

BOARD OF DIRECTORS  
THE MENLO COMMONS ASSOCIATION

SUMMARY OF SIGNIFICANT FEATURES AND CHANGES  
IN THE PROPOSED REVISED GOVERNING DOCUMENTS

**BACKGROUND OF GOVERNING DOCUMENT UPDATE PROJECT**

The Menlo Commons Association is a “common interest development” and, as such, it is governed by provisions of California law, including the Corporations Code and the Civil Code (the Davis-Stirling Act). Our Association’s governing documents were last updated in 2005. Since then, there have been many changes in the laws which have resulted in our existing articles of incorporation, bylaws, and CC&Rs being outdated, incomplete, or inaccurate concerning important aspects of our operations. For this reason, the Board has been working with the Association’s legal counsel to develop the updated governing documents that are enclosed in this package.

**OBJECTIVES OF THE PROJECT**

The objectives of this governing document project are: (i) to update the Articles of Incorporation, Bylaws, and CC&Rs to reflect the many changes that have occurred in the law since 2005, (ii) to provide clarity about issues due to outdated documents in a manner that reflects the principles contained in the current documents and applicable law, and (iii) to reorganize the documents so that the updated and clarified information will be more accessible to the membership, Board and committee members, the manager, and others who have an interest in the community.

The “New” Davis-Stirling Act was signed into law and became effective on January 1, 2014. The proposed documents reflect the new numbering scheme contained in the New Davis-Stirling Act. For instance, Civil Code section 1351(a) under the “old” law is now referred to by its new number location, Civil Code section 4080. The proposed documents have also been updated to current law through the most recent 2020 legislative session.

**THIS SUMMARY AND FORMAT OF THE DOCUMENTS**

Because the information has been reorganized, it was not possible to prepare new documents in such a way that they can be usefully “redlined” or “compared” to the old documents. To assist you in reviewing the proposed new documents, we have asked legal counsel to prepare this “executive summary.” This summary provides a road map of how the information in the new documents is organized and outlines features and changes in the documents that the Board feels are significant. It should not be solely relied upon in making your decision on how to vote. Each member should read through each of the enclosed documents carefully. Each document is discussed below.

The re-organization of the documents (objective (iii), above) is a result of certain changes in the law (i.e., it makes sense to put certain things together because of new requirements in the law) and also an effort to make the order of the topics within each document more logical and sequential and to eliminate redundancy between the Bylaws and the CC&Rs. Within certain parts of the documents, we have created additional and more descriptive headings; we use more white space and use a larger 12-point font. Although, admittedly, this reorganization makes the documents longer, we think it also makes the documents more approachable and user friendly.

## **ARTICLES OF INCORPORATION**

The **Articles of Incorporation** of a homeowners association is the document that is filed with the California Secretary of State to establish the association as a nonprofit corporate entity. The Amended and Restated Articles include provisions that are required under the Corporations Code and those that are required for a homeowners association under the Davis-Stirling Act. A complete, accurate and updated legal description of the property has been included. Obsolete provisions such as the initial agent for service of process, and the name and location of the managing agent, have been updated. Consistent with the provisions of the Corporations Code, future amendments of the Articles of Incorporation will require approval from a majority of a quorum of the members instead of a majority of the total voting power.

## **BYLAWS**

The **Bylaws** of a homeowners association govern organizational matters and matters of corporate governance. This is distinct from the Declaration of CC&Rs, which address real property rights, interests, and obligations and related real property matters. The Amended and Restated Bylaws are updated to include a number of specific “member protective” provisions that have been added to the law. The Amended and Restated Bylaws conform to the current requirements of the Corporations Code and the Davis-Stirling Act, particularly those that detail the duties and powers of the Association and the Board’s many disclosure obligations to the members.

**Article 1:** States the corporate name, location, and purpose of the Association.

**Article 2:** Contains a comprehensive set of definitions to clarify the terminology of the Bylaws and helps ensure the same words are used with a consistent meaning throughout the document. The CC&Rs define these words in the same way.

The purpose of the definitions is to ensure that important terms have the same meaning wherever they are used in the documents and that, as much as possible, the whole definition is in one place in the document. This is not intended to be a dictionary, so some of the definitions do include the words being defined and sometimes the “definition” refers you to another part of the document.

**Article 3:** Discusses membership and voting rights. As under the current bylaws, every owner of a Unit is automatically a member, and the owners of every Unit are jointly entitled to one vote.

**Article 4:** The Davis-Stirling Act was amended some years ago to require that common interest development associations use certain voting and election procedures that are different from the procedures contained in the Corporations Code and used by other (non-CID) corporations. Our existing bylaws (which were drafted before this change in the Davis-Stirling Act) do not reflect the provisions of the law.

Highlights of changes from our existing bylaws include: All voting by members will be by mail using the “secret ballot” method created by the voting and election law. Ballots will be opened and tabulated at either a member meeting or an open Board meeting but no voting by members will take place at a meeting. Proxies will no longer be used since they are irrelevant if there is no voting at member meetings. Since there will not be any voting at meetings, there is no quorum requirement for member attendance at meetings.

Under the Amended and Restated Bylaws, every member entitled to vote will receive a ballot and at least one-third of the members entitled to vote must return a ballot for the result of the vote to be valid, with the following exceptions: (i) elections of directors will be like public elections in which the number of ballots cast will constitute a quorum, (ii) when the law requires a member vote to approve certain changes in assessments, the quorum requirement is more than half of all the owners, and (iii) there is no quorum requirement for member attendance at member meetings. These lower or no quorum provisions are designed to help the Association operate more effectively and efficiently.

**Article 5:** Spells out the process of nominating and electing Board members. There is no change in the number of directors (it remains five) or their term of office (it remains two years). Directors are volunteers and are not entitled to receive compensation.

Only members in good standing are eligible to be elected to or serve on the Board of Directors. Co-owners of one or more Unit may not serve on the Board at the same time. Candidates for the Board may be nominated by a nominating committee or by placing their own name in nomination before the nomination deadline. The names of all qualified candidates received by the Board by the published deadline for nominations will be included on the ballot sent to the members for the election of directors. Because ballots must be sent out at least 30 days in advance and voting will begin as soon as ballots are mailed out, taking nominations from the floor at a meeting is not feasible.

**Please Note:** If by the published deadline for nominations the number of candidates is less than or equal to the number of seats to be filled (in other words, there is no question about the outcome of the election) and certain procedural requirements are followed, the Board can declare the candidates elected and notify the members of their election without going through the cost and unnecessary process of balloting. Election by acclamation is intended to permit the Association to avoid a costly election ballot mailing when there is an uncontested election.

In the election of directors, members may cast one vote per candidate for each vacancy being filled, and the candidates receiving the highest number of votes are

elected, up to the number of directors to be elected. If there is a tied vote, the candidates will draw lots to break the tie. Cumulative voting (giving more than one vote to a candidate for the Board) is not permitted.

**Article 6:** This Article deals with meetings of the Board and the rights of the membership to have notice of Board meetings and to speak to the Board as provided by law. Board meetings are to be held at least every three months. Directors and members both are entitled to notice of Board meetings. Members are given at least four days' notice of open Board meetings and at least two days' notice of executive session meetings. The notice must include the agenda except in the case of an emergency meeting. Permitted reasons for executive sessions are listed. Items not on the agenda cannot be decided by the Board except in very limited emergency situations.

**Articles 7 & 8:** Describe the duties and powers of the Board, including many important periodic notifications and disclosures to the membership which have been added by changes in the law. However, certain actions must also be approved by a vote of the members such as selling or mortgaging Association property.

**Article 9:** Describes the positions of the corporate officers. All of the principal offices (president, vice-president, secretary, and chief financial officer (treasurer)) must be held by members of the Board.

**Article 10:** Concerns Association record keeping and financial management, as well as members' right to review the Association's accounting books and records, minutes of proceedings, and other records. The law requires the Board to keep minutes of all open Board meetings and members are entitled to have copies of minutes 30 days after the Board meets.

**Article 11:** Under the Amended and Restated Bylaws, future amendments of the Bylaws will continue to require approval of a majority of a quorum of the members. To allow the Association to keep the Bylaws up to date with changes in the law, this Article also authorizes the Board to approve an amendment if it is to eliminate a conflict between the existing Bylaws and the law or if it is to add some new requirement imposed by law, and the amendment is prepared by the Association's legal counsel. The idea is to provide a mechanism for this limited category of changes to be made in an expeditious and low-cost manner so that it will be easier to keep the documents current with future changes in the law.

**Article 12:** States which of the governing documents will control in the event of a conflict. The likelihood of conflicts is reduced under the Amended and Restated Bylaws and the Amended and Restated CC&Rs because they do not cover overlapping subject matter.

### **DECLARATION OF CC&Rs**

The **Declaration (or CC&Rs)** of a condominium project addresses real property rights, restrictions, interests, and obligations and related real property matters. This is

different and distinct from the Bylaws which govern organizational matters and matters of corporate governance of the Association.

The proposed CC&Rs have been drafted using consistent terminology and are organized to collect in each part of the document the provisions that relate to a particular topic and to avoid repetition or excessive cross-referenced provisions. The content has been updated to conform to the current law and has been organized into a more logical order.

**Article 1:** Contains a comprehensive set of definitions consistent with the definitions in the Bylaws.

**Article 2:** Describes our Association generally and the fact that the Association has authority over the condominium project. To avoid repetition and the potential for inconsistent provisions in the Bylaws and the CC&Rs, detailed provisions concerning corporate governance are in the Bylaws only.

**Article 3:** Describes the overall “lay of the land” of the condominium project. Section 3.6 reflects the provisions of state law restricting partition of the condominium project. Section 3.7 contains provisions that limit the power of the Board to sell or mortgage Association property.

**Article 4:** Contains the provisions in our current 2005 Declaration regarding utilities.

**Article 5:** Deals with taxes and mechanic’s liens and collects together the provisions concerning easement rights.

**Article 6:** Contains the provisions concerning residential use of the property, such as use of the Common Area, conducting businesses, vehicles and parking, pets, and signs. Section 6.8 discusses the fact that our condominium project is an independent living senior residential community.

**Please Note:** There is a proposed new provision at Section 6.5 that will restrict smoking anywhere in the Common Area in our condominium project, whether indoors or outdoors including Exclusive Use Common Area. This provision is intended to protect the health and safety of residents and to preserve property values.

**Article 7:** Clarifies owners’ responsibilities in relation to their tenants. This Article contains the same limitation on the number of rental Units allowed that is contained in our 2007 Declaration except the cap has been raised to 25% (or 31 Units) to conform with current statutory requirements.

**Article 8:** Describes when architectural approval is required. State law has imposed procedural requirements and other standards on architectural control functions of homeowner associations. Describes the application, approval, and inspection procedures consistent with applicable law and with sufficient detail so that the procedures will remain generally consistent from year to year and so all members can know what their rights and obligations are when they want to make changes to their

Unit. Some common architectural issues are outlined which require prior approval. The Board may adopt architectural rules as long as they are consistent with the CC&Rs.

**Please Note:** Proposed Section 8.7 requires future new or replacement floor coverings in upper Units to meet certain sound transmission standards established by the American Society for Testing and Materials (ASTM), specifically ASTM E1007-14 (Standard Test Method for Field Measurement of Tapping Machine Impact Sound Transmission Through Floor-Ceiling Assemblies and Associated Support Structures). The standard is **not retroactive** and the objective is to allow a phase-in of this standard whenever an owner decides to replace existing flooring.

Requests for architectural approval must be made in writing. Architectural decisions must also be made in writing, must be made within 45 days after an owner submits a complete application, and if an application is denied, an explanation must be given for the decision. If the Board does not act in a timely manner, the owner may demand "internal dispute resolution" (meet and confer with the Board). All architectural decisions must be made in good faith in accordance with the standards in the CC&Rs. The Board may grant reasonable variances to deal with special circumstances as long as the variance is not contrary to the intention of the CC&Rs, and variances do not set precedents for other situations.

**Article 9:** Deals with assessments. The provisions have been updated to conform to the Davis-Stirling Act in terms of categories of assessments and enforcement. Regular and Special Assessments continue to be allocated among the Unit in the same manner as under the current governing documents.

This Article describes the procedures that by law are available to the Association to enforce the obligation to pay assessments. These provisions are designed to ensure that the Association is able to raise the funds needed to conduct the Association's affairs in a timely manner and that each member pays his or her fair share.

Regular Assessments continue to be due and payable monthly and are delinquent if unpaid 15 days after they are due.

The Assessment provisions describe a category of assessment to reimburse the Association for costs incurred in the process of enforcing the governing documents against a particular Unit ("Reimbursement Assessments"). Reimbursement Assessments can be enforced by lien and non-judicial foreclosure of the Unit, in the same manner as Regular and Special Assessments. The assessment provisions also describe a category of assessments that are fines ("Enforcement Assessments"). Enforcement Assessments are also enforceable by lien but cannot be foreclosed by non-judicial foreclosure. These categories of assessments and the powers and procedures to enforce them reflect the powers available to the Association under the provisions of applicable law.

If an owner does not pay assessments when they are due, the Association must give certain notifications to the owner before a notice of delinquent assessments can be recorded and foreclosed upon. Delinquent owners are responsible for late charges,

interest, and collection costs in addition to the unpaid assessments. Owners are also personally responsible for payment of assessments if there is not enough equity in the Unit to pay what the owner owes to the Association. If an owner is delinquent but is still collecting rent from a tenant who is renting the Unit, the Association can direct the tenant to pay the rent to the Association to collect what the owner owes to the Association. (This right does not interfere with any rights of lenders to do the same thing if the owner is delinquent on a mortgage loan.) The homestead exemption is waived so as to increase the ability of the Association to recover what a delinquent owner owes to the Association.

**Article 10:** Describes the respective maintenance responsibilities of the Association and the individual owners. This Article reflects the maintenance scheme as provided in our existing governing documents. It clarifies the existing obligations of the Association and the owners, respectively, as to maintenance, repair, and replacement responsibilities.

**Article 11:** Sections 11.3, 11.4 and 11.5 describe the insurance to be carried by the Association, including particular liability insurance policies that may give the members and the volunteer directors and officers the benefit of certain limitations on liability as provided by law.

Consistent with our current documents, Section 11.2 describes an “all in” policy covering the Common Area and the Units, including replacement of “builder’s grade” fixtures. If something has been upgraded, the insurance will pay the amount to replace with the builder’s standard grade item and owner is responsible for the cost of the difference between builder’s grade and the upgrade the owner had installed.

Section 11.10 describes the Unit owners’ responsibility to carry certain kinds of insurance which the Association policies do not cover. The described insurance is intended to provide a reasonable amount of coverage for normal foreseeable risks so owners will have financial resources to deal with events that are likely to occur. This Section does not require owners to carry this insurance. Section 11.10.5 states that the Association is not responsible if a Unit owner fails to carry insurance that is the owner’s responsibility. It is the owner’s sole responsibility to carry such insurance and if owners do not carry insurance, they are still financially responsible.

**Article 12:** Contains provisions dealing with damage or destruction of the condominium project or eminent domain or condemnation of any part of the project by governmental agencies. These are the provisions of our existing documents slightly reorganized.

**Article 13:** Describes the rights of mortgagees as provided in our existing CC&Rs.

**Article 14:** Describes the enforcement powers that by law are available to the Association if members fail or refuse to comply with the governing documents. This Article describes the members’ right to enforce the CC&Rs as well. Describes in sequential order the enforcement process, from investigating complaints, to notice and hearing whether called by the Board or requested by a member, to “internal dispute

resolution” and “alternative dispute resolution” procedures for resolving disputes between the Association and an owner, or between owners for certain compliance issues, consistent with the Davis-Stirling Act.

**Article 15:** Future amendments of the CC&Rs will continue to require approval of a majority of the total voting power of the Association. Also contains the same provision as in the Bylaws authorizing certain kinds of amendments to be adopted by the Board if they are to remove conflicts with law or conform to requirements of law.

**Article 16:** Contains general provisions concerning the document.

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The Board would like to thank you for taking the time to review this information.

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