



Agenda Report

22-550

Agenda Date: 5/10/2022

REPORT TO COUNCIL

SUBJECT

Action on Amendment to Covenants, Conditions, and Restrictions for Casa del Rey Homeowner Association Located at 1303 Karmen Court

COUNCIL PILLAR

Promote and Enhance Economic, Housing and Transportation Development

BACKGROUND

On November 21, 2021, Douglas P. Bickham, Esq., filed an application to amend the Covenants, Conditions, and Restrictions (CC&Rs) on behalf of the Casa del Rey Homeowner Association (HOA). The HOA consists of 40 townhome properties zoned and constructed as a Planned Development (PD). The original CC&Rs for this PD were recorded on January 13, 1978 and remain in effect without alteration.

Although the City Code requires review of proposed amendments to CC&Rs *prior* to adoption, in this case, the HOA has already submitted the new CC&Rs to its members, which voted to adopt the revised CC&Rs. Nevertheless, the City Attorney's Office (CAO) reviewed the new CC&Rs after the homeowners voted, and asked Mr. Bickham to make approximately eight changes to the new document. In response, Mr. Bickham indicated that it would be too expensive to submit a second set of revised CC&Rs to the homeowners for a vote and asked that the City approve the new CC&Rs without any revisions. Without making any of the requested revisions, the CAO was unable to recommend approval of the new CC&Rs to the City Council.

On January 4, 2022, Keith Stattenfield, a resident of Casa del Rey, submitted a written petition to the City Council, asking the Council to agendize a discussion about the requested CAO revisions to the new CC&Rs. At the January 11, 2022 Council meeting, the City Council voted to place the item on a future agenda.

DISCUSSION

Adoption of Covenants, Conditions, & Restrictions

For all common interest developments, such as condominiums and co-ops, State law requires the recording of a declaration of Covenants, Conditions and Restrictions, or "CC&Rs". Condos involve the shared ownership of property, like the exterior walls and roof of the building, and common areas such as courtyards, recreational facilities and community rooms. The CC&Rs set up rules for what homeowners can and cannot do with their individual units and with the commonly held property.

CC&Rs help govern a common interest development, although they are not a set of laws; they are

similar to private contracts among the HOA members. As with any contracts, the way they are drafted will affect the rights of the parties. When done thoroughly and carefully, both parties have a clear understanding of their rights and responsibilities, and there are no ambiguities. When poorly drafted, vague language can either give one party an unfair advantage or the document will fail to provide the protections it is supposed to give. Poorly drafted or out-of-date CC&Rs can result in a poorly maintained or managed community, with potentially unenforceable conditions and language that doesn't adequately protect homeowners or inform them of their rights.

Condo buyers themselves have no ability to request revisions to CC&Rs at the time of purchase. But in the City of Santa Clara, CC&Rs for new subdivisions are reviewed by the City Attorney, City Engineer, and Director of Community Development. This is a requirement of the City Code, § 17.05.310(i)(1)(H). More relevant here, the City Code also requires HOAs to obtain City approval prior to amending existing CC&Rs; the City Council has the ability to veto any such amendment (SCCC §§ 17.05.310(i)(1)(H), 18.54.080(c)(1)). These are long standing Code requirements, and the City Attorney's Office has reviewed dozens of draft CC&Rs and proposed amendments to CC&Rs.

Casa Del Rey's Preemptive Adoption of Amendments

Casa Del Rey, located at 1303 Karmen Court, is a 40-unit condo complex, with CC&Rs that were originally adopted in 1978. Because the existing CC&Rs were adopted prior to the enactment of the Davis-Stirling Common-Interest Development Act in 1985, there are a number of stale provisions in the existing CC&Rs that require revision.

However, the HOA did not follow the amendment process set forth in the City Code, and instead asked its homeowners to ratify a revised set of CC&Rs prior to submitting them to the City for review. Notably, even the existing 1978 CC&Rs for Casa del Rey contain language stating that "[a]ny amendment of this Declaration shall also require the prior written approval of the City of Santa Clara." By seeking to exclude the City from the process, the HOA is violating not only the Code but its own existing CC&Rs.

Many other common-interest developments recently have submitted their draft CC&Rs to the City for review, and have all agreed to make necessary changes after consultation with the CAO, including Gateway Crossings, Agrihood, and the Catalina Townhomes. The Council has also approved numerous amendments to CC&Rs in recent years, after those CC&Rs have undergone review by the CAO, including the Woodsborough Homes at 990 Kiely, the Talavera Owners Association at Monroe & Scott, and the Marriott Center Owners Association. As a result, allowing Casa del Rey to adopt their CC&Rs without City review would be a significant departure from established practice.

Specific Changes Requested for the Casa del Rey CC&Rs

The City maintains a checklist of provisions that it requires in all CC&Rs. This checklist is a public document and was last amended in 2015. When a developer or an HOA submits draft CC&Rs for review, the City requires that the checklist be completed at the time of submittal, indicating where each required checklist provision can be located in the new CC&Rs.

Upon initial review of the Casa del Rey CC&Rs and checklist in November 2021, the CAO determined that the draft satisfied many of the 25 checklist requirements but requested revision on eight items. After further communications with the HOA's attorney, the CAO agreed to forego six of

the eight requested revisions. For example, the City typically asks that the maintenance obligations of the HOA be thoroughly explained, with a detailed definition of the word “maintenance.” Although the definition of “maintenance” used by the HOA’s new CC&Rs was not as detailed as what the City usually requires, the CAO ultimately agreed to allow the use of the HOA’s definition.

However, the CAO was unwilling to waive two specific requirements. One request was to add a sentence indicating that prior to any architectural changes to the project, a homeowner must seek architectural approval from the City. Otherwise, an uninformed homeowner might believe that the only architectural approval they need to get is the consent of the HOA board. The homeowner would then potentially make changes without permits and then have to later either retroactively obtain permits or entirely remove the improvements. From experience, it is not uncommon for a homeowner to claim they had no idea that City permits were required. Placing a statement about the City’s requirements right next to the HOA’s architectural requirements in the CC&Rs directly informs the homeowners and makes any claim of ignorance more tenuous.

In addition, the City always asks that CC&Rs include a statement that the City is a third-party beneficiary to the document. That way, if there is a violation of the CC&Rs, the City can bring legal action to enforce the CC&Rs and has more ability to assist the homeowners in that context. Without that provision, the City is limited to code enforcement remedies, which may not be as effective. For at least the last 13 years, the City has never waived this requirement.

In his January 4, 2022 petition to the Council, Mr. Stattenfield indicated that there would be a “significant financial hardship” associated with asking the 40 homeowners to cast another vote to approve the revised CC&Rs. In an email to the Planning Division dated December 3, 2021, the attorney for the HOA, Douglas Bickham, stated that “[i]f the new CC&Rs cannot be approved as written, then it is likely the Association may never be able to adopt them and thus have to continue to operate under the current less than ideal 1978 CC&Rs.” However, according to the HOA’s bylaws, they conduct board elections at least once every two years, so they periodically have to incur the cost of an election. To include a CC&R ratification question with the next board election ballot would not significantly increase the HOA’s expenses.

ENVIRONMENTAL REVIEW

The action being considered does not constitute a “project” within the meaning of the California Quality Act (CEQA) pursuant to CEQA Guidelines 15378(a) as it has no potential for resulting in either a direct physical change in the environment or a reasonably foreseeable change in the environment.

FISCAL IMPACT

There is no fiscal impact to the City for processing the requested application other than administrative staff time and expense typically covered by processing fees paid by the applicant.

COORDINATION

This report was coordinated with the City Attorney’s Office.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City’s official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City’s website and in the City Clerk’s Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a

Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email clerk@santaclaraca.gov <<mailto:clerk@santaclaraca.gov>> or at the public information desk at any City of Santa Clara public library.

ALTERNATIVES

1. Inform the Casa del Rey Homeowner Association that revisions consistent with the CAO's direction will be required before the Council will consider the approval of the revised CC&Rs, consistent with established practice.
2. Direct staff to place the revised CC&Rs on a future Council agenda for approval, without the revisions requested by the CAO.

RECOMMENDATION

1. Inform the Casa del Rey Homeowner Association that revisions consistent with the CAO's direction will be required before the Council will consider the approval of the revised CC&Rs, consistent with established practice.

Reviewed by: Andrew Crabtree, Director of Community Development

Approved by: Rajeev Batra, City Manager

ATTACHMENTS

1. Site Map

1303 Karmen Court
Casa del Rey HOA

