

**COUNCIL ACTION FORM**

**SUBJECT: MODIFIED RESTRICTIVE COVENANTS AND REGULATIONS FOR  
BAKER SUBDIVISION SINGLE FAMILY HOMES (321 STATE AVENUE)**

**BACKGROUND:**

The City owns a 10.86-acre site located at 321 State Avenue known as the Baker Subdivision. This property is being developed to support the affordable housing goals of the City as a mixed income development with a minimum of 51% of the homes affordable to low- and moderate-income households.

The final plat for the subdivision (Attachment A) includes the development of 27 lots and was adopted at the May 26, 2020, City Council meeting. Of the 27 lots, 26 are for the construction of single-family homes. At the August 25, 2020, City Council meeting, the City Council awarded a contract for the installation of the public improvements to Construct of Ames. Project improvements began in late September 2020 and to date approximately 90% percent of the project has completed (including the geothermal wells).

The next step before lots and construction of homes should begin is the adoption of Restrictive Covenants and Regulations for the 26 single-family lots (Attachment B). In working with the Legal staff, the proposed covenants address both the initial construction of homes on the affordable and market rate single-family lots and ongoing requirements. Many of the terms are based upon common language seen within market rate subdivision covenants across Ames.

Approval of the covenants will allow for staff to proceed with construction of housing and the sale of lots. Some highlights of the covenants are:

1. The following lots are designated as Affordable Housing: Lots 1 through 8, 10-13, 15, 24, and 25.
2. The following lots are designated as Market Rate Housing: Lots 9,14, 16 through 23 and 26.
3. All lots are residential, and shall not be improved, used, or occupied for other than single-family residential purposes, this includes a prohibition against rental of homes.
4. Timeframe of 18 months to start and complete the construction of homes upon deed conveyance.

5. Affordable housing developer minimum experience of constructing 3 homes within the past 7 years.
6. Market rate housing developer minimum experience of constructing 3 homes within 3 years of the past 5 years.
7. Minimum size for affordable housing homes for a one-story is 1,100 sq. ft. and 1-1/2 story, two story and split/bi-level is 1,150 sq. ft.
8. Minimum size for market rate housing homes for a one-story is 1,200 sq. ft. and 1-1/2 story, two story and split/bi-level is 1,250 sq. ft.
9. All homes are required to have at least one garage parking space and a basement.

Lot 27, which is planned for future Low Income Housing Tax Credit (LIHTC) multi-family buildings, is not subject to these covenants.

**At the December 14, 2021, City Council meeting staff reviewed revised language with the City Council and also directed staff to modify the Baker Subdivision Covenants to include the following additional language:**

- Under item 7p., “chickens” were added as acceptable as pets and “an underground, invisible fence” was deleted in order to clarify that any type of fencing was okay to meet the standards.

In response to the request to investigate the creation of a Homeowners Association (HOA) for the Baker Subdivision, the City Attorney as prepare a response (see Attachment C).

In addition to the above added language, staff is restating the revisions that were presented at the December 14<sup>th</sup> meeting:

- ✓ Under item 4d., For the Affordable lots, “all residences shall include basements with at least one egress window” was added.
- ✓ Under item 6., “side yard” was added.
- ✓ Under item 7i, “which shall not be granted if the tonnage exceeds 3.25 tons”, was deleted, thereby a builder is referred to Ames Electric for required calculations.
- ✓ Under item 7l, “or street” was deleted.
- ✓ Under item 7o, “annoyance” was deleted.
- ✓ Under item 7q. shall be sodded within “six months” was added
- ✓ Under item 7r. shall be constructed within twelve (12) months was replaced with “eighteen (18) months”.
- ✓ Under item 7u, Christmas was replaced with “Holiday”

**ALTERNATIVES:**

1. Approve the attached modified restrictive covenants and regulations for single-family homes in the Baker Subdivision (321 State Avenue).
2. Approve the restrictive covenants and regulations for single-family homes in the Baker Subdivision (321 State Avenue) with additional modifications.
3. Do not approve the proposed restrictive covenants and regulations and refer back to staff for additional information.

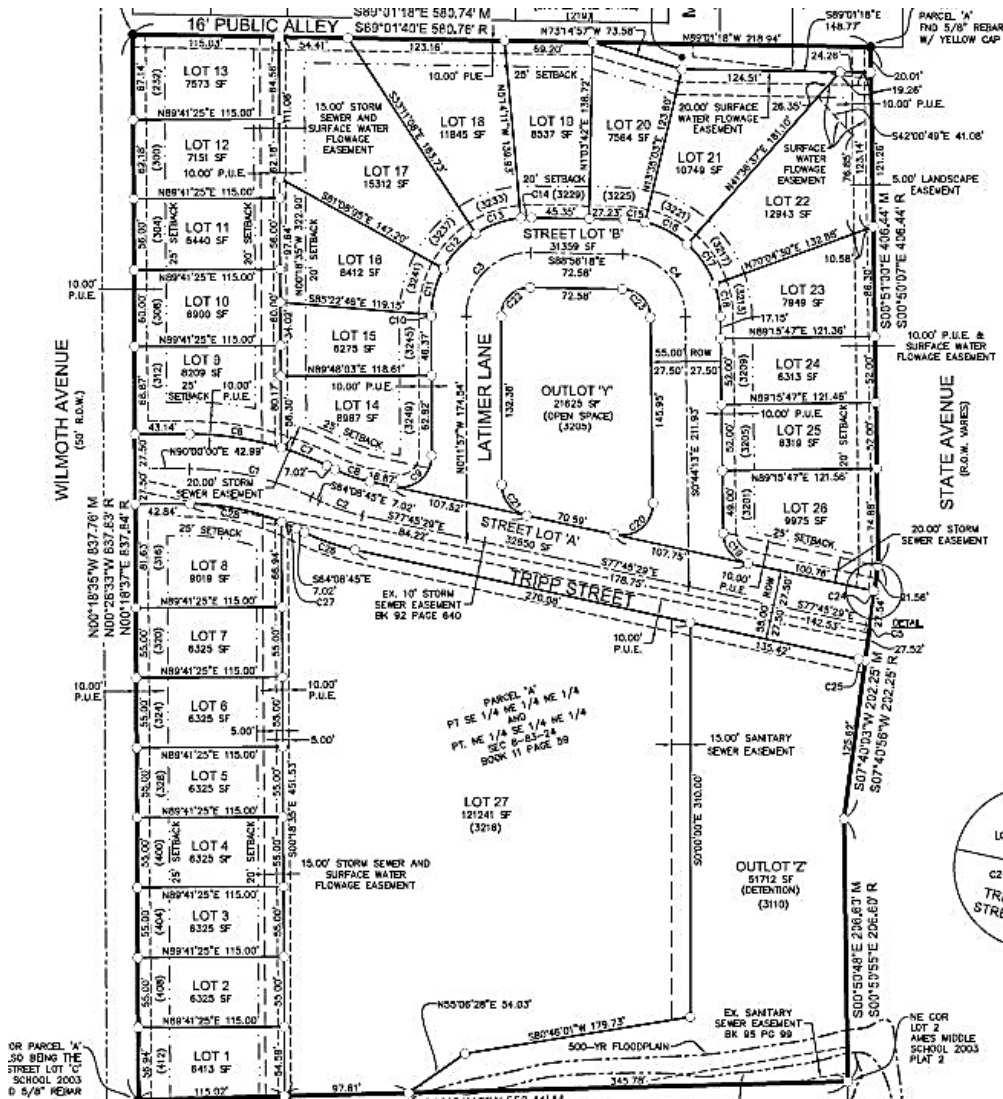
**CITY MANAGER'S RECOMMENDED ACTION:**

Adoption of Restrictive Covenants and Regulations for the Baker Subdivision (321 State Avenue) is the final step before the sale of lots and construction of homes should begin. Once covenants are adopted, staff can continue to proceed with soliciting and qualifying potential first time homebuyer applicants, finalize the required housing counseling services, finalize a partner lender(s), and solicit partnership with a modular housing company(ies) to be in position to construct housing structures by spring/summer 2022.

Market Rate lot sales can also begin next year and must be coordinated with the timing of affordable housing construction to maintain consistency with CDBG requirements for housing production.

Therefore, it is the recommendation of the City Manager that the City Council approve Alternative #1, as described above.

# Attachment A-Baker Subdivision Final Plat



**OWNER / DEVELOPER**  
 CITY OF AMES  
 CONTACT: JUSTIN MOORE  
 515 CLARK AVENUE  
 AMES, IA 50010  
 PHONE: (515) 236-5280

**ENGINEER / SURVEYOR**  
 CIVIL DESIGN ADVANTAGE  
 3403 SE CROSSROADS DRIVE, SUITE G  
 GRIMES, IOWA 50111

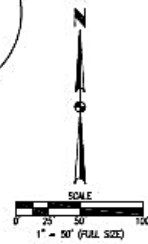
**PLAT DESCRIPTION**  
 PARCEL 'A' IN THE EAST HALF OF THE NORTHEAST QUARTER OF SECTION 8, TOWNSHIP 83 NORTH RANGE 24 WEST OF THE FIFTH PRINCIPAL MERIDIAN IN THE CITY OF AMES, STORY COUNTY, IOWA AS SHOWN ON THE RETRACEMENT PLAT OF SURVEY RECORDED IN INSTRUMENT NUMBER 2013-00001277 AND CONTAINING 10.86 ACRES (473,100 SQUARE FEET).

**DATE OF SURVEY**  
 MAY 6, 2020

**ZONING**  
 RL - RESIDENTIAL LOW DENSITY ZONE

**BULK REGULATIONS**  
 FRONT YARD: 25'  
 REAR YARD: 20'  
 SIDE YARD: 6'

- NOTES**
1. ANY SET MONUMENTATION SHOWN ON THIS PLAT WILL BE CURIEATED WITHIN ONE YEAR FROM THE DATE THIS PLAT WAS RECORDED.
  2. LOTS MAY BE SUBJECT TO MINIMUM PROTECTION ELEVATIONS AND OTHER ELEVATION RESTRICTIONS NOT SHOWN ON THIS PLAT. REFER TO THE APPROVED PROJECT ENGINEERING DOCUMENTS FOR ANY ELEVATION RESTRICTIONS.
  3. SOIL BORINGS ARE REQUIRED IN AREAS WITHIN THIS PLAT WHICH HAVE BEEN IDENTIFIED BY THE CITY OF AMES AS HAVING SOILS THAT MAKE CONSTRUCTION OF BUILDINGS DIFFICULT.
  4. STREET LOT 'A', CONTAINING 62,850 SF, IS TO BE DEDICATED TO THE CITY OF AMES FOR STREET PURPOSES.
  5. STREET LOT 'B', CONTAINING 31,359 SF, IS TO BE DEDICATED TO THE CITY OF AMES FOR STREET PURPOSES.



OR PARCEL 'A' SO BEING THE STREET LOT 'C' SCHOOL 2003 0 5/8" REAR

## Attachment 'B'

[RECORDER'S COVER PAGE TO BE INSERTED HERE]

### **RESTRICTIVE COVENANTS AND REGULATIONS FOR SINGLE FAMILY HOMES IN BAKER SUBDIVISION, AMES, STORY COUNTY, IOWA**

**WHEREAS**, the undersigned, the City of Ames, an Iowa municipal corporation (the herein after the "City"), is the owner of Lots One (1) through Twenty-seven (27), contained in **Baker Subdivision** (the "Subdivision"); and

**WHEREAS**, Lots One (1) through Twenty-six (26) (hereinafter "Lots") will be developed as Single Family Homes and governed by these restrictive covenants and regulations; and

**WHEREAS**, Lots One (1) through Eight, Ten (10) through Thirteen (13), Fifteen (15), Twenty-four (24) and Twenty-five (25) shall be designated Affordable Housing Lots (hereinafter "AR Lots"), and Lots Nine (9), Fourteen (14), Sixteen (16) through (23) and Twenty-six (26) shall be designated Market Rate Lots (hereinafter "MR Lots").

**WHEREAS**, for their own protection and for the benefit of subsequent owners of said Lots within said Subdivision, the said owner desires to restrict the use thereof in certain particulars.

**NOW, THEREFORE**, the parties hereto, in consideration of the covenants and agreements contained herein, by these presents, covenant, bargain and agree for themselves for their successors and assigns, as follows:

1. The covenants contained herein shall not apply to Lot 27, unless otherwise stated.
2. All Lots shall be known and described as residential lots and shall not be improved, used, or occupied for other than private single-family residential purposes. All Lots shall be occupied and used as the primary residence of the then-current title holders. No Lots shall be used and occupied as property for which rental income is received.
3. The residences to be constructed or to be permitted to remain on the MR Lots shall meet the following requirements:
  - a. One (1) story residences shall have a ground floor finished area of not less than one thousand two hundred (1,200) square feet.
  - b. One and one-half (1½) story residences, two (2) story residences, and split-level residences shall have a total finished area on the ground floor and second floor or split-level of not less than one thousand two hundred fifty (1,250) square feet.
  - c. The computation of the total finished area shall not include porches, breezeways, or garages.
  - d. All residences shall include basements with at least one (1) egress window.
4. The residences to be constructed or to be permitted to remain on the AR Lots shall meet the following requirements:

- a. One (1) story residences shall have a minimum ground floor finished area of not less than one thousand one hundred (1,100) square feet.
  - b. One and one-half (1½) story residences, two (2) story residences, and split/bi-level residences shall have a minimum total finished area on the ground floor and second floor or split-level of not less than one thousand one hundred fifty (1,150) square feet.
  - c. The computation of the total finished area shall not include porches, breezeways, or garages.
  - d. All residences shall include basements with at least one (1) egress window.
5. No Lot shall be subdivided for the purpose of constructing more than one (1) residence per Lot.
6. All Lots may have fences in the rear and side yard only. Chain link fences shall be permitted, except no chain link fences with galvanized finish shall be allowed on any Lot.
7. The following restrictions shall also constitute covenants:
- a. There shall be no mobile homes placed or erected on any Lot.
  - b. No pre-erected dwelling shall be moved to any Lot, except modular housing approved by the City of Ames Planning & Housing Department.
  - c. All dwellings must have, at a minimum, a single car attached garage, a double car attached garage, or a double car detached garage.
  - d. No more than twelve (12”) inches of concrete block, poured concrete, or wood foundation shall be exposed on any building unless the exposed material is covered with brick, stone veneer, or siding. Exposed foundations must be painted to blend with exterior wall finishes.
  - e. All building structures or improvements of any kind must be completed within twelve (12) months of the commencement date of the construction. Commencement of construction upon any Lot shall occur no later than six (6) months of the date on the deed from the City. **IF CONSTRUCTION HAS NOT BEGUN ON AN MR LOT WITHIN SIX (6) MONTHS OF THE DATE ON THE DEED FROM THE CITY, THEN THE OWNER OF RECORD, AT THE CITY’S REQUEST, AGREES TO CONVEY THE PROPERTY BACK TO THE CITY IN FEE SIMPLE FOR ONE HUNDRED PERCENT (100%) OF THE ORIGINAL PURCHASE PRICE WITH NO ADJUSTMENT FOR TAXES, CLOSING COSTS OR INTEREST AT THE TIME THE DEED IS CONVEYED TO THE CITY. THE CITY WILL PAY ONLY FOR DEED PREPARATION, RECORDING FEES, AND TRANSFER TAXES. ON ISSUANCE OF AN**

**OCCUPANCY PERMIT FOR A RESIDENCE, THIS RIGHT TO REPURCHASE SHALL TERMINATE AS TO THAT LOT.**

- f. All homes must be built by an experienced homebuilder. An experienced homebuilder shall be defined as a person, or entity who has built and completed at least three (3) new homes per year within three (3) of the past seven (7) years. Notwithstanding the forgoing, a nonprofit entity organized under Iowa law or possessing a valid certificate of authority to transact business in Iowa under Iowa Code 490.105 shall constitute an experienced homebuilder if they have started and completed three (3) homes in the past seven (7) years.
- g. All finished Lots and house grades shall conform to the City's grading plan which shall be obtained from the City prior to the commencement of construction. All excess dirt from the excavation shall be used as a part of the final landscape plan. Any excess dirt, concrete, or other debris may not be placed on other land within the Subdivision. **Topsoil shall not be removed from any of the Lots or the Site generally and shall be reused to respread around the house and lot once the home is completed.**
- h. All homes must utilize and connect to the geothermal system installed within the reserved public utility easements located in the rear yards of each Lot.
- i. Prior to construction upon any Lot, the builder must submit to the Electric Department an HVAC sizing calculation for review and approval.
- j. All mailboxes shall be placed in accordance with United States Postal Service regulations. Individual mailboxes will not be permitted. Cluster mailboxes will be provided by the United States Postal Service.
- k. No building, structure of a temporary character, trailer, tent, garage, or outbuilding shall be used at any time as a residential dwelling on any Lot.
- l. No tent, trailer, recreational vehicle, camper, boat, truck rated larger than three quarters (3/4) of a ton, or other movable or temporary structure, shall be maintained or parked on a Lot within public view for a period exceeding forty-eight (48) consecutive hours or for more than thirty (30) total days in any calendar year.
- m. No rubbish containers shall be visible from the street except on pickup day and one (1) day before and one (1) day after pickup day. Construction waste containers shall be exempt from this provision; however, the builder or Lot owner shall be responsible for keeping the construction debris contained on the Lot and in the construction waste containers.
- n. No extension towers or antennas of any kind shall be constructed, modified, or permitted on any Lot, except television or radio antennas of less than ten (10') feet in height. Satellite dishes or parabolic devices more than thirty-six (36")

inches in diameter used to receive television or other signals from satellites shall not be permitted. The satellite dishes or parabolic devices shall be mounted on the rear elevation or the rear half of the side elevation only. In no event shall a satellite dish or parabolic device be mounted on the front elevation or the front half of a side elevation.

- o. No noxious or offensive activities or odors shall be permitted on or to escape from any Lot, nor shall anything be done on any Lot which is or may become a nuisance, either temporarily or permanently.
- p. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot, except that dogs, cats, chickens, and other common household pets may be kept so long as they are not kept, bred, or maintained for commercial purposes. Dogs, cats and chickens must be tied, controlled, or contained within the Lot or on a leash at all times.
- q. Following construction of the residential dwelling on any Lot, the front, side, and rear yards shall be sodded within six months. The requirement for sod shall be waived where a permanent underground irrigation system is installed on the Lot. In addition to sodding, the builder or Lot owner shall install a minimum of ten (10): (i) 3-gallon shrubs, (ii) 1-gallon perennials, or (iii) a combination of 3-gallon shrubs and 1-gallon perennials, with either mulch or rock ground cover. The shrubs and/or perennials shall be in the front yard of a Lot. Foundational plantings shall be required to screen the base of the primary and secondary facade of any new building. In addition, ground-mounted mechanical units shall be screened from public view with plantings.
- r. Where the City of Ames, Iowa, requires the construction of public sidewalks, the sidewalks shall be constructed within eighteen (18) months following the sale of any Lot from the City or at the time of occupancy of any dwelling on a Lot, whichever occurs first. The City shall withhold the issuance of an Occupancy Permit for a dwelling until such time as a public sidewalk has been constructed.
- s. All retaining walls shall be constructed of stone or masonry product. No wood landscaping timbers shall be used to construct retaining walls, except that window well retaining walls that are not visible above grade may be constructed using wood landscaping timbers.
- t. Roof materials should be slate, tile, cedar shakes, or composite shingles. Composite shingles shall be architectural grade, minimum thirty (30) year warranty. Shingle colors shall be compatible with and complimentary to the exterior materials and colors. White or white blend roof materials are not acceptable.



- u. All outdoor light fixtures shall be designed, installed, and maintained to prevent light trespass beyond the boundaries of the Lot. "Full cutoff" outdoor light fixtures which emit no light at or above the horizontal plane of the fixture shall be utilized for all dusk to dawn light fixtures exceeding three hundred (300) lumens and for all manually switched or occupancy sensor switched fixtures exceeding one thousand (1,000) lumens. Holiday lighting or other temporary outdoor lighting shall be exempt from this provision but shall remain in place no longer than six (6) weeks annually.
  - v. Each Lot owner shall keep the Lot free of weeds and debris and shall take all necessary steps to control erosion from the lot. All Lot owners shall implement appropriate erosion control measures before, during, and after construction. These measures may include silt fences, ground cover, and seeding over exposed areas.
  - w. Any construction or earth moving on any Lot shall follow all laws relating to storm water discharge permitting. The owner of any Lot shall be the solely responsible permittee for the lot with respect to compliance with all terms, provisions, and requirements of any NPDES Storm Water Discharge Permit No. 2 and any storm water pollution prevention plan which includes the Lot. During the ownership of the Lot, the Lot owner shall protect, defend, indemnify, and hold the City and the other Lot owners harmless from any and all damages, claims, liabilities, fines, penalties, cleanup costs, and/or attorneys and consultant fees caused by, or in any manner related to: (1) any discharges of soil, silt, sediment, petroleum product, hazardous substances, or solid waste from the Lot; and/or (2) any alleged violation of any NPDES or storm water discharge rule or regulation.
  - x. No driveway shall be permitted to terminate onto State Avenue, Tripp Street or the North Alley. Driveway access shall be permitted only on Wilmoth Avenue or Latimer Lane.
8. All these restrictions shall be deemed to be covenants running with the land and shall endure and be binding upon all parties hereto, their successors and assigns, for a period of twenty-one (21) years from the date of the recording of these covenants, unless claims to continue any interest in the covenants are filed as provided by law.
9. In case of violation of any of the covenants, any person then owning a Lot in said Subdivision is authorized to resort to an action of law or equity for relief, either by injunction or in damages, against the person so violating said covenants.
10. Invalidation of any of these covenants by judgment or court order shall in no way affect the validity of any of the other provisions, but they shall remain in full force and effect.

11. None of the provisions herein shall be construed to waive any requirement of the Ames Municipal Code or otherwise exempt a Lot or Lot Owner from provisions of the Ames Municipal Code.
12. This instrument may be amended upon the recording of a written instrument executed and approved by the City of Ames until such time as the City no longer owns a Lot within this subdivision. After the City no longer owns a Lot within this subdivision, this instrument may be amended upon the recording of a written instrument executed by the owners of at least two-thirds (i.e., no fewer than 18 consenting owners) of the Lots. Any amendment to this instrument must be filed for record in the office of the Recorder of Story County, Iowa.
13. The provisions of this instrument and any amendments hereto may be extended for an additional period by filing a verified claim in the office of the Recorder of Story County, Iowa, within the initial twenty-one (21) year period. The City shall have the right to file a verified claim to extend these covenants.

[ R E S E R V E D   F O R   S I G N A T U R E   B L A N K S ]

## Attachment C



# MEMO

## Legal Department

**To:** Mayor and City Council

**From:** Victoria A. Feilmeyer, Assistant City Attorney

**Date:** December 16, 2021

**Subject:** Possibility of a Homeowner's Association for Baker Subdivision

The Council has asked our office to provide an advisory memo regarding a proposal to create a homeowners' association for Baker Subdivision. A homeowners' or property owners' association ("HOA") is ordinarily organized under state law as a nonprofit corporation under chapter 504 of the Code of Iowa. The organizer of a nonprofit corporation must file articles of incorporation with the secretary of state, create bylaws, obtain a taxpayer identification number from the Internal Revenue Service, open a bank account, file reports with the secretary of state, and file income tax returns with federal and state authorities. A nonprofit corporation for an HOA ordinarily has a membership. The membership is typically the owners and often includes the developer, sometimes even after all the properties have been sold. The developer may have extraordinary powers for a defined period of time, and often supports the HOA financially. The members elect a board of directors, usually from among the owner-members and the developer-member for the overall management of the corporation. The HOA board of directors will elect officers for the day-to-day operations, usually including a president, vice-president, treasurer, and secretary.

An HOA usually is formed to own, manage, and maintain common property or facilities that benefit the member-owners. In the subdivision context, an HOA often will maintain private parks and trails, supporting these with mowing and snow removal. Some HOAs may maintain a pond or other infrastructure such as private wastewater or water supply systems or private roads. Depending on the documents creating the HOA, the HOA may

have approval authority for design elements or the power to enforce covenants and bylaws.

An HOA almost always will have the authority to assess and collect dues from the members so that it can carry out the powers assigned by its covenants. An HOA must have sufficient funds to give meeting notices, to maintain, repair, and place HOA-owned facilities, to pay insurance premiums, to undertake collection activities for delinquent members, to undertake enforcement actions, to hire accountants and attorneys as needed, and to fulfill corporate reporting requirements.

The proposed Baker Subdivision will consist of 26 single-family residential lots and one multi-family lot. The subdivision will include public streets and a city-owned public park. There will be no commonly owned private amenities, lands, or other facilities in Baker Subdivision. There would be nothing for an HOA to maintain, repair, or replace. The City has determined the general criteria for the design of the buildings and accessory structures, so there would be no role for an HOA in approving design elements.

As the owner of the property under development, the City will impose restrictive covenants providing for minimum design requirements and the appropriate maintenance of the properties in the subdivision. Most "negative" restrictions on property will expire after 21 years unless some property owner records a "verified claim" causing them to be extended for an additional 21 years.

Once the initial construction takes place, typically there is little need for enforcement of basic design elements, such as minimum building size. The proposed covenants have no special requirements for fences or other accessory structures that are not already regulated by City Code or the City's project requirements; therefore, there is no role for an HOA in approving design elements.

To the extent that the proposed restrictive covenants place duties on the individual property owners for maintaining their properties in a defined manner, these covenants are enforceable by the City while it maintains an ownership interest and by each of the other owners in the subdivision. While it is conceivable that an HOA could be created specifically for the purpose of enforcing these basic requirements of maintaining one's property in good order, it should be recognized that: (a) the officers and directors of an HOA are also the neighbors suing a neighbor for compliance and, therefore, may make it no more or less likely that the burdens of an enforcement action will be removed; and (b) the HOA must have the cash resources to hire legal counsel, hire experts, and pay the court costs of an enforcement action; and (c) the costs of maintaining the HOA

corporation year-round and assessing dues for the sole purpose of bringing enforcement actions against neighbors and the costs to the low-income residents must contribute to the corporation for that sole purpose may be more burdensome than beneficial.

Anecdotally, the legal department is aware that it is difficult to recruit unpaid volunteers to serve on the boards of HOAs, and sometimes it is even difficult for HOAs to obtain a quorum to conduct the business of their required annual meetings.

For all these reasons, the legal department does not recommend creating a homeowner's association for Baker Subdivision.