



CITY OF BEND

## **M E M O R A N D U M**

To: Juniper Ridge Management Advisory Board (JRMAB)  
From: Mary Alice Winters, City Attorney  
Matt Stuart, Urban Renewal Manager  
Subject: Juniper Ridge Governing Documents  
Date: January 23, 2020

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### **Q U E S T I O N**

What is the process for changing or updating the various governing documents, including the Juniper Ridge CC&Rs, the Design Guidelines, the Transportation Demand Management Association requirements, the Intergovernmental Agreement between the City of Bend and ODOT, and the Articles of Incorporation/Bylaws?

### **S H O R T A N S W E R**

All the documents can be amended with varying degrees of difficulty and procedures. Most significantly, amending the CC&Rs requires approval of 75% of the Class A voting members, which is currently the private Lot Owners. The City, as Developer and Declarant, is a Class B member. Therefore, amending the CC&Rs by the City would require the City to change its Class B membership, typical for a Developer, to Class A membership. Once changed, the City cannot change back to Class B membership. In addition, the CC&Rs implement the Juniper Ridge Employment Subdistrict in the Bend Development Code (BDC), and the code and CC&Rs work together in some areas. Therefore, the JRMAB (and ultimately Council) would need to determine which aspects it wants to change or update, as the changes requested may require involvement from both the City's regulatory function and its role as a Developer.

### **R E G U L A T O R Y V S . P R O P R I E T A R Y**

As the owner of Juniper Ridge, the City acts in the proprietary, or ownership, role. This relates to the CC&Rs, the Articles of Incorporation and the Design Guidelines. However,

the City also has a regulatory role, where it processes permits (quasi-judicial) and would amend its code (legislative). In this role, the City is also the applicant/developer, as well as the regulator, and so should remember that as the regulator it is expected to be more arms-length or fair and neutral the way it would be with any developer/applicant.

On November 18, 2009, the City Council adopted a Special Planned Area (SPA) zoning overlay for the Employment Subdistrict. The City's development code at Section 2.7.2000 creates the Juniper Ridge Overlay District. The City also rezoned all of the 306 acres of the Employment Subdistrict from UAR 10 (Urban Area Reserve, ten-acre minimum parcel size) to IL (Light Industrial) with the boundaries of the Juniper Ridge Overlay Zone. The zone change was dependent upon the City and the Oregon Department of Transportation (ODOT) entering into an intergovernmental agreement (IGA) defining mitigation of transportation impacts resulting from development of the project, which is reflected in the development code.

## ***CC&RS – INTENT AND ADOPTION***

The former Juniper Ridge Management Board (JRMB) believed that the establishment of Covenants, Conditions and Restrictions was an essential, standard component of any master-planned land development, and were intended to ensure that the development is designed and maintained in accordance with City of Bend objectives. The Juniper Ridge project team, at the time, went through an extensive drafting and review process in preparing this document, and successfully completed an equally extensive negotiation and review process with Les Schwab Tire Centers, Suterra Corporation, and PacifiCorp, all of whom had the right of review and consent to the terms of the document as landowners within the Subdistrict, and would be affected or encumbered by the CC&Rs. The CC&Rs were discussed and reviewed at multiple JRMB meetings, which were open to the public. The following are outlined to help understand the policy direction and the intent of the CC&Rs when adopted by Council:

**Section 1.10, Declarant:** If the City assigns its rights as Declarant to a third party, such as a master developer, the City shall have the right to retain (“carve out”) specific rights. This would allow the City to retain control of any elements of the development program that were felt to be critical, for example, timing of infrastructure approval, annexation decisions or design review.

**Section 3.3, Voting Rights:** In determining the voting rights of Class B members (the Declarant) two alternatives were considered: (1) giving the Declarant the sum of votes allocated to Class A members (the other property owners) plus one vote; or (2) giving the Declarant ten votes per acre of land owned, in contrast to other property owners, who have one vote per acre of land.

The second method of counting votes, giving the Declarant ten votes per acre, was selected. The first method essentially would allow the Declarant to remain in control of the Owners Association (“OA”) until it chose to step down; the second provides a formula that will predictably transition control of the OA from the Declarant to the other landowners at a “sold threshold” of approximately 207

acres. There was clear consensus among the JRMB that developers and end users buying in to Juniper Ridge need to have the opportunity, and a clear mandate, to step up and direct the affairs of the OA. The formula selected allows for this transition to occur in direct proportion to the velocity of land sales.

**Section 3.5, Board of Directors:** Suterra and PacifiCorp both have the right to appoint a Director to the Board for the Board’s initial term, which starts after the close of the next property sale, and runs for two (2) years following.

**Section 3.9, Transportation Management Association (“TMA”):** The CC&Rs establish a TMA and essentially obligate all property owners to participate in transportation demand management provisions.

**Section 3.11, Turnover; Termination of Certain Declarant Rights:** When authority for administration of the Owners Association under the CC&Rs is turned over from the Declarant (the City) to the Association, the Declarant relinquishes certain rights, which are specified in Section 3.11 and include relinquishing the right to block annexation of additional property to the Employment Subdistrict. While this represents a significant loss of control over ongoing development at Juniper Ridge, it is important for JRMAB and Council to recognize that the City will retain significant control over future annexations to the Employment Sub-District, since any areas to be annexed must (i) be brought into the Urban Growth Boundary and (ii) re-zoned.

**Section 4.6, Assessments:** Assessments for (i) general administration of the OA, (ii) general administration of the TMA, and (iii) landscape maintenance and irrigation are to be assessed on a pro rata basis of the amount of acreage platted and served by streets in any given fiscal year. The pro rata percentage of unsold property to the total amount of platted acreage, applied to the total cost of OA operations for that year, is the Declarant’s funding obligation.

**Authorization of City Manager to act on behalf of the City pursuant to the CC&Rs:** By enabling efficient administration of the CC&Rs, authorization of the City Manager to act on behalf of the City will facilitate consistent, timely, and cost-effective development of the Employment Subdistrict. The City Manager will be required to promptly update the City Council on any and all significant actions. City Council, however, will always have the ability to revoke this authorization, or curtail it, if it finds this operational structure unsatisfactory. Additionally, as noted above, City Council will effectively retain control over any future annexations to the Subdistrict through its review and approval authority over the UGB and zone change processes.

## ***A M E N D M E N T P R O C E D U R E S :***

**Bend Development Code: Juniper Ridge Overlay Zone**

The Employment Subdistrict of the Juniper Ridge Overlay Zone lists permitted and conditional uses, has fencing and screening requirements, requires a Transportation Management Association (TMA) for the Employment Subdistrict to meet the City's Transportation System Plan goals and policies and BDC Chapter 4.7, and references the Juniper Ridge Design Guidelines for site development and natural resource/landscaping purposes. Building standards (height, front yard, side, rear setback, maximum building coverage) are also located in the development code – Table 2.7.2030.C.

Any changes to the development code would go through Planning Commission review and recommendation, and then City Council review and consideration as a Type IV land use action, in the City's regulatory role.

### **CC&Rs**

CC&Rs can only be amended as provided in the governing document. The CC&Rs provide that they can be amended or repealed by 75% of the voting power of Class A members and by the consent of the Class B Member, if any. No amendment may affect any rights of the City without prior consent of the City. In addition, amendments that affect or apply to the Les Schwab parcels (West, South or Ancillary Parcels) require the consent of Les Schwab. Section 12.2.

Under the Voting Rights, the City is a Class B member as described above, and all other Lot Owners are Members according to a formula. The CC&Rs state: "The Class B membership shall cease and be converted to Class A membership upon the earlier to occur of the following: (i) the date of the Declarant's election in writing to terminate the Class B membership, or (ii) (60) sixty days after the Declarant no longer owns any of the Property. Once the Class B membership has been converted, it shall not be reinstated for any reason, regardless of whether Declarant subsequently annexes additional property to the Property subject to this Declaration." Section 3.3.

So to amend the CC&Rs without voting for the amendments by the existing Class A members, the City would have to terminate its Class B membership and then have 75% of the voting power based on its remaining ownership. It would still need consent of Les Schwab for any amendments that affect or apply to the Les Schwab parcels. It would lose its Class B voting Power and its voting would be converted to Class A membership status. This would be unusual—converting to Class A membership by the Developer, and does not appear to be the intent of how the CC&Rs were structured, but could be done.

### **Critical Overlaps:**

- 1) The CC&Rs require the Association to establish a Transportation Management Committee to manage the TDM Provisions. CC&Rs, Section 3.9. This section is intended to implement both the ODOT trip count agreement, and the BDC provisions related to the vehicle trip limits and TDM requirements in the development code.

- 2) The Design Guidelines and Design Committee referenced in the CC&Rs are also referenced in the development code related to Natural Resources in the Employment Sub-District. BDC 2.70.2020(N).
- 3) The CC&Rs require that use, development, dividing and improving lots be consistent with the Bend Development Code, and the Juniper Ridge Employment Subdistrict section of the Code. Section 7.1. Owners cannot seek a discretionary land use approval without prior written consent of the Board. So development at Juniper Ridge works with the development code, by express intention.

### **Design Guidelines**

Prior to turnover, the Declarant has the sole authority to amend the Design Guidelines. Per the council adoption Resolution, the City Manager is authorized to amend the Design Guidelines on behalf of the City. Amendments are effective immediately upon adoption, and provided to all Owners. CC&Rs, Section 8.1.

### **Intergovernmental Agreement (IGA)**

The mitigation strategy in the IGA is reflected in the development code. Development within the Employment Sub-District is limited to a maximum of 2,200 p.m. peak hour vehicle trips allocated within the terms of the ODOT IGA and phased in accordance with the mitigation table (700 trips for the first set of improvements before the US 97 improvements). BDC Section 2.7.2030. The vehicle trip limit applies to all land use applications that propose development that will generate peak hour vehicle trips. Changing this mitigation strategy would require a code change, premised on a change in the IGA for mitigating and funding transportation improvements during the planning period.

The parties agreed on the vehicle trip limit of 2200 for the proposed zone change. As it currently reads, the IGA states that the agreement can be amended by mutual written consent “so long as such amendments are consistent with Vehicle Trip Limit identified in the Ordinance. If City amends the Vehicle Trip Limit set forth in Ordinance No. NS-2152 the IGA can be amended by mutual written consent to be consistent with the amended Ordinance.” IGA, Section E.6.

### **Transportation Demand Management Association**

According to Section 3.9.2 of the Juniper Ridge CC&Rs, the Association must establish the Juniper Ridge Transportation Management Committee (JRTMC), which will function as a transportation management association to enforce transportation demand management conditions and/ or mitigation measures (TDM) imposed to reduce peak hour (4pm-6pm) traffic. The JRTDMC’s obligation is to assure a 10% reduction in peak traffic within the Juniper Ridge Employment Subdistrict. The JRTDMC operates in accordance with operating guidelines established and amended by the Board, subject to approval by the City of Bend.

Since the code references the transportation demand management measures (BDC 2.7.2030(H)(2)), one cannot be amended without amending the other.

**Articles of Incorporation and Bylaws**

The Articles of Incorporation may be amended or repealed with the consent of the members holding at least 75% of the Class A voting power, together with the consent of the Class B member (provided that the Class B membership has not terminated. If an amendment is inconsistent with the Declaration (CC&Rs) or Bylaws, then it will not be effective unless the Declaration or Bylaws are likewise amended.