

WHITEWATER SPRINGS POA BOARD OF DIRECTORS MEETING

NOVEMBER 15, 2016

AGENDA ITEM XII

**AMENDMENT TO WWS RULES AND REGULATIONS
PERTAINING TO DEED ENFORCEMENT NITY CENTER
IMPROVEMENT PROJECT**

STATE OF TEXAS §

COUNTY OF BURNET §

**AMENDMENT OF RULES AND REGULATIONS
OF
WHITEWATER SPRINGS**

(Related to Deed Restriction Enforcement)

Document reference. Reference is hereby made to that certain Declaration of Covenants, Conditions and Restrictions of Whitewater Springs Subdivision Section I, filed as Document No. 199710212 in the Official Public Records of Burnet County, Texas (together with all amendments and supplements, the “**Declaration for Section I**”).

Reference is further made to that certain Declaration of Covenants, Conditions and Restrictions of Whitewater Springs Subdivision Section II, filed as Document No. 199806957 in the Official Public Records of Burnet County, Texas (together with all amendments and supplements, the “**Declaration for Section II**”).

Reference is further made to that certain Declaration of Covenants, Conditions and Restrictions of Whitewater Springs Subdivision Section III, filed as Document No. 199809115 in the Official Public Records of Burnet County, Texas (together with all amendments and supplements, the “**Declaration for Section III**”).

Reference is further made to that certain Declaration of Covenants, Conditions and Restrictions of Whitewater Springs Subdivision Section IV, filed as Document No. 199911856 in the Official Public Records of Burnet County, Texas (together with all amendments and supplements, the “**Declaration for Section IV**”).

Reference is further made to that certain Amended and Restated Declaration of Covenants, Conditions and Restrictions of Whitewater Springs Subdivision Section V, filed as Document No. 200211190 in the Official Public Records of Burnet County, Texas (together with all amendments and supplements, the “**Declaration for Section V**”).

Reference is further made to that certain Declaration of Covenants, Conditions and Restrictions of Whitewater Springs Subdivision Section VI, filed as Document No. 200005017 in the Official Public Records of Burnet County, Texas (together with all amendments and supplements, the “**Declaration for Section VI**”).

Collectively, the Declaration for Section I, Declaration for Section II, Declaration for Section III, Declaration for Section IV, Declaration for Section V, and Declaration for Section VI are hereinafter referred to as the “**Declarations**”.

WHEREAS the Declarations provide that owners of lots subject to the Declarations are automatically made members of Whitewater Springs Property Owners Association (the “**Association**”);

WHEREAS the Association, acting through its board of directors (the “**Board**”), is authorized to adopt and amend rules and regulations pursuant to Bylaw Section 7.1; and

WHEREAS the Board has voted to adopt the Enforcement Policy attached as Exhibit “A”;

THEREFORE, the attached rule is adopted.

(Signature on following page.)

WHITEWATER SPRINGS PROPERTY OWNERS ASSOCIATION
Acting by and through its Board of Directors

Signature: _____
Printed Name: Donald G. Rauschuber
Title: President, Whitewater Springs Property Owners Association

Exhibit "A": Enforcement Policy

Acknowledgement

STATE OF TEXAS §

COUNTY OF BURNET §

This instrument was executed and acknowledged before me on the _____ day of _____, 2016, by Donald G. Rauschuber in the capacity stated above.

Notary Public, State of Texas

EXHIBIT “A”

Enforcement Policy

Summary of Enforcement Policy

1. Send Courtesy Warning Letter (curable violations only - optional)
2. Send 209 Violation Notice (In accordance with Texas Property Code Ch. 209)
3. Levy fines and/or damage assessments as appropriate
4. Subsequent Violation Notices (optional)

The Board may vary from this policy on a case-by-case basis so long as the enforcement process meets state law requirements. Variances may include sending no Courtesy Warning Letter, sending more than one, and/or setting fines at levels other than as indicated on the Standard Fine Schedule.

1. **Types of Violations and Acts Covered.** The Board has adopted this policy to address situations where an owner has committed or is responsible for a violation of the deed restrictions other than by failing to pay assessments or other sums due to the Association. Delinquency violations are handled by an alternate process. This policy also covers situations where an owner or someone the owner is responsible for has damaged Association property.
2. **209 Violation Notices – Curable vs. Uncurable Violations.**
 - i. Curable Violation. Curable violations are those that are ongoing or otherwise can be remedied by affirmative action. The following is a non-exhaustive list of curable violations: ongoing parking violations; maintenance violations; failing to obtain approval through the Architectural Control Committee (ACC); failure to construct improvements or modifications in accordance with approved plans and specifications; and ongoing noise violations such as a barking dog.
 - ii. Uncurable Violation. Uncurable violations include those that are not of an ongoing nature, involve conditions that otherwise cannot be remedied by affirmative action, and those that pose a threat to public health or safety. The following is a non-exhaustive list of uncurable violations: shooting fireworks, committing a noise violation that is not ongoing, damaging common area property, and holding a prohibited gathering.
3. **209 Violation Notices -- When a fine or damage assessment may be levied; Board hearings.**
 - i. Curable Violations – Initial Fine. If an owner is sent a 209 Violation Notice for a curable violation and cures that violation by the deadline in such notice, any fine noted in the 209 Violation Notice shall not be levied. If the owner fails to cure the violation by the deadline, any fine noted in the 209 Violation Notice shall be levied after the time has lapsed for the owner to request a Board hearing, or, if a hearing is timely requested, after the date the hearing is held and a decision is made to uphold the fine.
 - ii. Uncurable Violations – Initial Fine/damage assessment. A fine or property damage assessment may be imposed in a 209 Violation Notice for an uncurable violation, regardless of whether the owner subsequently requests a Board hearing.
 - iii. Subsequent Fines. This Section 4 does not apply to fines levied after the initial fine. (*See* Section 4(iii) – Subsequent Violations, below.)

4. Violation Notices.

- i. Courtesy Warning Letter (curable violations only). Upon becoming aware of a deed restriction violation that is curable (*see* Section 2(i) above) and at the sole option of the Board or management professional, the Association may send a Courtesy Warning Letter requesting that the owner cure that violation by a date certain to avoid fines or other enforcement action.
- ii. 209 Violation Notice. If a violation is not cured in response to any Courtesy Warning Letter or if a Courtesy Warning Letter is not sent, the Board, in addition to all other available remedies, may:
 - A. Levy a fine;
 - B. Suspend the owner's right to use common area, if allowed under the governing documents; and/or
 - C. Charge the owner for damage to common area.

Any such action shall be initiated by sending a 209 Violation Notice to the owner. The 209 Violation Notice shall:

- A. Be in writing and sent certified mail to the most current owner address shown on the Association's records;
 - B. Describe the violation or property damage at issue;
 - C. State the amount of any property damage charge or fine that may be levied against the owner;
 - D. If the violation is curable and does not pose a threat to public health or safety, state a reasonable, specific date by which the owner may cure the violation and avoid any fine levied in the 209 Violation Notice; (there is no right to cure if the violation is incurable, poses a threat to health or safety, or involves damage to property);
 - E. Inform the owner that owner has a right to request a Board hearing to discuss the enforcement action on or before the 30th day after the notice was mailed to the owner (*see* Section 6 below);
 - F. Inform the owner that owner will be responsible for attorney fees and costs incurred in relation to the violation if the violation continues after a specific date; such fees and costs may be assessed to the owner's account after a hearing is held or, if a hearing is not requested, after the deadline for requesting a hearing has passed;
 - G. Inform the owner that owner may have special rights or relief related to enforcement under federal law, including the Service Members Civil Relief Act; and
 - H. Otherwise comply with Section 209 of the Texas Property Code and state law.
- iii. Subsequent Violation Notices for continuing or repeat violations. If an owner has been sent a 209 Violation Notice for a violation and the same violation continues or a similar violation is committed within six months of the 209 Violation Notice, the Association may levy additional fines either with or without notice to the owner. If it desires to send notice of additional fines, the Association shall do so by means of a Subsequent Violation Notice. A Subsequent Violation Notice may be of any form and sent in any manner, as by law such notices are not required to comply with Section 209 of the Texas Property Code, including the requirements set forth in Section 4(ii) above.

- 5. Standard Fine Schedule and Processing Procedures.** Below is the Standard Fine Schedule and Processing Procedures for deed restriction violations. *The Board may vary from this schedule on a case-by-case basis (i.e., set fines higher or lower than indicated below), so long as that decision is based upon the facts surrounding that violation. The Board also may change the fine amounts in this Standard Fine Schedule at any time by resolution, with no need to formally amend this Enforcement Policy.*

- i. Curable Violations.
 - A. Courtesy Warning Notice: No fine.
Allow 10- calendar days from date of letter to cure.

- B. 209 Violation Notice: \$50.00 fine (daily), plus attorney's fees; and/or Suspension of common area usage rights

First 209 Violation Notice to be forwarded, if violation not cured, no later than 11TH calendar day of Courtesy letter date with fine assessed as of date of letter.

- C. Subsequent Violation Notices: \$100.00 fine (daily), plus attorney's fees; (Increases \$100.00 for each additional notice, plus attorney's fees).

Subsequent Violation Notices, if violation not cured, forwarded every 7-calendar day increments with fines, including attorney fees, assessed.

- D. The Board may require the owner, at owner's sole expense, to remove any external improvement, whether in progress or complete, until subject project receives ACC and/or Board approval.
- E. Owner's application shall not be finally approved and/or issued until all applicable fines are paid in full to Association.

ii. Uncurable Violations.

- A. 209 Violation Notice: The greater of (a) a maximum not to exceed of \$_____ fine, plus attorney's fees; or (b) value of Property damage assessment, plus attorney fees and/or suspension of common area usage rights.

- B. Subsequent Violation Notices: \$_____, plus attorney's fees, fine; (Increases \$_____, plus attorney's fees, for each additional notice).

iii. Procedures. All communications, unless agreed by the ACC and/or Board, regarding curable and uncurable deed restrictions violations, shall be in written form via U.S. Postal Service letter and/or electronic mail. No personal communications between the ACC and the Board will be permitted without the pre-consent of a member of the ACC and/or Board.

6. **Hearings.** If an owner receives a 209 Violation Notice and requests a hearing in a timely manner, that hearing shall be held in accordance with Section 209.007 of the Texas Property Code. The Board may impose rules of conduct for the hearing and limit the amount of time allotted to an owner to present his/her information to the Board. The Board may either make its decision at the hearing or take the matter under advisement and communicate its decision to the owner later.
7. **Authority of agents.** The management company, Association attorney, and other authorized agents of the Association are granted authority to send violation notices, levy initial or subsequent fines per the Standard Fine Schedule, and levy property damage assessments, all in accordance with this Enforcement Policy. Such parties may act without any explicit direction from the Board and without further vote or action of the Board. The enforcing party shall communicate with the Board and/or certain designated officers or agents on a routine basis with regard to enforcement actions. The foregoing notwithstanding, the Board reserves the right to make decisions about particular enforcement actions on a case-by-case basis at a properly noticed meeting if and when it deems appropriate.
8. **Future changes in state law.** This Deed Restriction Enforcement Policy is intended to reflect current state law requirements, including those established under Section 209 of the Texas Property Code. If such laws are changed in the future, this policy shall be deemed amended to reflect such changes.
9. **Force mows and other self-help enforcement action.** Notwithstanding other language herein, the management company, Association attorney, and other authorized agents of the Association are granted authority to carry out force mows or other self-help remedies on behalf of the Association, in accordance

with any procedure described in the Declaration or other governing documents.

10. **Owners as Responsible Party.** If a family member, guest, tenant or invitee of an owner damages Association property or commits a violation of the Association's governing documents, the related enforcement action shall be taken against the owner, with all related damage assessments, fines, legal fees, and other charges levied against that owner and the related lot.

After recording, please return to:

Niemann & Heyer, L.L.P.
Attorneys at Law
Westgate Building, Suite 313
1122 Colorado Street
Austin, Texas 78701

FINAL DRAFT