

11/17/20

Item 2.P

Julie Minot

From: Mayor and Council
Sent: Tuesday, November 17, 2020 1:32 PM
To: Mayor and Council
Cc: Simrat Dhadli; Nora Pimentel; Deanna Santana; Genevieve Yip; Kathleen McGraw; Nadine Nader; Robyn Sahid
Subject: FW: 2020/11/17 - Agenda item: 2.P 20-1051
Attachments: Agenda item 2.P 20-1051 - CC&R.pdf
Importance: High

Dear Mayor and Council,

For your review and consideration, our office received the following email and attached letter regarding item 2P – 20-1051 Amendment to the Covenants, Conditions and Restrictions for the Marriott Center Owners Association.

Best regards,

Julie Minot, SPHR | Executive Assistant, Mayor and City Council
Mayor & Council Offices | City of Santa Clara
1500 Warburton Avenue, Santa Clara, CA 95050
Tel: 408-615-2252 | www.santaclaraca.gov



**City of
Santa Clara**
The Center of What's Possible

From: Simrat Dhadli <SDhadli@SantaClaraCA.gov>
Sent: Tuesday, November 17, 2020 12:54 PM
To: Mayor and Council <MAYORANDCOUNCIL@SantaClaraCA.gov>
Subject: FW: 2020/11/17 - Agenda item: 2.P 20-1051
Importance: High

From: Triware <triware@gmail.com>
Sent: Tuesday, November 17, 2020 12:18 PM
To: Clerk <Clerk@santaclaraca.gov>
Subject: FW: 2020/11/17 - Agenda item: 2.P 20-1051
Importance: High

Dear Hosam, Nora,

Sorry forgot to email to you all...

See below... Please confirm you get this if you can? Thanks!

Best Regards,

POST MEETING MATERIAL

Benson Yeung, Managing Partner
Lifetime Entrepreneur & Non-Linear Thinker



Triware Network Capital

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 **Think before you print.**

From: Yeung, Benson | Triware.US [mailto:benson_yeung@triware.us]

Sent: Tuesday, November 17, 2020 12:11 PM

To: 'MayorAndCouncil@santaclaraca.gov'; 'CityAttorney@santaclaraca.gov'

Cc: 'lgillmor@santaclaraca.gov'; 'kwatanabe@santaclaraca.gov'; 'rchahal@santaclaraca.gov'; 'khardy@santaclaraca.gov'; 'toneill@santaclaraca.gov'; 'ddavis@santaclaraca.gov'

Subject: 2020/11/17 - Agenda item: 2.P 20-1051

Importance: High

Dear Mayor, Councilmembers & City Attorney,

Re: Amendment to the Covenants, Conditions, and Restrictions for the Marriott Center Owners Association –
11/17/2020 Agenda item 2.p 20-1051

I would like to share some backgrounds and facts the way I see them and hope the backgrounds and facts can serve as part of your decision-making considerations.

Backgrounds:

1. **The existing CC&R was for maintaining shared common areas only.** Please also see the association attorney's original opinion; see the attached.
2. All funds in the association contributed by all the owners so far are for common areas maintenance purposes only; again, see the attached.

3. No 100% of the owners voted for these proposed CC&R amendments. The amendments set up allowing funds to be used in **selling all the properties purposes**.

Facts:

1. These proposed CC&R amendments will change the original purpose's nature – from shared common areas maintenance only (in 100% owners' interest and agreed) to redirect the funds to prepare for selling the entire campus (all properties), no in 100% owners' interest, at least, until there are common agreement from all owners.
2. All owners right now do not have a joint agreement to sell or how to sell together of our properties.
3. This proposed amendment will allow 75% of owners to use the funds for selling purpose when no all owners have an agreement, that, to me, is in violating individual property (funds) rights of the funds contributed thus far.
4. This proposed amendment will also allow 75% of owners to decide for all owners as what's the right way of spending the funds for selling 100% property, to me, again is in violating individual property rights as well.
5. One of the owners with associates, companies, and relatives own over 50% - 60%, perhaps more, of the association property.
6. The association funds are at an all-time low. Given the current and foreseeable market conditions, it will be difficult for us to increase the fee. Using up to 85% of the original funds will surely put the association under an undue burden.
7. Without these proposed CC&R amendments, all or some owners can still combine resources to prepare of the selling in other legal frameworks outside the existing CC&R.

I am writing this as one of the oldest, close to 20 years, serving member of the association's board of directors, an user, and owner of a building in this campus.

I am happy to answer any questions you all may have if necessary. Thanks!

Best Regards,

Benson Yeung, Managing Partner
Lifetime Entrepreneur & Non-Linear Thinker



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 Think before you print.

From: Candice B. Harper <charper@trainorfairbrook.com>
Sent: Wednesday, June 17, 2020 3:58 PM
To: Walter, Chris <Chris.Walter@colliers.com>
Cc: Melissa J. Johnson <mjohnson@trainorfairbrook.com>
Subject: RE: Marriott Center owners association

Chris:

In reviewing the CC&Rs, I believe you and the Board need to be aware of the following provisions:

Section 1.10 defines Common Assessments as common expenses for ordinary maintenance, operation, repair and management of the Common Areas and Exterior Surface Maintenance Areas.

Section 2.2 entitled Duties and Powers limits the powers of the Association to those acts which are necessary and proper for the peace, health, comfort, safety and general welfare of its members, subject only to the limitations upon the exercise of such powers as are expressly set forth in the Articles, By-Laws and CC&Rs.

Section 3.2 entitled Purpose of Assessments provides that the Assessments shall be used exclusively to promote the health, safety and welfare of the Owners for the operation, replacement, improvement and maintenance of the Common Areas and Exterior Surface Maintenance Areas. All Assessments must be used solely for the common benefit of all of the Owners for the purposes authorized by this Declaration, as it may be amended from time to time.

Section 3.4 permits the Association to return to the Members excess funds for Assessments.

Section 14.10 limits the liability of the Association to any Owner, but I don't see a limitation of liability for the Board Members.

Basically, I don't see any contractual basis for using the Association funds designed for Common Assessments to pay for due diligence expenses, even if approved by unanimous vote of the members. This use isn't authorized by the CC&Rs. I think it would be better to return proportionately to the Members excess funds from the Association Common Assessment account and then have the members agree to use those funds to cover due diligence costs. The parties could agree to set up a separate bank account for this purpose and then authorize someone to pay bills from that account. You should probably obtain pre-approval to cover bills up to a certain dollar threshold, or require approval of each bill via email approval from each member, so that you have a record of authorization from each Member.

Let me know if you have any questions about the CC&Rs or would like to discuss my analysis.

Candy Harper

Candice B. Harper

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