

**MOUNTAIN SPRINGS RANCH PROPERTY OWNERS ASSOCIATION
VIOLATIONS OPERATIONAL GUIDELINES AND FINE POLICY**

PURPOSE:

The Board of Directors of the Mountain Springs Ranch Property Owners Association (MSRPOA) is charged by the Declaration of Covenants, Conditions and Restrictions for Mountain Springs Ranch (DCCRs) with the duty and obligation to consistently, fairly and without prejudice enforce the provisions of the DCCRs, Supplemental DCCRs, Articles of Incorporation, bylaws, Architectural and Site Design Guidelines and other duly adopted resolutions, rules, regulations, guidelines and policies of MSRPOA (“Governing Documents”). To enable the Board of Directors to perform its duties and obligations, the DCCRs empower the Board of Directors to not only use equitable remedies available under Texas law but also, to impose sanctions on property owners and members of the MSRPOA (“Members”), residents and tenants for violations of Governing Documents. The following Violations Operational Guidelines and Fine Policy (“Fine Policy”) has been approved and adopted by the Board of Directors to supplement the Governing Documents and is for the purpose of setting forth the objective standards and procedures to be applied for violations of the Governing Documents. This Fine Policy supersedes all previous MSRPOA policies and/or resolutions authorizing fines.

1) VIOLATIONS:

The MSRPOA DCCRs and bylaws empower the Board of Directors to impose sanctions, which include but are not limited to, assessment of fines for violation of the Governing Documents after compliance with the notice and hearing procedures set forth herein and required by the Texas Property Code. Pursuant to the authority granted in DCCRs Section 4.3, by Resolution effective September 26, 2007, the Board of Directors granted the MSRPOA Architectural Control Committee (“MSRACC”) the authority to impose fines for violations in addition to the authority of the Board of Directors. This Fine Policy reaffirms the authority of the MSRACC to assess fines subject to the limitations herein. The Board of Directors reserves the exclusive right to additionally impose sanctions as set forth in the MSRPOA DCCRs, bylaws or any applicable policy of the MSRPOA against any violating Member should the Board of Directors or the MSRACC determine, in its sole discretion, such to be appropriate, including but not limited to the suspension of privileges to the use of MSRPOA facilities and amenities.

2) PROCEDURES:

2.1 Identified violations may be submitted by the Board of Directors, the MSRACC or any Member of MSRPOA. Violations may be anonymously mailed or emailed to the Board of Directors or the MSRACC. The complaint will be handled by the Board of Directors or at its discretion, will be referred to the Mountain Springs Ranch Compliance Committee (“MSRCC”) to investigate and determine the validity of the complaint. The Board of Directors will maintain the identity of the complainant(s), as well as the individual violator(s), in strict confidence, including not revealing the complainant(s) identity to the violator(s).

2.2 Curable Violation Procedure:

A. For a first time violation, a member of the Board of Directors, the MSRACC or the MSRCC, as applicable, shall personally notify the Member and the violating resident or tenant, if known, or a courtesy letter will be sent by email and/or first class mail to the Member of record, identifying the violation and referencing the Governing Documents provision. The Member shall have fifteen (15) days from the date of the notice to cure the violation unless the Board of Directors, the MSRACC or the MSRCC, as applicable, agrees, in its sole discretion, to extend the period to cure at the request of the Member.

B. If the violation is not cured by the expiration of the prescribed time period contained in the notice, a final notice of violation shall be sent by certified mail and regular mail. The final notice shall provide the Member the statutory notice required under the Texas Residential Property Owners Protection Act, Texas Property Code (“TPC”) Section 209.006, as it may be amended from time to time, and as applicable. The statutory notice shall inform the Member of its right to cure the violation and avoid the fine or suspension of privileges unless the Member was given notice and a reasonable opportunity to cure a similar violation within the preceding six (6) months. In such event, no additional opportunity to cure will be given before assessing a fine or suspending privileges. The Member shall be advised of its right to a hearing under TPC, Section 209.007.

C. If at the expiration of thirty (30) days from the date of the final notice, the violation has not been cured, or an appeal has not been requested, the file may be referred to an attorney for enforcement and a fine shall be assessed in accordance with this Fine Policy. If the MSRPOA is compelled to retain an attorney for the collection of fines or the enforcement of the Governing Documents, the Member shall be charged with all attorney’s fees, costs and expenses, subject to the limitations of the Texas Residential Property Owners Protection Act, TPC, Section 209.006, as it may be amended from time to time.

D. For the purposes herein, a violation is considered curable if the violation is a continuous action which can be remedied by affirmative action on the part of the violator. The following are examples of acts considered curable for purposes herein (examples only and not an all-inclusive list):

- a parking violation
- a maintenance violation
- the failure to construct improvements or modifications in accordance with the approved plans and specifications
- an ongoing noise violation such as a barking dog or music
- failure to obtain architectural approval before the commencement of work

2.3 Uncurable Violation Procedure:

A. For an uncurable violation, the Owner shall not be provided an opportunity to cure the violation before assessing a fine. If a fine is assessed by the MSRPOA, the Board of Directors, the MSRACC or the MSRCC, as applicable, shall provide notice to the Owner of the basis for the assessment of the fine, the fine amount and the right to a hearing under TPC Section 209.007.

B. For the purposes herein, a violation is considered uncurable if the violation has occurred but is not a continuous action or a condition capable of being remedied by affirmative action. In such cases, the non-repetition of a one-time violation or other violation that is not ongoing is not considered an adequate remedy. The following are examples of acts considered uncurable for purposes herein (examples only and not an all-inclusive list):

- an act constituting a threat to health or safety
- a noise violation that is not ongoing
- property damage, including the removal or alteration of landscape

- holding an event prohibited by the Governing Documents

C. Notwithstanding the foregoing, the MSRPOA reserves the right to seek injunctive relief at any time regardless of the provisions herein requiring notice for violations if the violation constitutes a material danger to persons or Property, will cause irreparable harm to persons or Property or is a nuisance as determined by the MSRPOA in its absolute sole discretion.

D. The process of appeal for Members entitled to a hearing as stated herein shall be:

(i) On or before the thirtieth (30th) day after the date the Member was mailed the statutory notice, Member shall make a written request to the MSRPOA for a hearing;

(ii) The hearing may be conducted by a committee appointed by the Board of Directors or before the Board of Directors if no committee is appointed;

(iii) If the hearing is before a committee, the Member shall have a right of appeal to the Board of Directors with written notice to the Board of Directors by Member;

(iv) A hearing shall be held not later than thirty (30) days after the Board of Directors receives the Member's request for a hearing;

(v) The Board of Directors shall notify the Member of the date, time and place of the hearing not later than the tenth (10th) day before the date of the hearing;

(vi) The Board of Directors or the Member may request a postponement and, if requested, a postponement shall be granted for a period of not more than ten (10) days;

(vii) Additional postponements may be granted by agreement of the parties;

(viii) Member or MSRPOA may make an audio recording of the hearing;

(ix) A Member is not entitled to notice and a hearing if the MSRPOA files a suit seeking a temporary restraining order or temporary injunctive relief or files suit that includes foreclosure of a cause of action;

(x) A Member is not entitled to notice and hearing for the temporary suspension of a person's right to use common areas if the temporary suspension is the result of a violation that occurred in a common area and involved a significant and immediate risk of harm to others in the subdivision;

(xi) The hearing permitted herein shall be a Closed Session Hearing restricted to the Member making the appeal and appointed members of the committee appointed by the Board of Directors or if the hearing is before the Board of Directors, members of the Board of Directors and third parties determined necessary by the Board of Directors, in its sole discretion, to conduct the hearing.

(xii) The appointed committee and the Board of Directors shall issue its written decision on the Member's appeal within fifteen (15) days of conducting the hearing or appeal, as applicable;

(xiii) The written decision shall include the final decision and any further curative action to be taken by Member, if any.

3) ENFORCEMENT:

3.1 The imposition of the monetary penalties provided herein shall not be construed as an exclusive remedy, and shall be in addition to all other rights and remedies to which the MSRPOA may otherwise be entitled including, without limitation, the filing of an Affidavit of Non-Compliance in the Real Property Records of Comal County, Texas, towing, if applicable, and/or the initiation of legal proceedings seeking injunctive relief and/or damages, attorney's fees, costs of court and all other remedies, at law or in equity, to which the MSRPOA may be entitled.

3.2 If the Member fails to cure the violation, as permitted by DCCR §9.9, an authorized agent of the Board of Directors or the MSRACC shall have the right to enter the Lot, cure or remove the violation and restore the Lot to substantially the same condition as previously existed. Entry for such purposes and in compliance with DCCR §9.9 shall not constitute a trespass.

3.3 A violation by a resident, tenant, guest, or agent of the Member shall be treated as a violation by the Member. All monetary penalties shall be billed to the Member.

4) FINES:

4.1 Members shall be subject to the following fines if the Member fails to cure the initial violation after being sent the required statutory warning or for any subsequent similar violations:

A. Continuing Curable Violations: For continuing and ongoing violations of the Governing Documents which are not cured within the specified time period contained in the warnings referenced above, the fines shall be a \$100.00 initial fine and \$50.00 per day commencing the day following the end of the cure period and continues daily until the violation is cured, subject to the limitation below.

B. Non-Continuing Violations: For a non-continuing violation reoccurring periodically within six (6) months of a similar violation; the fines shall be a \$150.00 initial fine and \$50.00 per occurrence per day. For the purposes herein, the six (6) month period shall run from the last day previous to the date the similar violation was cured. Notwithstanding the preceding, unauthorized operation of vehicles, recreational vehicles, motorcycles or other motorized vehicles in the Nature Preserve Area of Mountain Springs Ranch may result in a fine of up to \$500.00 per incident.

C. Uncurable Violations: For uncurable violations the fines shall be \$100.00 for the first uncurable violation and \$150.00 for each occurrence of other uncurable violations committed by an owner thereafter.

D. The Board of Directors, at its sole discretion, may increase or decrease the fines depending on relevant facts and history, for example, number of prior violations, severity of violations, multiple simultaneous violations, length of time to cure, cooperation of Member or any other applicable information.

E. Maximum fine amount per violation shall not exceed \$2,000.00 within any six (6) month period. Each type of violation will be fined separately from other existing violations.

4.2 Attorney's Fees: If the MSRPOA is compelled to retain an attorney for the collection of fines or the enforcement of the Governing Documents, the Owner shall be charged with all attorney's fees, costs and expenses subject to the limitations of the Texas Residential Property Owners Protection Act, Texas Property Code, § 209.008, as it may be amended from time to time.

CERTIFICATE OF OFFICER

The undersigned certifies that the foregoing Violations Operational Guidelines and Fine Policy was duly approved and adopted by the Board of Directors of **MOUNTAIN SPRINGS RANCH PROPERTY OWNERS ASSOCIATION** on the ____ day of _____, 2016, and that the undersigned has been authorized by the Board of Directors to execute and record this instrument. The undersigned further certifies that the foregoing Violations Operational Guidelines and Fine Policy constitutes a Dedicatory Instrument under Texas Property Code §202.006 which applies to the operation of **MOUNTAIN SPRINGS RANCH**, a subdivision located in Comal County, Texas, as hereinabove described.

Signed this _____ day of _____, 2016.

**MOUNTAIN SPRINGS RANCH PROPERTY OWNERS
ASSOCIATION**

By: _____
Julia Doerle
Its: Secretary