

WALNUT CREEK MUTUAL NO. TWENTY-NINE

October 3, 2024

To: All Members – Walnut Creek Mutual No. Twenty-Nine

Re: Proposed Second Amended and Restated Bylaws (“Bylaws”), and Second Amended and Restated Declaration of Covenants, Conditions and Restrictions (“CC&Rs”) Notice of Informational Meeting of Members on **November 4, 2024 at 5:00 p.m.**

Dear Members:

Your Board of Directors retained the law firm of Hughes Gill Cochrane Tinetti, P.C. to revise and update our Bylaws and CC&Rs, which are 21 years old.

You are encouraged to attend the informational meeting of the members via videoconference on **November 4, 2024 at 5:00 p.m.**, if you have any questions about the proposed CC&Rs. An attorney from Hughes Gill Cochrane Tinetti will attend the meeting for one (1) hour, from 5:00 p.m. to 6:00 p.m., to answer questions about the proposed CC&Rs; members of the Board of Directors will also attend. The Zoom link to join the meeting is: <https://us02web.zoom.us/j/86275265932?pwd=PXsT2W1Yv0aEJ3DwnUzbf4QKGdNZtc.1>, Meeting ID: 862 7526 5932, and Passcode: 610864.

Reasons Revision of the Governing Documents is Important

Our current CC&Rs are over 21 years old. There have been several changes in the law in the past 21 years that have changed the way homeowner Mutuals function. Our documents are out of date with current law in several areas. The Davis-Stirling Common Interest Development Act (“Davis-Stirling Act”), the primary body of law affecting homeowner Mutuals in California, has been amended every year since it was enacted in 1986, five years after your current governing documents were adopted. Additionally, in 2014, the Davis-Stirling Act was completely reorganized and renumbered and, in 2020, the election provisions of the Davis-Stirling Act were significantly revised requiring important changes to our Bylaws and CC&Rs. These changes in the law are reflected in the proposed Bylaws and CC&Rs.

The risk in having operative documents that are out of date with the law and do not reflect current Mutual practices is that Mutual members can be misled and/or rely in error upon the existing governing documents. This means that the existing governing documents are not serving their intended function, which is to inform the homeowners of the rights and restrictions attached to their property and how the Mutual, of which they are members, functions.

Because entirely new Bylaws and CC&Rs have been created, we are unable to provide you with documents that reflect each “change” to the existing Bylaws and CC&Rs. To assist in your review of the proposed documents, the following summary is provided to help with reviewing the documents and identifying some provisions of note.

Bylaws

The Mutual's Bylaws address how the Mutual functions as a corporation and were drafted to comply with relevant provisions of the California Corporations Code and Civil Code. As with the CC&Rs, many of the changes to the Bylaws were made to keep pace with changes to California law. The most substantive changes, as incorporated in the proposed Bylaws, are discussed below.

- Annual Meeting – Section 4.1 of the proposed Bylaws provides that the annual meeting shall be held once each calendar year.
- Remote Meetings – Sections 4.5 and 6.7 of the proposed Bylaws allow remote meetings, except a meeting to open ballots must include a physical location.
- Quorum – Section 4.8.2 of the proposed Bylaws provides that the quorum for the election of directors is the number of ballots received by the stated deadline. Section 4.8.4 of the proposed Bylaws provides that there is no minimum quorum requirement for the annual meeting of the members unless a vote is being conducted. The quorum required for action on other matters is 25% of the total voting power, which may be reduced to 10% of the total voting power. This is a change from Section 4.6 of the existing Bylaws, which provides a quorum of 25% of total voting power, which may be reduced to 20% of total voting power.
- Proxies – Section 4.10 of the proposed Bylaws prohibits the use of proxies for director elections. This is a change from Section 4.7 of the existing Bylaws, which prohibits proxies for all elections.
- Cumulative Voting – Section 5.4 of the proposed Bylaws prohibits cumulative voting for director elections.
- Write-in Candidates – Write-in candidates for the Board are prohibited by Section 5.4 of the proposed Bylaws.
- Qualifications for Candidates – Sections 5.2 and 5.8 of the proposed Bylaws reflect changes in the law effective January 1, 2020. Bylaws. The proposed Bylaws eliminates term limits from Section 5.5 of the existing Bylaws, which provides: “No director shall be elected to serve more than two (2) consecutive terms.”
- Acclamation – Section 5.5 of the proposed Bylaws allows for directors to be elected by “acclamation” subject to compliance with new requirements under the Civil Code. Essentially, in the event that the number of candidates is equal to or fewer than positions open in a given year, the candidates would automatically be appointed to fill the available positions (after the nomination period has come to a close), rather than having the Mutual needlessly spend money on mailing ballots. Newly amended Civil Code section 5100 requires a number of new procedures and notices in order to elect directors by acclamation.
- Disqualification of Directors – Section 5.8 of the proposed Bylaws provides that a director who misses two (2) consecutive regular meetings (which are quarterly) may be disqualified. Section 5.8 also provides that a director *shall* be disqualified from serving if he or she is

convicted of a crime which would prevent the Mutual from purchasing insurance coverage, per the revised Davis-Stirling Act changes effective January 1, 2020.

- Monthly Financial Review – As required by current law, Section 8.8 of the proposed Bylaws requires the Board to conduct a monthly review of the Mutual’s financial documents.
- Existing Approval Requirement – The existing Bylaws require the approval of a majority of a quorum to amend them. The quorum requirement is more than 50% of the total voting power. With 106 total units, this means that at least 54 ballots must be cast to satisfy the quorum requirement and a majority of those votes cast must be in favor of the proposed Bylaws for them to be approved.
- Future Approval Requirement – The proposed Bylaws require the approval of a majority of a quorum where the quorum is 25% of the total voting power, which may be reduced to 10% of the total voting power pursuant to Section 4.8.4 of the proposed Bylaws. This means that at least 27 ballots (which may be reduced to 11 ballots) must be received to satisfy the quorum requirement and a majority of those votes cast must be in favor of the amendment to the Bylaws for it to be approved.

CC&Rs

- Occupancy Limit – Section 4.2 of the proposed CC&Rs limits the number of residents per lot to two individuals per bedroom plus one, so long as said limitation is not in conflict with any governmental regulation or ordinance.
- Home Offices – Section 4.4 of the proposed CC&Rs allows home offices, which is consistent with the law.
- Smoking Prohibition – Section 4.9 of the proposed CC&Rs prohibits smoking within the units and common area which is consistent with local ordinance.
- Hard-Surface Flooring – Section 4.10 of the proposed CC&Rs recommends carpeted flooring in all units located above other units and requires all hard surface flooring and carpeted flooring in units above other units to meet the Mutual’s sound proofing ratings and construction criteria set forth in its Rules entitled “Statement of Policies.” New flooring in units above other units requires an alteration permit. This is a change from Section 4.25 of the existing CC&Rs, which requires prior written consent from the Board for any change to the floor covering material originally installed and requires all units located above other units to have all floor areas, except kitchens, bathrooms, and entry halls, covered with carpet or other material that provides equivalent insulation against sound transmission to the unit below.
- Basketball Standards – Section 4.11 of the proposed CC&Rs prohibits basketball standards without the permission of the Board, consistent with the existing CC&Rs.
- Clotheslines – Section 4.13 of the proposed CC&Rs prohibits clotheslines and drying racks, which is consistent with the existing CC&Rs.

- Pets – Section 4.16.1 of the proposed CC&Rs limits each unit to two (2) pets, which is consistent with Section 4.14.1 of the existing CC&Rs. Please note that service and assistance animals are not pets.
- Carports/Parking Spaces – Section 4.21.1 of the proposed CC&Rs provides that each manor may park no more than two (2) vehicles within the entry. Section 4.23 of the proposed CC&Rs prohibits the conversion of carports and parking spaces (to storage) from their intended use for parking.
- Open Flame Devices – Section 4.27 of the proposed CC&Rs prohibits exterior fires anywhere within the development except for barbeque and controlled fires contained within receptacles designed for that purpose.
- Minimum Lease Term – Section 5.3 of the proposed CC&Rs expressly prohibits short-term rentals of less than three (3) months through Airbnb, VRBO, or other similar websites. This is a change from the existing minimum lease term of 30 days. However, Section 5.5.1 of the proposed CC&Rs provides legacy status to exempt current owners from the minimum lease term of three (3) months, consistent with the law. Section 5.3 of the proposed CC&Rs allows owners to have roommates with lease terms of 30 days or more, consistent with Civil Code section 4739 which came into effect on January 1, 2023.
- Rental Cap – Section 5.5 of the proposed CC&Rs imposes a rental cap of 25% of the total 106 units, which means that 27 units is the maximum number of permitted rentals. This is a change from Section 4.3.2 of the existing CC&Rs, which imposed a rental cap of 16 units. This 15% rental cap violates Civil Code section 4741(b), which expressly prohibits rental caps of LESS than 25%. Section 5.5.1 incorporates the legacy status date of August 6, 2003, which is the recordation date of the existing CC&Rs. That means the owners who purchased prior to that date may continue to rent without being subject to the waiting list, but their rentals count toward the rental cap.
- Maintenance – Article 6 of the proposed CC&Rs provides detailed provisions on responsibilities of the Mutual and owners.
- Chimneys and Fireplaces – Section 6.2.4 of the proposed CC&Rs requires the Mutual to maintain, repair and replace the surfaces of chimneys extending above the roofline, chimney caps, and rodent-deterrent wire barrier located on the chimney and/or roof.
- Waterproofing – Section 6.2.11(a) of the proposed CC&Rs requires the Mutual to be responsible for waterproofing components around skylights and solar tubes and to provide future repairs at the owners' expense.
- Windows/Sliding Glass Doors – Section 6.3.1(a) of the proposed CC&Rs also requires the Mutual to be responsible for waterproofing components around windows and sliding glass doors and to provide future repairs at the owners' expense. Section 6.3.1(b) of the proposed CC&Rs requires the owners to maintain, repair and replace their windows, sliding glass doors and unit doors.

- Insurance Deductible – Section 10.2.7 of the proposed CC&Rs requires the owners to pay the deductible on Mutual-maintained insurance in the event of damage caused by the failure of some portion of the unit or common area for which the owner is responsible for maintaining.
- Owner’s Insurance – Section 10.5 of the proposed CC&Rs requires the Owners to carry a “special causes of loss” policy in an amount equal to or greater than the total replacement value of the Unit interior to the extent not covered by the Mutual’s blanket property policy, including, if applicable, upgrades to the Unit as originally constructed and the personal property contained therein (commonly known as a “HO-6” policy). This is necessary to fill the insurance gap if the Mutual’s property insurance policy limit is depleted.
- Existing Approval Requirement – The existing CC&Rs require the approval of a majority of the total voting power to amend them, which means at least 54 Members must vote in favor of the proposed CC&Rs to adopt them.
- Future Approval Requirement – The proposed CC&Rs require the approval of a majority of a quorum where the quorum is 25% of the total voting power, which may be reduced to 10% of the total voting power pursuant to Section 4.8.4 of the proposed Bylaws. This means that at least 27 ballots (which may be reduced to 11 ballots) must be cast to satisfy the quorum requirement and a majority of those votes cast must be in favor of the proposed amendment to the CC&Rs.

Bring Your Questions to the Informational Meeting

Please carefully review the proposed governing documents. If you have questions about the proposed documents, you are encouraged to bring them to the informational meeting on November 4, 2024. The meeting will be conducted via videoconference and will begin at 5:00 p.m.

Please note that the vote to approve the proposed Bylaws and CC&Rs will *not* be conducted at the November 4, 2024 meeting. The Board will consider all comments received at that meeting and ask the Mutual’s attorney to make changes to the proposed documents if appropriate.

Following the informational meeting, a ballot to vote “FOR” or “AGAINST” the proposed Bylaws and CC&Rs, as well as copies of the proposed Bylaws and CC&Rs, will be mailed to each member of the Mutual, as required by law, at least thirty (30) days prior to the ballot tabulation meeting.

Thank you very much for your participation and cooperation in this process.

Very truly yours,

Board of Directors
Walnut Creek Mutual No. Twenty-Nine

Enclosures