



**COMMUNITY DEVELOPMENT DEPARTMENT
OFFICE MEMORANDUM**

DATE: **July 13, 2009**

TO: **Planning Commission**

FROM: **Trudi Ryan, Planning Officer** *Trudi Ryan*

RE: **Follow-up to Council Study Issue:
Determine Enforceability of CC&Rs for Violations to City Code
and Project Approvals (RTC 09-090)**

The attached report (RTC 09-164) was presented to the City Council on June 23, 2009 as an Information Only Report/Item. The Council has referred the item back to the Planning Commission for review and recommendations.

Planning Commission should make a recommendation to the City Council on the sufficiency of the education plan for common interest developments.

Attachments:

A. RTC 09-164



Council Meeting: June 23, 2009

SUBJECT: Follow-up to Council Study Issue (RTC 09-090): Determine Enforceability of CC&Rs for Violations to City Code and Project Approvals (Information Only)

DISCUSSION

On April 7, 2009, the City Council made a series of policy decisions as part of a study to determine the enforceability of covenants, conditions and restrictions (CC&Rs) for violations to City Code and project approvals and ways to aid homeowners associations in managing their communities (RTC 09-090). The Action Plan Checklist adopted by Council is included in Attachment A.

In addition to adopting the staff recommendations listed in RTC 09-090, Council directed staff to provide, three months after the Council hearing, the following information:

1. Conditions of Approval for residential subdivision projects that relate to the study, which would be incorporated into the final CC&Rs for a given development, and which include the following revisions (Attachment B):
 - a. Require the developer to schedule a meeting between the developer, the City of Sunnyvale and the board members or officers of the homeowners association once it is transferred to the property owners to discuss the conditions of approval of the development and other applicable City requirements (1.B of Attachment B);
 - b. Require every development to provide sufficient on-site parking for residents and guests (4.A of Attachment B);
2. A plan for an education process for all existing and future homeowners associations (Attachment C).

FISCAL IMPACT

This an information only report. The fiscal impact was discussed in RTC 09-090.

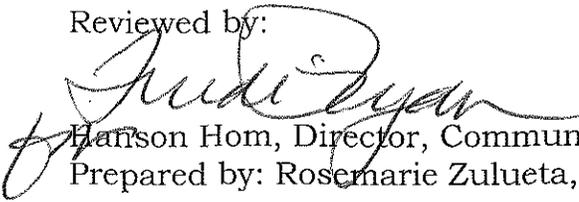
PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's Web site.

RECOMMENDATION

This is an information only report. Staff is not recommending any action to the City Council.

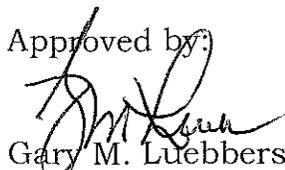
Reviewed by:



Judi Ryan, Director, Community Development Department

Prepared by: Rosemarie Zulueta, Assistant Planner

Approved by:



Gary M. Luebbers
City Manager

Attachment

- A. Action Plan Checklist
- B. Template of Conditions of Approval for Residential Subdivision Projects
- C. Education Plan

REC'D JUN 23 2009
CITY CLERK'S OFFICE

Determine Enforceability of CC&Rs for Violations to City Code and Project Approvals (RTC 09-090)

Council Adopted Options

Parking And Management Of Garage Spaces And Unassigned/Guest Parking Space

1A. Continue to implement the Council adopted policies that resulted from the 2008 parking study, which include 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.

This is incorporated into the template of Conditions of Approval for residential subdivision projects (Attachment B, 4.A – 4.C).

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.

This is part of the education plan (Attachment C).

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.

This is part of the education plan (Attachment C).

Trash Containers In Public View

2B. Advise existing CIDs to amend their CC&Rs to have stricter provisions on the maintenance of containers, including implementing administrative fines and penalties.

This is part of the education plan (Attachment C).

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2C. Require proper trash bin placement and specified storage space as a condition of approval of new developments.

- This is incorporated into the template of Conditions of Approval for residential subdivision projects (Attachment B, 5.A).*

Minor Modifications to Individual Properties

3B. Circulate informational handouts or provide information on the City website to inform communities of City requirements regarding physical modifications within a CID.

- This is part of the education plan (Attachment C) and is incorporated into the template of Conditions of Approval for residential subdivision projects (Attachment B, 1.A and 1.D).*

3C. Advise CIDs to create architectural review committees (ARC), or similar.

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

- This is part of the education plan (Attachment C).*

Installation of Exterior Mechanical Equipment

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.

- This is incorporated into the template of Conditions of Approval for residential subdivision projects (Attachment B, 3.A – 3.B).*

4B. Continue to follow current staff procedures for review of exterior mechanical equipment and air conditioning unit installations in existing CIDs.

- This is incorporated into the template of Conditions of Approval for residential subdivision projects (Attachment B, 3.A – 3.B).*

4C. Address noise issues associated with exterior mechanical equipment with the update of the Noise Sub-Element and revision to the City's noise ordinance in 2010.

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- ☑ *Noise issues will be considered as part of the Noise Sub-Element update, as directed by Council.*

HOA Enforcement Challenges

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.

- ☑ *These are part of the education plan (Attachment C) and are incorporated into the template of Conditions of Approval for residential subdivision projects (Attachment B, 1.C).*

- 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.

- ☑ *This is incorporated into the template of Conditions of Approval for residential subdivision projects (Attachment B, 3.A – 3.B, 4.A – 4.C and 5.A).*

- 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.
- Support HOAs through a list of resources and/or web links; include information about organizations and agencies that aim to provide

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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)
- o 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

These tools, as well as those discussed in the previous sections, are incorporated into the education plan (Attachment C).

Additional Council Action Items

1. Within three months, staff shall provide Council with a complete list of COAs to be incorporated into the CC&Rs.

Please see Attachment B for template of Conditions of Approval.

2. Include a standard COA for the developer, City of Sunnyvale, and new HOA when the HOA is transferred to the property owners to meet and discuss COAs for the project.

This is incorporated into the template of Conditions of Approval for residential subdivision projects (Attachment B, 1.B).

3. Prepare an education plan for HOAs in the City.

Please see Attachment C.

4. Include a standard COA the policy that every development shall provide all of its parking on the site.

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- This is incorporated into the template of Conditions of Approval for residential subdivision projects (Attachment B, 4.A).*

**TEMPLATE OF CONDITIONS OF APPROVAL FOR RESIDENTIAL
SUBDIVISION PROJECTS THAT RELATE TO RTC 09-090**

This list has been edited to include only those conditions that relate to RTC 09-090 (Study Issue to Determine the Enforceability of CC&Rs for Violations to City Codes and Project Approvals). Items highlighted are new or revised conditions resulting from the study issue.

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 and approval of the Director of Community Development.

1. GENERAL CONDITIONS

- A. Project shall be in conformance with the plans and Conditions of Approval approved at the public hearing(s). **Any proposed amendments to the approved plans or Conditions of Approval are subject to review and approval by the City.** Minor changes may be approved by the Director of Community Development; major changes may be approved at a public hearing.
- B. **At the time the homeowners association is transferred from the developer to the individual property owners (typically at election of board members or officers), the developer shall schedule a meeting between the board members or officers, the City of Sunnyvale and the developer to review the Conditions of Approval of the development and other applicable City requirements.**
- C. **The developer shall submit to the City the names, addresses and telephone numbers of the officers of the homeowners association, architectural review committee or similar committee, at the time the organization is granted autonomy. Until such information is supplied to the City, the developer shall remain a Responsible Person for purposes of maintaining all common property. The chairperson, secretary or principal officer of any committee or association shall notify the City of any change in officers and provide the names, addresses and telephone numbers of the new officers within thirty (30) days after the change becomes effective.**

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D. In common interest developments, any future applications to the City for physical modifications on commonly owned property shall require consent of the board of directors of the homeowners association, architectural review committee or similar committee; applications for physical modifications on privately owned property shall require the individual property owner's signature. Individual property owners submitting an application for physical modifications on private property shall comply with any approval processes outlined as such in the conditions, covenants & restrictions (CC&Rs) of their respective development.

2. 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. All property owners and residents shall be provided the most recently updated CC&Rs (including the Conditions of Approval and any amendments therein) of the project at any given time.
 - 4. 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

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association, following sale of at least 75% of the units, whichever comes first.

5. The Conditions of Approval of this _____ Permit and _____ Map [*File Number*] , and any subsequent amendments 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

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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."

3. EXTERIOR EQUIPMENT

- A. Detailed plans showing the locations of individual exterior mechanical equipment/air conditioning units shall be submitted to the Director of Community Development for review and approval prior to issuance of building permits. Proposed locations shall have minimal visual and noise impacts to neighbors and ensure adequate usable open space.
- B. Individual exterior mechanical equipment/air conditioning units shall be screened with architecture or landscaping features.

4. PARKING

Multi-family Uses:

- A. Sufficient off-street parking for both residents and guests shall be provided.
- B. 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

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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. Require that unassigned spaces reserved for residents shall be maintained as common parking spaces, and individual spaces may not be rented or reserved for the exclusive use of residents.
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 of the number of parking spaces provided for each unit on-site.

C. 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.

5. RECYCLING AND SOLID WASTE

- A. Submit a detailed recycling and solid waste disposal plan to the Director of Community Development for approval. **The plan shall include proper trash bin placement and specified storage space.**
- 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.

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EDUCATION PLAN

PRODUCT	EXPECTED COMPLETION DATE / LEAD STAFF
<p>Create Webpage for Homeowners Associations</p> <ul style="list-style-type: none"> ▪ http://hoas.insunnyvale.com ▪ Post educational handouts regarding City processes: <ul style="list-style-type: none"> – Parking Management Handout – Design Review/Miscellaneous Plan Permit and Use Permit brochures and other frequently requested zoning and building information ▪ List of resources and/or web links to organizations and agencies that aim to provide education (classes and seminars) and other resources to homeowners, builders and other professional resources, such as: <ul style="list-style-type: none"> – The State of California Department of Real Estate (DRE) – Executive Council of Homeowners (ECHO) in California – Community Associations Institute (CAI) ▪ Information about Project Sentinel services and contact information ▪ Frequently Asked Questions (FAQs) ▪ Advice/techniques to aid in tackling issues that most frequently arise within common interest developments, such as parking, trash containers, exterior equipment, minor physical modifications to properties and lack of awareness of important processes <ul style="list-style-type: none"> – Advise existing CIDs to amend their CC&Rs to have stricter provisions on the maintenance of containers, including implementing administrative fines and penalties. – Advise CIDs to create architectural review committees (ARCs) or similar. – Advise HOAs of techniques other communities have used to increase awareness of rules and regulations and to limit conflicts between neighbors. ▪ Information regarding the Community Resources Program and services offered by the Neighborhood and Community Resources Division 	<p>August 3, 2009</p> <p>Planning Division (CDD) and Community Services Division (OCM)</p>

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EDUCATION PLAN

PRODUCT	EXPECTED COMPLETION DATE / LEAD STAFF
<ul style="list-style-type: none"> ▪ Links to Planning, Building and Neighborhood and Community Services Division websites ▪ Contact information for questions 	
<p>Encourage Existing HOAs to Register and Maintain Contact Information with the City</p> <ul style="list-style-type: none"> ▪ Provide information about the Neighborhood Association Registry and the Neighborhood Grant Program, which could fund community-building activities ▪ Distribution to HOA board members/officers of community meeting notices, press releases and public hearing notices ▪ Assistance in securing City and community speakers for meetings ▪ Arranging/coordinating meetings with City staff or elected officials on issues of importance to specific neighborhoods ▪ Opportunities for networking with other associations that support Sunnyvale neighborhood associations ▪ Explore web registration so that it is easier for HOAs to register 	<p>August 3, 2009</p> <p>Community Services Division (OCM)</p>
<p>Parking Management Handout</p> <ul style="list-style-type: none"> ▪ Include the types of parking violations the City may enforce ▪ Techniques HOAs can use to manage parking more effectively, including those that other HOAs in the community and beyond have used <ul style="list-style-type: none"> – Require every car to be registered with the association and require parking tags to keep track of them; – Time restrictions on unassigned/guest spaces to encourage turnover of spaces; – Hire parking patrol to monitor parking or do inspections at random; and/or – Advance notice of garage inspections to assure garages are being used for parking. 	<p>July 10, 2009</p> <p>Planning Division (CDD)</p>

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EDUCATION PLAN

METHODS OF DISTRIBUTION AND OUTREACH

1. Create a website devoted to HOAs with information to be launched by August 3, 3009.
2. Include a list of new resources available to HOAs and website URL in the City's *Quarterly Report* when available.
3. Send, via postal mail, an informational handout to those HOA members for whom we have contact information.
4. Post an advertisement slide on KSUN.
5. Post a display advertisement in the *Sunnyvale Sun* newspaper.
6. Include an insert in residential utility bills when available.