

# THE SOUTH BAY COMMUNITY ASSOCIATION

## ENFORCEMENT POLICY, FINE SCHEDULE AND VIOLATION HEARING PROCEDURES

approved 8/11/22

### A. Governing Document Compliance, Penalties, and Enforcement.

1. **Governing Documents.** Members of The South Bay Community Association (the "Association") are subject to the South Bay Master Declaration of Covenants, Conditions, Restrictions, Assessments, Charges, Servitudes, Liens, Reservations and Easements recorded in Jefferson County under Auditor No. 324010, and any amendments thereto ("CC&Rs"), the Association's Articles of Incorporation, Bylaws, Rules and Regulations (including Design Standards), and any other policy, resolution, or written instrument by which the Association has the authority to exercise the powers conferred upon it by law or to manage, maintain or otherwise affect the property under its jurisdiction (collectively defined herein as the "Governing Documents").

2. **Compliance with Governing Documents.** All members of the Association, and the Owners and Occupants of any Lot within the Association's jurisdiction, and their guests and invitees, are required to comply with the Governing Documents, as they may be amended, from time to time. Members shall be responsible for ensuring that their tenants, guests, and invitees comply with the Governing Documents.

3. **Violation Fines and Damages.** Failure to comply with the Governing Documents may result in the Association (a) assessing fines, (b) commencing legal action to recover sums due for monetary damages or injunctive relief, or both, maintainable by the Association, through its Board of Directors (the "Board") against the members and responsible parties, and/or (c) pursuing such other rights, relief, or remedies available to the Association under the Governing Documents or applicable law.

4. **Liability for Residents, Guests, and Invitees.** Members are personally liable to the Association for any fines, penalties or other amounts assessed or charged by the Association, including, but not limited to, for damage to property or noncompliance with the Association's Governing Documents, when such fines, penalties, amounts, or damages results from the actions or omissions of (a) such member; or (b) such member's guests or invitees; or (c) any Resident or Occupant of the member's Lot or such Resident's or Occupant's guests or invitees. To the extent any of the persons identified in paragraphs 4(b) and 4(c) are personally liable to the Association, such liability shall be joint and several with the member identified in paragraph 4(a), and shall not relieve any person, member, or party from any such liability to the Association, except only as to amounts paid.

5. **Role of the Association.** The Board encourages members to amicably resolve issues directly, neighbor-to-neighbor or member-to-member. However, there are times, for a variety of reasons, when that is not possible. When issues cannot be resolved between members directly, the SBCA (acting by and through its Board and designated agents) may determine whether the issue is one that is appropriate for the SBCA to address, and if so, what action should be taken.

B. **Fine Schedule.** RCW 64.38.020(11) and the Governing Documents, *inter alia*, Section 5.3 of the Master Declaration, authorize and empower the Board to adopt, amend, or repeal the South Bay Rules and establish a system of fines and penalties for enforcement of such Rules.

1. **Fine Schedule.** The Board has established the following fine schedules for violations of the Governing Documents.

(a) **General Fine Schedule:** Except as provided for in sub-section 1(b) below, the following fine schedule shall apply:

1<sup>st</sup> offense: \$25.00

2<sup>nd</sup> offense: \$50.00

3<sup>rd</sup> offense: \$150.00

4<sup>th</sup> offense and each subsequent offense: \$200.00 per offense

Each day that a violation continues (after notice of such violation has been given) without such violation being resolved or fully abated is a separate offense, subject to an escalated fine amount. Notwithstanding the foregoing, fines imposed for any one continuing offense (meaning an offense that continues unresolved or unabated for more than twenty-four hours) shall not exceed \$1,000 in any thirty-day period. This limitation shall not apply with respect to "intermittent" offenses which are not of a continuing nature, but which occur intermittently or sporadically. With respect to multiple offenses of a continuing nature, each such violation or offense shall be subject to the maximum amount of \$1,000 that may be levied in a thirty-day period (e.g., for two separate violations that continue unabated the maximum violation fines that can be levied in any thirty-day period would be \$2,000 (\$1000 x 2 violations)).

Examples of when fines may be assessed, include, but are not limited to: (a) pet related issues (off leash, failure to clean up after a pet, aggressive animals); (b) parking issues; (c) nuisances or offensive conduct; or (d) lot or yard maintenance. The Board may waive fines assessed under this paragraph, if the violation is timely resolved to the Board's satisfaction.

(b) **Specific Violations:** The Board may adopt and amend fine schedules for violations of a particular section or sections of the Governing Documents ("Specific Violations"). If a specific fine amount or fine schedule is provided with respect to a Specific Violation, then that specific fine amount or fine schedule shall apply. In addition, if the Declaration or Bylaws set forth a Specific Violation fine or penalty for a particular offense, then the fine or penalty specified in the Declaration or Bylaws shall supersede and apply. A fine for a Specific Violation will take precedence over the more general fine schedule in paragraph 1(a).

**Specific Fine Schedule for ARC Related Violations:** Members are required to apply for and receive SBCA-ARC approval, prior to making exterior modifications or changes to a Lot. No changes to the scope of work or deviations to previously approved plans are allowed, without prior written approval of the SBCA-ARC. A non-inclusive list of when SBCA-ARC approval is required includes, but is not limited to, modifications to the exterior of your home, installation of an exterior structure, new construction, landscaping changes, or removing a tree of a specified size. Please see South Bay Design Standard 4.2.2 for when SBCA-ARC approval is not required.

Due to the importance of ensuring compliance with the SBCA-ARC approval process and to promote compliance with such process, including, but not limited to, the full and timely submittal of applications and plans to the Association, prior to the commencement of construction or changes in work, **the Board has established following Specific Violation fine schedule:**

ARC Violations	1 <sup>st</sup> Notice/Fine	Continuing Violation
<b>Failure to Apply For And Receive SBCA-ARC Approval Prior to Commencement of Work</b>	<b>\$100 Fine</b> for commencing construction prior to submittal of a proper application for the project and/or prior to receiving SBCA-ARC approval	<b>\$10 fine per day</b> from date of commencement of construction until such date that a proper application has been submitted and received SBCA-ARC approval
<b>Changes or Deviations in the Work After Receiving SBCA-Approval</b>	<b>\$50 Fine</b>  Issue notice to cease desist work until updated application is submitted and approved by the SBCA-ARC	<b>\$10 fine per day</b>  From date of issuance of notice to desist work, until such date that a proper application has been submitted and received SBCA-ARC approval.

The Board has established the following Specific Violation fine schedule applicable for removal of a tree in violation of Section 4.2.1 of the Master Declaration.

Violation of Declaration Section 4.2.1	Fine
<b>Tree Removal</b>	<b>\$5,000 fine</b> for each tree removed with a base trunk diameter exceeding six inches (6'') without prior written approval from the SBCA-

2. **Warning Notice Not Required but May Be Given.** Prior to assessing a violation fine, the Board may choose to issue one or more warning notices. However, the Board is not required to do so. Whether to issue a warning notice shall be in the sole discretion of the Board, based on the particular situation, facts, and circumstances.

3. **Notices.** Any notice permitted or required to be delivered under this Enforcement Policy shall be in writing and may be delivered to an Owner, including, but not limited, to any notice relating to any member, Resident, or Occupant such Owner's Lot, by: (a) personal delivery; (b) regular first-class United States mail, postage prepaid; (c) or by electronic transmission (e.g., e-mail) to an Owner who has consented in writing to receive electronically transmitted notices at the designated e-mail address, location, or system.

Each Member is required to register a mailing address with the Association. Notice to a Member shall be sufficient if mailed or delivered to the mailing address for a Member's lot within the SBCA's jurisdiction, if no other mailing address has been provided to the Association in writing. If delivery of the notice is by mail, the notice shall be deemed to have been delivered on the third day after it is deposited in the United States mail, first class, postage prepaid, addressed to the Member. *See Declaration, ¶ 18.10.* Notice provided in an electronic transmission is effective as of the date it (i) is electronically transmitted to an address location or system designated by the recipient for that purpose; or (ii) has been posted on an electronic network and separate notice of the posting has been sent to the recipient containing instructions regarding how to obtain access to the posting on the electronic network.

4. **Lien.** Monetary penalties and fines are treated and collectable in like manner as assessments and are a lien against the Member's Lot. See, e.g., Master Declaration, Section 5.3.

5. **Other Rights and Remedies.** The fines stated herein are in addition to, and not in lieu of any right of the Association to require Members to remedy violations of the Governing Documents, to charge Members for remedial action taken by the Association, or to exercise any remedy available to the Association at law or in equity.

**C. Procedures for Notice and Opportunity to be Heard.**

1. **Fines Assessed upon Delivery of Violation Notice.** Fines will accrue from the date of delivery of the violation notice or, if the notice is for warning purposes or provides a specified period of time for compliance, then fines will accrue from such later date as may be specified in a said violation notice or in a subsequent notice from the Board.

2. **Notice of Fine and Opportunity to be Heard.** The levying of violation fines shall be subject to a Member's right to receive notice of the fine and an opportunity to be heard (i.e., a hearing) to contest the fine before the Board. Fines will not be assessed to a Member's account until such Member has been provided with an opportunity to be heard or such opportunity to be heard has expired, pursuant to subsection C.3 below.

3. **Opportunity to be Heard.** Upon receiving a violation notice or notice of suspension membership privileges with respect to SBCA common area land or facilities, a Member may request a hearing to contest, defend, or otherwise offer information or testimony regarding the circumstances relating to the alleged violation. If a Member does not request an opportunity to be heard (i.e., a hearing) to contest the violation **within fourteen (14) days** after the Association provides notice of the violation, the fine will be deemed valid and the Member will not have a chance to further appeal, challenge, or contest the violation or suspension.

4. **Request of Hearing.** In requesting a hearing, a Member shall provide the Board with the following information, in writing, by personal delivery or United States mail, to SBCA's main office:

- a. The Member's name and current mailing address;
- b. The address of the Member's property within the Association community (if different than the Member's mailing address);
- c. The name and address of any non-owner occupants of the Member's property, except for minors;
- d. A statement setting forth the Member's defenses or other objections to the notice;
- e. A copy of all documentation the Member intends to offer in support said Member's position with respect to the violation notice;
- f. The name of any attorneys, witnesses or other collaborating guests that are expected to attend the hearing;
- g. The Member's signature and the date of delivery or mailing to the SBCA Board.

5. **Hearing Procedures.** Hearings with respect to violations of the Association's Governing Documents shall be heard and decided by the Board, subject to the following procedures:

(a) **Notice of Hearing.** After the Board has received a timely request for hearing, it will provide the Member making such with written Notice of a Hearing. The hearing will normally be set

not less than 10 nor more than 30 days after the Board's receipt of a timely request for hearing and shall be set between the hours of 8:00 a.m. — 6:00 p.m.

The Notice of Hearing should include (a) the violation(s) to be addressed at the hearing, (b) the proposed action or actions required to resolve the violation(s); (c) the fines that apply or will apply if the violation is not corrected.

The Notice of Hearing may state whether a Member may offer a written statement, in lieu of personally appearing at a hearing, and such other matters or issues, as may be reasonably necessary or appropriate to the administration of the hearing, including, but not limited to, prescribing time limits for the presentation of evidence.

*A Member's failure to appear for a hearing shall constitute waiver of the Member's opportunity to be heard and shall result in the violation being deemed valid.*

**(b) Continuance of Hearing.** Once a hearing has been requested and a hearing date has been set by the Board, the Board shall have discretion to allow or disallow a continuance of the hearing date at the request of the Member.

**(c) Attorneys.** If the Member intends to have an attorney present at the hearing, the Member must notify the Board at least 7 days prior to the hearing so that the Association may also have counsel present. Failure to notify the Association within said seven (7) day period may result in the hearing being continued and the accrual of additional fines during until such hearing is rescheduled and held.

**(d) Order of Proceedings.** The Board may decide whether the hearing will be an open or closed hearing. At the hearing, the responding Member or party shall be afforded a reasonable amount of time, based on the facts and circumstances, to present evidence and argument to the Board regarding the violation. Notwithstanding the foregoing, the decision of the Board President or such other person, as the Board has appointed to preside over the hearing, shall be final as to the handling and administration of the hearing, including, but not limited to, the time allowed for oral argument and the presentation of evidence. Other members, witnesses, experts, professionals, or stakeholders may be allowed to present evidence or information about the alleged violation (whether support of or opposition to the imposition of fines). Any of the Board's Directors may ask questions of any Member or witness, such as through the process of cross examination.

**(e) Evidence.** Any relevant evidence which is not privileged, is not subject to the attorney work-product doctrine or is not otherwise required to be kept confidential pursuant to a contract, covenant, court order or applicable law, shall be admissible regardless of whether the evidence is hearsay or would be otherwise inadmissible in a court of law. Notwithstanding the foregoing, the President or other chair presiding over the hearing may exclude evidence for any reasonable and non-discriminatory reason, including, but not limited to, if the evidence is irrelevant, duplicative, immaterial, unduly repetitious evidence. Any evidence that is excluded shall not be kept as part of the Association's records of the hearing.

**(f) Decorum.** The Board may expel any person from any hearing for improper, disorderly or contemptuous conduct and, if so expelled, the hearing shall continue in such person's absence.

**(g) Deliberation.** After conclusion of the hearing, the Board shall meet in closed/special session to deliberate and reach a decision concerning the alleged violation(s). The decision of the Board shall be in writing and shall contain a finding as to whether or not the respondent violated the Governing Documents or other decision of the Board. The Board will endeavor to issue its decision

within 21 days of the date of the hearing, which decision shall be made part of the Association's records.

**D. Costs Incurred in Enforcement.** In addition to the fines and penalties set forth herein, all costs incurred in collecting such fines and penalties, including but not limited to attorneys' fees, interest, recording fees and other costs of collection, shall be collected in the manner for collection of assessments.

**E. Applicability.** This policy as amended applies prospectively only, *i.e.*, to acts or conduct occurring after the date this policy was adopted or amended. Acts and conduct occurring on or before the date this policy was adopted or amended are subject to prior versions of this policy as in effect at the time of such acts or conduct.