

**INTEROFFICE MEMORANDUM  
Santa Clara City Attorney's Office**

**DATE:** 11/29/2021

**TO:** Debby Fernandez, Associate Planner

**FROM:** Luis M. Haro, Deputy City Attorney

**SUBJECT:** Casa Del Rey CC&R Amendment

This memo is a review of the draft CC&Rs submitted by Doug Bickham, Berding & Weil for the residential development at 1303 Karmen Court, Santa Clara, CA 95051, "Casa del Rey". I have the following comments on the draft:

Requirement from City's CC&R Checklist	Draft CC&R Location	Comment	Berding & Weil Response	CAO Response
1. <u>Definitions</u> . Include definitions of terms such as "unit", "common area", pursuant to current California Civil Code. Additionally, a definition of "maintenance" shall be included and shall read as or similar to the following: "Maintenance" shall mean the exercise of reasonable care of buildings, roads, landscaping, lighting and other related improvements and fixtures in a state similar to their original	Section 1.24	The definition of "maintenance" is missing some language regarding the reasonable care of buildings, roads, landscaping, lighting and other related	Section 1.24 is intended to be a very broad definition of "maintenance" in general. The specific detailed requirements for maintenance, repair, and replacement of "buildings, roads, landscaping, lighting and other related fixtures" are stated in Article 9, Sections 9.1, 9.2, and 9.3 of the new CC&Rs. Please note that the maintenance provisions in Article 9 of the new CC&Rs are far more detailed and comprehensive compared to Article IX of the Association's current 1978 CC&Rs.	The definition included in Section 1.24 is acceptable.

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<p>condition, normal wear and tear excepted. Maintenance of landscaping shall further mean the exercise of regular fertilization, irrigation, and other garden practices necessary to promote a healthy, weed free environment for optimum plant growth."</p>		<p>fixtures.</p>		
<p>6. All exterior changes to a project, including those not typically requiring a building permit under the City's Zoning Ordinance (such as decks and gazebos) shall be referred to the City for architectural review. Routine operations such as painting and landscaping are exempt.</p>	<p>Article 7*</p>	<p>The required language regarding City review of exterior changes is missing.</p>	<p>We do not understand this comment. Article 8 of the new CC&amp;Rs addresses Association assessments. There is no requirement for "City review of exterior changes" in the Association's current 1978 CC&amp;Rs. Architectural review and approval by the Association of exterior changes is addressed in Article VI of the Association's current 1978 CC&amp;Rs and in Article 7 of the Association's new CC&amp;Rs. The only requirement for City approval in the 1978 CC&amp;Rs is Section 7.03 which states "Any amendment of this Declaration shall also require the prior written approval of the City of Santa Clara." This requirement has been carried forward to Section 15.2 of the new CC&amp;Rs.</p>	<p>The City Attorney's Office requires the architectural approval language. Specifically, we require language stating that all exterior changes to a project requiring a building permit under the Zoning Ordinance be referred to the City for architectural review. Such requirement is based on Santa Clara City Code 18.76.020(b) which reads: "Before action is taken on an application for the issuance of a permit for any sign, building, structure, or alteration of the exterior of a structure in any zone district, plans, and drawings of such signs, building or alternation shall be submitted, in such form and detail as the Director may prescribe." We have required this language in each set of CC&amp;Rs that we review.</p>

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<p>7. Modification of Unit by owner. Any improvements, modifications, or alterations made within the boundaries of the owner's separate interest must comply with provisions of the governing documents, applicable City codes and Section 4760.</p>		<p>Please include language requiring that improvements, modifications, and alterations comply with governing documents, applicable City codes and Section 4760.</p>	<p>Article 7 of the new CC&amp;Rs addresses in great detail the requirements and procedures for "improvements, modifications, and alterations" in compliance with the governing documents, governmental requirements and the Davis-Stirling Common Interest Development Act. Furthermore, Section 5.9 of the new CC&amp;Rs expressly states "Each Owner and Resident shall comply with all requirements of all federal, state, and local governmental authorities and all laws, ordinances, rules and regulations applicable to his or her Lot and Dwelling and the Common Area." Article 7 of the new CC&amp;Rs regarding architectural approval is far more extensive and detailed than Article VI of the current 1978 CC&amp;Rs. Section 7.13 of the new CC&amp;Rs also expressly requires compliance with all governmental requirements for <i>any</i> alterations.</p>	<p>Language in new CC&amp;Rs is acceptable.</p>
<p>8. Enforcement of Covenants and Restrictions. The covenants and restrictions in the declaration shall be enforceable equitable</p>		<p>Please include language including the City as a third-party</p>	<p>The new CC&amp;Rs both expressly and by operation of law are "enforceable equitable servitudes." (See Recitals Paragraph G of the new CC&amp;Rs and Civil Code section 5975). There is no requirement in the</p>	<p>The City has an interest in enforcing obligations set forth in CC&amp;Rs. As such, we require in every set of CC&amp;Rs that the City be listed as a third-party beneficiary.</p>

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servitudes, unless unreasonable and shall inure to the benefit of and bind all owners of separate interests in the project. These servitudes may be enforced by any owner of a separate interest or by the association, or by the City of Santa Clara as a third party beneficiary.		beneficiary that may enforce these servitudes.	current 1978 CC&Rs naming the city as a third-party beneficiary. To add such language now would be to completely change the substance of what already exists and has successfully operated for over forty years. The new CC&Rs are not intended to change the basic structure of the current 1978 CC&Rs but to update, enhance, and clarify where appropriate.	
12. Provision of Municipal Services. The City of Santa Clara will provide sanitary sewer service up to the boundary line of the project. The City will provide and maintain water service for domestic use within the public utility easement (common area) up to and including water meters. Underground electric power service shall be provided and maintained by the City up to and including secondary splice boxes. The Association will provide such services to the common area		Please include language regarding provision of municipal services.	There is no such language in the current 1978 CC&Rs regarding "provision of municipal services." Provision of <i>utility services</i> by the Association is addressed in the new CC&Rs in Section 9.1.2.	Language in new CC&Rs is acceptable.

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<p>and to the individual lots and shall be solely responsible for the repair and maintenance of the sanitary sewer line system, storm drain system, domestic water lines, electric power service, asphalt paved area and fire protection lines in the common area and through the individual lots to the residence or individually-owned buildings or structures, excluding items maintained by the City. All such maintenance and repairs shall be made at the expense of the Association.</p>				
<p>21. Taxes and Liens. The management body shall pay taxes and special assessments which would be a lien upon the entire project or common areas, and shall discharge any lien or encumbrance levied against the entire project or common areas.</p>		<p>Please include the required language.</p>	<p>Payment of taxes on common areas is a responsibility of the Association and is addressed in Section 8.7 of the Association's new Bylaws which reads as follows: "The Board shall have the power to pay all real property taxes and assessments levied upon any property within the Development to the extent not separately assessed to the Owners. Provided that any such taxes are paid or that a bond insuring</p>	<p>Language in new CC&amp;Rs is acceptable.</p>

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			the payment is posted, such taxes and assessments may be contested or compromised by the Association prior to the sale or other disposition of any property to satisfy the payment of such taxes.” Please note this is not a topic that is typically addressed in CC&Rs and is also not in the current 1978 CC&Rs either.	

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<p>22. Acquisition of Materials, Supplies, and Labor. The management body shall provide for: purchase of materials, supplies, and labor services for the maintenance of all building exteriors, unless the Association has expressly transferred this requirement to unit owners; gardening services as necessary to maintain landscaped common areas; payment of utility services used for the benefit of the units in common; payment for garbage and trash disposal services for the project; employment of personnel necessary for legal and accounting services; reconstruction of any portion of the project damaged or destroyed.</p>		<p>Please specify whether the Association will provide for the acquisition of materials, supplies, and labor or whether this obligation is transferred to individual owners.</p>	<p>The allocation of maintenance, repair, and replacement responsibilities between individual lot owners and the Association is identified in great detail in Article 9 of the new CC&amp;Rs, specifically in Sections 9.1, 9.2, and 9.3. Please note Article 9 of the new CC&amp;Rs provides a far more comprehensive allocation of responsibilities than stated in Article IX of the current 1978 CC&amp;Rs.</p>	<p>Language in new CC&amp;Rs is acceptable.</p>
<p>24. Modification of Unit by Owner. Alterations and/or facilitation of access for</p>		<p>Please include language regarding</p>	<p>Please note that these are not condominium units but attached townhomes on separately owned lots. Lot owners can modify their</p>	<p>Language in new CC&amp;Rs is acceptable.</p>

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handicapped shall require approval by project association.		facilitation for handicapped access.	lots with prior approval from the Association. In reviewing architectural changes, the Association must abide by all applicable laws. The approval process for alterations of Lots is specifically addressed in Article 7 (Architectural Approval) of the new CC&Rs.	

This information can be provided to the developer's attorney. Please let me know if you have any questions or concerns.

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Luis M. Haro  
Deputy City Attorney