

# **Proposed 2022 Covenant Revision**

To: Fiesta Village Owners and Interested Parties,

We have in 2022 the rare opportunity to update and revise our subdivision Covenants. Subdivision Covenants are a legal agreement among the owners of properties in a subdivision outlining how properties may be developed and used, how the subdivision is managed and regulated, and may address other factors of current importance to the owners. Because of changes in governmental regulation and the desires of owners, subdivision Covenants should be regularly reviewed and updated, to keep them relevant and legal.

## **FIESTA VILLAGE HISTORY**

On February 15, 1978, the developer of Fiesta Village recorded the subdivision plat and original Covenants for Fiesta Village. The Covenants ran for 25 years to February 15, 2003. They included a statement that in effect did not allow for revision except at the end of its term. For a revised covenant to take effect it had to be recorded prior to the ending date of the prior covenant or February 15, 2003.

On January 20, 1983, after all the lots had been sold and the common area was deeded to Fiesta Village, Inc., the then owners assumed (incorrectly) that they could revise the covenants with the revision to take effect immediately. Other attempted covenant revisions prior to the 2003 revision date were recorded on December 26, 1999 (adding “over 55” as per the Housing for Older Persons Act of 1995); and on January 2, 2002.

After consultation with our attorney, it was determined that our current effective covenant is the one recorded in 2002, having taken effect on February 15, 2003 (as the most current revision at that time). Again, this version also included a statement that did not allow it to be revised until 20 years after its date of recording, or January 2, 2022.

Another failed attempt to revise the Covenants was recorded on January 29, 2007. This revision has been determined to be invalid, as it had an insufficient number of lots voted; was incorrectly dated as recorded; and included extraneous and conflicting material with the recorded document.

## **PROPOSED 2022 COVENANT REVISION**

The Board and the Covenant Review Committee have reviewed current Federal and State laws concerning subdivision associations, and “over 55” properties; consulted our Attorney; consulted relevant City of Mission officials; and digested comments made by our owners.

Our Attorney has recently written or revised Covenants for several other subdivisions and was able to assist in updating the language used in the document and to bring it to conform to current law and regulations. Our special charge to the attorney was to review the history of our Covenants and to remove errors and conflicts that have made us open to litigation in the past.

The attached proposed 2022 Covenant revision is the result of a multi-year effort by our Covenant Review and Update Committee and the Board to bring our Covenants to current standards; to conform to current governmental law, regulation, and rules; and to address present and projected future issues facing Fiesta Village. The proposed revision will run for ten years, to January 2, 2032. To allow future owners to revise these covenants, this revision includes the ability to enact future revisions upon recording.

Excluding grammatical, punctuation, clarification, and organizational edits, the revised Covenants are substantially the same as the current Covenant. Language has been updated. Changes are primarily in clarification of the “over 55” section to detail exemptions as per Federal and Texas law and regulations; clarification of Board responsibilities; and limitations on ownership going forward from 2022. The latter issue, restricting ownership by outside investment companies, and limiting the number of properties in individual ownership to four lots, are a result of listening to widely raised concerns among our owners in recent years. (Their concern was that outside rental companies and social services groups could start purchasing properties in the park, thus changing its ‘Winter Texan’ orientation and services.) These issues have been addressed, providing a grandfather allowance for existing ownership as of the effective date.

We have also addressed a change in law concerning the term “shall.” Our Covenant used this term 78 times as it was typically used when our earlier Covenants were written. Court rulings, including from the U.S. Supreme Court, have changed the legal meaning and effect of this term from an “insistence that something be done,” to “it may or may not need to be done.” Because of this we have reworded the Covenant to remove this term while re-establishing the insistence that something “must” be done or establishing an equivalent “is” where appropriate. This change alone will reduce our legal exposure through clarification of our property rights and duties, and clarification of the relationship among owners, as were intended by the original Covenant authors.

Fiesta Village has 428 lots including those owned by the park. Current Texas Law (enacted in 2011) requires that 67% of the owners agree with a change in subdivision covenants for them to become effective, negating the 75% requirement stated in our current Covenant. This means that the owners of 287 lots must vote yes to this change. The signed approval forms must be notarized.

**This Covenant Revision must be recorded prior to the January 2, 2022 rollover date for the current Covenant. If it is not recorded by that date, the existing outdated Covenant with its inherent potential legal liability for our owners, will renew for twenty (20) more years to 2042, with no possibility to revise.**

It is planned that the revised Covenant will be recorded in December 2021, so that it will become effective on January 2, 2022, replacing the prior covenant upon its cessation.

Note that these Covenants do not revise the By-Laws of Fiesta Village. They do, however, include items that may involve items in the By-Laws. Following the enactment of these revised Covenants, a thorough study and update of the By-Laws will be conducted for submittal to the owners at a future Annual Meeting.

Respectively Submitted,

*Fiesta Village Board of Directors*

*Covenant Review and Update Committee*

**NOTARY INSTRUCTIONS:**

1. Fill out the form with your Block and Lot numbers, if it has not already been filled out by us. **Do not sign before facing the Notary.** If you have questions call us.
2. **All signatures must be notarized.**
3. **Find a Notary at a Bank,** Real Estate office, Insurance office, Tax office, or phone book.
4. **Typical ownership: Both husband and wife must sign even if title is in only one name.**
5. Conservatorship: The financial conservator must sign.
6. Estate: The executor must sign. Heirs do not sign unless the distribution has been made after which the inheriting heir becomes the owner and must sign.
7. Trust: The Trustee must sign.
8. Corporation: The Corporate President and possibly also the Secretary must sign.
9. Two or more signatures in different locations: contact us for a special form.
10. Tenants do not sign.

Return the signature pages to:      Fiesta Village Covenants  
205 S. Stewart Road #109  
Mission, TX 78572

***For questions contact Dave De Morett at 763-772-2363.***

***Time is of the essence so please sign and return the signature pages as soon as possible.***