March 4, 2025

Representative Spencer Igo, Chair

Minnesota House Finance and Policy Committee

75 Rev Dr. Martin Luther King, Jr. Blvd.

St. Paul, MN 55155

RE: Cities Management Testimony House File 1268

Chair Igo, Vice- Chair Dotseth, Committee Members:

Chair Igo, Vice-Chair Dotseth, and esteemed members of the Housing and Finance Committee, thank you for the opportunity to provide testimony regarding House File 1268.

My name is Matt McNeill, and I am the President of Cities Management. I came to Cities Management with more than 20 years' experience in portfolio management and real estate development. For more than a decade I served as the Board President of a 418-unit condominium and live in a common interest community today. While we agree with some of the policy goals outlined in HF 1268 and think that some of the provisions in the bill should be adopted as drafted, we also have some suggestions for areas we think could be improved. Some of the proposed measures align closely with the best practices we implement daily with our clients while others will have unintended consequences if left unchanged.

First, let me state some principles that guide our work every day. We believe that transparency, trust, and comprehensive education are foundational to the effective management and operation of common interest communities. This bill offers an opportunity to bring more of those concepts to Minnesota and we look forward to working with the Committee in the coming weeks to further refine and strengthen the legislation, ensuring it reflects the industry's best practices and fosters improved governance, management collaboration, and homeowner engagement.

About Cities Management and Associa:

Cities Management, an Associa company, currently manages 272 common interest communities, representing 17,812 homes across Minnesota. Our portfolio encompasses a diverse range of housing types, including planned communities, single-family homes, townhomes, condominiums, senior cooperatives, and modular housing. We serve clients spanning a wide geographic area, from

the Wisconsin border to St. Bonifacius, and from St. Cloud to Faribault, with home values ranging from $38,000 to over $5,000,000.

Cities Management is one of four Associa companies operating in Minnesota, alongside Associa Minnesota, Suddler Property Management, and Sentry Management. Collectively, we represent nearly 50,000 homes throughout the state.

As the largest community management firm in North America, Associa boasts over 300 branch offices and serves more than 7.5 million residents worldwide. Our team of over 15,000 professionals leads the industry in education, expertise, and innovation. With over 45 years of experience, Associa is committed to delivering positive impact and meaningful value to the communities we serve.

Common Interest Communities

It is essential to begin by underscoring the framework within which these communities operate. In Minnesota, common interest communities are organized as non-profit corporations, governed by Minnesota Statutes Chapter 317A, the Minnesota Nonprofit Corporation Act. This statute establishes the foundational legal principles that dictate the structure, operation, and governance of these entities.

Crucially, under 317A, members of a common interest community's Board of Directors are held to a standard of care as fiduciaries of the corporation. The duty requires Board members to act in the best interests of the corporation and its members, exercising due diligence, loyalty, and good faith in all their decisions.

Furthermore, common interest communities are also subject to Chapter 515B, the Minnesota Common Interest Ownership Act. While the applicability of specific provisions within 515B may vary depending on the date of a community's creation, the act broadly governs the establishment, management, and termination of common interest communities. It provides essential guidelines regarding declarations, bylaws, and other governing documents.

Within this framework, volunteer Board members are entrusted with the responsibility to manage the affairs of the corporation. In many instances, the community's Declaration empowers the Board to retain and, if necessary, terminate the services of a qualified management agent, commonly referred to as an association manager. The scope of an association manager's responsibilities can vary significantly. Some communities may engage managers solely for financial services, limited to the basic collection and disbursement of funds. Others may utilize association managers to provide comprehensive governance and operational support, up to and including employed or on-site staff, to assist the Board in fulfilling its obligations.

Property Management

Regarding Article 1, Property Management we agree that transparent disclosure of financial interests is essential and forms the bedrock of a trustworthy relationship between management firms and the corporation's Board of Directors. Furthermore, we unequivocally object to any compensation structure that incentivizes or remunerates firms based on a percentage of fines

collected. Such a practice undermines the collaborative spirit necessary for fostering a strong community.

In Subdivision 2 we would request consideration to address the unique circumstances of communities with on-site management employed staff, 1099 contractors who perform a broad range of duties as outlined in their agreement, and most critically urgent situations involving health, life safety, or property loss. For instance, our firm maintains agreements with our client communities that authorize us to engage emergency service providers for expenditures up to a certain dollar amount dependent on the size and type of community during such emergencies. This practice ensures immediate action can be taken to mitigate potential harm or damage.

Our main concern in this Article is Subdivision 4, Automatic Renewal. Specifically, the bill says that management contracts cannot have a non-renewal notice window of more than 30 days. We strongly advocate changing this to 90 days. Longer notice is required to ensure that there is a comprehensive communication plan to facilitate a smooth transition from one management company to the next. This extended timeframe is crucial, particularly for communities with limited operating cash. Many of these communities maintain less than 30 days of operating funds, making cash management pivotal during transactions. While we strive to expedite the collections process during the initial transition period, it typically takes up to 30 days for homeowners to adjust their payment methods, including redirecting payments from financial institutions, establishing new payment arrangements, or becoming aware of the change. Additionally, prior management retains the right to complete the final disbursement to new Management for 45 days following the termination date of the contract. Therefore, a 90-day notice period would provide appropriate time to notify owners and complete a successful transition of service.

Common Interest Communities

We recognize the significant responsibilities placed on volunteer Board members, who serve as fiduciaries and stewards of their communities. We are hopeful that the provisions within this article will foster alignment and collaboration between association managers and Boards of directors regarding business practices.

We are supportive of efforts to standardize practices across common interest communities. Consistency will enhance homeowner understanding of their investment(s) and roles, while also providing clarity for association managers and other service providers regarding their respective authority.

Regarding the termination of a common interest community, we note the legislation's requirement for only a 60% vote. This contrasts with other provisions requiring higher thresholds for amendments to governing documents, specifically the Declaration. We urge the Committee to reconsider this discrepancy and ensure consistency across these critical responsibilities.

We seek clarification on the "plain language" explanation of the Articles of Incorporation, Declaration, Bylaws, and Rules and Regulations. Our initial reading suggests this may not align with the comprehensive documents typically provided to owners and potential owners. We also request further clarification on the responsibility for creating these explanations and potential liability

concerns as many volunteers would offer to create in lieu of incurring any expense. We suggest the Committee examine real estate disclosure practices during transactions, which effectively summarize governing documents for potential buyers in plain language.

Furthermore, this provision appears within the resale certificate section of statute, where it is generally understood that prospective owners are responsible for their own due diligence, including legal review of governing documents.

With respect to Section 16, we are gravely concerned about the proposed modification or removal of the provision allowing Boards to "(16) exercise any other powers necessary and proper for the governance and operation of the association." While the current language may appear broad, it acknowledges the diverse operational and governance decisions Boards must address. We propose a revised version: "(16) Exercise of additional powers reasonably necessary for the governance and operation of the association in accordance with applicable laws and the association's Declaration."

Finally, regarding Rules and Regulations, we propose a friendly amendment to allow Boards to take immediate action, without a 60-day notice period, on matters affecting the health, safety, or welfare of the association or its members.

Board of Directors and Declarant Control

A cornerstone of Associa's work is board and homeowner education. We partner with boards of directors, offering ongoing conversations and scheduled monthly educational sessions on topics such as collections and collection policies, best practices for rules, regulations, and violation procedures, and foundational governance.

We request that the author identify the source for the publication of the "plain language" role explanation. Furthermore, to promote shared best practices, we advocate Board members to attest to reading and understanding their respective roles within the corporation.

Importantly, regarding Board meetings, we request clarification and specificity throughout the statute to distinguish between Board Meetings and the Annual Meeting of the corporation. These are distinct matters often used interchangeably, leading to confusion.

Concerning Board meetings, management supports the intent to ensure owners are aware of matters before the Board (with the exception of legal matters, specific collections matters, and personnel matters) and can attend, and, most importantly, can be heard. However, we have concerns regarding the use of the term "designee" and how that would be determined or managed. Currently, if an owner cannot attend, their designated power of attorney on file with management may speak on their behalf. The concept of a "designee" is concerning, as it could allow renters or non-owners to represent themselves as authorized representatives, making it impossible for the Board or management to verify their authority to participate in business matters.

We further would support the separation of the section regarding virtual meetings, allowing both Board and Annual Meetings to be held online and in person. Many communities are currently

limited to in-person meetings following the end of the public health emergency, and online meetings can contribute to greater owner engagement.

Relatedly, we advocate that online Annual Meetings be required to utilize technical solutions that comply with statutory requirements regarding owner registration for quorum, participation, and, most importantly, voting. Ensuring members have access to anonymous voting solutions is essential.

Finally, regarding contracts and business relationships, the corporation should not be restricted from entering into business relationships with specific partners, as the current language proposes. However, the Board and management should be required to ensure that all relationships are disclosed and that competitive processes are followed to secure the best business outcomes for the corporation.

Bylaws and Annual Report

We support increased clarity regarding amendments and changes to all governing documents. We urge that this section be revised to align with the language found in Minnesota Statutes Chapter 317A, with the stipulation that member approval is required, provided that a duly called meeting with proper legal notice of the proposed change has been conducted.

Meetings

We request clarification and specificity throughout the statute to clearly distinguish between Board meetings and the corporation's Annual Meeting. These are distinct matters frequently used interchangeably, which creates confusion.

For example, the corporation's Annual Meeting may not align with the association's fiscal year. We believe, and advocate as best practice, that a budget meeting, open to all members, should be held no less than 30 days prior to the end of the fiscal year. This meeting, being a Board meeting, should be conducted in accordance with the amended statutes (also applicable to Section: Assessments for Common Interests).

Voting Proxies

The current proxy voting restrictions in the bill may inadvertently hinder the corporation's ability to hold its annual meeting by limiting participation. Specifically, prohibiting Board members from acting as proxies and capping proxy votes at 20% could prevent the association from reaching quorum. To address this, we propose allowing directed proxies, where unit owners specify how their votes should be cast. This ensures transparency while providing flexibility for those unable to attend. Adjusting the 20% cap to apply only to quorum calculations, rather than total votes, would further support meeting viability without compromising voting integrity.

Assessments for Common Interests

The assessment is viewed simply as a monthly fee. However, it is far more than that; it is the lifeblood and primary income for a CIC, designed to ensure the community’s continued well-being. To understand its significance, we must look beyond a simple profit and loss statement and

consider a broader financial picture. Imagine a three-legged stool: a fiscally responsible budget, healthy cash flow, and a robust reserve plan. Each leg is essential for affordability and sustainability. The assessment is the resource that ensures this respective obligation is met by the corporation's fiduciaries.

Assessments fund the annual budget and contribute to healthy cash flow. This allows the community to meet its financial obligations promptly, even amidst seasonal fluctuations or unforeseen expenses. Timely payment of invoices and contracts hinges on a steady stream of income, primarily derived from assessments.

Most importantly, assessments are the primary source of funding for the reserve fund. This fund safeguards the community's future by providing resources for major repairs and replacements of common area components. Underfunding reserves through artificially low assessments is a dangerous practice, a “kicking the can down the road” approach that ultimately leads to larger financial burdens and potential special assessments.

As a best practice, we consistently schedule and conduct budget meetings for all our clients. We strive to establish the association's annual calendar in January, immediately identifying, scheduling, and communicating the dates for the annual meeting, the budget meeting (based on the fiscal year), and all regular Board meetings. This proactive approach fosters transparency and establishes clear expectations within the community.

We concur that the budget should be provided to members in draft form prior to the budget meeting. Moreover, members should be afforded the opportunity to ask questions regarding the budget and its underlying assumptions during an open meeting before the Board votes to adopt the budget for the next fiscal year.

Our main concern with this section is the language about offering unit owners a “reasonable payment agreement” that takes into consideration the “financial circumstances of the unit owner.” Every day, especially in small associations, we have situations where the inability of one or two individuals to pay their assessments impedes the association's ability to pay bills on time, resulting in late fees, in certain instances up to a loss of insurance coverage due to inability to pay, and other financial challenges. This often persists until the community can convene to levy a special assessment or collect the outstanding balances from the members. But more importantly, it should not be the responsibility of a volunteer board of directors to determine if a unit owner satisfies an ambiguous standard like the one set out in the bill. Assessments are a contractual obligation between the association and the unit owner. If a unit owner fails to pay their contractually obligated assessments, then their neighbors are forced to pay more.

Lien for Assessments

We understand that delinquency and collections within communities are sensitive topics, particularly when they involve individuals' homes. Our experience has consistently shown that these measures are employed as a last resort, strictly in accordance with the community's governing documents and the relevant laws, and only when absolutely necessary.

Our firm has proactively addressed this issue by assisting the Board in adopting comprehensive Delinquency and Collections Resolutions. Resolutions are reviewed annually alongside the budget, ensuring alignment with state statutes and the community's governing documents. This policy aims to establish transparent expectations for members and provide precise guidelines for management and legal counsel regarding their respective responsibilities.

While liens were historically used as a means of gaining an owner's attention, we have found that a multi-faceted communication approach has significantly reduced the need for such measures. Utilizing a combination of U.S. Mail, Certified Mail, and electronic communication, we have effectively raised owner awareness of account discrepancies. For instance, an owner who has set up bill pay with their financial institution may inadvertently overlook an adjustment for a January assessment increase, leading to a delinquency. Proactive communication allows for swift resolution of these issues. It is also important to remember that assessment intervals vary, encompassing annual, biannual, semi-annual, and monthly payments.

Given the potential financial impact of assessments, loss assessments, insurance assessments, maintenance assessments, or special assessments, particularly in smaller communities, we propose an amendment to the section. Our recommended amendment would allow for lien placement *after six months* of delinquency, when the total principal amount owed exceeds $5,000, or *whichever is lower*, and that amount has been outstanding for 180 days or more. This approach strikes a balance between protecting the community's financial interests and providing a reasonable timeframe for resolution.

Requirement to Meet and Confer

We support the spirit of the requirement for Meet and Confer. We are hopeful that these ongoing conversations will enhance homeowner engagement and foster a shared understanding of roles and responsibilities among Board members, homeowners, and management. In our experience, homeowners are sometimes unaware or uninformed about the respective roles of various parties in decision-making. This can lead to misdirected feedback and frustration due to a perceived lack of clear resolution processes.

Recognizing that Board members are fiduciaries of the corporation, we propose a revision to subdivision 1:

> "'For the purposes of this section, "enforcement action" means any attempt by an association, management company, or an attorney or other person on behalf of the association or management company, to collect an assessment, fine, late fee, or contest a written violation of a covenant of the association."

We believe that other matters, as described in the present text, should allow the Board of Directors to have counsel present or respond on their behalf, to protect the interests of all members, while remaining subject to Minnesota Statutes 515B.3-125, Legal Fees; Notice Required.

In closing, we reiterate our commitment to working collaboratively with the Committee to ensure House File 1268 effectively addresses the challenges and opportunities facing common interest communities in Minnesota. We believe that by incorporating the recommendations we have

outlined, this legislation can establish a stronger, more transparent, and equitable framework for these communities, ultimately benefiting all Minnesotans.

Thank you for your consideration.

Sincerely,

Matthew J. McNeill
President

Association of Minnesota Counties
www.mncounties.org

MACPZA
Minnesota Association of County Planning & Zoning Administrators
www.macpza.org

March 3, 2025

Re: County Comments on SF1286

Dear Chair Igo and Members of the House Housing Finance and Policy Committee:

The Association of Minnesota Counties (AMC) and Minnesota Association of County Planning and Zoning Administrators (MACPZA) thank the committee for the opportunity to submit comments on SF1286. Counties are concerned with Article 3, Section 1, preempting county authority.

AMC appreciates the work of the Working Group on Common Interest Communities and Homeowners Associations that was done over the past interim, but regret that a county perspective was absent from the discussions.

Several meetings of the work group and issues addressed in the report speak to the unique nature of Common Interest Communities (CIC) the way they are established and the authority that they have as unelected bodies. And yet, Article 3 restricts the role of local government and would allow these types of developments without any or minimal local government oversight.

The Development Agreements regularly give LGUs the ability to review and approve the association declaration and bylaws. The LGU review is important for many reasons including to ensure that the declaration provides for maintenance of roads and common areas and assessment of costs when warranted. The LGU serves as check on basic requirements and safety matters in its jurisdiction.

CICs are sometimes used to establish a use that would normally not be allowed by the local government, but due to the nature of a CIC it was acceptable. The language as proposed allows a developer to make changes that would be outside the scope of what was approved. The permitting authority and nearby communities should not be surprised by developments that can change without restriction.

Developments require an entity, such as an HOA, to construct and maintain key infrastructure. This provision also conflicts Minnesota Shoreland Rules (6120.3800 Subd. 5.C) that require a homeowner's association be created for residential PUD self-governing. As a result, counties have Shoreland Management Ordinances which require a property owners association agreement with mandatory membership be submitted as part of the CUP application for a residential PUD.

AMC and MACPZA oppose the adoption of Article 3 in HF1268. We believe that these changes will perpetuate the problems of residents and communities regarding CIC's, rather than solve issues.

Thank you for your consideration. If you have any questions about our position, please feel free to contact Brian Martinson at bmartinson@mncounties.org or 651-246-4156.

Sincerely,

Brian Martinson, Policy Analyst
Association of Minnesota Counties

Garry Johanson, President
Minnesota Association of County Planning & Zoning Administrators

Habitat for Humanity® of Minnesota

Building homes, communitiy, and hope.

4 March 2025

Re: HF1268 Common Interest Communities/Homeowner Associations Modifications

To: Chair Igo and Members of the Housing Finance & Policy Committee

Dear Chair Igo and Members of the Committee,

Thank you for the opportunity to share Habitat for Humanity of Minnesota's (Habitat Minnesota) support of HF1268 which is the result of the critical work of the Working Group on Common Interest Communities (CIC) and Homeowners Associations (HOA). Habitat Minnesota is a statewide support organization that provides training, technical assistance, lending, grants, and other support to the 24 local Habitat affiliates in Minnesota, working in 59 counties across the state.

Habitat Minnesota supports policies like this that help Minnesotans retain their homes, benefit family stability, children's education, community well-being, and our economy. Common Interest Communities and Homeowners Associations play an important role in the lives of many homeowners, and Habitat Minnesota is appreciative of the Working Group's efforts to study their prevalence and impact in Minnesota and recommend solutions to the legislature on best practices. The resulting research and recommendations provide a path for CICs and HOAs to better serve Minnesotans and help homeowners and tenants access safe and affordable housing. Amongst other modifications, SF1268 would require HOA boards to create a schedule of fines and fees, ensure homeowners can contest an HOA fine, provide reasonable time to correct violations, and prohibits the requirement or incentivization to create HOAs.

Thank you to full Work Group, and for the opportunity to share our support of SF1268 to better ensure long-term homeownership security for Minnesotans. Please reach out to myself or Jeru Gobeze (jeru.gobeze@habitatminnesota.org) with any questions.

Sincerely,

Cristen Incitti, President & CEO
Habitat for Humanity of Minnesota
cristen.incitti@habitatminnesota.org

MUNICIPAL LEGISLATIVE COMMISSION

MLC Cities
Apple Valley
Bloomington
Burnsville
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Inver Grove Heights
Lakeville
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Minnetonka
Plymouth
Prior Lake
Rosemount
Shakopee
Shoreview
Woodbury

March 3, 2025

Dear Chair Igo and Members of the House Housing Finance and Policy Committee:

On behalf of the Municipal Legislative Commission (MLC), a coalition of 18 cities with nearly one million residents in the seven-county metropolitan region, we welcome the opportunity to provide feedback on HF 1268. While we commend the efforts of the authors and their colleagues on the legislative Working Group on Common Interest Communities (CIC) and Homeowners Associations (HOA) to improve CIC/HOA transparency and accountability, we are concerned that the proposed legislation may create unintended challenges for cities and residents.

First, it's important to understand that cities currently do not require private common elements or HOAs as part of the development approval process. The decision to include common elements and establish an HOA to maintain them is entirely up to the developer. While cities may reference HOAs in approval documents, they do not manage private common areas or enforce HOA rules.

When a developer opts to include common elements in a residential development, an HOA is established to oversee the ownership and maintenance of these elements. Common elements typically fall into three main categories:

- Building elements (roofs, siding, decks)
- Site amenities (landscaping, monuments, pools, playgrounds, trails)
- Infrastructure (private roads, utilities, stormwater ponds)

Proper maintenance of these elements is vital to prevent issues like:

- Impacts on adjacent units when maintaining building elements
- Blight and decreased property values from neglected amenities
- Negative effects on public infrastructure due to poor private infrastructure maintenance

As the legislature addresses CIC/HOA challenges, we urge you to work with cities to ensure that private common elements continue to be effectively managed and maintained by private entities to avoid increasing burdens on cities and taxpayers.

Thank you for your consideration of these important issues.

Sincerely,

James Hovland
Chair, MLC
Mayor, City of Edina

CC: Rep. Kristin Bahner
Sen. Eric Lucero

METRO CITIES
Association of Metropolitan Municipalities

March 4, 2025

Chair Igo and Members of the House Housing Finance and Policy Committee,

Metro Cities, representing the shared interests of cities across the metropolitan area at the Legislature and Executive Branch, appreciates the opportunity to comment on HF 1268 – Bahner.

Metro Cities appreciates the need to consider updates to laws regarding Homeowners Associations and Common Interest Communities to ensure Minnesota residents living in these communities are protected.

Metro Cities has concerns with Article 3, the Local Government Preemption section of the bill, where language does not allow a city to condition the approval of a permit related to the residential development of an HOA on the inclusion of any service, feature, or common property that requires the creation of an HOA, or on the creation of an HOA.

A lack of appropriate maintenance of private infrastructure can have negative effects on public systems, and as such, common area infrastructure must have a mechanism to ensure that systems are maintained, and that property does not become tax-forfeited and become a burden for taxpayers for a very localized benefit.

Common property maintenance provided by HOAs are important to many, including seniors and those with disabilities. By eliminating the ability for cities to ensure the maintenance of common property, this could leave vulnerable populations without the options for common property maintenance, snow removal, and lawn care through the future lack of access to this type of housing. Metro Cities appreciates your attention to our concerns, and we look forward to working with the author and others on this language.

Thank you for your consideration of this letter.

Sincerely,

Ania McDonnell
Government Relations Specialist