

Response to Resident Comments on the Draft Governing Documents

Over the past year and a half, the Board, with assistance from Legal Counsel, has been working on a major update of the Association's governing documents –the Covenants, Conditions, and Restrictions (CC&Rs), Bylaws, and Articles of Incorporation. Along the way, residents have made comments or asked questions about the update through regular HPOA Board meetings, the April 10 Workshop or via emails to the Board. This document provides a summary of the Board's responses to these comments and can be read in conjunction with the latest versions of the documents themselves.

Overall Goals for the Update of the Governing Documents

The overall goals for the update of the Covenants, Conditions, and Restrictions (CC&Rs,) Bylaws and Articles of Incorporation are to:

- Remove restrictions that are procedural and costly and that do not add comparable benefit
- Remove outdated information and correct errors
- Include provisions found in more “modern” CC&Rs
- Make adjustments based on 14+ years of experience with enforcing the governing documents

Community Outreach and Involvement

From the beginning, the community has indicated its desire to be consulted and involved in the updating of the governing documents. HPOA's efforts to accomplish this have taken a number of forms:

- Two community surveys (Survey Monkey, *August 2018 and March 2019*)
- An Agenda Item for nearly every Board meeting starting in January, 2018; minutes of Board meetings are posted on the Hiddenbrooke website
- PowerPoint slide presentations concerning the update have been posted on the Hiddenbrooke website
- A Community Workshop led by HPOA's Legal Counsel was conducted on April 10, 2019
- Complete drafts of various iterations of the governing documents have been posted on the Hiddenbrooke website
- Updates on the progress of the work have been periodically posted on the community newsgroups (HB NEWS and Hiddenbrooke Nextdoor)
- The Board extended the comment period after the April 16 Board meeting to April 23 to provide one more opportunity for member comments before asking Legal Counsel to begin work on the final revisions

Questions about why HPOA is updating the governing documents

The current CC&Rs were recorded in July, 2006 and have not been reviewed or updated since that time, as is good practice for any homeowner association. The update will provide consistency between the three main governing documents, remove outdated language, address new issues, and improve the clarity of various requirements. Some of the key considerations are below:

-Legal

- A community vote in 2016 changed the Articles of Incorporation to identify HPOA as a “Common Interest Development” under the Davis Stirling Act that governs most homeowner associations in California. This was after the State updated the Davis Stirling Act and created new questions about whether HPOA should be under this Act and its many requirements. After receiving opinions from its Legal Counsel the Board conservatively elected to follow the Act and proceeded to conduct the community vote. This was a conservative decision and was made in part to ensure that the vote to establish the Resident Access Program with the Golf Club (which no longer exists) was conducted under the most rigorous standards. However, the companion governing documents --the Bylaws and CC&Rs--were not changed to reflect HPOA’s new requirements under the Davis Stirling Act, creating ongoing legal questions about which requirements to follow. This situation alone would trigger the need to update the governing documents. However, before deciding whether to conform the CC&Rs and Bylaws to Davis Stirling law, the current Board elected to seek further legal advice as to whether HPOA is appropriately identified as a Common Interest Development and needs to follow Davis Stirling law (see below).
- Other important reasons an update is needed are: there are many references throughout the CC&Rs to the “Declarant” which no longer have meaning as the Declarant refers to Triad, the Master developer, who left the community a number of years ago; the current CC&Rs contain outdated language and Civil Code references; Exhibit A in the CC&Rs (the complete legal description of the property in Hiddenbrooke encumbered by the CC&Rs), was found to have errors and omissions due to the way the different developments in Hiddenbrooke took place; and the organization and understanding of the documents can be improved.

-New Items to Consider

- Also with the passage of time, there are also new topics and issues that need to be incorporated into the CC&Rs, such as Accessory Dwelling Units (ADUs), different rental situations, Child Care and Residential Care facilities, owner maintenance of Residences, outdated HARC (Hiddenbrooke Architectural Review Committee) procedures, etc. In a related effort HARC has just recently updated the community’s Design Guidelines and these changes were approved by the Board in May after an opportunity for member comment.

-Other

- In a related effort, HARC has just recently updated the community's Design Guidelines and the CC&Rs need to ensure consistency between the two documents.
- This is a one time effort and another review of the governing documents will not be required for a number of years if the changes are approved by the community

Questions about why HPOA is recommending a change from being classified as a Common Interest Development (CID) under State Davis Stirling Law to a non-CID

- A common trait for all HOAs that are Common Interest Developments (CIDs), and required to follow various sections of the Civil Code referred to as the Davis Stirling Act, is that they all own and maintain "Common Areas". These HOAs allow property owners to pool resources to manage and share common facilities such as landscaped grounds, open space, clubhouses, pools, parks, trails, exercise facilities, etc. Clearly, HPOA does not own or maintain any Common Area or collect money from homeowners to maintain any Common Area. This situation is different from the four sub-associations in Hiddenbrooke that all own and maintain Common Area (Fairway Villas, Reflections, Summit, Village). HPOA's Legal Counsel did perform a title search to insure that the Association did not inadvertently own some Common Area and found none.
- Because of the perceived complexity and cost of complying with the State's old Davis Stirling laws, which have only become more stringent over time, HPOA's original governing documents were intentionally set up to broadly follow but not be under Davis Stirling law.
- A minute wording change in the Davis Stirling laws that became effective in January, 2014 led to confusion about the Law's applicability to HPOA, when it stated if there is "an" association that owns Common Area (i.e., the sub-associations with Common Area that are under HPOA, the Master Association), the association could be considered a CID. Whether or not HPOA considers itself subject to Davis Stirling laws defines how the new governing documents are constructed. Together with Legal Counsel, the current Board has done an extensive review of the issue and believes the more appropriate, logical, and defensible argument is that an Association needs to own Common Area to be classified as a CID operating under Davis Stirling laws. HPOA also researched whether there was any way to easily acquire Common Area so that the Association could stay under Davis Stirling law and determined that the options either did not make sense or would require a lengthy and time consuming process involving the City. Also if HPOA did acquire Common Area there would be new costs involved for homeowners to first acquire it, and second, maintain it.
- The latest review further found that there are provisions in the Davis Stirling laws that the community would likely not support or would have strong

- concerns about. Not commonly understood is that under Davis Stirling laws an Association can foreclose on a home (not allowed in the current CC&Rs, but could be explored by a future Board), and an Association can increase dues up to 20% annually (the current CC&Rs restrict increases in dues to a much smaller percentage based on changes in the Consumer Price Index).
- Under Davis Stirling, HPOA will be exposed to new laws adopted by the State Legislature each year that may be unreasonable and/or add costs. One bill currently being considered (SB323) would remove any qualifications for being a member of the Board and would add new, burdensome election requirements.
 - Some of suggested that Davis Stirling is the only way to control the activities and functions of the Board and ensure future Boards do not “go off the reservation”; however, HPOA will still be governed by Corporation Codes (HPOA is a nonprofit mutual benefit corporation) and by the new governing documents themselves. Additionally, HPOA now has a professional HOA management company to guide and advise the Board both in terms of correct procedures and in the conduct of all financial matters.
 - A key piece of information former Boards did not have is the cost of complying with Davis Stirling laws, particularly the number of items which must be law be mailed to all members. Some examples of required mailings and their associated costs are:
 - Election Ballots with secret double envelopes -- **\$2,745**
 - Election nomination letters --**\$1,275**
 - Disclosure Packet (many items)* -- **\$7,400**
 - * costs can be lowered if a member submits a letter requesting electronic receipt
 - CPA Audit Report* -- **\$3,000**
 - *the CPA Audit required by Davis Stirling costs another \$1,400
 - Changes in Operating Rules (e.g., the Design Guidelines) must be mailed out for Member comment; the Design Guidelines mailing cost was **\$3,300**
 - Proposed Changes to Governing Documents*
 - *To be determined, but the cost of mailing all 121 pages would be prohibitively expensive, so less costly options are being evaluated
 - In contrast, if HPOA changes back to being governed by Corporation Code the above items can be sent and received electronically, as is the more modern practice and will significantly reduce costs.
 - Some members have proposed reducing Davis Stirling costs by using community volunteers. In the early days of HPOA, the Association was run largely by volunteers to keep costs down. This model simply does not work today with few residents having the time, interest or skills to do what is needed to keep HPOA running. Hence the need to hire a professional management company, which was recognized by the past Board and has proven to be extremely helpful. A professional management company brings

the knowledge of how HOAs function, handles a large amount of the work, and provides continuity when Boards change members and old Board members with knowledge leave and new Board members come onboard.

Questions about the cost of the Governing Document update

- Some members have expressed concerns about the cost of updating the governing documents, which are largely related to Legal fees. This concern needs to be put in perspective, as it is a one-time cost for an effort that has been overdue and will not need to be repeated for a number of years.
- As noted above, because the Association's current governing documents are not consistent with each other HPOA needs to invest the money at some point to correct this problem. Performing the update now is more cost-effective than postponing the work and paying a higher cost in the future.
- Finally, and most importantly, the changeover to a non-Davis Stirling operating environment will save the Association significant money every year going forward which will more than repay the cost of the current Legal fees. Managing cost is a key fiduciary responsibility of the Board.

Key CC&R Topics and Resident Input.

- Owner Responsibility to Maintain Their Residence The requirement for Owners to maintain their residence in good condition and state of repair was a key omission in the original CC&Rs (the four sub-associations all have this requirement in their CC&Rs - Fairway Villas, Reflections, Summit, Village). As homes age, some over 20 years now, this is a needed new provision in the CC&Rs. This addition is supported by 76% of respondents in the March 2019 CC&R Survey.
- Maintenance of Landscaping: New language was added regarding sparse yards, use of bark and mulch in a yard, and care of City Street Trees (trees the City required Builders to install on each lot to provide a tree canopy throughout Hiddenbrooke).
- Right of Entry: This was the major discussion item at the April 10 CC&R Workshop. The current CC&Rs allow the Association to enter a yard to correct a violation under various circumstances. The revised language will make it clear that entering onto a lot to correct a CC&R violation would only occur after due process (several courtesy notices), a hearing before the Board, and a subsequent letter giving an Owner 15 days to correct the violation (this provision in the current CC&Rs has only been used once in the past when it was necessary to perform basic maintenance on front yards when homes were in the foreclosure process and had been abandoned by the owner). If HPOA does not have this authority it may be virtually impossible

to correct a chronic violation when an owner has no intention of complying with the CC&Rs. Eyesore situations or safety/health issues could go on for long periods and adversely affect neighborhood property values. Some suggested using the City's Code Enforcement Division, but the CC&R violation may not be a City Code violation and there are additional concerns about getting a timely response from the City.

Another topic receiving comments at the Workshop was what would constitute an "emergency" situation which would require the Association to enter onto someone's property. We are not aware of any precedent for doing so, but the new CC&Rs would have the following conditions: 1) immediate threat to the safety or peaceful enjoyment of residents of the Development, 2) a traffic or fire hazard, and 3) threat of material damage or destruction of any portion of the Development.

- Proposed Cap on the Number of Homes that can be Rented: The March 2019 Survey asked residents if they supported a cap on the number of homes that could be rented as a way to ensure that most owners live in the community and "buy in" to the overall standards for care of their property and adherence to the CC&Rs. Some people commented that they did not observe problems from homes that are being rented while others mentioned large numbers of cars associated with some rental properties and parking issues. Although 66% of respondents in the Survey agreed with having such a new restriction, this restriction has not been included in the new CC&Rs as it would be difficult to enforce and lead to higher management company costs.
- Parking: The parking situation in certain neighborhoods continues to frustrate owners due to spillover onto the streets and neighbor vehicles parking in front of their homes. However, the March 2019 CC&R Survey also showed that many respondents were not greatly concerned about residents who do not park any cars in their garage (53% registered "not concerned"), indicating that they would not support a restriction requiring owners to use their garage for parking. The new CC&Rs would not require owners to use their garage, but that may be an outcome if all their vehicles cannot be contained in the driveway and garage. The monthly CC&R inspection drives do not attempt to monitor ever-changing parking situations at individual residences, nor is it possible to know how a garage is being used. A specific parking issue would be evaluated when a formal complaint is submitted to HPOA.
- Pets: Although the March 2019 CC&R Survey showed that 55% of residents supported the Board having authority to remove a pet that is a danger to people, other pets, or property, the Board chose not to include this authority and to continue to refer residents to County Animal Control to address a problem. The constant barking of a dog that disturbs the quiet enjoyment of a

neighbor's property is, however, a defined type of "nuisance" in the latest CC&Rs. There would be no change in the standard number of pets allowed (2).

- Portable Basketball Standards. The March 2019 CC&R Survey asked residents about their support for allowing portable basketball standards in the front yard and driveway. It has been HPOA policy in the past to restrict such uses. Fifty one percent (51%) said they should not be allowed, 24% said they should be allowed, and 14% said they could be allowed if they are removed and stored out of sight (10% were undecided). The proposed CC&Rs would continue current policy and not allow portable basketball standards in the front yard, including the street, but would allow them in side or rear yards.
- Increase in Dues. HPOA is proposing to increase the base dues to \$85 a year per Lot (\$73 currently), which is the breakeven amount with the Association's current costs. Future dues increases beyond the \$85 would continue to be limited by increases in the Bay Area Consumer Price Index as in the current CC&Rs (over the past 14 years, the average CPI increase has been 3.2% per year). The Board does not raise dues automatically and only if there is a need to do so. Several years have gone between dues increases in the past. HPOA costs are higher now due to a range of factors: the hiring of a professional management company, new mailing requirements associated with Davis Stirling laws, delinquent owner accounts, and higher than anticipated legal costs in some years. Future Boards will still need to manage expenses carefully to re-establish a more robust reserve which has dwindled from \$188,000 (FY ending June 2015) to \$95,000 (FY ending June 2018),

Some members suggested only allowing dues increases after a community vote or restricting CPI increases in any one year to a maximum of 5%. Requiring community votes to raise dues by small amounts (as with annual CPI adjustments) would not be cost effective or practical due to the time constraints for adopting yearly Budgets and also the expense involved in conducting a community vote. The CC&Rs do require a community vote should there be a need to increase dues above the allowed amount. The current CC&Rs require approval of 25% of members to raise dues beyond the CPI allowed amount. The new CC&Rs propose having a 25% quorum requirement to raise dues, which would make it somewhat easier in the case of an emergency or extraordinary and unforeseen expense. Capping any individual year's CPI increase at 5% (as could occur in a high inflation period) would impose constraints on HPOA when its costs are presumably also going up; discussions about controlling overall costs are best left to the annual budget discussions.

Questions about Key Bylaw Topics

- Concerns with reduction in number of Directors on the Board from 7 to 5. The current Bylaws state that the Board shall have *at least five (5) but no more than seven (7)* Directors. Because in some past years it has been difficult to find people with the interest and time to serve, the Board is recommending that the lower number be adopted. One recent year had no candidates apply when there were four open positions. A five (5) member Board is typical for many HOA Boards, and it is the skill and knowledge that Board members bring that is important rather than the number per se. Also smaller numbers are better for conducting meetings and various related meeting logistics.
- Concerns with reduction in quorum to amend Governing Documents. Several members expressed concern with the Board's original proposal to lower the quorum needed to amend the governing documents from one third of members to one quarter. Newer governing documents generally have lower quorum requirements in response to community voter apathy and the costs and time involved with trying to achieve the required quorum (e.g., mailing out additional ballots, reconvening meetings when sufficient ballots have not been submitted for a quorum, additional mailers or publicity, etc.). Any particular quorum requirement does not in any way restrict a members right to vote and more ballots are always better than fewer ballots. On the flip side, it can be argued that a higher quorum requirement ensure there is a threshold of enough votes to show support for a particular change in the governing documents. Since there appears to be some concern with lowering this quorum requirement, the current one third requirement will not be modified.

Other Comments Received

- Concerns about having several daycare/childcare facilities in close proximity, which would disproportionately affect one neighborhood. Answer: this is not something the CC&Rs can address.
- Parking for Custom Homes. HPOA/HARC should require enough parking space to house the maximum number of cars possible for a home based on the size of the home. Answer: HARC's new Design Guidelines base the required amount of parking, both covered and uncovered, for a Custom Home on the number of bedrooms proposed.
- Holiday Decorations/ Lighting (Note: This topic has been re-located from the Design Guidelines into the CC&Rs). The period for removal of holiday decorations/lighting should be extended from 14 days to 30 days after a Holiday. Answer: HPOA does provide some latitude for removal of Christmas decorations, but the shorter time period is preferred as well as having the

same removal period for each Holiday. Some homes have left decorations up for months after a Holiday.

- Under “Definitions”, should the definition of the “Development” explicitly exclude public streets? Answer: While it is true HPOA cannot regulate parking on a public street, some aspects of the CC&Rs do address activity in the public streets, such as placement of basketball hoops, trash containers left in the street, landscape debris, etc., so the inclusion of streets in the Definition of the Development is appropriate.