

THE CAPES HOMEOWNERS' ASSOCIATION, INC.

Resolution of the Board of Directors

ENFORCEMENT RESOLUTION AND SCHEDULE OF FINES

The following Resolution is adopted as of the 21st day of November, 2020, by the Board of Directors ("Board") of the Capes Homeowners Association, Inc. ("Association").

RECITALS

"Declaration" is the *Amended and Restated Declaration of Covenants, Conditions and Restrictions for the Capes* recorded as Document No. 2003-419490, as amended, "Bylaws" is *Fourth Amendment to Bylaws The Capes Homeowners' Association, Inc.* recorded as document No. 2010-006541, as amended, "Act" is the Oregon Planned Community Act, ORS Chapter 94.550-94.783, "Association" is the Capes Homeowners Association, Inc, and "Board" is the elected Board of Directors of the Association;

WHEREAS, Article XIV of the Bylaws authorizes the Board to adopt, amend, and rescind administrative rules and policies for the governance of the Association;

WHEREAS, Article XI of the Declaration and ORS 94.630(1)(n) provide that the Board may levy reasonable fines for violations of the Declaration, Bylaws and Rules and Regulations of the Association after notice and an opportunity to be heard, if the fine is based on a Schedule of Fines adopted by a resolution of the Board;

WHEREAS, ORS 94.630(2)(m) provides that the Board may terminate utility services paid for out of common funds and access to common amenities as a means to compel owners to correct or abate violations;

WHEREAS, Article XVI, Section 3 of the Bylaws and ORS 94.709 provides that fees, late charges, fines and interest imposed, pursuant to ORS 94.630(1)(n), are enforceable as assessments;

WHEREAS, the Board has adopted rules and regulations ("Rules and Regulations") and may amend and supplement the same from time-to-time;

WHEREAS, from time-to-time the Board identifies or receives complaints from owners regarding alleged nuisances; improper, offensive or unlawful activities or use of the premises; or other alleged violations of the Declaration or Bylaws ("Governing Documents") or Rules and Regulations. The Declaration, Bylaws and Rules and Regulations are available online at thecapeshoa.org;

WHEREAS, for the benefit and protection of the Association and of the individual owners, the Board of Directors deems it necessary and desirable to establish a formal procedure for the handling of complaints and the enforcement of the Governing Documents and Rules and Regulations; and

WHEREAS, the Board deems it necessary and desirable to adopt a Schedule of Fines to be used by the Board in imposing sanctions for violations of the Governing Documents or Rules and Regulations of the Association;

NOW, THEREFORE, BE IT RESOLVED that all prior Enforcement Resolutions, Financial Penalties Resolutions, and enforcement procedures are rescinded and are no longer of any force (except as to violations already underway or fines already levied) and the procedure set forth below shall now be the

process for handling complaints and enforcement of violations of the Governing Documents or Rules and Regulations (collectively, “Violations”).

ARTICLE 1 OVERVIEW OF PROCESS

1.1 Complaint. Complaints may be initiated by the Association’s community manager, the Board, a designated committee, or an owner may file a written complaint with the Board regarding a Violation by another owner, tenant or guest. (Article 2)

1.2 Investigation. The Board has the discretion to investigate the complaint and decide if it is valid. (Article 3)

1.3 Violation and Notice. If the Board finds there is a violation, the Board must send notice to the Alleged Offending Owner. The notice must contain certain provisions. The Alleged Offending Owner must be given the opportunity for a hearing. (Article 4)

1.4 Hearing. If requested, the Alleged Offending Owner may present testimony or evidence regarding the violation at the next Board meeting, or such other time as the Board may determine. (Article 5)

1.5 Fines. The Board may impose fines pursuant to the Schedule of Fines, provided that the owner has been provided the opportunity for a hearing. (Articles 3, 6, and 7)

1.6 Additional Enforcement Action. In addition to the imposition of fines, the Board may enter lots, terminate utility services and access rights, or initiate legal proceedings in order to abate violations. (Article 6)

ARTICLE 2 ORIGINATION / INITIATION OF COMPLAINT

2.1 Board of Directors. A complaint may be initiated by the Board based on information from a community manager (“Manager”), a designated committee, owner, or other source of information the Board deems reliable.

2.2 Owners. An owner (“Complaining Owner”) who desires that the Board take corrective action against another owner or tenant (“Alleged Offending Owner”) must submit a complaint to the Board via the Manager. The complaint must be in writing and must include:

- (a) The name, if known, and address of the Alleged Offending Owner;
- (b) A description of the offending behavior or activity, including the date(s) and approximate time(s);
- (c) Whether or not the Complaining Owner attempted contact with the Alleged Offending Owner regarding the alleged violation;
- (d) Any evidence of the violation such as photos, witness statements, or other documents; and,
- (e) A statement certifying that the complaint is true and correct to the best of the Complaining Owner’s knowledge.

2.3 Manager. The Manager conducts periodic compliance checks at the direction of the Board. The Manager shall send a notice of violation / fine notice for any violations discovered by the Manager during such compliance checks without the need for additional investigation by the Board.

2.4 Designated Committee. The Board may delegate its authority to send a notice of violation / fine notice for violations without the need for additional investigation by the Board.

ARTICLE 3 INVESTIGATION OF COMPLAINT

3.1 Investigation. Upon receipt of a written complaint from a Complaining Owner, the Board, Manager, a designated committee, or other person authorized by the Board, has the discretion to conduct an investigation to confirm the nature and existence of the allegations contained in the complaint.

3.2 Preliminary Determination of Violation. If, after review of a complaint, the Manager, designated committee, or other designated agent conducting the investigations determines that it is likely a violation has occurred, and the Board determines that it is in the best interest of the Association to address the violation with the Alleged Offending Owner, notice shall be given to the Alleged Offending Owner as described below.

ARTICLE 4 NOTICE PROCEDURE

4.1 Courtesy Notice. The Manager or designated committee may, but shall not be required to, send a courtesy notice describing the alleged Violation, the required corrective action (if any), and the fine that will be imposed in the event of further violations or failure to correct an ongoing Violation.

4.2 Notice of Violation. The Manager or designated committee shall send a Violation Notice, which: (1) describes the Violation, (2) contains a statement that the Alleged Offending Owner has the opportunity to request a hearing, the deadline for requesting a hearing, and the manner by which a hearing may be requested; and (3) contains a statement advising the Alleged Offending Owner that, if no hearing is requested by the deadline, the hearing will be waived and the Board will impose a fine for the Violation pursuant to the Schedule of Fines adopted by the Board as “Exhibit A” to this resolution, and (4) describes any specific action the Board is requiring to remedy the Violation;

4.3 Delivery of Notice. All notices must be sent by certified or first-class mail with return receipt requested to the address on record with the Association and may also be mailed or hand-delivered to the unit, or affixed to the entry door of the unit.

4.4 Informal Action. Nothing in this article precludes the President, a designated Board member, or other person authorized by the Board from first attempting to resolve the matter either by an informal meeting or telephone call to the Alleged Offending Owner.

ARTICLE 5 HEARING PROCEDURE

5.1 Hearings Procedure. In the event that an Alleged Offending Owner requests a hearing, the Board shall set the date, give the Alleged Offending Owner notice of the hearing, and utilize the following procedure:

(a) Open Meeting. All hearings shall be conducted in a properly-noticed open Board meeting. The Board shall allow testimony and evidence from the Complaining Owner (if any), the Alleged Offending Owner, and any witnesses or other interested parties. The Board may limit testimony as it deems reasonable and necessary.

(b) Documentation. The Alleged Offending Owner and Complaining Owner must provide the Manager all documentary evidence at least 48 hours before the hearing.

(c) Attorneys. If the owner intends to have an attorney present at the hearing, the owner must notify the Board at least ten (10) business days before the hearing date.

(d) Virtual or Telephonic Hearing. At the request of the Alleged Offending Owner, the hearing may be conducted virtually or telephonically. The Board of Directors may also allow witnesses to appear telephonically.

(e) Appearances at the Hearing. If the Alleged Offending Owner fails to appear within fifteen (15) minutes of the time set for the hearing, the Board may, at its sole discretion: (1) conduct the hearing without the presence of the Alleged Offending Owner, (2) allow the Alleged Offending Owner additional time that day to appear; or (3) reset the hearing to another date and time.

(f) Board Determination. Following the testimony and any evidence presented by the parties, the Board shall make a final determination as to whether any Violation occurred. The Board shall decide whether to levy a fine, any required or appropriate resolution for the Violation, and any other matter which may result in the resolution of the Violation.

- (1) The Board's deliberations must be in open session as directed by ORS 64.640.
- (2) The Board shall either give its decision at the conclusion of the hearing, or take the matter under advisement and give the decision at a later Board meeting.
- (3) The Alleged Offending Owner shall be notified of the Board's decision in writing.

ARTICLE 6 ADDITIONAL PENALTIES AND ACTIONS

6.1 Board Actions. In addition to levying fines, the Board may take additional action, including, but not limited to, entry onto a lot to correct a Violation, with the cost of correction assessed to the Alleged Offending Owner; termination of common utility services; and seeking injunctive or declaratory relief in the Courts of the United States or the State of Oregon against any Alleged Offending Owner and tenants, guest, or other occupants of the Alleged Offending Owner.

ARTICLE 7 MISCELLANEOUS

7.1 Tenants, Guests, and Invitees. Owners shall be responsible for the Violations of any tenant, guest, invitee, or family member. Notices for any Violations committed by any tenant, guest, invitee, or family member shall be sent to the owner and any fines levied for Violations committed by any tenant, guest, invitee, or family member shall be assessed to the owner.

7.2 No Fines Pending Resolution of a Hearing. Pending resolution of a requested hearing, no fines may be charged against the account of an Alleged Offending Owner. However, notwithstanding Section

(a) above, certain violations will be treated as separate occurrences for each distinct time the Violations occur. These certain Violations shall be so considered because of the “affirmative” steps required to recreate or further the initial Violation. These “affirmative” Violations include but are not limited to the following examples: (1) throwing any material from the decks, (2) playing loud music, (3) failure to pick up animal waste, and (4) building unauthorized fires.

Each time “affirmative” Violations occur, the Violation will be treated as a separate, distinct occurrence, regardless of whether or not the hearing has occurred. Upon resolution of the hearing, the Alleged Offending Owner may be fined the amount on the Schedule of Fines for each occurrence.

7.3 “Continuing” Violations. Those Violations which are “continuing” by nature shall not accrue fines for separate occurrences pending the resolution of a hearing. These continuing Violations include but are not limited to the following examples: (1) unauthorized installation of window covering, (2) storing firewood on a lot, (3) ARC violations.

Once the hearing has been resolved, these “continuing” violations may be subject to fines which renew periodically if the violation is not remedied or ceased.

BE IT FURTHER RESOLVED that the Schedule of Fines attached as Exhibit A is adopted by the Board of Directors to determine the fines for violations of the Declaration, Bylaws and Rules and Regulations of the Association.

ATTEST:

Gene Mitchell
President

Claude Zeller
Secretary

EXHIBIT “A”

SCHEDULE OF FINES

NOTE: The Board may, at its discretion, provide additional verbal or written warnings, in addition to those set forth below, prior to imposing a fine for any violation described herein.

Violation Type	Fine Amount
Failure to maintain property	An initial fine of \$500.00 plus \$50.00 per day for the first 60 calendar days and then \$100.00 per day.
Architectural violations	Up to \$250.00 daily
Failure to provide the manager the required notice and/or registration forms for renters and nonpaying guests	\$100.00 per occurrence
Rentals exceeding 30 calendar days per year	Up to \$250.00 per occurrence per night in excess of 30 days
Renting a property for less than 7 continuous days	Up to \$250 per occurrence per day less than 7 days
Parking violations	\$75.00 per occurrence, and \$25.00 per day for continuing violations
Hazardous waste violations	\$500.00 per occurrence plus any fines levied by any government entity and plus any costs incurred by the Association to clean up the violation
Leaving large items in or around the dumpsters	\$100.00 per occurrence per item, plus the cost to properly dispose of the item(s).
Fire safety violations	\$500.00 per occurrence
Quite Enjoyment (Nuisance)	\$100.00 per occurrence
Failure to clean up pet waste or not properly disposing of waste bag	\$50.00 per occurrence
Pets off leash	\$50.00 per occurrence
Other Intermittent Violations of the Declaration, Bylaws or Rules and Regulations	Up to \$500.00 per occurrence
Other Continuing Violations of the Declaration, Bylaws or Rules and Regulations	Up to \$100.00 per day