

SHOULD WE UPDATE OUR CC&Rs AND BYLAWS WITH AN INCREMENTAL OR A FULL REWRITE APPROACH?

by Jim Hicks and Russ Cotton, Candidates for The Village 2019-2020 Board of Directors Election

Our Governing Documents are nearly 50 years old and do need updating. We believe taking an incremental approach to updating them addresses key items and has the best chance for community consensus and approval. The following are our opinions of both approaches. Comment is welcomed.

INCREMENTAL APPROACH HIGHLIGHTS

Recommended by Jim Hicks & Russ Cotton

1. **EASY TO UNDERSTAND.** Each proposed change gets listed with the old language, the new language, and the reasoning justifying the change.
2. **INEXPENSIVE.** We estimate community expense in the few thousands and not tens-of-thousands by comparison.
3. **REASONABLE.** We take a handful of items with solid reasoning and present them to the community.
4. **A LOW RISK-HIGH REWARD** proposition. Let's just say five changes are on the ballot. If three are voted in and two do not make it, then we've **adopted** three new community-supported changes. That's a 100% improvement over all governing documents update attempts since 1982.
5. **TARGETED.** We address specific issues with specific solutions.
6. **EASY TO DEBATE.** Can conduct an open dialog on each item and let each stand on its own merits based on community feedback.

KEY ITEMS TO UPDATE WITH AN INCREMENTAL APPROACH

UPDATE FINES STRUCTURE. \$50 is not a deterrent in this day and age for egregious abuse. A new solution should remain in our CC&Rs to prevent future Board abuse. Maintain or even lower our \$50 fine if possible, just to cover administrative expenses for typical first-offense violators. Propose an escalating fine schedule sufficiently encouraging chronic violators to adhere to the community guidelines we all comply with.

REMOVE CUMULATIVE VOTING. This is where you can stack up to all 5 of your votes onto one candidate during HOA Elections. The intent of cumulative voting is to offset developer influence in young subdivisions, giving outnumbered homeowners in burgeoning developments a seat at the table in a developing community's Boardroom. We are approaching a 50-year-old community. This has long not applied.

SELLING YOUR VOTE AND ELIMINATE PROXIES. From what I can tell, our Governing Documents allow for a voting proxy and are silent on whether you can pay someone for their vote. This applies to all secret ballots, including amendment proposals and land use changes. It needs to be eliminated.

UPDATE OUTDATED REFERENCES. Developers and their companies are long gone, completely out of the picture. Changing developer references in our documents are straightforward, simple, and needed. We need to clarify property ownership. We are a community of separate interests and our documents should reflect as much.

STREAMLINE HOA RULES. Permit reasonable, like-for-like maintenance and repairs on your home, by eliminating full Architectural submission paperwork for simple maintenance. The objective is to provide an easier pathway for homeowner improvements. Let us CHAMPION this BOLD NEW IDEA. Everyone wins.

FULL-REWRITE APPROACH HIGHLIGHTS

NOT Recommended by Jim Hicks & Russ Cotton

The State of California emphasizes Governing Documents should *easy* to understand. Even with that in mind, our recent full-rewrite presentation did not cross the finish line through no lack of effort and illustrated that there is just no easy way to do this.

We have studied this approach for over four years, and even now cannot pinpoint conclusively all of the reasons why the recent proposal failed. In the simplest terms, a full-rewrite of our Governing Documents invoked more questions than answers. Even in its most perfect presentation, a full rewrite adoption is simply an overwhelming challenge for most communities and ours is no exception.

1. **IT'S ALL OR NOTHING.** Key updates embedded in a full re-write are lost if it fails. We are back to square one. Conversely, who wants to approve a full re-write to get some needed items updated, at the expense of agreeing to language that you are not comfortable with.
2. **IT IS DIFFICULT TO EXPLAIN.** While new documents may be endorsed by the State of California Department of Real Estate, many homeowners have expressed a high comfort level with our easy-to-understand, long standing current documents and see little reason to tackle and make sense of all that legalese.
3. **DO CC&RS REALLY ADD VALUE?** Ask your Coto Neighborhood Realtor if there is quantifiable, increased value in newer neighboring developments compared to Coto de Caza based on their newer CC&Rs.
4. **CALIFORNIA ALREADY UPDATES CC&R STATUTES.** These constantly updated statutes always supersede Community documents.
5. **FOCUS ON SPECIFIC COMMUNITY ASPECTS THAT WE CAN CONTROL.** Avoid misunderstanding and legal costs by leaving the heavy lifting of maintaining statutes to our County and State governments.
6. **THE BAR FOR APPROVAL IS VERY HIGH.** While a CC&R update needs 50%+1 of the membership (215 ayes), our Bylaws require 75%, or 322 members to adopt. The courts would likely allow us to fudge a bit, but for a full re-write it remains a very difficult goal to achieve. It's common knowledge that this is very difficult for any HOA to achieve.
7. **THE MOST EXPENSIVE** approach. With mounting legal fees in tow, for the last seven or eight year several heartfelt attempts to update our Governing Documents have failed. Our attorneys must love us.
8. **INSURANCE COMPANIES MAY LOOK FAVORABLY** on a new set of documents.

DID YOU KNOW?

Some HOAs have CC&Rs with expiration dates (not ours). Recognizing that these 30 and 40 year-old documents have merit, advocacy groups have efforts afoot looking to make it easy for these mature HOAs to renew them WITHOUT even requiring a vote of all members (*see footnote (1), below*).

This tells me that we are not the only HOA with mature documents, and that documents like ours do not necessarily mean they mandate replacement.

(1) <https://independentamericancommunities.com/2018/09/09/studies-conclude-that-hoas-ccrs-have-little-to-no-impact-on-property-values-of-mature-communities/>