

## SKY MOUNTAIN HOMEOWNERS' ASSOCIATION

### COVENANTS COMPLIANCE POLICY

Pursuant to the authority granted to the Board of Trustees (the Board) of the Sky Mountain Homeowners' Association (the "Association") by:

- Washington State Law – RCW 64.38.020(1), RCW 64.38.020(11)
- Declaration of Covenants, Conditions, and Restrictions (Division 1& 2)
- The Association's Articles of Incorporation
- The Association's Bylaws

the following Covenants Compliance Policy was adopted by the Board at a duly called meeting of the Board held on February 5, 2020.

The Covenants Compliance Policy set forth herein shall take effect on the 1<sup>st</sup> day of July, 2020.

#### Introduction

**The Covenants.** The Declaration of Covenants, Conditions and Restrictions was recorded December 3, 1982 and the Amended Declaration of Covenants, Conditions and Restrictions of Sky Mountain was recorded on November 21, 1986 (hereinafter referred to as the "Covenants"). The Covenants are part of the legal title of every lot in Sky Mountain.

**The Importance of Voluntary Compliance.** The Covenants contain general protective conditions and restrictions that define standards to which homeowners and residents must comply in order to preserve the general residential character and livability of Sky Mountain. The chief means for preserving these standards is for each Sky Mountain homeowner and resident to voluntarily fulfill those standards as described in the Covenants.

**The Need to Create This Policy.** This Policy is meant to guide the Board in bringing a Sky Mountain homeowner or resident into compliance when voluntary compliance is missing.

**The Board's Authority.** The Covenants, Bylaws, this Covenants Compliance Policy, other adopted policies, and Washington State Law combine to create various remedies for use in restoring compliance. The Association's remedies include:

- Fines: Imposing a fine or fines on an owner:
- Costs: Assessing an owner for hard costs incurred in attempts to restore compliance, including, without limitation, any property damage created by an owner:
- Stop Work Order: Issuing a Stop Work Order to halt unapproved work, construction or improvements:
- Liens: Placing a lien on the property of the homeowner who was assessed:

- Self Help: If a situation warrants immediate or urgent action, or an owner has refused to remedy a violation after ample opportunity to do so, the Board may in appropriate circumstances authorize self help at the owner's expense.
- Legal Action: If needed, filing a lawsuit that asks the court to (i) order the owner to restore compliance, and (ii) enter judgement against the owner for damages, attorneys' fees and court costs.

### **The Policy**

The Board hereby resolves that the following Covenants Compliance Policy (the "Policy") is adopted to guide actions taken to restore compliance.

**Section 1. Authority Reserved to Association and to Each Owner.** This Policy exists to advance the purpose of restoring compliance with the Covenants. 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. This Policy is also not meant to impair a homeowner's own ability to bring about or enforce compliance with the Covenants directly with another homeowner.

**Section 2. Maintaining Awareness.** To reduce the chance that an owner will violate any portion of the Covenants through ignorance or inadvertence, the Association may take actions to periodically remind homeowners and residents of obligations imposed by the Covenants.

**Section 3. Identifying a Possible Violation.** A possible violation of the Covenants shall be identified by a Sky Mountain homeowner's written and signed complaint that is delivered to the Board of Trustees of the Sky Mountain Homeowners' Association. A complaint can also be received in the form of email so long as the email identifies the complaining individual and that individual is willing to verify the content of the complaint as a witness. The complaint shall identify the address of the offending homeowner, describe in detail the nature, scope and date of the violation, identify other witnesses to the violations, and any other pertinent details. A complaint may also be prepared and signed by a board member who confirms, by personal observation, the circumstances reported by another individual.

**Section 4. Compliance Request.** The Board may take enforcement action to restore compliance. This includes sending an owner a written Compliance Request. The Compliance Request shall:

- State the date on which the Compliance Request is being issued;
- Describe the non-compliance;
- Cite the Covenants section(s) it violates;
- Describe what must be done to restore compliance;
- State the date by which compliance must be restored ("Restoration Date");

- Describe the fine that will result if the compliance is not restored by the Restoration Date;

Where a fine is to be imposed, or in other circumstance in the Board's discretion, state that the person has a right to request in writing that he or she be given an opportunity to be heard on the matter;

State the deadline by which a written request for an opportunity to be heard must be received, which deadline shall not be less than ten (10) calendar days from the date the Compliance Request is issued; and

State that unless compliance is restored by the Restoration Date, the fine shall become due on the Restoration Date without further notice (assuming the fine is not contested via a requested hearing – see below).

State that subsequent to two notices, if compliance is not restored by Restoration Date, the provisions of paragraph 6b below shall also apply, in addition to fines as set forth in Fine Schedule, attached.

**Section 5. Hearing.** If the homeowner of the property against which a covenants violation complaint has been filed makes a timely written request for an opportunity to be heard, then the person shall be given written notice of the date, time, and place of the meeting at which the person will be heard (the "Hearing"). The Hearing shall occur not less than 15 (fifteen) days from the date the notice of the Hearing is issued. At the Hearing, the person has the right to give testimony orally and to present evidence. The rules of procedure here described may be supplemented by additional rules of procedure the Board may adopt to promote a prompt and orderly resolution of the matter. If so adopted, and if provided to the person before the Hearing, such additional rules will apply to the Hearing. The evidence received will be considered in making a decision. The person shall be notified of the decision in the same manner in writing within a reasonable time following the Hearing.

#### **Section 6 Fines**

**Section 6a. Fine Amounts.** The Board may impose a fine(s) by following the procedure described in Section 4 above. The amount of the fine will be based upon the Fine Schedule attached to the Policy. Whenever a homeowner has submitted a timely written request for an opportunity to be heard on the matter, the Board will suspend its attempts to collect payment of the fine or impose additional fines until conclusion of the Hearing and the Board has issued a final decision on the matter. Fines are assessments. Unpaid fines shall be treated as any other delinquent assessment.

**Section 6b. Fines for Continuing Violations:** The Board may, but is not required to, impose an additional \$25 daily fine for a continuing violation that the owner has not corrected and after the owner has received at least two prior written notices of the offense within the immediate six-month period. A continuing violation is one which exists for succeeding or continuous days. In addition to such daily fines, the Board also may exercise its discretion to impose a weekly fine up to a maximum of \$300, and/or a monthly fine up to a maximum of \$750, for continuing violations based on the level of the violation (minor, medium or serious) and other factors that

affect the gravity of the offense. **Note that violations of a Stop Work Order will incur continuing weekly fines of \$350 (see below).**

**Section 6c. Fines Collection:** Fines are collectable in the same manner as assessments and must be paid to the Association within 10 days of notification that a fine has been imposed.

**Section 6d. Fines Late Fees/Interest.** Any fines not paid within 10 days after the due date are subject to imposition of a \$25 late fee per month. In addition, the Board may charge 12% interest for any fines that are not timely paid. Owners are responsible for payment of all collection costs including but not limited to attorney fees, court costs, etc. in connection with collection for any past due amounts. Unpaid fine(s) imposed against an owner constitute a lien upon the property of that owner.

**Section 7. Issuing a Stop Work Order.** The Board may issue a Stop Work Order to any person engaged in an unauthorized activity. Fines are not an exclusive remedy. In addition to imposing a fine, if appropriate based upon the nature of the violation, the Board may issue a Stop Work Order to any person engaged in unauthorized activity. An unauthorized activity is any activity which requires the prior written approval of the Board or of the Associations' Architectural Control Committee, and which has not received prior written approval.

A Stop Work Order shall:

- a) Identify the properties address;
- b) Describe the unauthorized activity;
- c) Identify the specific prior approval requirement being violated;
- d) State that the unauthorized activity shall immediately cease, and describe any additional sanction to be imposed;
- e) State the delivery of the Stop Work Order serves as a determination that a violation has occurred;
- f) State that this determination is final unless it is appealed to the Board, in writing, within 10 days of the date that the Stop Work Order was issued; and
- g) State that failure to immediately comply with the terms of the Stop Work Order will cause a continuing daily, weekly or monthly fine for each day, week or month thereafter in which noncompliance with the Stop Work Order takes place.

**Section 8. Paying a Fine Does Not "Cure" A Violation.** Paying a fine does not relieve a person from responsibility to cure a violation. Exercise of the right to a hearing or otherwise to appeal a fine may suspend a person's obligation to cure a violation until such time as the final decision issues following the hearing/appeal, depending on the nature and circumstances of the violation in the Board's discretion.

**Section 9. Voluntary Compliance Agreement.** The Board may reach a Voluntary Compliance Agreement with an owner in which the owner admits a violation exists, agrees to take specific

actions to cure the violation within a specific time frame acceptable to the Board and agrees that failure to perform the specified actions within the specified time frame will result in enforcement consequences.

**Section 10. Board's-Discretion to Waive Fines.** A fine(s) imposed under this Policy may be partly or entirely waived by the Board in its sole discretion and upon its determination that circumstances exist in the particular instance to warrant the granting of a waiver. This right to waive fines includes a right to suspend collection of a fine pending an owner's fulfillment of promises the owner made in a Voluntary Compliance Agreement.

**Section 11. Protection of Board Members.** Persons exercising authority of the Board or of a Committee are not liable for action or inaction done in good faith. Association action under the Policy shall not create any liability of the Board, Association, or Committee.

## **FINE SCHEDULE**

The Board has classified violation of the Covenants into three levels with corresponding warnings and monetary fines for each level. Those classifications and corresponding penalties are:

### Level 1 (minor)

- 1<sup>st</sup> Noncompliance – Written Notification by ACC with Restoration Date
- If Restoration not completed by required date, Fine of \$50 levied by Board, plus new Restoration Date
- If no Restoration by 2<sup>nd</sup> Restoration Date, Subsequent fine of \$75, plus provisions of section 6b above

### Level 2 (medium)

- 1<sup>st</sup> Noncompliance – Written Notification by ACC with Restoration Date
- If Restoration not completed by required date, Fine of \$250 levied by Board, plus new Restoration Date
- If no Restoration by 2<sup>nd</sup> Restoration Date, Subsequent fine of \$300, plus provisions of section 6b above

### Level 3 (serious)

- 1<sup>st</sup> Noncompliance – Written Notification by ACC with Restoration Date
- If Restoration not completed by required date, Fine of \$500 levied by Board, plus new Restoration Date
- If no Restoration by 2<sup>nd</sup> Restoration Date, Subsequent fine of \$750, plus provisions of section 6b above

Violation/Noncompliance	Covenants Reference: Div 1	Div 2	Violation Level
Occupancy and Use	Paragraph 2	Paragraph 2	Level 3
Building Plans	Paragraph 3	Paragraph 3	Level 3
Single Family Residences Exclusively	Paragraph 5	Paragraph 5	Level 3
Setback Line, Proximity of Fence, Wall, hedge, mass plantings, interference of views or 2	Paragraph 6	Paragraph 6	Level 1
Surface Grade	Paragraph 8	Paragraph 8	Level 3
Landscaping and Maintenance of Plants and lawns, restriction of views	Paragraph 9	Paragraph 10	Level 1 or 2
Nuisances	Paragraph 10	Paragraph 11	Level 1 or 2
Assessments	Paragraph 13	Paragraph 14	Level 1