

Thank you everyone who submitted their questions to the Board this week!

At our monthly board meeting that was held on 2-4-21, we discussed at length the most pressing issues raised so far.

We anticipate the following changes in these areas to the Proposed CC&Rs document ahead of the town hall to help alleviate the fears and stresses expressed in your emails; and create additional talking points for the town hall scheduled for 2-18-21.

Part 1: Common concerns

#### **“48-hour Notice of entry”**

Under review from legal counsel.

We have expressed the desire to have it removed. The only reason we see the need for this would be to 1, investigate a complaint of nuisance or violation; 2, verify a complaint or violation has been remedied.

#### **Home Businesses**

The current CC&Rs, which have been in effect since the creation of the HOA, state, "No lot shall be used except for residential purposes." Thus the Current CC&Rs are actually MORE RESTRICTIVE because they prohibit all home businesses.

The Business Activities section of the Proposed CC&Rs allows for Owners and residents to operate businesses out of their home, WITHOUT PRIOR BOARD APPROVAL, as long as they meet the 5 criteria stated in the section (see below). If they do not meet those 5 criteria, specifically 1 through 4, the business would need Board review to determine its impact upon the neighborhood. Businesses that do not meet criteria 5 run the risk of being reported to the police.

Those criteria are:

1. Only normal residential activities would be observable outside of the Residence;
2. The business activity does not involve persons coming on to the Project who do not reside in the Project in a manner and/or amount that would constitute a nuisance;
3. The business activity does not involve the solicitation of Occupants or Owners.
4. The business will not result in the increase of the cost of the Association's insurance;
5. The activities would not be in violation of applicable local ordinances.

The Board does not wish to prohibit home business, but rather, create a balance where Homeowners can operate their own businesses while keeping the neighborhood enjoyable and safe for all Homeowners. We feel that the proposed Business Activities section creates that balance.

## Part 2: Rights of the HOA Board / Owners

The following topics (taken from the main points in some of the documents that have been floating around the FB groups) concern the rights of the Owners, HOA Board, or both. Whether they are spelled out in the CC&Rs (as the Proposed contains), or not (as the Current does or does not contain), is irrelevant: they still exist and no amount of voting can remove these rights. It is the Board's prerogative whether to exercise these rights or not.

### **Foreclose on your house**

(Utah Code 57-8a-303).

This gives the HOA the RIGHT to foreclose on your lot for your failure to pay your assessments (annual dues, any fines incurred from violations).

LET IT BE KNOWN: THE CURRENT MEMBERS OF THE BOARD NEVER WANT TO FORECLOSE ON A HOMEOWNER.

### **Remove your right to vote.**

This is a common practice amongst HOAs to encourage delinquents to pay their fines. We have chosen to revise this somewhat: you are not authorized to vote in any HOA meeting where a vote is taken, if you have not paid your ANNUAL ASSESSMENT. Balances due to fines and/or late fees will NOT preclude you from voting.

### **Change the annual dues and substantially increase fines and late fees.**

The dues are to remain \$40 per year for the foreseeable future.

**Assume any power or right that isn't explicitly given to owners.**

The right to exercise powers not expressly granted to owners defaults to the HOA board (Utah Code 57-8a-102 §4, §10.a).

**Create a new rule or delete any existing rule at any time, for almost any reason.**

The Board has a right to enact changes.

The Association has the right to disapprove of those changes. (Utah Code 57-8a-217)

**Charge the owners additional dues without a vote.**

This is called a "special assessment".

THIS BOARD SEES NO NEED FOR SPECIAL ASSESSMENTS.

The Proposed CC&Rs say the Board can issue special assessments up to \$50 without any owner approval. Anything above \$50 would require a simple majority owner vote at a meeting duly called for such purpose.

**Take out loans for the HOA.**

There are 2 options for financing special projects (such as building a pool, playground, purchasing landscaping equipment, etc): Special Assessments & Loans.

By default, the board can get a loan with no input from homeowners.

We changed that so the board cannot get a loan without homeowner approval (via meeting and vote). In the event the HOA would need extra funding, a majority of votes at an owner meeting (in person or proxy) would be needed to approve.

We have reduced the power of future boards regarding this right.

THE CURRENT BOARD SEES NO REASON TO TAKE OUT A LOAN AT THIS TIME.

**Require approval for any change made to the outside of your home or landscape.**

This is under the direction of the ACC, as defined by both the Current and Proposed CC&Rs.

**Subjectively decide what is a violation of most rules, and it doesn't have to be consistent (5.12, 6.4.2, 6.4.4, 9.15, 10.4, 10.5).**

No two violations are ever the same, there is no blanket clause for any single violation. Each violation is considered on a case-by-case basis and if a fine is justified, the Board has the prerogative to exercise that right. (Utah Code 57-8a-208).

**Annex new homes into the HOA without anyone's consent. (6.4.8)**

This is fairly rare and occurs if an area within the boundaries of an HOA were to be rezoned as residential and not designated as already in the HOA.

Part 3: Other topics of concern

"Nuisance", as it appears herein, is not just a vague generalization based on whims, and/or the imagined or perceived complaints that have been theorized on the posts and comments.

It is defined as anything someone has ACTUALLY REPORTED, based on complaints that have been received by the Board and/or the management company, concerning the actions of the reporter's neighbors.

To help mitigate future reports, we encourage you to speak with the neighbor(s) first. All reports are passed to the management company for inspection and/or follow-up.

**Fences: Fence liability for replacing is equally shared:**

We have removed the "shared responsibility" sentence.

**Decide if your holiday decorations are unacceptable (9.11)**

Decorations must not be allowed to become a nuisance (disrepair, damaged, etc).

**Restrict you to only flying one american flag, of a size that the Board likes, (9.12)**

If you fly the American Flag, it must conform to United States Code Title 4, Chapter 1. This is enforceable regardless of its presence in or absence from an HOA's CC&Rs.

Any other flag is not restricted, so long as it does not become a nuisance. The line concerning the quantity of flags has been removed.

**Decide if and what solar panels you can have installed, (9.13)**

Solar panels are limited to rooftop systems only. Subject to ACC approval.

**Decide if you can paint your front door a certain color, (10.2)**

Under ACC's prerogative.

**Decide if you can change your landscaping, (10.2)**

Under ACC's prerogative.

**Decide if you can pour a concrete pad on your lot, (10.2)**

Under ACC's prerogative.

**Decide if you can build a gazebo or patio cover, (10.2)**

Under ACC's prerogative.

**Really, the HOA can subjectively decide whether or not you can make any external change to your property. (10.2)**

Under ACC's prerogative.

**Increases the late fee to \$25/month instead of 18% annually...So if you forgot to pay your annual dues for a year, the previous late fee would have been \$7.20. Now if you forget to pay your annual dues for a year, you would get charged \$300 in late fees. (5.13)**

The fee for not paying annual assessment was brought more in line with the rest of the fine structure. We have removed mention of the 18% line.

**Makes it explicit that you will be charged regular dues, fines, and late fees, even if the HOA fails to send an invoice. (5.11)**

Invoices are not required to be delivered to the lot Owner. It is the responsibility of the HOA (or its authorized agent) to send warning notices. After the warnings and warning period has expired, fines commence.

Please ensure your contact information is up to date to avoid any incorrectly assessed fines. Any dues or fines must be paid in a timely manner.

You have the right to appeal any fine but not the annual dues. During the inquiry, no further late fees can compound. (Utah Code 57-8a-208)

**Allows for passing on legal fees, collection fees, and other expenses to an owner. (5.6, 5.13, 5.13.3, 5.13.5)**

This occurs in rare instances of litigation against the HOA or each other. It is protected by Utah Code 57-8a. The fees and expenses would be awarded to the prevailing party.

**Creates a "Reinvestment Fee" that new neighbors will have to pay to the HOA when they buy a house here. (5.16)**

Our Reinvestment Fee of \$200 is very low, and can be no higher than 0.5% of the value of the home (Utah code 57-1-46). Furthermore, reinvestment fees are currently paid as part of closing

costs when buying a home. All present Owners have paid this fee. This fee is negotiable between the buyer and the seller at the time of purchase.

**Creates an account payoff request fee of \$50 (5.17)**

The reference to the fee has been removed. Our current management company provides this service free of charge.

**There are many new regulations that double cover city ordinances but will now be fine-able offenses. We will be paying a management company to do what the city is already doing, which could result in an increase of our annual dues.**

The Proposed CC&Rs seek to be more specific than the vagary of the Current CC&Rs. The Current CC&Rs are open to broad interpretation.

The Proposed CC&Rs are written specifically to prevent confusion and neighbor-neighbor litigation opportunities. Therefore, removing the finer points will open the possibility to press charges against each other under the guise that “it’s not in the CC&Rs”; that is why legal counsel has advised the inclusion of so many points of specificity.

The management company has been instructed: if they observe a city violation, it is left to their prerogative whether to contact the police or not.

In all other instances, the Board encourages neighbors to solve disputes of perceived violations, amongst themselves. When this option is not feasible, they may report a potential violation to the Board.