

MEMORANDUM



To: Scott McCullough, Planning and Development Services Director
From: John Jay Miller, Staff Attorney
Cc: David L. Corliss, City Manager
Toni Ramirez Wheeler, Director of Legal Services
Re: Interpretation of Development Code Subsection 20-109(c), Conflict with
Private Agreements and Covenants
Date: August 30, 2007

An inquiry to the Planning Office has been received regarding whether or not the terms of a private lease agreement entered into prior to the adoption of the Development Code (which conflict with the regulations of the Development Code) may take precedence over the requirements of the Development Code. As a result, an interpretation of subsection 20-109(c) of the Development Code entitled "Conflict with Private Agreements and Covenants" has been performed.

The specific inquiry regarded the parking requirements set forth in the terms of a private license agreement, which conflict with the parking requirements set forth in the Development Code. The inquirer argues that the Development Code requirements "abrogate" or "otherwise interfere" with the terms of the private lease agreement.

Subsection 20-109 (c) reads as follows:

(c) Conflict with Private Agreements and Covenants

This Development Code is not intended to abrogate, annul, or otherwise interfere with any Easement, covenant, or other private agreement or legal relationship otherwise in conformance with the Development Code.

The purpose and intent of the Development Code pursuant to Section 20-104 of the Development Code is to implement planning and zoning regulations "in a manner that protects, enhances and promotes the health, safety, and general welfare of the Citizens of Lawrence." Compliance with the Development Code and adopted development policy is required pursuant to 20-106 of the Development Code.

The purpose of Section 20-109 (c) is for the Development Code not to interfere with private agreements or covenants "otherwise in conformance with Development Code." The "otherwise in conformance language" means that compliance with the Development Code is still required. For the City, the terms of a lease or private agreement do not take precedence over or eliminate the requirements of the Development Code. For the parties to the agreement, they would have to comply with the terms of the code and with the terms of the private agreement. The City must enforce the requirements of the code; the private parties would have to enforce the private restrictions pursuant to the agreement terms. For example, a homeowner's

associations can create restrictive covenants with terms more restrictive or with higher standards than the Development Code. The Development Code would not abrogate or interfere with the covenant terms if they comply with the code but the City would not enforce the private covenants, the members of the homeowners' association would.

What the inquirer is requesting raises the issue of persons attempting to use private agreements to avoid the requirements of the Development Code. Subsection 20-109(c) does not allow persons to agree privately to sidestep the code nor does it allow agreements or covenants entered into in past years with terms based upon previous codes to supersede the current code.