



## **Policy ADM-10**

### **COVENANT ENFORCEMENT**

#### **References**

Declaration of Covenants, Conditions and Restrictions for the Indian Summer Residential Community, as Amended.

#### **Responsibility**

The Board of Directors is responsible to maintain and keep this Policy current, approving changes as necessary.

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## **Introduction**

### **A. The Covenants**

The Declaration of Covenants, Conditions and Restrictions for the Indian Summer Residential Community were recorded July 27, 1993 under Thurston County Auditor's file number 9307270117 and have been amended eight times. As amended the Covenants affect all lots within Indian Summer.

The Covenants make each Owner responsible for complying with specific restrictions found in the Covenants, for getting prior written approval from the Association before doing certain things described in the Covenants, for following rules and regulations the Board adopts from time to time, and for complying with a Board Decision.

### **C. Voluntary Compliance**

The primary means for preserving and advancing the Community Wide Standard is for each Owner to voluntarily perform the responsibilities of an Owner. Indian Summer has achieved its existing neighborhood character largely because individual Owners take their responsibilities seriously. The Board believes that the actions of responsible Owners will continue to minimize the need for the Board to create compliance with the Covenants through enforcement action.

However, for a variety of reasons, occasionally Owners will fail to comply with requirements clearly set forth in the Covenants and something more is needed to bring them into compliance. This Policy is meant to guide the Board in acting to restore an Owner's compliance with the Covenants through a process that is fair, efficient and effective.

### **D. Board Authority**

The Covenants give the Board broad authority and a variety of tools to use in preserving and advancing the Community Wide Standard. It is authorized to create rules, regulations, procedures and penalties. (*For example, see Covenants Section 10.01 and 10.02.*) The Board is authorized to resort to various remedies to restore compliance with the Covenants, including:

- a) imposing a fine;
- b) curing the violation and charging all costs of the cure to the Owner;
- c) suspending an Owner's right to vote in the Association;
- d) suspending an Owner's right (and the right of such Owner's family, guests, and tenants and of the co-Owners of such Owner and their respective families, guests and tenants) to use any of the Club Recreational Facilities and Common Areas (for a period of not to exceed 30 days after the violation is cured);



- e) enjoining construction and preventing a contractor, agent, or others from continuing work;
- f) requiring an Owner, at his or her own expense, to remove a violation and to restore a Lot or Dwelling to its previous condition;
- g) towing abandoned or inoperable vehicles;
- h) imposing a specific assessment;
- i) filing a lien against the property; and
- j) bringing a lawsuit to get a court order requiring compliance, as well as a judgment for all damages, attorneys' fees and costs incurred.

### **Covenants Enforcement Policy**

Whereas Sections 1.01 and 10.01 of the Covenants require that all Owners must comply with the Governing Documents, and Section 10.02 and other Sections of the Covenants give the Board the authority to ensure compliance with the Governing Documents through a variety of measures;

NOW THEREFORE BE IT RESOLVED that the following Covenants Enforcement Policy (the "Policy") is adopted to govern actions by the Homeowners Association, the Board of Directors and the Owners regarding the enforcement of the Governing Documents.

#### **Section 1. Authority Reserved to Association**

This Policy is a general approach and exists to advance the purpose of restoring compliance with the Indian Summer Covenants and the other Governing Documents. It is not meant to impair the Association's ability to pursue this purpose. The Board retains whatever authority it otherwise has to employ any available means or remedy in pursuit of this purpose.

#### **Section 2. Maintaining Awareness**

To lower the chance that an Owner will violate a Covenant through ignorance or inadvertence, the Board may take actions to educate or periodically remind all Owners of the responsibilities which the Covenants assign to each Owner.

#### **Section 3. Identifying a Possible Violation**

A possible violation of the Covenants may be identified by an Owner's written complaint (as described in Section 5 below), or by other reasonable, reliable means. The Board shall conduct, or cause to be conducted, a community-wide inspection at least quarterly to monitor compliance with Governing Documents.



#### **Section 4. Monitoring Compliance**

When a complaint is received, the Association, through the Board, property management staff or volunteers, may investigate the complaint. For conditions which require approval of the Board, the ARB, or another committee, the Association will check with the appropriate body to see if the modification was approved. Assuming the condition is in violation and that no modification was approved, the Association may send the violating Owner a warning or a Demand to Cease and Desist.

#### **Section 5. Written Complaint – Homeowner Mediation**

A person may bring a possible violation to the Board's attention through a written complaint. The complaint must identify the property, describe the violation and include a reference to the specific Covenant, rule or regulation being violated. The Board may check to see if the condition described still exists. The Board may seek to restore compliance with the Covenants through this Policy or may encourage the parties to voluntarily participate in mediation.

#### **Section 6. Two Step Approach**

This Policy uses a two-step approach. Two violations of the same restriction within twelve months of the first violation will result in a fine of up to \$50 per day. In the alternative, a fine of \$150 may be imposed the second time an action or omission results in a one-time violation. (*See Section 9, Fine Schedule, for more details.*) In addition, two violations of the same restriction may result in the imposition of other sanctions or remedies. Fines or other sanctions may be imposed at the hearing held after the Hearing Notice is sent.

#### **Section 7. Demand to Cease and Desist**

Covenants Sections 10.03.01 and 10.03.02 require the following procedure upon identification of an alleged violation. A written Demand to Cease and Desist will be sent to the Owner of each home identified to have a potential violation. The Demand to Cease and Desist must contain:

- a) the property's address;
- b) a description of the alleged violation;
- c) the specific restriction being violated;
- d) a request for prompt compliance with the restriction;
- e) if the violation is continuing, a time period of not less than ten (10) days during which the violation may be cured or abated without further sanction; and
- f) if the violation is not continuing, a statement that further violation of the same provision of the Governing Documents may result in imposition of fines or sanctions after notice and a hearing.



## **Section 8. Hearing**

If the violation continues past the cure period allowed in Section 7(e) above, or if the same violation occurs once more within a twelve month period, then the Board may serve the allegedly violating Owner with written hearing notice. "To Serve", as used in this Policy, means to give notice to an Owner. Therefore, the procedures for giving notice to an Owner contained in the Covenants Section 13.13 shall apply.

The Hearing Notice must contain:

- a) the property's address;
- b) a description of the alleged violation;
- c) the date, time and place of the hearing (the date of the hearing must be at least ten (10) days from the date the notice is served on the Owner);
- d) the proposed fine or sanction to be imposed; and
- e) an invitation to the Owner to attend the hearing, and produce any statement, evidence and witnesses on his or her behalf.

The hearing shall be conducted according to the procedures listed in Section 10.03.03 of the Covenants. That Section requires that the hearing be held in executive session, which means it will not be open to the public.

The Board may conduct the hearing or it may designate a temporary hearing board to conduct the hearing. The temporary hearing board may consist of the ARB, another committee, or may be a single, neutral person specially appointed for this purpose. In the event a temporary hearing board conducts the hearing, an Owner may appeal the decision of the temporary hearing board to the Board of Directors. An appeal must be in writing, delivered to the Board President or Secretary within 30 days after the Owner is sent notice of the temporary hearing Board's decision. Upon receiving an appeal, the Board will issue a notice of a new hearing as described above.

## **Section 9. Fine Schedule.**

- A fine of \$150 may be imposed for the second violation of any restriction in the Governing Documents.
- In the alternative, the Board may impose a daily fine for a continuing violation.
  - Each day the same violation of a restriction exists may be considered a continuing violation.
  - Daily fines may accrue at the maximum rate of \$50 per day, beginning on the date of the hearing set in the initial notice of hearing.



- Fines will continue to accrue until the violation is cured. Violations which the Board, in the exercise of reasonable discretion, determines pose a serious health or safety hazard will have the maximum fine of \$50 per day imposed.
- Other violations of the restrictions in Article 4 of the Covenants will have an initial fine of \$10 per day imposed, unless the Board finds the Owner to have committed the violation intentionally, willfully, or after previously having been fined for the same or a similar violation.
- In case of an intentional, willful or repeated violation, the Board may impose up to the maximum fine of \$50 per day. For continuing violations which are not cured within 30 days after a hearing, the daily fine rate may increase as follows:
  - an additional \$10 beginning on the 31<sup>st</sup> day of non-compliance after the hearing, and
  - an additional \$10 beginning on the 61<sup>st</sup> day, and
  - will continue to increase in this manner until the maximum rate of \$50 per day is reached.

### **Section 10. Paying Fine Does Not Cure a Violation**

Paying a fine does not relieve a person from the responsibility to cure a violation.

### **Section 11. Issuing a Stop Work Order**

The Board may issue a Stop Work Order to any person engaged in an unauthorized activity. An unauthorized activity is any activity which requires the prior written approval of the Board or the ARB and has not received prior written approval of the Board, the ARB or the appropriate committee. A Stop Work Order must contain:

- a) the property's address;
- b) a description of the unauthorized activity;
- c) the specific restriction being violated;
- d) a statement requiring the immediate cessation of the unauthorized activity;
- e) a time period of not less than ten (10) days during which the violation may be cured or abated without further sanction; and
- f) a statement that failure to immediately comply with the terms of the Stop Work Order will result in issuance of a notice of hearing, after which fines or sanctions may be imposed.

Failure to honor a Stop Work Order will result in a hearing notice being issued to the Owner. No additional Demand to Cease and Desist will be necessary before a hearing notice is issued.



## **Section 12. Maintenance Within Property, Landscaping**

The Association strongly encourages education and voluntary compliance with the Community Wide Standard concerning landscaping. The Association may offer referrals to landscaping companies including referrals for a one-time landscaping “clean-up” service, and information on where to get help with landscaping questions.

According to Section 5.07 of the Covenants, the Board may send in a crew to perform maintenance, cleaning, repair, including landscaping maintenance—and charge the cost to the Owner—under the following circumstances. An Owner who fails or refuses to perform his or her maintenance responsibilities (including, but not limited to, failure to maintain landscaping so that the Lot or Dwelling does not meet the Community Wide Standards or other rules the Board may develop) is in violation of the Covenants. The Board may correct these violations using its power of self-help, according to the following procedure.

When a maintenance, cleaning, repair, or landscaping violation is identified, the Board may issue a Maintenance or Landscaping Demand to Cease and Desist, which will contain:

- a) a statement requiring the violation to be cured in a good and workmanlike manner within fifteen (15) days;
- b) notice that if the violation is not cured by that date, the Board may authorize a landscaping crew to enter the property after that date to perform all necessary maintenance, repair, clean up or landscaping action to restore the property to meet the Community Wide Standard;
- c) a statement that the bill for these services will be billed to the Owner, and an administrative fee of \$250 will be billed to the Owner, which is a specific assessment against the Lot or Dwelling; and
- d) notice that this determination is final unless a hearing is requested, in writing, delivered to the Board within ten (10) days of the date of the Maintenance or Landscaping Demand to Cease and Desist.

After issuing the Maintenance or Landscaping Demand to Cease and Desist, the Board is not required to give an Owner any other notice of the date after which a landscaping crew may enter the property, unless the Owner timely requests a hearing in writing.

If the Owner timely requests a hearing, that hearing must be held according to Section 8 of this Policy. If after a hearing the Board decides to proceed with self-help to cure the violation, then the Board must give the Owner notice of the new date after which a maintenance or landscaping crew may enter the property (this notice may be included in the Board's written decision on the matter).

If an Owner has had more than one landscaping violation, the Board (after notice and a hearing according to Covenants Section 10.03.02) may require an escrow deposit to the ARB from the



Owner in an amount sufficient to cover not more than three months of maintenance or landscaping services work. This deposit shall be administered by the Board in the same manner as the escrow deposit to the ARB for improvements described by Covenants Section 4.06.05.

### **Section 13. Curing Parking Non-Compliance**

The Association strongly encourages education and voluntary compliance with the parking and vehicle restrictions contained in the Covenants Sections 4.10, 4.14, 4.22, and other rules the Board may develop. Therefore, the Association will issue two warning "tickets" to vehicles which violate the parking and vehicle restrictions (except for vehicles which pose a serious health or safety hazard, for example, vehicles parked in marked fire lanes).

After the second warning ticket, the Board may issue a Parking Demand to Cease and Desist, which will contain:

- a) the property's address of the Owner, whose vehicle, or the vehicle of his or her tenant, invitee or guest, is allegedly violating the parking or vehicle restrictions;
- b) a description of the vehicle in question, including the license plate number if available;
- c) the specific restriction being violated;
- d) a request for prompt compliance with the restriction;
- e) if the violation is continuing, a time period of not less than ten (10) days during which the violation may be cured or abated without further sanction; and
- f) if the violation is not continuing, a statement that further violation of the same provision of the Governing Documents may result in imposition of fines or towing of the vehicle, after notice and a hearing.

If after the cure period expires, the violation is still continuing, the Board may issue a Hearing Notice and proceed with a fine, towing or other sanction after the hearing date.

### **Section 14. Voluntary Compliance Agreement**

The Board may reach a Voluntary Compliance Agreement with an Owner. The form of such an Agreement is solely within the discretion of the Board, but will be in writing and will typically contain:

- a) the Owner's acknowledgement that the violation exists;
- b) the Owner's agreement to take specific actions to cure the violation;
- c) the time period within which those actions will be taken;



d) a statement that failure to perform the specified actions within the specified time period will entitle the Board to impose a fine or fines in a specified amount, without first holding a hearing; and

e) signatures of the Owner and a representative of the Board.

So long as a Voluntary Compliance Agreement is in place, and the Owner is not in breach of that Agreement, fines will not accumulate.

### **Section 15. Board's Limited Discretion to Waive Fines**

A fine or fines imposed under this Policy may be partly or entirely waived by the Board upon the Board's determination that special circumstances exist in the particular instance to warrant the granting of such a waiver, or that such a waiver will further the purpose of this Policy to encourage compliance with the Covenants.

### **Section 16. Protection of Board Members**

Persons exercising authority of the Board are not liable for action or inaction done in good faith (*See Covenants Section 13.15*). Board action under this Policy shall not create any liability of the Board or the Association.

### **Section 17: Effective Date**

The Covenants Enforcement Policy set forth in this Resolution will take effect on June 1, 2011.

### **EFFECTIVE DATE AND RECORD OF AMENDMENTS**

06/11/2011, Original Policy ADM-00, approved by Board Motion 2011-011.

**08/19/19**, Amended Policy by Board Motion 2019-039, Renumbering, Removing Community-wide Standard language, Reformatted Section 9 – Fines. Effective September 16, 2019.