

Neighborhood Task Force

Final Report

Respectfully Submitted To

City Council

September XX, 2007

Neighborhood Task Force Report

Executive Summary

Don Harris, District 9, Council Memorandum (appendix I) dated April 25, 2007 proposed a Neighborhood Task Force to look at five (5) general topics:

1. The function and role of the Office of Neighborhood Coordination;
2. Possible amendments to the Neighborhood Association Recognition Ordinance (Sections 14-8-2-1 et seq. ROA 1994);
3. Neighborhood governance;
4. Notice to neighborhoods; and
5. Other issues identified by the Task Force

All City Councilors were invited to provide up to three (3) names from their districts representing a recognized neighborhood association, a homeowner's association or homeowner association management company, or a member of the development community. A total of fourteen (14) sat on the task force, representing all council districts except District 7. Councilor Sally Mayer did not respond. Clarification from Councilor Harris provided the structure of 1 voting member per district. A TF member listing organization and voting status is listed in appendix II.

The task force had seven (7) meetings, open to the public, all held on the ninth floor of the City/County Building, with the first meeting held July 10, 2007. The initial meeting represented an organization meeting, with the election of task force chair, Nancy Bearce and vice chair, Bambi Folk, the adoption of revised Robert's Rules, and limiting meetings to two (2) hours from 6:15 pm to 8:15 pm.

Invitations were issued to the City's Legal Office and Office of Neighborhood Coordination (ONC) to attend a task force meeting to provide information to the task force. The Legal Office provided attorney John DuBois to discuss legal questions on the City's Neighborhood Recognition Ordinance and homeowner's associations. ONC's response was that all questions should be submitted 48 hours in advance and two ONC staff, Patrick Montoya, Interim Program Director and Stepani Winklepleck, attended the next to the last meeting of the task force.

The task force resolved to make recommendations in three (3) areas:

1. Organizational status of ONC
2. Home Owner's Associations
3. Changes to Neighborhood Recognition Ordinance.

The task force majority recommendations follow, with minority reports for two (2) of the areas.

Task Force Recommendations

1. Organization of Office of Neighborhood Coordination (ONC)

Majority Opinion: The Task Force recommends that the City Council support the “Audit Model” (or a similar structure used for the newly created Audit Office) for establishing ONC as a more independent organization. (6-1 Vote)

Minority Opinion: ONC should be removed from the Planning Department and made into its own City Department for the benefit of the citizens, neighborhood associations, City Council, Mayor, and other City Departments.

2. Homeowner’s Associations (HOAs)

Majority Opinion: The Task Force recommends the City Council implement legislation that:

- A) establishes HOAs as quasi-governmental;
- B) require the full disclosure of all covenants, rules and restrictions that are applicable in an HOA at least 2 weeks prior to settlement on any property under covenants;
- C) require an HOA to participate in mediation, and arbitration if necessary, with the recognized NA when disputes arise between a recognized neighborhood association and a HOA with overlapping boundaries;
- D) establish and make available an HOA central registry for the purpose of HOA notification for zoning hearing enforcement (ZHE) and traffic engineering violations and such a registry will be available in the City’s GIS system, like the neighborhood associations, for the public at large;
- E) formally request the State Legislature to implement legislation that addresses the concerns and recommendations submitted by this Task Force, particularly regarding options for dispute resolution. (Unanimous 7-0 Vote)

3. Neighborhood Recognition Ordinance

Majority Opinion: No changes at this time. (5-2 Vote)

Minority Opinion: To be a Recognized Neighborhood Association, the association’s bylaws shall include the following provisions, in addition to those already in Ordinance:

- A) Term Limits – Officers may serve only 2 consecutive 2-year terms

B) Full notification of all meetings, particularly regarding elections, to the entire neighborhood, not just membership. Methods should include all available means such as posters, web site posting, emails etc.

C) Nominations must be allowed from floor at any meeting involving elections

D) Membership lists must, upon request, be shared with all **members**. Records must be open for members of non-profits in compliance with New Mexico's Non Profit Corporation Act.

E) Neighborhood associations must be incorporated as a "non-profit" from the Public Regulation Commission in Santa Fe as a measure of legal protection for the Officers of the neighborhood association and to provide for open inspection of records. ONC staff will assist in this process.

F) Any spokesperson purporting to represent a neighborhood association position must voluntarily announce how the neighborhood association's position was arrived at, how many voted and when vote took place.

**Appendix 1
Councilor Harris' Memorandum**

**CITY OF ALBUQUERQUE
CITY COUNCIL**

INTEROFFICE MEMORANDUM

TO: Debbie O'Malley, President, City Council
FROM: Don Harris, Councilor, District 9
SUBJECT: Neighborhood Task Force
DATE: April 25, 2007
CC: All Councilors, Laura Mason

I am putting together a task force, composed of up to nine members, to provide to me and the City Council, by August 1, 2007, recommendations regarding the following general topics:

1. The function and role of the Office of Neighborhood Coordination;
2. Possible amendments to the Neighborhood Association Recognition Ordinance (Sections 14-8-2-1 et seq. ROA 1994);
3. Neighborhood governance;
4. Notice to neighborhoods; and
5. Other issues identified by the Task Force.

I have asked Scott Varner, the executive director of the Xeriscape Council of New Mexico, the President of the Towne Park Neighborhood Association, and a past board member of the Towne Park Home Owners' Association, to initially chair the Task Force. I would like the Task Force to consist of a member from each Council district who represents a recognized neighborhood association, a homeowner's association or homeowner association management company, or a member of the development community.

I anticipate that the Task Force will elect a Chair (who may be someone on the Task Force other than Mr. Varner) and Vice Chair, and, following notice to all members of the Task Force, may meet with or without a quorum. All of the Task Force's meetings shall be held in a City facility and shall be open to the public. The Task Force may adopt procedures for the conduct of its meetings that it deems appropriate. I will request that the Task Force generate a report (which may include a minority report) that summarizes the information considered and the Task Force's recommendations. The Task Force's report should include recommendations, if any, for legislative amendments or initiatives. Please provide me with names of individuals from your districts who would like to serve on this Task Force and who fall within the categories set forth above. Because of the

importance of having balanced representation, I would like to receive two or three names from each Councilor. I would like to get the Task Force underway as soon as possible so I would appreciate receiving the names by May 11, 2007.

Appendix 2 Task Force Member Listing

Voting Members:

Miguel Maestas, District 1
Lee Julian, Bel-Air Neighborhood Association, District 2
Kevin Hagan, District 3
Bambi Folk, District 4 Coalition
Brett Lopez, Ventana Ranch Neighborhood Association, District 5
Nancy Bearce, District 6 Coalition of Neighborhoods
Bob Francis, Cibola Neighborhood Association, District 8
Scott Varner, Towne Park Neighborhood Association &
Towne Park Home Owner's Association, District 9

Non Voting Members:

John Husler, Rancho Encantado
Laura Horton, Ventana Ranch Neighborhood Association &
West Side Coalition of Neighborhood Associations
Joe Yardumian, NorEste Neighborhood Association
Dr. Joe Valles, West Side Coalition of Neighborhood Associations
Charlie Bennett, La Mesa Community Improvement Association
Jim Strozier, Nob Hill Neighborhood Association

Appendix III
Majority Report, Background/Discussion
Recommendation Item 1

Whereas, the Office of Neighborhood Coordination (ONC)

1. Serves as a liaison between neighborhood associations and City government;
2. Serves as a liaison between neighborhood associations and the development community; coordinates notification to recognized neighborhood associations from applicants who apply for zone changes, site development plans and liquor licenses prior to the City's acceptance of such requests;
3. Provides information between neighborhoods and local government such as training workshops on Neighborhood Leadership, Parliamentary Procedures, Neighborhood Association Patrol Training, Land Use issues and many other relevant topics;
4. Is responsible for implementation of the Neighborhood Recognition Ordinance, also known as [O-92-5](#), which defines the process by which the City organizes and officially recognizes neighborhood associations who meet the requirements of the ordinance.
5. Encourages individuals to cooperate with their existing neighborhood association;
6. Works with City officials and recognized neighborhood associations to develop appropriate processes for neighborhood review and comment on city plans and policies;
7. Supplies to all recognized neighborhood associations a current list of all city government agencies, their department heads, and corresponding phone numbers;
8. Advises recognized neighborhood associations of self-help projects, which could enhance the quality of life within their neighborhoods;
9. Along with the district Councilor, serve when appropriate as a liaison between a recognized neighborhood association and city agencies;
10. Provides for the sharing of information with recognized neighborhood associations by furnishing, upon request, available pertinent information;
11. Provides to recognized neighborhood associations a city newsletter to inform them about happenings in city government and to increase communications between such neighborhood associations;
12. Upon request, assist the district Councilor and/or neighborhood associations in the formation of alliances of neighborhood associations;
13. Supplies to the public and to city officials the names and addresses of the two designated recipients of notices, as most recently specified by each recognized neighborhood association and;
14. Has served as the model for other cities and was the first to institute a Neighborhood Recognition Ordinance;

A majority of the Task Force wants a well trained, fully staffed and well funded ONC, which is autonomous from both the Mayor and City Council and is more directly responsible to the citizens of Albuquerque.

Appendix IV
Minority Report, Background/Discussion
Recommendation Item 1

Whereas the Minority of the Neighborhood Task Force agrees with the Majority Report up to the placement and model template to be used as they reported.

Whereas, the Office of Neighborhood Coordination be removed from under the Planning Department and current funding from the Planning Department for the Office of Neighborhood Coordination be available to them until the next Fiscal Budget Year comes.

Whereas, the Office of Neighborhood Coordination should be brought up to a full staff and be fully budgeted from the City during each Fiscal Year.

Whereas, the Office of Neighborhood Coordination should be changed by Ordinance to be made a permanent department unto itself and not put under the influence of any other City department.

Appendix V
Report, Background/Discussion
Recommendation Item 2

Whereas, the Neighborhood Task Force

1. Acknowledges that it is increasingly difficult for homeowners, particularly new homebuyers, to avoid living under a Home Owner Association (HOA) in new communities;
2. Recognizes that regardless of how carefully by-laws are worded, an HOA board has tremendous power and control over many aspects of members' lives;
3. Recognizes that an HOA board can become overzealous or even abusive in its governance;
4. Recognizes that an HOA functions as a quasi-governmental organization
5. Recognizes that HOAs are granted its authority under the laws of the State of New Mexico.

Background Provided:

There is a growing need to recognize that residents of Albuquerque in HOA's can be subjected to harassing and even illegal action from HOA boards.

HOA's boards are run by volunteer directors who often have limited or no experience operating real property organizations or running a non-profit corporation. They rarely have experience in interpreting and enforcing restrictions and rules imposed by the governing documents. Violations and mistakes are inevitable, sometimes, deliberate, and this may lead to serious, costly, and very divisive confrontations and legal battles.

The mere existence of rules and by-laws does not guarantee that democratic procedures will be followed for homeowners. HOAs, as quasi-governmental institutions with similar powers of government, should not be allowed to infringe upon the fundamental rights of residents, yet this happens. Without some type of protective safeguards this will likely continue to happen and increase as more of our new communities are built with CC&Rs and ruled by HOAs.

The principle remedy for resolving a violation in an HOA is private litigation and this may not be an ideal remedy where the disputants are neighbors and must try to maintain an ongoing relationship. Homeowners who cannot afford to bring a lawsuit are also effectively denied the benefit of the laws designed to protect them. Litigation can also impose huge costs on the entire HOA and result in unnecessary/frivolous assessments.

Specific areas that seem to cause the most problems and are not easily resolved by normal procedures have to do with properly conducted elections, properly conducted meetings, adequate notice of meetings and board actions, and inspection and access to

books and records. If a board chooses to be non-compliant in any of these areas, it is likely to not voluntarily participate in mediation or arbitration.

Examples from throughout the country are abundant and many states and cities are taking steps to help protect the rights of individuals in these communities. There are currently no checks on an abusive board of directors other than the will of the residents and the court system, which can be more expensive than many residents are willing to consider. Abuses are therefore often allowed to continue without action, both due to cost of resolution and the absence of information to the community as a whole. Florida state law now allows a judge in any case brought to court to require the parties go to mediation or arbitration, thus speeding up the decision process and lowering costs.

Appendix V
Majority & Minority Report, Background/Discussion
Recommendation Item 2

Majority Report

Changes to the Recognition Ordinance were considered by the Task Force. However, the majority of the Task Force makes no recommendation for changes at this time. In its deliberations, the Task Force considered the following:

There is widespread concern and resistance on the part of neighborhood associations to any further infringement on their autonomy by the City. If, for example, the City were to dictate 'term limits' in neighborhood associations by-laws, it could well backfire with respect participation in neighborhood associations. Moreover, there is concern that the City would overreach its authority and in effect, subject neighborhood associations to the Open Meetings Act as a quasi-branch of City government.

While the Task Force recognizes that changes may be appropriate in the future, given the current status of ONC and its staff, and the City's restraint on the availability of ONC personnel; the Task Force was deprived of ONC's expertise and institutional knowledge regarding implementation of the Neighborhood Recognition Ordinance. In essence, "if we don't know how or even if it's broke; why fix it?"

Minority Report

There was a significant split in the views of the Task Force members when it came to suggesting any changes in the existing "requirements" necessary to achieve "Recognized" status for neighborhood associations. The majority view seemed to be very rigid and closed. For example, one member stated he would vote "no" to any suggested changes in part due to his area's coalition that had voted unanimously that no change should be made even before the Task Force had met to begin such discussions.

The minority felt that these refusals to consider any changes may in-fact provide an indicator that indeed there is a need for some changes, a few of which are addressed below. During the discussion, it was widely acknowledged there were many events, albeit perhaps few in number, and often isolated, where additional emphasis by the ONC could provide important leverage to strengthening the role of neighborhood associations and assuring additional adherence to, and enhancement of, democratic principles.

The minority also believes that the fact that the City's Planning Department, did not allow ONC to the Task Force meetings, until the next to the last meeting, while regrettable, is not a valid reason to take no action on suggested changes in existing recognition requirements. During the Task Force meetings, there was both full discussion and broad general concurrence that ONC is currently understaffed, as well

as under funded. A general deterioration in providing Educational and Informational services was noted.

One of the more obvious, and acknowledged needs of many existing neighborhood associations is increased participation – both in terms of general membership participation, and also in a willingness to serve in a position of leadership. The reasons for this are many and varied. Often times, officer positions have remained with the same individual, or small group of individuals, for so many years that it is possible that new leadership may not be “honestly” sought. The continued control by a few leading to disinterest by the community may be the real problem. Required modest limitations on terms of specific offices, as well as rotational requirements, would alleviate a majority of these type problems. Experience has shown that when really significant issues come up, the community usually will be heard from with more representative numbers.

To address the above mentioned particular issue, as well as similar ones, we propose that the ONC add a modest few additional requirements as being ‘necessary’ for neighborhood associations to receive “recognized” status. These requirements do not add any additional organizational burden on either the neighborhood associations or the ONC - but merely require that certain democratic procedures are in place, and appropriately certified by the neighborhood associations in their annual report seeking “recognition.” If they are already being done then nothing more is required. This simple “certification” process would thus provide the basis for any challenge if, in fact, previously certified procedures are not being followed. If a neighborhood association does not choose to be recognized then any and/or all of the criteria can be ignored.