REPORT TO MAYOR AND COUNCIL NO: _____

DRAFT FOR PLANNING COMMISSION REVIEW
October 13, 2008

Council Meeting: October 21, 2008

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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). Although the City does not have the legal authority to enforce private property agreements, residents have come to the City for assistance when issues regarding CC&Rs arise. The most common complaints received from residents of CIDs relate to inadequate parking, minor modifications to individual properties, trash containers left in public view and the impacts of the installation of new air conditioning units.

Staff has researched State law to determine the extent of the authority of public agencies in enforcing CC&Rs. The State of California gives legal authority to HOAs and individual homeowners to enforce CC&Rs. Public agencies do not have authority to enforce CC&Rs because they are private agreements between individual owners and the HOA. 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 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.

Staff recommends that the standard COAs required of new CIDs be revised so that they could be more easily enforced by community associations. Enforcement of private property matters within CIDs is best handled by the association members themselves; however, staff recommends educational opportunities and other resources be provided to owners in CIDs to aid in managing their properties and in carrying out their responsibilities.

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BACKGROUND

This study issue ranked number one on the Community Development Department Study Calendar for 2008 and focuses primarily on the issues regarding residential CIDs.

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 interest is coupled with an interest in the common area. CIDs can take the form of residential multi-story building or complex, single-family detached homes, attached townhomes, or industrial or commercial condominiums. In Sunnyvale, there are over 150 HOAs with known contact information although many more CIDs exist in the City. The City does not currently keep track of HOAs.

In 1985, the Davis-Stirling Common Interest Development Act (Civil Code § 1353-1378) was passed by the state of California. The Davis-Stirling Act contains all laws pertaining to CIDs and requires all CIDs to be managed by an association. Developers are required to create CC&Rs and bylaws, which are the governing documents that dictate how the association operates and what rules the owners – and their tenants and guests – must obey. The CC&Rs are legally enforceable by the association and individual owners, and nothing in the CC&Rs can take precedence over federal, state or local laws.

Over time, the City has required CIDs to include the COAs in their CC&Rs as part of the development approval. This is to ensure that common areas within these developments are maintained to a certain standard as required by the 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.

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

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The City is also currently engaged in a study to re-evaluate the Neighborhood Preservation (NP) program to determine if more aggressive procedures and methods should be implemented. City Council will consider staff's recommendations on October 14, 2008.

EXISTING POLICY

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 B.

General Plan Goals and Policies

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.

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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.

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. Other key statutes include the Subdivision Map Act, Subdivided Lands Act and the Nonprofit Mutual Benefit Corporation Law. 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.

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.

DISCUSSION

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.

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HOAs and CC&R Enforcement Responsibilities

CIDs are characterized by the individual ownership of property coupled with the right to common property. Common property can include landscaped areas, recreational facilities, private streets or the exterior walls and roof of a condominium. By state law, CIDs are required to be managed by an association with an elected board of directors to govern the association. The declaration that CIDs are required to record includes CC&Rs and bylaws. These documents are private agreements that contain the rules for the operation and management of the association, and the responsibilities to maintain the common areas. They also state the obligation to collect and pay assessment fees to fund the activities of the association. Every property owner is required to be a member of the association and the declaration is recorded with the title of each property.

HOAs and individual homeowners have the legal authority to enforce the CC&Rs. 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). 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.

City Involvement in Common Enforcement Issues

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 C) that have prompted an investigation. Not all phone calls resulted in enforcement cases. These calls included topics such as requirements for minor changes to private and common property and storage of trash containers.

The authority of a city to enforce land use laws stems from its police power to protect the health, safety and welfare of the public. A local agency may make

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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 free speech, the right of assembly, 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. The City currently requires as a condition of the approval of the development that all COAs 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. Confusion about the enforcement authority of CC&Rs could arise, and have arisen, from this procedure. This confusion is partly due to the wording of the COAs and how the COAs are incorporated into the CC&Rs.

In commercial and industrial areas, Neighborhood Preservation specialists may 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. Compliance is most frequently pursued with the appropriate person in the business such as the operations manager, facilities manager, marketing manager or the person on record for the business license. If a violation has been made within a CID, Neighborhood Preservation staff would first have to determine whether the violation is on common area or on an individual's property. If the violation is on individual property, enforcement would be pursued directly with the property owner. If on common area, enforcement would be pursued with the party determined to be directly responsible for creating the violation, be it an individual or the HOA.

Staff has identified four main issues relating to the operations of CIDs that residents have asked the City to provide assistance with. The following is a discussion of each issue and the City's current involvement in each.

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1. ***Parking and Maintenance of Garage Spaces:*** Homeowners have complained about the seemingly inadequate parking 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. These COAs are required to be incorporated into the CC&Rs, which the HOA and individual homeowners have the authority to enforce. However, residents have turned to the City to resolve such parking issues.

Enforcement of these operational issues can be problematic, and may involve a large amount of City resources and legal issues. Garage areas are considered private property and the City would first have to procure a civil inspection warrant. In addition, if the public interest is to control parking problems, 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 parking patterns. They could, therefore, be better equipped to enforce parking issues. The City can and will cite vehicles illegally parked in required, and legally marked fire access lanes and handicap accessible parking spaces. The City can 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. 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, is enforceable only by the HOA and individual owners.

The City completed a study regarding parking issues in multi-family and commercial developments in response to similar complaints. In the study, it was found that the City's current parking requirements were adequate and that the complaints stem from a lack of parking management. On February 26, 2008, City Council made a series of policy decisions to better accommodate parking needs in multi-family residential and commercial developments. Among the changes is the requirement of a parking management plan for any new mixed use, multi-family residential or commercial shopping center developments. Planning staff is also completing a handout with a variety of tools to assist new and existing multi-family developments manage parking. The implementing ordinance for these changes was adopted by Council on September 30, 2008.

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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 single-family and multi-family developments to store recycling and solid waste containers so that they are screened from public view. If a complaint falls under the current code provisions as referenced above and listed in full in Attachment B, the City can 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.

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 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 (ARC) to review and approve any physical modifications to individual and common properties within the CID.

The 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 may not make the changes approved through their own process 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 obtain approval from the City for a minor modification to their own property, that homeowner would still have to obtain approval from the ARC or other review committee if the CC&Rs require as such. If the modification were on common property, the City would require authorization from the HOA. If the modification were on private property within a CID, the City would advise the applicant to first obtain authorization from the HOA to make the application, or authorization for the

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proposed modification so that the applicant is aware of any applicable CC&R provisions.

4. *Installation of New Exterior Air Conditioning Units:* The placement of 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 the air conditioner unit locations were addressed and detailed in the original project approval, staff will review the proposal in conformance with the approved plan. No separate planning application is required; it is reviewed at time of building permit.

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 D).

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 a summary of the findings are found 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. 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 and with 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.

Summary of Issues

The experiences in Sunnyvale relative to CIDs can be divided between older developments and relatively recent developments. Parking issues are more prevalent in newer projects that have not worked out their parking management techniques or older developments that are legal non-conforming for number of spaces. Trash container issues are more common in developments that precede the requirement for centralized enclosures for developments over four units. Minor modifications to properties are present in both newer and older developments. Installation of air conditioners is primarily an issue in older developments.

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. More recent projects have included conditions that specify criteria for air conditioner placement. In 2000, an ordinance was adopted that required centralized trash enclosures. Recently, the City Council approved new zoning code requirements for parking management plans for multi-family residential and commercial developments.

Also, it is important to note that issues often exist between the HOA and an individual homeowner, or between homeowners:

- HOA and homeowner, or neighboring homeowners, disagree on private matters, which tend to escalate.
- HOA is inactive.
- Volunteer HOA board members are inexperienced and/or uneducated about managing an organization with many rules and regulations.
- CID law is complex and homeowners do not understand their rights and obligations.

These issues can hamper the effectiveness of a HOA and the application of CC&Rs.

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Options

Because the City's legal authority relative to CC&Rs is limited there are two main options available in terms of changing the City involvement in the enforcement of CC&Rs: create a legal context for authority for City enforcement of CC&Rs and provide tools to HOAs for more effective self regulation.

Legal Context for City Enforcement of CC&Rs

The City could adopt an ordinance (similar to the Chandler, Arizona ordinance) that requires existing and new HOAs to register and states that the City shall not enforce CC&Rs as these are the responsibility of the HOA; however it allows the City to initiate enforcement action to compel the HOAs to enforce their CC&Rs. 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.

Issues:

- 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 that comports with state law has been imposed on relatively newer developments.
- 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 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).
- 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.
- 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) to cooperate.

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Tools for more Effective Self Regulation of HOAs

Below is a selection of tools to assist HOAs in self-regulating:

- The City could offer educational materials and classes to HOAs so that residents understand the responsibilities and limitations of HOAs. Educational materials could also cover the role the City plays in CIDs.
- Encourage existing HOAs to register with the City and to maintain current officers' names and contact information.
- Require, in the COAs, future HOAs to register with the City and to maintain current officers' names and contact information.
- Include COAs for HOA issues:
    - Retain zoning code provisions to require a parking management plan.
    - Require a trash bin placement plan for projects with individual trash containers.
    - Continue to require the air conditioning units locations and noise specifications to be included as part of the original permit for the development, and require future installations to meet those criteria.
- Create a grant program for HOAs to fund educational efforts and community-building activities.
- Refer CID homeowners to mediation service (e.g., Project Sentinel).
- Provide information to HOAs about current neighborhood support programs (Neighborhood and Community Resources Division).
- Support HOAs through a list of resources and/or web links; include information about organizations and agencies that aim to provide education 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)
    - Berding and Weil, LLP
- For future CIDs, require COAs to remind HOAs that there shall not be language binding the City to any responsibility or requirement beyond that described in the originally approved document.

Issues:

- The City has no legal obligation to train or educate HOAs of their responsibilities.
- There is a cost to the City to add new services.
- CC&Rs need to be current and accurate (i.e. the CC&Rs cannot include language that suggests the City or other entity is responsible when that entity is not a party to the CC&Rs).
- Both parties must be willing to participate in mediation services.

FISCAL IMPACT

If the City were to adopt an ordinance requiring HOAs to register, there would likely be an increase in enforcement cases, requiring more staff time. This additional time cannot be quantified 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.

The general fund would be affected if a separate grant program is created for HOAs.

If the City develops a proactive program to find, contact and train HOAs, more staff resources would be required in outreach and providing educational materials, and creating a Webpage for HOAs. For a simpler program of creating a Webpage with resource information, about 40 hours of staff time would be required. The majority of these costs would likely be shared between the Land Use Planning Program and the Neighborhood and Community Resources Program.

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 F.

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.

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ALTERNATIVES

A. Direct staff to prepare an ordinance that requires HOAs to register and states that the City shall not enforce CC&Rs as these are the responsibility of the HOA.

B. Develop tools for HOA education and assistance.

1. Require new HOAs to register with the City and to maintain current officers' names and contact information.
2. Encourage existing HOAs to register with the City and to maintain current officers' names and contact information.
3. Provide HOAs with a list of resources and/or web links to address common problems or issues.
4. Direct HOAs and homeowners to mediation services (e.g., Project Sentinel).
5. Provide information to HOAs about current neighborhood support programs (neighborhood and community resources division).
6. Include information and resources to HOAs on the City Website on organizations and agencies that assist HOAs on the City Website.
7. Create a grant program for HOAs to fund educational efforts and community-building activities.

C. Direct staff to include specific Conditions of Approval for new Common Interest Developments to address common complaints to which the City has involvement:

1. Require a parking management plan,
2. Require proper trash bin placement and storage,
3. Require the air conditioning units locations and noise specifications to be included as part of the original permit for the development, and require future installations to meet those criteria.

D. Direct staff to better articulate Conditions of Approval for new Common Interest Developments to specify the responsible party for certain conditions (e.g. HOA as the responsible party to enforce operational conditions such as maintenance of garage spaces).

RECOMMENDATION

Staff recommends Council adopt Alternatives B.1-6, C.1-4 and D to develop tools for HOA education assistance and to include specific COAs to address common issues in CIDs. Because the CC&Rs are private documents that bind

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the property owner and HOAs, and not the City, all aspects of CC&Rs are enforced by the HOA and individual homeowners of a given development. The City has authority only in cases where specific COAs or City codes are violated. Given the legal limitations that the City has in getting involved with CIDs, 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. Providing resources and educational tools would also assist current and future CID homeowners in understanding what it means to be a member of an HOA and the importance of an HOA.

As mentioned in the beginning of the report, the purpose of this Study Issue 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. Parking, minor modifications to individual properties, trash containers left in public view and the impacts of the installation of new air conditioning units have been shown to be the most common complaints to which the City has involvement. These common issues can be addressed in the following ways:

- **New Common Interest Developments:** With the recently adopted practices and regulations, staff believes the issues of parking, trash containers and air conditioners will be adequately addressed in newer developments. The process for minor modifications to property should be more clearly articulated in the project COAs. To avoid confusion and uncertainty about who enforces CC&R provisions, staff recommends specifying in the COAs those certain conditions that the HOA would be responsible for, i.e. maintenance of garage spaces. Staff recommends that new HOAs be required, in the COAs of a new CID, to register with the City and to maintain current officers' names and contact information so that the City would know who to contact when enforcement issues arise, and also to provide educational resources to CID residents. The creation of an ordinance to require new HOAs to register is not necessary as this can be required through COAs.

- **Older Common Interest Developments:** Because the City cannot retroactively impose new COAs through the creation of a new ordinance, the City should instead, provide support to individual homeowners and HOAs to more effectively manage their properties. Staff recommends encouraging HOAs to register with the City so that the City can not only be aware of the proper party to work with when these common enforcement issues arise, but also to extend opportunities for education and community engagement. The City can also directly inform HOAs and individual homeowners of the permit requirements for minor modifications to properties.

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Other issues are more specific to the residents of the CIDs that are outside City authority, and can include payment of dues, the number of animals in a unit, neighbor disputes, lack of reserves, general upkeep of a unit, etc. Unless any of these issues reach a health or safety concern, the City has no involvement in their enforcement or resolution.

The City can get involved in helping to educate future and existing CID residents and provide resources to increase their chance for success. Education 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, homeowners have found that CIDs are best managed by those who hold the best interest of the residents, and those are the homeowners themselves. The common issue is that these homeowners may not fully understand the various aspects of HOA membership and the law.

Staff recommends providing information to HOAs about the City's Neighborhood Association Registry and grant program. A separate grant program for HOAs may not be necessary as it is possible for HOAs to be their own neighborhood associations; however, they would need to be clear about what their duties are as a HOA and then as a neighborhood association. As a registered neighborhood association, they could have access to grants for activities that build a sense of community and strengthen communication among members, City outreach meeting notices, press releases regarding the City, the public hearing process, etc. Two CIDs are currently registered as neighborhood associations with the City.

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 seem to be struggling in taking on their responsibilities.

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Attachments

A. 2008 Study Issue Paper
B. Sunnyvale Municipal Code References to Enforcement and Other Issues
C. Neighborhood Preservation Division Report of Complaints
D. Process for Review of New Air Conditioning Unit in CIDs
E. Table of Other Cities' Policies/Practices
F. Notes from the Community Outreach Meetings

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 interity 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 publice 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**

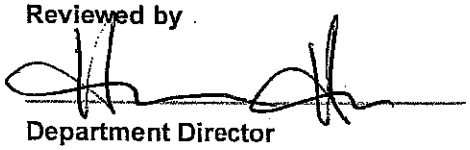
Managers

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

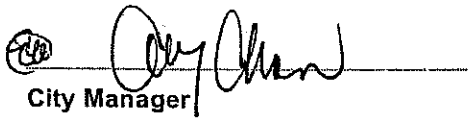
Note: If staff's recommendation is 'For Study' or 'Against Study', the Director should note the relative importance of this Study to other major projects that the Department is currently working on or that are soon to begin, and the impact on existing services/priorities.

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 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	

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.

(b) For appurtenant, temporary, hazardous materials storage or emergency shelter container uses conditions may include those determined to be reasonably necessary in connection with the hours of operation, visual screening, cleanup of the location or premises, use of lights or lighting or other means of illumination, or operation of any loudspeaker or sound amplification or any other aspect of the project, in order to prevent the creation of any nuisance or annoyance to the occupants of or commercial visitors to adjacent buildings or premises or any public nuisances.

(c) In addition to any other conditions imposed, the director of community development may require the posting of a cash security in an amount sufficient to guarantee the removal of any fixtures, equipment or stands and the cleanup of the location or premises immediately upon the expiration of any temporary use. (Ord. 2623-99 § 1 (part): prior zoning code §§ 19.32.070(d)(1)—(e), 19.52.030(g)).

§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.

Chapter 9.24. ABANDONED VEHICLES.

§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.

ATTACHMENT C
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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 Kingfisher Terrace)
- HOA painted curbs red without a permit from the City (Riesling Terrace)
- HOA modified parking plan and spaces without consulting the 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 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 air conditioner 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 reduce the usable open space requirements, if established by the prior approval.
    b. Require the unit to meet the noise requirements 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.

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?

Have you had to enforce CC&Rs or run into conflicts 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
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.

ATTACHMENT E
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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?
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

ATTACHMENT E
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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