone calls resulted in enforcement cases.

Staff has identified five main issues residents of CIDs have asked the City to provide assistance with:

1. Parking and maintenance of garage spaces;
2. Trash containers in public view;
3. Minor modifications to individual properties;
4. Installation of exterior mechanical equipment; and
5. HOA enforcement challenges.

Staff has also spoken with local CID officers, residents and property managers to determine how communities have dealt with each one. Below is a discussion of each issue, which includes the City's current involvement in each, options to increase City involvement and techniques that HOAs have used to further address each issue.

1. Parking and Maintenance of Garage Spaces: Homeowners have complained about the seemingly inadequate unassigned/guest parking spaces in CIDs, especially in the most recently approved developments. Decision makers have imposed standard COAs in relation to parking, such as maintaining garage spaces for parking at all times and prohibiting property

owners or HOAs to assign or offer for rent uncovered or unassigned parking spaces. Garage areas are often used for storage, or residents own more cars that can be accommodated by their assigned spaces, and therefore park in the unassigned/guest spaces or on the street. The City requires COAs to be incorporated into the CC&Rs, which the HOA and individual homeowners have the authority to enforce. Recently, residents have asked the City for assistance in resolving such parking issues.

Two CIDs, in particular, have come to the City recently for assistance in resolving parking issues; these are Danbury Place (168-unit CID located at Fair Oaks Ave. and Tasman Ave.) and Classics at Fair Oaks (54-unit CID located at Arques Ave. at Fair Oaks). In these cases, the residents felt the properties did not have adequate on-site parking and made complaints to the City. It was found that the City did not specify how the parking would be allocated on the site, except for the specific COA requiring the garage to be used for parking.

Enforcement

Enforcing garage parking and restricting parking in unassigned/guest parking can be problematic. Garage areas are considered private property and the City would have to go through the difficult process of procuring a civil warrant signed by a judge before inspection could be made. In addition, if the public interest warrants controlling parking in private common areas, it may be difficult to determine whether a vehicle parked in unassigned/guest parking belongs to a guest or to a resident. It would also be difficult to discern whether a vehicle parked on the public streets belongs to a resident whose garage is too full. Any member of the public is allowed to park on the public street. The HOA could have the authority, if so outlined in their CC&Rs and bylaws, to keep track of every resident's vehicle or to monitor garages and guest parking patterns. They could be better equipped to enforce parking issues, but it is acknowledged that these issues are difficult for HOAs to enforce unless they are very diligent. Nevertheless, some HOAs closely monitor parking in unassigned/guest spaces by requiring registering their guests and monitoring license plates. Aggressive enforcement of unassigned/guest parking indirectly encourages residents to park their cars in their garage.

The City also responds to complaints and can and will cite vehicles illegally parked in required and legally marked fire access lanes and handicap accessible parking spaces. Public Safety will not undertake any enforcement of an accessible parking space that is occupied by a vehicle displaying a legal handicapped license plate or placard. The City can and will also cite vehicles that block private or public driveways, or if vehicles are deemed to be abandoned or inoperative, whether located on private or public property. The Department of Public Safety has enforced these provisions as needed. Any other parking restrictions stated in the CC&Rs, such as prohibiting parking on private streets even if it is wide enough to accommodate on-street parallel

parking, or restricting handicap accessible parking spaces for guest use only, are enforceable only by the HOA and individual owners.

Parking concerns in multi-family residential developments were addressed in the recently completed parking study (RTC 08-061). Although the study showed that the current parking requirements were adequate, it was found that complaints seemed to stem from a lack of parking management or disagreement with the adopted policies of the HOA board.

Options

- 1A. Continue to implement the Council adopted policies that resulted from the 2008 parking study, which includes requiring a parking management plan for multi-family developments as a condition of approval and clarifying and confirming the responsibility of the property owner or homeowners association to enforce its provisions.
- 1B. Continue to develop a handout with a variety of tools to assist new and existing multifamily developments to manage parking.
 - o Inform CID residents what types of parking violations the City may enforce, such as parking in legally marked fire access lanes.
 - o Maintain a file of parking management plans as a reference source for HOAs.
- 1C. HOAs could address parking concerns by using the following techniques:
 - o Require every car to be registered with the association and require parking tags to keep track of them;
 - o Time restrictions on unassigned/guest spaces to encourage turnover of spaces;
 - o Hire parking patrol to monitor parking or do inspections at random; and/or
 - o Advance notice of garage inspections to assure garages are being used for parking.

Recommendation

Staff recommends Options 1A and 1B to continue implementing the newly adopted policies regarding parking and to inform CID residents about what the City can enforce. The City could also advise HOAs of techniques that have worked for other communities.

2. Trash Containers in Public View: Visible trash containers create both public and private concerns. Visible trash containers are also of concern to the City as a public health matter. SMC §8.16.050 states that it is unlawful to have a solid waste or trash container in public view from any public right-of-way in any R-0, R-1, R-1.5, R-1.7/PD or R-2 district. Furthermore, SMC §19.38.030 requires all multi-family developments with four or more units to provide

centralized trash enclosures and to store recycling and solid waste containers so that they are screened from public view.

Enforcement

If a complaint falls under the current code provisions as referenced above and listed in full in Attachment C, the City can and will take enforcement action. The CC&Rs could have stricter provisions on the maintenance of trash containers and the amount of time trash containers could remain in public view around service days within a CID, in which case the HOA would be the enforcement authority.

CIDs with private streets and in zoning districts that are not included in the code referenced above have had difficulty in compelling homeowners to properly store their trash containers. This is true also for older CIDs which were built before the current provisions were in effect.

Options

- 2A. Sponsor a study issue to consider amending the SMC to include other residential zoning districts in SMC §8.16.050. Amendments could include clarification of “public view” and whether City enforcement would include private streets. Additional staff resources would be required to enforce new provisions that would result from the study. The amended ordinance would expand City enforcement to multi-family zoning districts, and deem trash enclosures left in public view to be a public nuisance to allow abatement procedures.
- 2B. Advise existing CIDs to amend their CC&Rs to have stricter provisions on the maintenance of containers, including implementing administrative fines and penalties.
- 2C. Require proper trash bin placement and specified storage space as a condition of approval of new developments.

Recommendation

Staff recommends Options 2B and 2C.

3. Minor Modifications to Individual Properties: CIDs are approved with a set of drawings and plans with the condition that they shall be built according to those approved plans, except as modified by the COAs. The COAs also typically include a condition that major changes shall be reviewed by the Planning Commission (typically), and that minor changes may be approved by the Director of Community Development, usually through a review of a staff-level Miscellaneous Plan Permit application. If an individual homeowner, or the HOA, were to make any physical modifications to the development, City approval may be required if the change is directly related to what has been

approved in the original Special Development Permit, or if it falls under any provisions of the SMC. In addition, the CC&Rs and bylaws of a CID usually establish an architectural review committee to review and approve any physical modifications to individual and common properties within the CID.

A common issue is that individual homeowners will physically modify their property without obtaining the appropriate approvals. If an association's governing documents require association approval for any physical modifications, Civil Code § 1378 requires that a decision may not violate any governing provision of law, including a building code or other applicable law governing land use or public safety. An individual homeowner or a HOA board may not approve any changes without first obtaining the appropriate approval from the City—either a permit for a minor modification to the approved plans, or a permit to build a fence or a shed for example. Similarly, if an individual homeowner were to seek approval for a minor modification to their own property, that homeowner would have to first obtain an approval from the HOA board, architectural review committees (ARC) or other review committee, as required in the CC&Rs prior to filing an application with the City. If the modification were on common property, the City would require authorization from the HOA. Staff also regularly advises applicants to review their CC&Rs carefully before preparing plans.

Enforcement

There are instances where the City is not aware that physical modifications are being made within CIDs, which may or may not be in violation of City code. Most residents contact the City to inquire whether additional permits are necessary to perform the proposed work. When residents do construct without permits, the City is informed only if a neighbor files a complaint with Neighborhood Preservation Division. For newer developments, however, unpermitted modifications can be discovered through the Neighborhood Preservation Division's Systematics process where projects that are two years old or less are inspected for compliance with COAs. Staff resources limit the ability to proactively inspect CIDs on a regular and on-going basis.

Options

- 3A. Sponsor a study issue to explore a program and allocate staff resources for a regular on-going inspection program to ensure compliance with approved development plans and COAs.
- 3B. Circulate informational handouts or provide information on the City website to inform communities of City requirements regarding physical modifications within a CID.
- 3C. Advise CIDs to create architectural review committees (ARC), or similar.

- The ARC could conduct a periodic walk-through of the community to identify any unpermitted architectural modifications or other violations.

Recommendation

Staff recommends Options 3B and 3C.

4. Installation of Exterior Mechanical Equipment: The placement of mechanical equipment such as air conditioning units on balconies or patios in CIDs occasionally generates complaints because of their noise and visual impacts. In addition to noise and visual impacts, there is also the concern of the possible loss of open space to the unit.

If mechanical equipment and air conditioning unit locations were addressed and detailed in the development plans for planning approval, staff will review the proposal in conformance with the approved plan when construction plans are submitted for building permits. If a project does not have a planning approval, staff still reviews the building permit and considers possible noise and aesthetic impacts.

If the location of the air conditioning unit was not addressed in the approval of the project, then a new unit would require several steps to assure the HOA is informed and that the original intent of the project approval is met (see Attachment F).

Enforcement

The visual impacts of new exterior air conditioning units are more easily mitigated through the requirement of adequate screening than are noise impacts. Current City code (SMC §19.42.030) addresses operational noise standards to be measured at the perimeter property line. However, it does not properly address acceptable noise impacts to residents within a CID where interior property lines may not be clear.

During the study issue workshop of January 2009, Council considered a study to examine potential modifications to the noise regulations that could provide protection for people near the source of the noise on the same property. Council direction was to address this study issue in 2010 concurrently with the update of the Noise Sub-Element and other related study issues pertaining to amendments to the noise ordinance.

Options

- 4A. Continue to require new developments to determine locations of air conditioning units at the planning stage and to choose locations that would minimize visual and noise impacts, and ensure adequate usable open space.

- 4B. Continue to follow current staff procedures for review of exterior mechanical equipment and air conditioning unit installations in existing CIDs.
- 4C. Address this issue with the update of the Noise Sub-Element and revision to the City's noise ordinance in 2010.

Recommendations

Staff recommends Options 4A, 4B and 4C.

5. HOA Enforcement Challenges: During the course of this study and especially during the outreach meetings, staff found underlying issues that can hamper and have hampered the effectiveness of a HOA and the implementation of CC&Rs.

- CIDs are run by volunteer board of directors who may have little or no experience managing real property or governing a nonprofit association. Many are unsure how to enforce provisions, including City-imposed conditions of approval or operational standards, and oftentimes look to other authorities for enforcement. These volunteers are charged with interpreting not only CC&Rs and bylaws of the CID but also state laws, which includes the Davis-Stirling Act. The act is complex and many homeowners do not understand their rights and obligations. Residents may also be reluctant to enforce CC&R provisions in fear of being “unpopular” neighbors. Finally, frustrations or lack of willingness could lead to an inactive HOA. The California Law Revision Commission is aiming to replace it with a new statute that will be more user-friendly and easier for homeowners and volunteer board members to navigate.
- Some HOAs also have difficulty in managing resources and reserves which are essential in funding the activities of a HOA. Resources could be used to hire property management services or parking patrols to aid in enforcing CC&R provisions.
- State law currently does not appoint a regulatory agency charged with overseeing CIDs. If there are disputes over management of the CID, or if HOA boards fail to comply with the law, the main resolution is litigation. Litigation can be quite costly, especially for the individual homeowner who is at a disadvantage compared to the association who could use the assessments to fund the litigation. In its effort to rewrite the main statute governing CIDs, the California Law Review Commission is considering ways to address this lack of oversight.

- Disagreements on private matters between neighbors who live in such close proximity to one another tend to escalate and involve other parties, sometimes the City. The City is sometimes caught in the middle and tries to mediate when a resident or group of residents strongly disagrees with the decisions or management of the HOA board. However, staff primarily takes an advisory role and bases recommendations and decisions on appropriate City regulations and the specific plans and COAs of the development. Staff also refers residents to Project Sentinel for mediation services.
- In the past several years, the City has required that COAs be included in the CC&Rs so that future owners are informed of the requirements of their development. Confusion about the enforcement authority of CC&Rs could arise, and have arisen, from this procedure.
- The City does not currently track or maintain current contact information of HOA officers. This could prevent the City from pursuing compliance with the proper party, as well as hinder dissemination of informational materials to all communities.

Options

- 5A. The City could adopt an ordinance (similar to the Chandler, Arizona ordinance) that requests existing HOAs and requires new HOAs to register, and requires them to update their information. Staff has consulted with the Office of the City Attorney and determined that if such an ordinance were to be created, it cannot *require* existing HOAs to register. The ordinance may state that the City cannot enforce CC&Rs as these are the responsibility of the HOA; however it could allow the City to initiate enforcement action to compel the HOAs to enforce CC&R provisions pertaining to the City.
- 5B. The City could expand services to CID residents:
- Create a grant program for HOAs (separate from the existing grant program for neighborhood associations) to fund educational efforts around CC&Rs and CID law.
 - Provide classes to CID residents and especially HOA board members so that they can better understand the responsibilities and limitations of HOAs. Educational materials could also cover the role the City plays in CIDs.
- 5C. The City could develop tools for HOA education and assistance. These tools may include:

- Informational materials (handouts, web-based information, etc.) regarding City processes, i.e. City permit requirements for architectural modifications, etc.
- Encourage existing HOAs to register with the City and to maintain current officers' names and contact information.
 - Develop incentives similar to those of the City's Neighborhood Association Registry Program (Neighborhood and Community Resources Division).
- Require in the COAs that future HOAs shall register with the City and to maintain current officers' names and contact information.
- Continue to include COAs for HOA issues:
 - Continue to implement the new parking code provisions and require a parking management plan.
 - Require a trash bin placement plan for projects with individual trash containers.
 - Continue to require the exterior mechanical equipment and air conditioning units locations and noise specifications to be included as part of the development plan for planning approval, and require future installations to meet those criteria.
- Continue to refer CID homeowners to readily available mediation services (e.g., Project Sentinel, which is a free service provided by the City) and strongly encourage them to use mediation services when disputes arise within their communities.
- Increase outreach to HOAs about the City's community building and civic engagement programs. Community building programs promote communication and teamwork among neighbors, while civic engagement programs establish communication links between the City and residents for the sharing of timely information.
- Support HOAs through a list of resources and/or web links; include information about organizations and agencies that aim to provide education (classes and seminars) and other resources to homeowners, builders and other professional resources, such as:
 - The State of California Department of Real Estate (DRE)
 - Executive Council of Homeowners (ECHO) in California
 - Community Associations Institute (CAI)
- Advise HOAs of techniques other communities have used to increase awareness of rules and regulations and to limit conflicts between neighbors, in addition to the techniques used to address common enforcement problems described in the previous section:
 - Create a website for the community.
 - Contain important information
 - Identify answers to common questions
 - Identify board members and who to contact when issues arise

- Hold community forums.
 - Periodic meetings where residents can discuss concerns and possible solutions

Recommendation

The pros and cons of each option listed above are located in Attachment G. Staff recommends Option 5C.

FISCAL IMPACT

To find all HOAs could require over 100 staff hours and could be more if HOAs have not responded to the initial request for information. To maintain contact information for over 250 HOAs could require an estimated 100 hours per year. This additional time is difficult to quantify, as it is not known if more complaints would be received. There is a potential, likely modest, cost savings on some issues where homeowners continually contact the City for assistance and staff needs to refer the homeowner back to the HOA [see Option 5A page 14].

The general fund would be affected if a separate grant program is created for HOAs. In addition to the value of a grant (\$1,000 or whatever might be selected), there is staff time to administer a program. As an example, the City's Neighborhood Grant Program currently requires 125 staff hours per year (factor approximately 70 baseline hours for promotion and administration of the program, plus an average of four hours per application received and processed). Some of these costs could be recovered through modest fees. [Option 5B page 14]

If the City develops a proactive program to train HOAs, more staff resources would be required in outreach and providing educational materials, and creating a Webpage for HOAs. Training programs with two seminars per year may cost \$10,000 for advertising, room set-up and consulting services. The initial cost of the program would be approximately \$30,000 in the first year and approximately \$17,000 a year after that [Option 5B page 14]

For a simpler program of creating a Webpage with resource information or increasing outreach to HOAs, about 40 hours of staff time would be required (less than \$3,000). The majority of these costs would likely be shared between the Land Use Planning Program and the Neighborhood and Community Resources Program, and would not require a budget modification. [Option 5C page 14]

The General Plan Long-term Financial Plan is fully balanced to the twentieth year, so any increase in costs will require a corresponding revenue increase or service level decrease in another area. If Council chooses any option that

requires additional budgetary resources, Council will need to select one of the following options:

1. Establish a priority ranking for the new service and use the Priority Ranking Tool to select a service to cut to maintain a balanced long-term financial plan. Hold a public hearing on the recommended change once the service level reduction is determined.
2. Establish a priority ranking for the new service and direct staff to establish a fee to recover the cost of the new service as part of the City's Fee Schedule.
3. Establish a priority ranking for the new service. Direct the City Manager to incorporate the new service and a corresponding service level reduction into the FY 2009/2010 Recommended Budget.

PUBLIC CONTACT

Staff conducted two outreach meetings on August 28, 2008 to discuss the issues and concerns HOAs and individual homeowners are facing in living in CIDs. Notices were sent to those HOAs and members for which the City has contact information and neighborhood associations. A list of HOAs and contact information of officers was obtained from the Neighborhood and Community Resources Division and from the office of the Secretary of State. The meetings were also advertised on the City Website, the *Sunnyvale Sun* newspaper and KSUN. A total of 20 homeowners and HOA board members came to the meetings. Topics discussed and suggestions brought forth by citizens are outlined in Attachment H.

Public contact for the Council meeting was made by posting the agendas on the City's official-notice bulletin board outside City Hall, in the Office of the City Clerk, at the Library. The agenda and report were posted on the City's Website and were made available at the Library and the Office of the City Clerk. Notices for the public hearings were also sent to the same recipients of the outreach meeting notices and to those who attended the outreach meetings.

The Planning Commission held a public hearing to consider this study on November 10, 2008. The minutes of this hearing are provided in Attachment I. Five members of the public came to speak on the issue. In general, speakers did not support any resulting action from this study that would further involve the City in the enforcement of CC&Rs more than it already is. Speakers also expressed concerns that HOAs are not fully aware of the content of CC&Rs and why certain requirements are imposed by the City, which is why mistakes can be made in the implementation of CC&Rs. It was suggested that the City be a source of information and that the City should work with developers and attorneys in writing CC&Rs that could be more easily understood, with sensitivity to enforcement problems. The Planning Commission voted

unanimously to recommend the Council adopt the staff recommendations with a minor modification to the phrasing of Alternative C.3 regarding recommending the use of mediation services to HOAs.

Subsequent to the review by the Planning Commission, this staff report was revised to further clarify information presented in the report and to include additional staff analysis and options.

ALTERNATIVES

1. Adopt the following options as recommended by the Planning Commission and staff:
 - a. Parking And Management Of Garage Spaces And Unassigned/Guest Parking Spaces:
 - Options 1A and 1B [page 9] – Continue to implement Council adopted policies that resulted from the 2008 study and continue to develop a handout of tools to assist HOAs to manage parking.
 - b. Trash Containers In Public View:
 - Options 2B and 2C [page 10] – Advise existing CIDs to have stricter provisions on maintenance of containers, and require proper trash bin placement and specified storage space for new developments.
 - c. Minor Modifications to Individual Properties:
 - Options 3B and 3C [page 11] – Circulate informational handouts regarding the process for physical modifications within a CID and advise CIDs to create ARCs, or similar, to identify any unpermitted architectural modifications.
 - d. Installation of Exterior Mechanical Equipment:
 - Options 4A, 4B and 4C [page 12-13] – Continue the require locations of exterior mechanical equipment to be determined at the planning stage and continue the current process for reviewing new installations in existing CIDs. Address noise issues with the update of the Noise Sub-Element and revision to the City's noise ordinance in 2010.
 - e. HOA Enforcement Challenges:
 - Options 5C [pages 14-16] – Develop tools for education and assistance, including: providing informational handouts about City processes; encouraging existing HOAs and requiring future HOAs to register and maintain current officers' names and contact information; continue to refer CID homeowners to readily available mediation services; provide a website of a list of resources and/or web links pertaining to HOA education and CID law; and advise HOAs of effective techniques other HOAs

have used to address common enforcement problems. The list could expand as staff time and resources would allow.

2. Adopt the recommended options with deletions, additions of other options, or other modifications.
3. Request further study by staff.

RECOMMENDATION

Staff recommends Alternative 1 to include specific COAs to address common issues in CIDs, and to develop tools for HOA education and assistance. The recommended alternatives would not require additional budgetary resources.

Given the legal limitations that the City has in enforcing CC&Rs, staff believes that these recommendations would be the most effective in addressing the common concerns of existing CIDs and in addressing those same issues in future CIDs.

Information about what it means to be a member of an HOA and the importance of an HOA is valuable, especially for those who live in smaller developments or are self-managed. HOAs may choose to hire a management company, but management companies are not regulated and are not required to be licensed. Testimonies from some HOAs reveal that although there are excellent management companies, some homeowners believe that CIDs are best managed by those who hold the best interest of the residents, and those are the homeowners themselves. Alternatively, a common issue is that homeowners may not fully understand the various aspects of HOA membership, the law and the CC&Rs governing their development.

The staff recommendation to develop tools for HOA education and assistance is a multi-pronged approach, dependent upon first establishing a communication link with all existing and future HOAs in the City. Staff may then utilize this link to distribute and gather information, much in the same way it communicates with neighborhood associations; the difference being that HOAs have very specific educational and assistance needs with respect to their operations and enforcement of CC&Rs. With this new communication link, staff will also promote community building and civic engagement programs to CIDs in a manner which clearly identifies the roles and responsibilities of residents when acting in an official HOA capacity versus that of a neighborhood association.

The goal of these recommended actions is to provide a clear understanding of the City's role in CIDs and CC&Rs, to provide the highest possibility of success in enforcing violations and to provide support for the many HOAs that may be struggling to achieve success in managing their communities.

Reviewed by:

Hanson Hom, Director, Community Development
Reviewed by: Trudi Ryan, Planning Officer
Prepared by: Rosemarie Zulueta, Assistant Planner

Approved by:

Gary Luebbers
City Manager

Attachments

- A. 2008 Study Issue Paper
- B. Standard Conditions of Approval for Subdivision Projects
- C. Sunnyvale Municipal Code References to Enforcement and Other Issues
- D. Summary and Table of Other Cities' Policies/Practices
- E. Neighborhood Preservation Division Report of Complaints
- F. Process for Review of New Air Conditioning Unit in CIDs
- G. Pros and Cons of New Ordinance and HOA Education and Assistance
- H. Notes from the Community Outreach Meetings
- I. Minutes of Planning Commission Hearing on November 10, 2008

Proposed New Council Study Issue

Number CDD-29
Status Pending
Calendar Year 2008
New or Previous New
Title Determine the enforceability of CC&R's for violations to City Code and project approvals
Lead Department Community Development
Element or SubElement Land Use and Transportation Element

1. What are the key elements of the issue? What precipitated it?

This study was prompted by concerns, in certain developments, that the homeowners' associations are not enforcing the Covenants, Conditions and Restrictions (CC&Rs). CC&Rs are private agreements between property owners to maintain their property in a certain manner. The City does not have the authority to enforce private property agreements, though they have been asked to do so in several cases in the last few years.

Typically, if a property owner is violating the CC&Rs, the homeowner's association has two recourses. If the CC&Rs describe a penalty process, they can apply financial penalties or sue to obtain compliance. If there is no penalty process, the homeowner's association may place a lien against the property to recover financial damages.

Staff has previously devoted resources to documenting the issues relating to this matter. This study could further detail the various issues associated with CC&R enforcement. Currently, the City does not have legal power over enforcing CC&Rs, but assistance to homeowners' associations could include working with developers to design CC&Rs which make it easier to enforce provisions in new developments, and additional staff resources to assist existing developments if noncompliance issues arise.

2. How does this relate to the General Plan or existing City Policy?

LAND USE AND TRANSPORTATION ELEMENT

Policy N.1.1. Protect the integrity of the City's neighborhoods; whether residential, industrial or commercial.

Policy N1.4 Preserve and enhance the high quality character of residential neighborhoods.

3. Origin of Issue

Council Member(s) Howe
General Plan
City Staff

Public
Board or Commission none

4. Multiple Year Project? No Planned Completion Year 2008

5. Expected participation involved in the study issue process?

Does Council need to approve a work plan? No
 Does this issue require review by a Board/Commission? Yes
 If so, which?
 Planning Commission
 Is a Council Study Session anticipated? No
 What is the public participation process?
 Outreach to the residents and development community. Noticed Planning Commission and City Council public hearings

6. Cost of Study

Operating Budget Program covering costs
 242 Community Planning
 Project Budget covering costs
 Budget modification \$ amount needed for study
 Explain below what the additional funding will be used for

7. Potential fiscal impact to implement recommendations in the Study approved by Council

Capital expenditure range None
 Operating expenditure range None
 New revenues/savings range None
 Explain Impact briefly

8. Staff Recommendation

Staff Recommendation None
 If 'For Study' or 'Against Study', explain

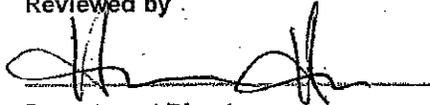
9. Estimated consultant hours for completion of the study issue

Managers	Role	Manager	Hours	
Lead	Ryan, Trudi	Mgr CY1:	30	Mgr CY2: 0
		Staff CY1:	170	Staff CY2: 0
Interdep	Berry, Kathryn	Mgr CY1:	30	Mgr CY2: 0
		Staff CY1:	0	Staff CY2: 0
Total Hours CY1:			230	
Total Hours CY2:			0	

ATTACHMENT A

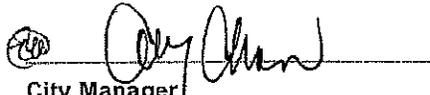
Note: If staff's recommendation is 'For Study' or 'Against Study', the Director should note the relative importance of this Study to other major projects that the Department is currently working on or that are soon to begin, and the impact on existing services/priorities.

Reviewed by


Department Director

11/7/07
Date

Approved by


City Manager

11/14/07
Date

Addendum

A. Board / Commission Recommendation

Issue Created Too Late for B/C Ranking

Board or Commission	Rank	Rank
	Rank 1 year ago	Rank 2 years ago
Arts Commission		
Bicycle and Pedestrian Advisory Committee		
Board of Building Code Appeals		
Board of Library Trustees		
Child Care Advisory Board		
Heritage Preservation Commission		
Housing and Human Services Commission		
Parks and Recreation Commission		
Personnel Board		
Planning Commission		
Board or Commission ranking comments		

B. Council

Council Rank (no rank yet)
Work Plan Review Date (blank)
Study Session Date (blank)
RTC Date 12/30/2008
Actual Complete Date (blank)
Staff Contact

Recommended Conditions of Approval - Special Development Permit /Use Permit

In addition to complying with all applicable City, County, State and Federal Statutes, Codes, Ordinances, Resolutions and Regulations, Permittee expressly accepts and agrees to comply with the following conditions of approval of this Permit:

Unless otherwise noted, all conditions shall be subject to the review of approval of the Director of Community Development.

1. GENERAL CONDITIONS

- A. Execute a (SELECT ONE: Use Permit/Special Development Permit) document prior to issuance of the building permit.
- B. Project shall be in conformance with the plans approved at the public hearing(s). Minor changes may be approved by the Director of Community Development, major changes may be approved at a public hearing.
- C. Any major site and architectural plan modifications shall be treated as an amendment of the original approval and shall be subject to approval at a public hearing except that minor changes of the approved plans may be approved by staff level by the Director of Community Development.
- D. For Places of Assembly Uses, provide an adequate separation of assembly times if there is a shortage of parking or only minimal parking is available.
- E. The Conditions of Approval shall be reproduced on a page of the plans submitted for a Building permit for this project.
- F. The "Use/Special Development" Permit for the use shall expire if the use is discontinued for a period of one year or more.
- G. The "Use/Special Development" shall be null and void two years from the date of approval by the final review authority at a public hearing if the approval is not exercised, unless a written request for an extension is received prior to expiration date and is approved by the Director of Community Development.
- H. Once this "Use/Special Development" Permit is exercised, the previously approved permit File Number [*File Number*] shall be null and void with no further action required by any reviewing authority.

- I. Any expansion or modification of the approved use shall be approved by separate application at a public hearing by the Commission or City Council) .
- J. Comply with all requirements of previously approved "Use/Special Development" File Number [*File Number*] .
- K. To address storm water runoff pollution prevention requirements, an Impervious Surface Calculation worksheet is required to be completed and submitted for the California Regional Water Quality Control Board prior to issuance of a Building Permit.
- L. The developer shall work with the Santa Clara County Transit District in establishing bus stops, shelters, pads and turnout locations, if desired by the District.

2. COMPLY WITH OR OBTAIN OTHER PERMITS

- A. Obtain necessary permits from the Development Permit from the Department of Public Works for all proposed off-site improvements.
- B. Obtain approval from the Crime Prevention Division of Public Safety Department for crime prevention measures appropriate to the proposed development prior to issuance of a Building Permit.
- C. The applicant shall test any wireless telecommunications site installed in the City of Sunnyvale within 15 days of operating the tower. The test shall confirm that any Emergency 911 wireless call made through the wireless telecommunications site shall provide Enhanced 911 capability (including phase 2 information when available from the caller's device) and direct the call to the City of Sunnyvale Department of Public Safety dispatcher, ensuring phase 2 information is transferred. If the call is to be directed elsewhere pursuant to State and Federal law the applicant shall ensure that the Enhanced 911 information transfers to that dispatch center. This capability shall be routinely tested to ensure compliance as long as the approved wireless telecommunications site is in service.

3. ENVIRONMENTAL MITIGATION MEASURES

- A. In addition to complying with applicable City Codes, Ordinances, and Resolutions, the following mitigation measures are incorporated into the project to minimize the identified potential environmental impacts:
- B. Submit plans for approval by the Director of Community Development showing the design and method by which continuous or recurrent noise will be buffered.
- C. Final construction drawings shall incorporate all noise mitigation measures as set forth under "Mitigation Measures."

- D. Provisions of Title 25 of the California Administrative Code shall be satisfied with dependence on mechanical ventilation.
- E. Final plans shall bear the consultant's signature.
- F. Acoustical tests shall be performed by the developer to demonstrate that an interior Ldn scale (day and night average noise level) of 45 dBA is met on the finished units. Such test results shall be furnished to the Director of Community Development prior to occupancy of the units.

4. BMR (BELOW MARKET RATE UNITS)

- A. Comply with Below Market Rate Housing (BMR) requirements as noted in SMC 19.66.
- B. The project will provide _____ Below Market Rate ownership dwelling units in compliance with SMC 19.66.
- C. The project will provide _____ Below Market Rate rental dwelling units in compliance with SMC 19.66.
- D. The developer shall submit a site plan to the Housing Officer for review. The plan will include a description of the number, type, size and location of each unit on the site. The Housing Officer will then determine the specific units to be obligated as Below Market Rate (BMR) unit(s). (BMR Administrative Guidelines)
- E. Prior to issuance of a building permit, the developer shall execute a Development Agreement with the City to establish the units. The rental/sale price of the BMR unit(s) is established at the time of the execution of the Development Agreement. (BMR Administrative Guidelines)
- F. All BMR dwelling units shall be constructed concurrently with non-BMR units, and shall be dispersed throughout the property and shall reflect the range in numbers of bedrooms provided in the total project and shall not be distinguished by exterior design, construction or materials. (SMC 19.66.020(c))
- G. Sixty days (60) days prior to the estimated occupancy date, the developer shall notify the Housing Division of the BMR units to be available. (BMR Administrative Guidelines)
- H. BMR rental units - Record a "Deed of Trust" Prior to Occupancy Permit. (BMR Administrative Guidelines)
- I. BMR Ownership Program - Developer and Buyer to execute "Addendum to Purchase Offer" prior to Occupancy Permit and provide copy to City. (BMR Administrative Guidelines)

- J. Ownership Units - Prior to Close of Escrow, a Deed of Trust between the City and the Buyer of the BMR unit shall be recorded to establish resale and occupancy restrictions for a 30-year period.
- K. The original sale/rental price of BMR dwelling units shall comply with sales prices established by the City, which is revised annually. (SMC 19.66.040 (c))
- L. Below Market Rate dwelling units shall be offered for sale/rent only to persons qualified under the terms described in SMC 19.66.040 and 19.66.050 and described more fully in the Administrative Guidelines. (BMR Rental Units / BMR Ownership Program)
- M. Resale of BMR dwelling units shall comply with procedures set forth in SMC 19.66.060.
- N. In the event of any material breach of the Below Market Rate Program requirements and conditions, the City may institute appropriate legal actions or proceedings necessary to ensure compliance. (SMC 19.66.140)
- O. In the event that any of the Below Market Rate dwelling units or a portion thereof is destroyed by fire or other cause, all insurance proceeds therefrom shall be used to rebuild such units. Grantee hereby covenants to cause the City of Sunnyvale to be named additional insured party to all fire and casualty insurance policies pertaining to said assisted units. (BMR Administrative Guidelines)
- P. Pay an in-lieu BMR fee of an amount determined by SMC 19.66.090 (developments consisting of 9-19 units only).

5. CC&R's (CONDITIONS, COVENANTS AND RESTRICTIONS)

- A. Any proposed deeds, covenants, restrictions and by-laws relating to the subdivision are subject to review and approval by the Director of Community Development and the City Attorney.
- B. The developer/Owner shall create a Homeowner's Association that comports with the state law requirements for Common Interest Developments. Covenants, conditions and restrictions (CC&Rs) relating to the development are subject to review for consistency with the Conditions of Approval by the City Attorney and Director of Community Development prior to approval of the Final Map. The Conditions of Approval shall be attached as an exhibit to the CC&Rs created for this subdivision.
- C. In addition to requirements as may be specified elsewhere, the CC&R's shall include the following provisions:

1. Membership in and support of an association controlling and maintaining all common facilities shall be mandatory for all property owners within the development.
 2. The homeowners association shall obtain approval from the Director of Community Development prior to any modification of the CC&R's pertaining to or specifying the City.
 3. The developer shall maintain all utilities and landscaping for a period of three years following installation of such improvements or until the improvements are transferred to a homeowners association, following sale of at least 75% of the units, whichever comes first.
 4. The Conditions of Approval of this _____ Permit and _____ Map shall be incorporated into the CC&Rs as an exhibit or attachment.
- D. The CC&Rs shall contain the following language:
1. "Right to Remedy Failure to Maintain Common Area. In the event that there is a failure to maintain the Common Area so that owners, lessees, and their guests suffer, or will suffer, substantial diminution in the enjoyment, use, or property value of their Project, thereby impairing the health, safety and welfare of the residents in the Project, the City, by and through its duly authorized officers and employees, will have the right to enter upon the subject Property, and to commence and complete such work as is necessary to maintain said Common Area. The City will enter and repair only if, after giving the Association and Owners written notice of the failure to maintain the Common Area, they do not commence correction of such conditions in no more than thirty (30) days from the giving of the notice and proceed diligently to completion. All expenses incurred by the City shall be paid within thirty (30) days of written demand. Upon a failure to pay within said thirty (30) days, the City will have the right to impose a lien for the proportionate share of such costs against each lot in the Project.
 2. It is understood that by the provisions hereof, the City is not required to take any affirmative action, and any action undertaken by the City will be that which, in its sole discretion, it deems reasonable to protect the public health, safety and general welfare, and to enforce it and the regulations and ordinances and other laws.
 3. It is understood that action or inaction by the City, under the provisions hereof, will not constitute a waiver or relinquishment of any of its rights to seek redress for the violation of any of the

provisions of these restrictions or any of the rules, regulations and ordinances of the City, or of other laws by way of a suit in law or equity in a court of competent jurisdiction or by other action.

4. It is further understood that the remedies available to the City by the provision of this section or by reason of any other provisions of law will be cumulative and not exclusive of the maintenance of any other remedy. In this connection, it is understood and agreed that the failure to maintain the Common Area will be deemed to be a public nuisance and the City will have the right to abate said condition, assess the costs thereof, and cause the collection of said assessments to be made on the tax roll in the manner provided by appropriate provisions of the Sunnyvale Municipal Code or any other applicable law.
5. No Waiver. No failure of the City of Sunnyvale to enforce any of the covenants or restrictions contained herein will in any event render them ineffective.
6. Hold Harmless. Declarant, Owners, and each successor in interest of Declarant and said Owners, hereby agree to save, defend and hold the City of Sunnyvale harmless from any and all liability for inverse condemnation which may result from, or be based upon, City's approval of the Development of the subject Property."

6. DESIGN/EXTERIOR COLORS AND MATERIALS

- A. The plans shall be revised to be consistent with the Design Guidelines to provide the following:
 1. Provide a focal point
 2. Accent points,
 3. Provide additional detail and variation to break up large/long wall planes,
 4. Enhance entry points, etc.
 5. Other modifications noted by the Hearing Officer/Planning Commission.
- B. The modified plans shall include additional details to (Planner can add specific language here)
- C. Final exterior building materials and color scheme are subject to review and approval of the Planning Commission/Director of Community Development prior to issuance of a building permit.

- D. Roof material shall be 50-year dimensional composition shingle, or as approved by the Director of Community Development.

7. EASEMENTS AND DEDICATIONS

- A. Dedicate (TYPE EASEMENT) easement at (LOCATION) prior to issuance of a Building Permit or Final Map
- B. Apply for and obtain abandonment of street easement at (LOCATION:).
- C. Dedicate a six-foot easement on (STREET LOCATION).
- D. Dedicate (SELECT ONE: storm drain/sanitary sewer/water main easements). Install these facilities per Department of Public Works requirements.

8. EXTERIOR EQUIPMENT

- A. Individual air conditioning units shall be screened with architecture or landscaping features.
- B. Any modification or expansion of unenclosed uses shall require approval from the Director of Community Development.
- C. All unenclosed materials, equipment and/or supplies of any kind shall be maintained within approved enclosure area. Any stacked or stored items shall not exceed the height of the enclosure.

9. FEES

- A. Pay Traffic Impact fee estimated at \$_____, prior to issuance of a Building Permit. (SMC 3.50)
- B. Pay regional traffic impact fees estimated at \$_____, prior to issuance of a Building Permit.
- C. Pay Park In-lieu fees estimated at \$_____, prior to approval of the Final Map or Parcel Map. (SMC 18.10)

10. FENCES

- A. Design and location of any proposed fencing and/or walls are subject to the review and approval by the Director of Community Development.
- B. Such fences may extend along side property lines, but do not extend beyond the front line of the main building on each lot.
- C. Any side yard fence between the building and the public right-of-way shall not exceed three feet in height.
- D. The fence or wall shall not exceed three feet in height for a distance of (FEET) feet from the street right-of-way on (STREET).

- E. For front yard fences in residential areas, open decorative type fences, such as picket, post and rail are preferred.
- F. Chain link and barbed wire fences are not allowed in residential areas.
- G. Install and maintain a (HEIGHT: 6 or 8) foot solid (wood fence/decorative masonry wall), measured from the highest adjoining grade, of a design approved by the Director of Community Development along the (FENCE DIRECTION) property lines(s). Wherever the grade differential is one foot or higher, a concrete or masonry retaining wall shall be installed.
- H. Only fences, hedges and shrubs or other natural objects 3 feet or less in height may be located within a “vision triangle” (For definition, refer to Vision Triangle brochure or SMC 19.12.040(16), SMC 19.12.050 (12))

11. LANDSCAPING

- A. Landscape and irrigation plans shall be submitted to the Director of Community Development subject to approval by the Director of Community Development prior to issuance of a Building Permit. Landscaping and irrigation shall be installed prior to occupancy. The landscape plan shall include the following elements:
 - 1. XXXX
- B. Decorative paving as required by the Director of Community Development to distinguish entry driveways, building entries, pedestrian paths and common areas.
- C. Provide separate meter for domestic and irrigation water systems.
- D. A tree protection plan shall be submitted for any existing trees on the site. Where possible, trees shall be protected and saved. Provide an inventory and valuation of any trees proposed to be removed prior to issuance of building permits.
- E. The landscape plan shall including street trees and shall be submitted and approved per the City Arborist.
- F. All landscaping shall be installed in accordance with the approved landscape plan and shall thereafter be maintained in a neat, clean, and healthful condition.
- G. Prepare a landscape maintenance plan subject for review and approval by the Director of Community Development
- H. Trees shall be allowed to grow to the full genetic height and habit (trees shall not be topped). Trees shall be maintained using standard arboriculture practices.

- I. Provide trees at minimum 30 feet intervals along side and rear property lines, except where mature trees are located immediately adjoining on neighboring property.
- J. Deciduous trees shall be provided along (DIRECTION) exposures for passive solar heating purposes.
- K. Of new trees installed, 10% shall be 24-inch box size or larger and no tree shall be less than 15-gallon size.
- L. Any “protected trees”, (as defined in SMC 19.94) approved for removal, shall be replaced with a specimen tree of at least 36-inch box size.
- M. At the expense of the subdivider, City staff shall install required street trees of a species determined by the Public Works Department. Obtain approval of a detailed landscape and irrigation plan from the Director of Community Development (SMC 19.38.070) prior to issuance of a Building Permit.
- N. Provide a ten-foot wide landscape buffer along the (DIRECTION) property line.
- O. Provide bermed landscaping along street frontages to (MOUND HEIGHT) feet in height.
- P. Ground cover shall be planted so as to ensure full coverage eighteen months after installation.
- Q. All areas not required for parking, driveways or structures shall be landscaped.
- R. Provide a fifteen-foot deep band of decorative paving for the width of the private drive(s) immediately behind the public sidewalk.

12. TREE PRESERVATION

- A. Prior to issuance of a Demolition Permit, a Grading Permit or a Building Permit, whichever occurs first, obtain approval of a tree protection plan from the Director of Community Development. Two copies are required to be submitted for approval.
- B. The tree protection plan shall be installed prior to issuance of any Building Permits, subject to the on-site inspection and approval by the City Arborist.
- C. The tree protection plan shall remain in place for the duration of construction.
- D. The tree protection plan shall include measures noted in Sunnyvale Municipal Code Section 19.94.120 and at a minimum:

1. An inventory shall be taken of all existing trees on the plan including the valuation of all 'protected trees' by a certified arborist, using the latest version of the "Guide for Plant Appraisal" published by the International Society of Arboriculture (ISA).
 2. All existing (non-orchard) trees on the plans, showing size and varieties, and clearly specify which are to be retained.
 3. Provide fencing around the drip line of the trees that are to be saved and ensure that no construction debris or equipment is stored within the fenced area during the course of demolition and construction.
- E. Overlay Civil plans including utility lines to ensure that the tree root system is not damaged.

13. LIGHTING

- A. Prior to issuance of a Building Permit submit an exterior lighting plan, including fixture and pole designs, for approval by the Director of Community Development. Driveway and parking area lights shall include the following:
 - B. Sodium vapor (of illumination with an equivalent energy savings).
 - C. Pole heights to be uniform and compatible with the areas, including the adjacent residential areas. Light standards shall not exceed 18 feet on the interior of the project and 8 feet in height on the periphery of the project near residential uses.
 - D. Provide photocells for on/off control of all security and area lights.
 - E. All exterior security lights shall be equipped with vandal resistant covers.
 - F. Wall packs shall not extend above the roof of the building.
 - G. Lights shall have shields to prevent glare onto adjacent residential properties.
 - H. Prior to issuance of a Building Permit submit a contour photometric plan for approval by the Director of Community Development. The plan shall meet the specifications noted in the Standard Development Requirements.
 - I. Pole heights not to exceed (POLE HEIGHTS: 8, 15, 24) feet.
 - J. Installation of lights at a minimum of 50 feet intervals along all private streets.
 - K. Out-of door loudspeakers shall be prohibited.

14. ON-SITE AMENITIES

- A. Swimming pools, pool equipment structures, play equipment and other accessory structures, except as otherwise subject to Planning Commission review, may be allowed by the Director of Community Development subject to approval of design, location and colors.
- B. (NUMBER) “tot lots” shall be provided on-site to accommodate recreational needs of small children. These facilities shall incorporate active play structures and other amenities on a secured area of at least 1,500-sq. ft. each, as specifically approved by the Director of Community Development:
- C. Provide car wash areas as may be approved by the Director of Community Development.
- D. Provide faucets near each garage door for purposes of washing cars.

15. PARKING

Multi-family Uses:

- A. A Parking Management Plan must be submitted to the Director of Community Development prior to issuance of a building permit. The Parking Management Plan shall include the following:
 - 1. Give the property managers/homeowner’s association, with approval by the Director of Community Development, the latitude to define “guest,” since ultimate enforcement is the responsibility of that entity.
 - 2. Specify that 25% to 75% of unassigned spaces be reserved for guest use only at the discretion of the property owner or homeowner’s association.
 - 3. Note that property owners and homeowner’s association cannot rent unassigned spaces, except that a nominal fee may be charged for parking management.
 - 4. Require tenants to use their assigned parking spaces prior to using unassigned parking spaces.
 - 5. Do not allow tenants to park RV’s, trailer, or boats in assigned spaces.
 - 6. Clearly notify potential residents that number of parking spaces provided for each unit on-site.
- B. The parking lot shall be maintained as follows:
 - 1. Garage and carport spaces shall be maintained at all times so as to allow for parking of vehicles.

2. Clearly mark all assigned, guest, and compact spaces. This shall be specified on the Building Permit plans and completed prior to occupancy.
 3. Maintain all parking lot striping and marking.
 4. Assure that adequate lighting is available in parking lots to keep them safe and desirable for the use.
- C. Unenclosed storage of any vehicle intended for recreation purposes, including land conveyances, vessels and aircraft, but excluding attached camper bodies and motor homes not exceeding 18 feet in length, shall be prohibited on the premises.

16. STREETS

- A. PRIVATE STREETS
- B. Dedicate private streets as emergency vehicle ingress-egress easements.
- C. NEW STREETS
- D. The name of the (SELECT ONE: east-west/north-south) street shall be (NAME:) or another name as determined by (SELECT ONE: City Council/Planning Commission).
- E. The common lot shall be assigned a private street name in accordance with the official Street Name System, as selected by the Community Development Department.

17. RECYCLING AND SOLID WASTE

- A. Submit a detailed recycling and solid waste disposal plan to the Director of Community Development for approval.
- B. All exterior recycling and solid waste shall be confined to approved receptacles and enclosures.
- C. The required solid waste and recycling enclosure shall:
 1. Match the design, materials and color of the main building.
 2. Be of masonry construction
- D. All recycling and solid waste containers shall be metal or State Fire Marshall listed non-metallic.

18. RIGHT-OF-WAY IMPROVEMENTS

- A. Obtain a Development Permit from the Department of Public Works for improvements.
- B. Curbs, gutters, sidewalks, streets, utilities, traffic control signs, electroliers (underground wiring) shall be designed, constructed and/or installed in accordance with City standards prior to

occupancy. Plans shall be approved by then Department of Public Works.

- C. Provide (SELECT ONE: street electrolier(s)/street signs) on (LOCATION:).

19. ROOF/ROOF SCREENS

- A. Roof vents, pipes and flues shall be combined and/or collected together on slopes of roof or behind parapets out of public view to meet code requirements as noted in Sunnyvale Municipal Code Section 19.38.020.

20. SOLAR ENERGY

- A. Roof system shall be designed to provide an adequate area with proper solar access and orientation to accommodate the required number of collector panels.
- B. Such system shall carry a warranty as prescribed by the California Energy Commission in order to qualify for State Income tax credit.
- C. Such systems shall be designed and installed in accordance with an overall plan as approved by the Director of Community Development.
- D. Separate active solar energy- collection system shall be provided for each adjoining residential dwelling unit.

21. STORAGE

- A. All unenclosed materials, equipment and/or supplies of any kind shall be maintained within an approved enclosed area. Any stacked or stored items shall not exceed the height of the enclosure.
- B. Unenclosed storage of any vehicle shall be prohibited.
- C. Unenclosed storage of any kind shall be prohibited on the premises.
- D. Unenclosed storage area(s) shall be fully screened to the highest point of any stored or stacked materials, equipment and/or supplies of any kind. The design and method of enclosure is subject to approval by the Director of Community Development. Any modification or expansion of unenclosed uses shall require approval from the Director of Community Development.
- E. Carport locker units shall have a minimum depth of 30 inches.
- F. No hanging lockers shall be allowed in carports unless a full back wall is provided on the carport.

22. TRAFFIC/ROAD IMPROVEMENTS

- A. Provide a traffic signal at (LOCATION).

- B. Construct a bus duckout of a design and location approved by the Director of Public Works.
- C. Approval of detailed street improvements plan shall be obtained from Public Works and bonds posted prior to issuance of a Building Permit.

23. TRAILERS

- A. The temporary trailer(s) shall be subject to following requirements:
- B. Trailer(s) shall be placed on the premises not sooner than 15 days following the date of City approval and shall be removed on or before (DATE).
- C. Trailer entrance(s) shall be oriented towards the nearest building.
- D. Any variation from the location of the trailer(s), as represented by the submitted plan, shall be subject to approval by the Director of Community Development.
- E. Area lighting shall be provided in the vicinity of the trailer(s).

24. UNDERGROUND UTILITIES

- A. All proposed utilities shall be undergrounded.
- B. Applicant shall provide a copy of an agreement with affected utility companies for undergrounding of existing overhead utilities which are on-site or within adjoining rights-of-way prior to issuance of a Building Permit or a deposit in an amount sufficient to cover the cost of undergrounding shall be made with the City.
- C. If any additional poles are proposed to be added, developer shall have PG&E submit the preliminary plan to Public Works Department for review. City Council shall make the decision if any additional poles are acceptable or not. Under no circumstances shall additional poles be permitted along the frontage of this development.
- D. Install conduits along frontage for Cable TV, electrical and telephone lines in accordance with standards required by utility companies, prior to occupancy. Submit conduit plan to Planning Division prior to issuance of a Building Permit.
- E. Conduit sizing and locations shall be included on street improvement plans. Submit one copy to the Planning Division.
- F. Improvement plans showing conduits for future undergrounding of existing overhead utilities shall be submitted to the Planning Division for review and approval prior to issuance of a Building Permit. Complete installation of conduits prior to occupancy.

- G. Any additional poles are proposed to be added, developer shall have PG&E submit the preliminary plans to the Director of Public Works Department for review. City Council shall make the decision if any additional poles are acceptable or not. Under no circumstances shall additional poles be permitted along the frontage of this development.
- H. A copy of an agreement with affected utilities companies for existing overhead utilities which are on-site or within adjoining rights-of-way shall be provided to the Director of Community Development prior to issuance of a Building Permit or a deposit or bond in an amount sufficient to cover the cost of undergrounding shall be made with the City.
- I. A copy of an agreement with affected utilities companies for undergrounding all existing and proposed overhead service drops to the building shall be provided to the Director of Community Development prior to issuance of a Building Permit.
- J. Solar-assisted hot water shall be provided for all swimming pools and spas. Provide 70% of hot water needs for summer months.
- K. The recreation facilities (pool and clubhouse) shall be installed in connection with the first phase.
- L. Indoor shower and locker facilities shall be provided for men and women at the ratio of one shower for every 30 employees and individual lockers.

25. MISCELLANEOUS

- A. Prior to commencement of new construction remove all debris, structures, area light poles, and paving from the site.

26. TENTATIVE MAP CONDITIONS

- A. Full development fees shall be paid for each project parcel or lot shown on (SELECT ONE: Final Tract Map/Parcel Map) and the fees shall be calculated in accordance with City Resolutions current at the time of payment.
- B. Comply with all applicable code requirements as noted in the Standard Development Requirements.

27. SUBDIVISIONS

- A. Individual buildings shall not be sold separately, or if the sale of any building shall be anticipated, all requirements of the Subdivision Ordinance in effect at the time of the sale shall be compiled with in full prior to such sale (State Subdivision Map Act).

- B. Remove all debris, structures, area light poles, and paving from the site prior to recordation of a final map.

EXISTING POLICY

The following Sunnyvale Municipal Code (SMC) Requirements are relevant to the discussion of the City's enforcement authority:

Chapter 1.04. GENERAL PENALTY

Chapter 1.05. ADMINISTRATIVE CITATIONS.

Chapter 1.06. ADMINISTRATIVE FINES AND PENALTIES

§19.98.090 Conditions of approval.

(a) The director of community development, planning commission or city council may approve any permit, or approve the same upon such conditions in addition to those expressly provided in applicable provisions of this code, as it finds desirable in the public interest.

§19.98.140. Violations.

(a) Any person violating or permitting the violation of or who fails to comply with the terms and conditions of a permit approved pursuant to this title shall be guilty of an infraction, and upon conviction thereof shall be punishable as set forth in Chapter 1.04 of this code.

(b) The remedy provided for in this section is in addition to and does not supersede or limit any and all other remedies, civil or criminal. (Ord. 2623-99 § 1 (part): prior zoning code §§ 19.20.160, 19.46.070, 19.51.050, 19.52.012(i)(part), 19.52.150, 19.54.100, 19.56.120, 19.80.145).

§19.98.100. Revisions or modifications.

Except as otherwise specified in conditions of approval, major changes to an approved project must be reviewed by the original approving authority through the applicable application process. (Ord. 2623-99 § 1 (part)).

§8.16.050. Solid waste containers.

It is unlawful to permit any solid waste or recycling container to remain in public view from any public right-of-way in any R-0, R-1, R-1.5, R-1.7/PD or R-2 district unless the container is stored in the side yard of the premises behind the face of the house. For scheduled curbside pick-up, containers are permitted in public view during the fifty-four-hour period commencing at 12:01 a.m. on the day preceding the day of scheduled pick-up and terminating at six a.m. on the day following such pick-up. (Ord. 2816-06 § 1: Ord. 2614-99 § 1 (part)).

§19.38.030. Recycling and solid waste enclosures.

(a) General requirements.

(1) All residential uses with four or more units and all nonresidential structures approved after January 1, 2001, shall provide adequate enclosures for the storage of recycling containers and solid waste containers. Any additions which equal or exceed thirty percent of the existing floor area of a building or buildings on a site shall require the property owner to provide adequate enclosures for the storage of recycling containers and solid waste containers.

(3) Recycling and solid waste bins, containers, and enclosures shall be adequate in capacity, number and distribution to serve the uses on-site. Enclosures shall fully screen all materials and containers from public view.

(4) Each recycling and solid waste enclosure shall have four sides, one of which shall include a door or gate, unless the containers are stored in a building.

(6) The property owner is responsible for the maintenance and cleanup of recycling and solid waste enclosures.

(7) The recycling and solid waste contractors are responsible for the maintenance of their respective bins and containers.

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PAGE 1 OF 3

Chapter 9.24. ABANDONED

§10.16.150. Parking on private property prohibited.

It is unlawful for any person to park a vehicle in a private driveway or on private property without the direct or implied consent of the owner or person in lawful possession of such driveway or property. (Ord. 2435-93 § 1 (part)).

§19.38.020 Screening of equipment.

(a) General requirements.

(1) All exterior mechanical, electrical or other type equipment whether installed on the ground, roof or walls shall be screened from view from adjoining streets or property.

(2) Such equipment shall not be located between the face of the building and the street.

(3) Screening shall be as high as the highest point of the item being screened. If higher than eighteen inches, shall meet the side and rear yard setbacks of the zoning district.

(4) Screening shall be architecturally compatible with the building upon or adjacent to where it is constructed.

(5) The director of community development shall review the architectural compatibility of proposed screening.

§19.42.030 Noise or sound level.

(a) Operational noise shall not exceed seventy-five dBA at any point on the property line of the premises upon which the noise or sound is generated or produced; provided, however, that the noise or sound level shall not exceed fifty dBA during nighttime or sixty dBA during daytime hours at any point on adjacent residentially zoned property. If the noise occurs during nighttime hours and the enforcing officer has determined that the noise involves a steady, audible tone such as a whine, screech or hum, or is a staccato or intermittent noise (e.g., hammering) or includes music or speech, the allowable noise or sound level shall not exceed forty-five dBA.

OTHER CITIES' PRACTICES

Staff surveyed other cities throughout Santa Clara County regarding their involvement in CC&R enforcement issues. Not all cities in the county were able to comment. Those who did respond revealed that their involvement is similar to that of the City of Sunnyvale. These cities would only get involved if the issue is in direct violation of a project condition of approval or to the city code. None of the jurisdictions proactively keep track of the HOAs or any changes in officers or contact info. But, this is a practice the City can do more diligently to maintain updated list of HOA contacts.

Staff also went beyond Santa Clara County to research whether other cities have further involvement with HOAs and other issues pertaining to CC&Rs beyond project approval. Chandler, Arizona, a city that is about twice the size (in population and area) of Sunnyvale, has devoted a great deal of resources in assisting HOAs and individual homeowners with understanding their roles and responsibilities in living in a CID. Chandler took two approaches in dealing with these issues. Chandler had adopted an ordinance that was last revised in 1999 specifically for HOAs and CID maintenance. The ordinance states that the City shall not enforce CC&Rs as these are the responsibility of the HOA and individual property owners. In an effort to assure that an HOA is formed and continues to operate, the city code requires the developer to appoint the members of the board of directors of the HOA and to submit the names and contact information of the officers to the city clerk; officers are then responsible for notifying the city clerk of any changes. The last known contact information would be considered the responsible party until changes are submitted.

In 2000, the city of Chandler, Arizona created the Office of Neighborhood Programs which provides resources for neighborhood associations and HOAs to build stronger communities. The programs were designed to give HOAs an incentive to register with the city and to be eligible for financial and educational assistance. The programs focus primarily on providing free education for HOAs and individual homeowners, achieved through partnerships between the city, a local non-profit organization and law professionals. The Chandler "HOA Academy" includes an overview of the responsibilities and challenges associated with running a neighborhood or homeowners association, the legal jurisdictions and obligations of HOAs and rights of homeowners. The city staff has found this approach more effective in helping HOAs manage their communities successfully, rather than through direct code enforcement (See web page at: www.chandleraz.gov/default.aspx?pageid=639).

Questions Asked of Other Cities Relating to CC&Rs

What is the process in which your City requires and reviews conditions, covenants and restrictions (CC&Rs) for residential or industrial developments/subdivisions?

- When do you require the creation of CC&Rs and a Homeowner's/Owner's Association?
- Does the City review CC&Rs?
- Who reviews them? City Attorney or Planning Staff?
- What do you review for?
- Do you review the whole document, or do you review only those that pertain to the conditions of approval that were placed on the conditional use permit?

Do you have a set of standard conditions of approval regarding CC&Rs?
(Try to obtain a copy)

Have you received complaints from residents/tenants of common interest developments regarding enforcement of CC&Rs?

How do you assure that the CC&Rs that pertain to the City-imposed conditions of approval are being enforced by the Homeowner's/Owner's Association?

ATTACHMENT C
PAGE 1 OF 3

Have you had to enforce CC&Rs or run into problems regarding CC&Rs?
When and how have you gotten involved?

Other Cities' Involvement in Issues Related to Conditions, Covenants and Restrictions (CC&Rs)

City	Enforcing CC&Rs	Received complaints regarding CC&Rs	Process in which your City requires CC&Rs	Have standard set COAs regarding CC&Rs	How do you assure that the CC&Rs are being enforced	Does your City keep track of the contact information or a change in officer for the HOAs?
Campbell	Does not enforce CC&Rs, unless they happen to correspond to a Code requirement or condition of approval.	Not to their knowledge	CC&Rs are required for developments that proposed commonly maintained areas. A condition of approval for these types of projects requires an HOA be established and CC&Rs to be drawn up. Staff/City Attorney review CC&Rs for conformance to conditions of approval and general consistency.	General set of conditions of approval for CC&Rs that are adjusted on a project specific basis.	If a project's HOA was not enforcing a CC&R requirement required as a condition of approval, that could constitute a code enforcement matter. But, our code enforcement is generally complaint driven, so the City isn't proactively enforcing these types of requirements.	No
Cupertino	Don't enforce CC&Rs. If there are associated conditions from the City they enforce them if a complaint is issued. If an application comes in, require that the homeowners association sign off prior to review.	Yes, but they are considered private disputes. If the complaint can be connected to a City condition, or requirement, then the issue is reviewed.	We require CC&Rs for multi-family or mixed use developments with private common areas, or access roads. Basically if we need an area to be kept up, maintained, either for access or aesthetics we have CC&Rs with associated conditions. The City Atty., Planning and Public Works review the entire doc for any conflicts with Cupertino's Ordinance/requirements.	None	CC&Rs are self enforced. We respond through complaint or a modification is requested.	No. A list with contact numbers or officers is not retained. It is up to the applicant to receive approval for any modification, and provide staff with a letter confirming the review and decision/conditions.
Gilroy	Don't enforce CC&Rs.	If a complaint regarding noncompliance with the CC&Rs, the complainant is referred to the HOA.	Don't require CC&Rs since it is a state requirement.	None	Gets involved only if there is a code violation.	HOAs are not tracked. However, if there were to be any enforcement issues, they would respond following Muni/Zoning and Building codes.

Other Cities' Involvement in Issues Related to Conditions, Covenants and Restrictions (CC&Rs)

City	Enforcing CC&Rs	Received complaints regarding CC&Rs	Process in which your City requires CC&Rs	Have standard set COAs regarding CC&Rs	How do you assure that the CC&Rs are being enforced	Does your City keep track of the contact information or a change in officer for the HOAs?
Los Gatos	Typically dose not get involved with CC&R enforcement . There have not been any issues that have come up in recent memory.	Occasionally, it is usually a case where something isn't being enforced.	CC&Rs required when there is common area and/or improvements (such as trails, open space, landscaping and/or private streets) within the development to be maintained by homeowners.Reviews CC&Rs typically prior to recordation of final map. They are reviewed by Town Attorney and staff (typically Engineering and Planning) for compliance with any applicable conditions of approval and that they don't include something that is in direct conflict with the Town Code. Staff from appropriate departments review their conditions or criteria and the Town Attorney looks at whole document.	They are added on an as needed basis depending on the project characteristics.	If a condition to the project is not being met, and the Town is made aware of it, the Code Compliance officer can pursue it.	HOAs are not tracked.
Morgan Hill	Does not enforce CC&Rs. The city will enforce any breach of any maintenance obligation as required by the original approval.	Yes	Requires CC&Rs for certain commercial and industrial development for maintenance of shared parking lots and landscaping. CC&Rs and HOAs required to oversee the maintenance of common area landscaping, recreational amenities and private drives and access to public utilities. Planning Staff and City Atty. review CC&Rs for a consistency with standard conditions and review only those provisions that pertain to conditions of approval.	A standard condition states that "it shall be the responsibility of each Owner and the Association to insure that any changes or modifications to the Project or any Unit are in compliance with the original City conditions of approval of the Project."	The City has authority under Section 1(b) in the attached Standard Conditions to enforce any breach of any maintenance obligation or any change and/or modifications to the project.	The city maintains a list of HOAs but does not keep track of any changes in officers on the boards of directors.
Santa Clara	No. They refer complaints (which are typically the result of landscaping or parking concerns) to the HOA.	Yes.	Requires CC&Rs for Planned Developments (the City has a PD Ordinance). Planning Staff as well as the City Attorney review the CC&Rs. The Planning staff is concerned with landscaping, maintenance, parking issues, etc.	No. COAs are specific to individual CC&Rs	It is the responsibility of the HOA.	No
Milpitas						
Mountain View						
Palo Alto						
San Jose						

From: Dale Huber, Neighborhood Preservation
Date: June 10, 2008
Subject: Complaints to Neighborhood Preservation that have included CC&Rs
(covenants, conditions & restrictions)

In the last two-and-a half-years (September 2005 through May 2008) Neighborhood Preservation has received 15 phone calls that include questions or concerns related to CC&Rs. All of these related phone call resulted in investigation by Neighborhood Preservation staff, but not all the phone calls resulted in enforcement cases related to the CC&Rs.

Neighborhood Preservation does not track and sum all phone calls received so we do not know what the percentage of phone calls including CC&Rs relative to the number of phone calls received. But we do know that in the past two-and-a-half years approximately 7600 Neighborhood Preservation Cases have been opened up. The ratio of CC&R phone calls to Neighborhood Preservation cases is 15/7600 or 0.2%.

The topics in the CC&R related phone calls were;

- HOA member not paying their dues and storing trash in the back yard (194 Anaheim Terrace)
- Can an homeowner in a HOA change the plants in their front yard (Polk and Iowa)
- Where is the allowable placement of trash containers on a property in the townhouse development (Maria Lane)
- A window to a bathroom on the first floor was added to a townhouse (125 S Mary)
- Balcony added without a permit (832 Kin ATTACHMENT D
- HOA painted curbs red without a permit f PAGE 1 OF 5 ling Terrace)
- HOA modified parking plan and spaces w he City (Riesling Terrace)
- Resident in a HOA added a concrete walkway without approval of the HOA (Polk and Iowa)
- Resident in a HOA contesting citations for outside storage issued by the HOA
- Resident in a HOA said the HOA is doing nothing about bird droppings
- Walls built in the garage of townhouses in a HOA. HOA requested help (407, 410, 412 Timor Terrace)
- Storage in the garage of a townhouse in a HOA (971 Belmont Terrace)
- HOA requested help with trash container storage, overgrown vegetation, un-permitted structures, use of garages as storage issues (Cottage Grove Terrace)
- Storage area of a townhouse in a HOA converted to a living area (Kingfisher Terrace)
- HOA wanted to know who is responsible for overgrown vegetation in their development.(Belleville at Homestead)

PROCESS FOR REVIEW OF NEW EXTERIOR MECHANICAL EQUIPMENT AND AIR CONDITIONING UNIT IN CIDs

1. A Miscellaneous Plan Permit (MPP) would be required for the unit
2. As part of the application for an MPP, Planning would request the following items:
 - a. A letter from the Homeowners Association approving the addition of the unit.
 - b. Clear plans showing the location of the unit, the amount of space taken by the unit, and the amount that would remain (if on a patio, balcony or common open space). Also, an elevation drawing showing the visual impact of the unit to the surrounding area.
 - c. Specific unit model number along with the specifications of size of the unit and the noise level.
3. Staff reviews the application for the following:
 - a. Review the original approval of the complex, specifically for discussion or conditions of approval of exterior mechanical equipment/air conditioning unit placement, noise impacts from the units or required usable open space requirements.
 - b. Determine if the unit meets the Code requirements for noise by reviewing the specification sheet provided for the unit.
 - c. Determine any visual impacts of the unit.
 - d. Consider the possible loss of usable open space.
4. If the unit meets all the requirements noted above, the application can be approved with the following considerations and conditions:
 - a. Ensure the unit does not rATTACHMENT D able open space requirements, if established by thPAGE 1 OF 5 1.
 - b. Require the unit to meet the noi ts as noted in the Code.
 - c. Include any screening that could mitigate the visual impacts.
5. Any action by the Planning Division can be appealed to the Planning Commission within 15 days of the action taken.
6. There are no noticing requirements to surrounding property owners for an MPP, unless a specific request is given to the Planning Division, at which time a courtesy notice would be sent.
7. If the MPP is appealed, the Planning Commission is the final hearing body.

OPTION 5A: CREATE ORDINANCE TO REQUIRE HOAs TO REGISTER

Pros

- Allow the City to initiate enforcement action when issues arise by knowing who to contact.
- Ability to fully develop a database of all CIDs and updated contacts of HOA board members and property managers in the City.
- Increase circulation of City informational materials so that communities are aware of City rules and regulations and of their own responsibilities.
- Ability to require HOAs to periodically submit demonstration of compliance with City regulations and verify that CC&Rs pertaining to the City have not been modified without approval by the City. Some HOAs have amended the CC&Rs to try to bind the City to responsibilities beyond that originally described in the approval of a CID and in the initial preparation of the CC&Rs without consent or approval by the City.

Cons

- Pending changes to the Davis-Stirling Act may result in better understanding of HOA formation and responsibilities, and assist HOAs in being more active and/or effective.
- New HOAs could be required to register as a condition of the approval of a new subdivision project.
- Although the State requires the formation of an HOA, not all HOAs are active and there may not be a known entity managing the common areas for the City to work with. The City cannot compel an older, existing development to have an active HOA even with the creation of a new ordinance, unless there was a specific condition that required the formation of an HOA in the approval of the CID. A COA that requires the developer/Owner of a CID to create a HOA with state law has been imposed on relatively newer developments.
- A large amount of City resources would be required to implement the new provisions.
- A large amount of City resources would be required to find and inform all CIDs of the provisions a new ordinance would have.
- All CC&R provisions are not directly enforceable by the City because they are private agreements between homeowners. State law identifies the association and the individual homeowner as the enforcement authority of CC&Rs. The City can only compel the HOA to enforce CC&R items related to general public health, safety and welfare; many of these types of issues are already covered in city-wide regulations (e.g. visibility of trash containers) or COAs (e.g. requiring garage to be available for parking, location of air conditioning units).
- There may be an increase in requests to the City to compel HOAs to enforce CC&Rs, whether or not they are issues the City has control over.

- The City could compel HOAs to comply with code and COA requirements, but HOAs may not have the resources (e.g. reserves funding to maintain common areas), or know how to properly manage resources to cooperate.

OPTION 5B: EXPAND CITY SERVICES TO CIDs

Pros

- Foster a better sense of community City-wide and within individual communities.
- HOAs can better understand their responsibilities as well as the City's and obtain the tools necessary to manage their community more successfully.
- Providing education to CID residents may decrease violations as more people become more aware of rules and regulations.
- Increase circulation of City informational materials so that communities are aware of City rules and regulations and of their own responsibilities.

Cons

- The City has no legal obligation to train or educate HOAs of their responsibilities, and it would cost the City a large amount of resources to implement such a program.
- There are organizations out there that already provide educational services to CID residents.
- It would cost the City a large amount of resources to implement a separate grant program for CIDs. There is already a grant program available for neighborhood associations, and a HOA could become its own neighborhood association.

OPTION 5C: DEVELOP TOOLS FOR HOA EDUCATION AND ASSISTANCE

Pros

- Foster a better sense of community City-wide and within individual communities.
- HOAs can better understand their responsibilities as well as the City's and obtain the tools necessary to manage their community more successfully.
- Educational tools may decrease violations as more people become more aware of rules and regulations.
- Allow the City to initiate enforcement action when issues arise by knowing who to contact.
- Ability to develop a better database of CIDs and updated contacts of HOA board members and property managers in the City.
- Increase circulation of City informational materials so that communities are aware of City rules and regulations and of their own responsibilities.

- Residents of CIDs may be able to take advantage of the existing Neighborhood Association Registry program through which they could benefit from efficient communication with City staff on topics of neighborhood concern (RTC 07-318). Two of Sunnyvale's 24 currently registered neighborhood associations are CIDs.
- Ability to require HOAs to periodically submit demonstration of compliance with City regulations and verify that CC&Rs pertaining to the City have not been modified without approval by the City. Some HOAs have amended the CC&Rs to try to bind the City to responsibilities beyond that originally described in the approval of a CID and in the initial preparation of the CC&Rs without consent or approval by the City.

Cons

- The City has no legal obligation to train or educate HOAs of their responsibilities.
- It would cost the City a large amount of resources to implement the tools described and any other subsequent actions or programs.
- Although residents of CIDs are eligible and encouraged to join the Neighborhood Association Registry for the purposes of community building and civic engagement, the primary challenge of a CID becoming a registered neighborhood association is differentiating between official HOA business and community building efforts. Because of limited staff time and resources, it would also take only a fraction of the City's estimated 250 CIDs joining the Neighborhood Association Registry to significantly impact the programs effectiveness in serving the currently registered neighborhood associations.
- Referring parties to mediation services will not be effective unless both parties are willing to participate in mediation services.

Community Outreach Meeting
Enforceability of CC&Rs
August 28, 2008 10a.m. and 7p.m.

Topics Discussed

- Common concerns:
 - Lack of resources, education and/or experience to effectively run a HOA and manage a common interest development
 - Neighbor disputes
 - CC&Rs are outdated
 - Exterior modifications
 - First-time homeowners have a difficulty in shifting mentalities from renter to homeowner
 - Confusion in who enforces what and when the City can get involved
 - Lack of funding reserves, especially in older developments
- HOA resources, i.e. ECHO (Executive Council of Homeowners) is a good resource for HOA management and education
- HOAs restrictions (not mentioned in the municipal code) supersede city restrictions
- Current City involvement –
 - The City responds to HOA complaints that violate zoning code or COAs
 - Any changes made to a planned development that do not comply with COAs trigger city involvement

Questions/Suggestions for the City

- Require property managers to be certified (there is no certification/licensing process for management companies required by the State)
- The City should create a plan to help HOAs get started
- Help HOAs be aware of state laws
- Help HOAs be aware of each other to enable them to network, discuss common problems and discuss how others have resolved them
- Notify HOAs if a complaint on a homeowner has been filed with the City
- How can the City help HOAs bring CC&Rs into compliance with new laws
 - How can smaller HOAs enforce CC&Rs with out the expense of the legal process?
- Audits of the HOA property manager/management should be used to police HOAs
- Public Safety should have a greater presence on private streets and within gated communities
- Make resources available to HOAs through the City website
- The City should provide education or resources for HOAs
- Identify a decision-making body to resolve HOA conflicts

- Identify a resource for HOAs to go to when a situation arises
- The City should make CC&Rs more clear and accessible
- Guidelines for HOAs should be available from the City

PLANNING COMMISSION MINUTES OF NOVEMBER 10, 2008

2008-0482 - Determine the Enforceability of CC&Rs (conditions, covenants & restrictions) for Violations to City Code and Project Approvals – Study Issue to determine the various issues associated with residential common interest developments (i.e., townhomes, condominiums, or detached single-family homes with common areas); how these issues can be better addressed; and the level of involvement the City could undertake in the enforcement of CC&Rs. RZ (*Continued from October 13, 2008*)

Rosemarie Zulueta, Assistant Planner, presented the staff report. She said that staff recommendations include providing educational resources to homeowners associations (HOA) members, to provide specific provisions in the conditions of approval (COAs) which address common issues, and to better articulate the COAs so they can be better enforced by the HOAs.

Chair Rowe commented to staff about several areas of the report that she felt needed to be reworded. The pages she referred to were: page 5, regarding the “roof of a condominium” commenting to staff that the wording should be more general; page 9, regarding the ARC (architectural review committee) and felt this wording needed to be more general; and page 12, regarding Berding and Weil asking whether this should be a more general statement like law associations affiliated with HOAs. **Trudi Ryan**, Planning Officer, said that the Commission can provide recommendation to make the changes. Comm. Rowe referred to page 14 and 15 regarding alternatives confirming with staff that Alternative A would require an ordinance and C, D, and E would not.

Chair Rowe opened the public hearing.

Brandon Stevens, a Sunnyvale resident, said he does not support the City getting involved in the enforceability of CC&Rs. He said other cities do not enforce the CC&Rs, it is a drain on City time and resources, and it is a risk and liability to the City. He said the other concept presented in the staff report is training programs for HOAs. He said with the current economic situation, tax revenues will be down, and taking on new services that the City will have to pay for does not seem like a good idea at this time.

Comm. McKenna discussed with Mr. Stevens the staff recommendation, clarifying that the staff recommendation was not to be involved in the CC&R enforcement.

Chair Rowe discussed with staff that the recommendation is to encourage that existing HOAs register with the City and to require that future HOAs register so the City can communicate with the HOAs. Chair Rowe said she wanted to emphasize that even if the Commission directed an ordinance be written that the enforcement of CC&Rs would be in the hands of the HOAs and the City would not enforce the CC&Rs. Ms. Ryan said that possibly Mr. Stevens may have noticed some of the fiscal impact comments in the

report which are not commenting on the staff recommendation solely, but include other alternatives that the Council may consider that are not necessarily recommended by staff.

Jim Griffith, a Sunnyvale resident, said that he thinks the study misses the point in some areas. He commented that when the City approves a development the City has a big picture idea of what the development should be which does not necessarily get passed on to the HOA. Mr. Griffith discussed parking in newer developments and said his understanding is that the current City policy is that any new development should be able to meet its own parking needs through on-site parking. He said in the Danbury Place development the CC&Rs give the HOA the flexibility to set the resident versus guest parking percentages. He said by the time the HOA was formed the developer recommended a 100% guest parking policy which is what they did. He said the result is parking problems as any resident that cannot park on-site is forced to park off-site. He said the HOA had no idea what the City's intent was. He said he thinks that the City needs to spend time in developing the CC&Rs so the City's intent is clear. He said in general he supports staff's recommendation. He said he thinks what staff is proposing is good, that he is a little concerned about the parking plan requirement, and does not think the City should get involved with the enforcement of CC&Rs. He said preparing an ordinance for the whole City when the problems are more regional does not seem like a good idea. He said one way he thinks the City could do a better job along with the development of CC&Rs, is to provide a letter of transmittal developed by the Community Development Department that indicates certain issues to be considered when setting HOA rules.

Arthur Schwartz, a Sunnyvale resident and single-family homeowner spoke about CC&Rs related to single-family homes. Mr. Schwartz said he lives in an Eichler home and discussed the architectural controls the Eichlers specified with the intent of the controls to be continuous into the future. He asked that the Commission recommend some sort of registration system for single-family developments such as the Fairbrae tracts, to register the information on the CC&Rs so a homeowner can find out what their rights are, not expecting the City to enforce anything, but to be a source of information.

Gary Swierski, a Sunnyvale resident, referred to page 15 of the report item C.3, which says, "Direct HOAs and homeowners to mediation services (e.g., Project Sentinel)" and commented that Project Sentinel is not qualified to mediate disputes in HOAs. He said that he thinks the City should work with builders, developers and attorneys to write future bylaws and CC&Rs in layman's terms so they are easier to understand. He asked if all the City is recommending be done are what is listed as the staff recommendation, why were 230 hours spent on the Study Issue report? He commented that in his housing area the HOA enforces the CC&Rs and that some of the calls referred to in Attachment C were people being lazy and not contacting the HOA, but the City.

Connie Portele, a Sunnyvale resident, said that unless there is a high volume of complaints, that she thinks government should not go where it does not need to be, especially with single-family CC&Rs.

Chair Rowe closed the public hearing.

Comm. Klein asked if staff knows how many residents with an HOA have been referred to Project Sentinel for mediation regarding CC&Rs. Ms. Ryan said there have not been a lot. She said staff usually recommends that a resident first meet with their HOA as this is the HOA's role. Ms. Ryan said if there are disagreements then staff might refer residents to Project Sentinel.

Vice Chair Chang discussed with staff, developer guidelines and HOA boards and enforceability. Ms. Ryan said that what is being addressed is whether the City can compel the HOAs to enforce their CC&Rs. **Kathryn Berry**, Senior Assistant City Attorney, said one of the conditions of approval is that a drafted declaration of the CC&Rs be submitted to the City for review by the Office of the City Attorney and by the Director of Community Development. She said one thing being required is that the COAs be attached as an exhibit to the CC&RS so homeowners are aware of the COAs. She said the City is imposing COAs on the HOA to address certain things and not as an avenue for the City to get involved. Vice Chair Chang said that a member of the public said the HOA changed the parking requirements for unassigned parking spaces at Danbury Place to guest use only. Ms. Ryan said, specifically on that issue, staff has completed a study and recently adopted ordinances that modify how we will handle parking. She said recent code change would include how unassigned spaces would be used. Vice Chair Chang confirmed with staff that there is a new code requirement requiring multi-family development plans to provide a parking management plan.

Comm. McKenna commented that this study is not about single-family homes.

Chair Rowe asked staff about Project Sentinel understanding how CIDs (Common Interest Developments) work, and asked if possibly the report should omit the specific name and replace it with mediation services. Ms. Ryan said that currently the City contracts with Project Sentinel primarily for tenant landlord disputes and also other housing related disputes including HOAs. She said Project Sentinel provides this service to the City and is available to residents at no charge. She said residents can use other mediation services at their own expense.

Comm. McKenna moved for the staff recommendation to recommend the City Council adopt Alternative C.1-5, D.1-3 and E to develop tools for HOA education assistance and to include specific COAs to address common issues in CIDs. **Comm. Travis** seconded the motion.

Comm. McKenna said that the only thing she might want to change is **Alternative C.3**, to direct HOAs and homeowners to appropriate mediation services and not put in a specific service. She said staff could let them know that Project Sentinel is free, or they could go their own way and pick someone else to do mediation. **The seconder accepted the Friendly Amendment.** Comm. McKenna and Ms. Ryan discussed wording for the Friendly Amendment with staff suggesting that the wording could be to **“recommend that the HOA and resident may want to use mediation services”**.

Comm. Sulser said he has mixed feelings about this Study Issue. He said members of the public have expressed concern about the City enforcing CC&Rs. He said what the Commission is recommending tonight is reasonable and he can support the motion. He said largely this recommendation is for educational programs and assistance for HOAs and that this is about as far as he is willing to go regarding this subject.

Comm. McKenna said she thinks the staff recommendation is a good one. She said what she likes about it is the recommendation includes the issues that come up most often in dealing with HOAs. She said staff is recommending that there be specific COAs for CIDs to address common complaints with which the City has become involved including, parking, trash bin replacement and storage, and air conditioning units. She said staff is saying that with any new developments that COAs will outline these areas specifically. She said she thinks that is the most important part of this Study, in addition to developing tools for education and assistance while not getting involved in day-to-day operations or in overseeing the rules or regulations.

Vice Chair Chang said he would be supporting the motion. He said the current motion will address the educational portion and the City would have a program to get more information and direct homeowners back to their HOAs.

ACTION: Comm. McKenna made a motion on 2008-0482 to recommend to City Council to adopt Alternative C.1-5, D.1-3 and E to develop tools for HOA education assistance and to include specific COAs to address common issues in CIDs with a modification to Alternative C.3 that the wording be changed to **“Recommend HOAs and Homeowners use mediation services”**. Comm. Travis seconded. Motion carried unanimously, 7-0.

APPEAL OPTIONS: This recommendation will be forwarded to City Council for consideration at the December 16, 2008 City Council meeting.