

August 10, 2020

Hello KBTS Owners,

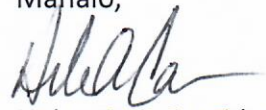
Thank you to all the owners for reviewing and making suggestions during our 30-day comment period regarding the amendment to construction hours as stated in Section 10.b, Courtesy To Neighbors of our Community Rules & Regulations (CR&R). The Board of Directors formally adopted the following statement during the July 19th, 2020 board meeting:

To minimize noise during certain times of the day, yard care or construction work that involve power equipment (including commercial vehicles' backup signal) or loud noise (manual hammering, sawing, etc.) shall be limited to 7:00am to 6:00pm, Monday through Saturday. Sunday is a quiet day with such yard care or construction work strictly prohibited.

The attached is the entire CR&R incorporating the approved change. This document will be posted to the Kohalabythesea.net website.

Thank you again for your support.

Mahalo,



Helen Carr, President

KOHALA-BY-THE- SEA

COMMUNITY RULES & REGULATIONS

APPROVED BY THE KBTS BOARD OF DIRECTORS

November 2, 2018

Amended section 10.b on July 17, 2020

KOHALA BY THE SEA PRIVATE GARDEN ESTATES COMMUNITY RULES AND REGULATIONS

(Adopted November 2, 2018)

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1. AUTHORITY:

a. Bylaws. Pursuant to Bylaws of Kohala by the Sea on how owners of property in these Estates should govern their affairs, basic rules of conduct may be set forth that are binding on all present and future owners, tenants, guests, invitees and occupants. These Bylaws were filed May 17, 1990 and Amended March 24, 2001.

b. Rules and Regulations. These Rules and Regulations are established by the Directors of Kohala by the Sea (KBTS) pursuant to the Bylaws, Article 111, Sec. 2.14. The Board of Directors may adopt, amend or repeal any supplemental rules and regulations contained herein, provided that said adoption, amendment or repeal is not inconsistent with any provision of law, Declaration, or Bylaw.

2. PURPOSE:

To ensure congenial living atmosphere, promote harmonious living and ensure maintenance of property values within the community these rules and regulations are set forth for owners, tenants, guests, invitees and occupants of property owners.

3. SUBORDINATION:

These Rules and Regulations are subordinate and subject to all the provisions of the KBTS CC&R's and By Laws. Nothing herein shall be interpreted or construed to be contrary to any governing laws or statutes.

4. USE OF PROPERTY:

- a. The dwellings in KBTS shall be used for single family residential purposes.
- b. No activity shall be engaged in and no substance introduced into or manufactured within any dwelling or anywhere in the community which might result of any violation of law. (CC&Rs, Art. III, Sec. 3.02 (a))

- c. Dwellings shall not be rented for transient or hotel purposes which are defined as a rental for less than thirty (30) days. (CC&Rs, Art. III, Sec. 3.02 (o))

Any advertisement of a dwelling on vacation rental websites or any other rental marketing media shall contain the words “30-day minimum rental, no exceptions” clearly and within the first few paragraphs of the property description. No agreements shall be made with the renter to allow for cancellations or modifications to less than 30 days after the rental has begun. In addition, if there is cause to believe that the dwelling is being rented for less than 30 days, a representative of the HOA will attempt to contact the owner to determine the nature and length of the occupancy. If the owner is unresponsive, the HOA may approach the occupants to ask about their rental period. Pursuant to 13.b, below, the owner shall notify the association management company of occupants, tenants or guests staying in the dwelling when the owner is not present in order to avoid unnecessary contact and increase safety (see 13.b below).

The Fine Enforcement Policy (Appendix 1, below) has been modified to provide stronger enforcement of this minimum rental rule.

- d. No soliciting of goods or services of any type shall be allowed in KBTS.
- e. No yard sales, moving sales or garage sales shall be allowed.

5. MAINTENANCE OF DWELLINGS AND YARDS

- a. Every Dwelling Owner, at his/her own expense and at all times, shall substantially repair, maintain his/her dwelling in good order and condition. Good order and condition include, but is not limited to, keeping the dwelling properly painted, keeping fences and other external structures in good repair and painted, if appropriate, and repairing torn exterior screens or damaged doors. (CC&Rs, Art. 111, Sec. 3.02(h))
- b. Every dwelling owner, tenant or other occupant shall at all times keep dwelling in clean and sanitary condition. Trash containing food shall be stored in closeable containers and to minimize access by rodents or pests. Trash containers shall be kept out of sight. (CC&Rs, Art. III, Sec. 3.02 (f))

c. Yards and landscaping shall be kept neat, trimmed, and irrigated at all times. (CC&Rs, Art. III, Sec. 3.02 (h))

6. AIR. LIGHT AND VIEW:

- a. No dwelling owner or occupant shall erect, construct or place any structure, improvement or landscaping feature, including but not limited to trees, shrubs, hedges or fences which restricts air flow, light or view of other dwelling. (See Design Requirements booklet)
- b. All existing landscaping, including trees, shrubs and palms shall be kept trimmed to extent necessary to minimize air, light and view obstruction of other dwellings and shall comply with Firewise Community requirements (See attached). Except for Palm trees, no plantings shall exceed 20 feet in height.
- c. In an effort to minimize street light glare into homes by directing the light downward, the HOA will pay for installing shielding of a street light if requested by any surrounding homeowner who is affected by the glare. The installation would occur at the time of replacing a burned-out bulb for that street light. If the requesting homeowner wants to have shielding installed immediately instead of waiting for the bulb to burn out, the owner would pay for the cost of shielding. Contact the HOA's management executive for a current cost estimate.

7. AESTHETICS:

- a. No nuisance items shall be permitted in areas visible from the street or other dwellings. Determination of nuisance shall be at the discretion of the Board of Directors. (CC&R's Sec. 3.01 (i)).
- b. No cars, boats, trailers of any kind, RVs or trucks or other motor vehicles shall be parked on the street for more than 24 hours.
- c. Any vehicle stored or parked on the dwelling's property must be parked in the dwelling's garage or vehicle storage area as required by the Design Rules. Outside garage parking on a regular basis shall be limited to two (2) vehicles. Inoperable vehicles parked in outside parking area must be removed within 7 days of receipt of written notice from the Management Company.
- d. No major repairs of motor vehicles or watercraft shall be permitted within KBTS which are visible from streets or other dwellings. (CC&Rs Art. III, Sec. 3.02 (k))

- e. No clotheslines may be placed in any location where they can be observed from the street or other dwellings. (CC&Rs, Art. III, Sec. 3.02 (h))
- f. No tents, awnings, tarps, canopies or free-standing shade or privacy structure shall be placed on lots, hung on any windows or attached to the exterior of any dwelling, except temporary shade structures in colors approved by the DRC may be used for gathering of guests, provided the temporary structure is removed immediately following the event. The rule does not apply to patio umbrellas or patio window shades, provided they are in good repair.
- g. If a garage door is left open, the interior of the garage visible to the street shall be kept clean and neat at all times. Garage doors shall be kept closed when not in use.
- h. Holiday decorations shall be removed within thirty (30) days from the date of the holiday. No other decorative outside lights shall be allowed except during outdoor parties and shall be removed promptly following the event.
- i. No dwelling owner or occupant shall place or maintain any signs or posters except signs as approved by the Design Review Committee. Approved exceptions are one (1) For Sale sign per dwelling. House numbers (which are required by County law), personal identity or family name signs shall be visible from roadways with large legible characters. Hand lettered signs are not allowed. (CC&Rs, Art. III, Section 3.02 (k))

8. PETS:

- a. No livestock, poultry, rabbits or other animals shall be allowed or kept in any part of KBTS except that a small number of dogs, cats or birds per dwelling may be kept as pets by dwelling occupant. A reasonable number of pets per dwelling may be determined by the Board of Directors.
- b. Pets allowed in KBTS must be confined within the dwelling or contained within the dwelling's yard by fence, safe tether or electronic tether.
- c. Any pet that is not so confined (above) must be on a leash and accompanied by a person responsible for controlling pet and for cleaning up immediately any defecation or other pet messes.

- d. A dwelling owner or occupant will not be allowed to keep any pet which causes a nuisance or unreasonable disturbance of any other dwelling owner or occupant at any time of the day or night. Animals that exhibit aggressive or vicious behavior shall be removed permanently from the subdivision. The Board of Directors shall determine if a nuisance or unreasonable disturbance exists.
- e. No animals shall be kept, bred or used for commercial purposes.
- f. Workmen are prohibited from bringing dogs into the subdivision.

9. RESPONSIBILITY FOR OWNERS, TENANTS, GUESTS, INVITEES AND OCCUPANTS

- a. Each dwelling owner is responsible for the conduct of his/her occupants, tenants, guests and invitees and for ensuring that they are aware of and abide by the spirit and intent of these Rules and Regulations.
- b. If a dwelling owner is unable to control the conduct of his/her tenants, guests and invitees as determined by the Board of Directors, the dwelling owner may be notified by the Management Company to remove the offending tenant(s) or guest(s) and the dwelling owner shall remove them immediately without any compensation of any damage whatsoever from such removal.

10. COURTESY TO NEIGHBORS:

- a. All dwelling owners, occupants, tenants and guests shall at all times avoid making excessive noises and using musical instruments, radios, televisions and amplifiers in such a manner as may disturb other occupants.
- b. To minimize noise during certain times of the day, yard care or construction work that involve power equipment (including commercial vehicles' backup signal) or loud noise (manual hammering, sawing, etc.) shall be limited to 7:00am to 6:00pm, Monday through Saturday. Sunday is a quiet day with such yard care or construction work strictly prohibited.
- c. No racing of motors or noisy mufflers shall be allowed in the subdivision.

- d. No nuisances shall be allowed which are determined by the Board of Directors to constitute unreasonable interference or unreasonable annoyance to the peaceful or proper enjoyment of the premises by other dwelling occupants. Nuisances include but are not limited to the repeated use of loud or offensive language, objectionable odors, obscene gestures or actions, or other than accidental damage to another owner's property. (CC&Rs, Art III, Sec. 3.02 (i))
- e. The use of fireworks of any type at any time is strictly prohibited.
- f. Discharge of firearms is strictly forbidden. (CC&Rs, Art. III Sec.3.02 (t))

11. COMMON AREAS AND STREETS:

- a. No speeding or racing of motor vehicles will be permitted.
- b. No vehicle shall be parked on the street in such a manner that it obstructs or interferes with safe traffic flow at corners, intersections.
- c. Skateboards, tricycles, scooters, roller blades, go-carts, or ATVs shall not be allowed on KBTS streets.

12. BUILDING APPLICATIONS, ALTERATIONS OR MODIFICATIONS OF DWELLINGS AND YARDS: Also see Design Rules latest revision

Procedure Protocol for Building Applications:

- (1) Lot Owner to submit Application for Construction of Improvements – Part I of the Design Rules to the association management company. The association manager will log in the application and forward plans to the Design Review Committee (DRC) for review.
- (2) Predesign/Conceptual Design Meeting Checklist – Part II of the Design Rules shall be completed and meeting scheduled with the DRC or representative. Call the association manager to schedule.
- (3) Preliminary Submittal Checklist – Part III of the Design Rules shall be submitted by the owner's architect to the DRC. The DRC will respond to owner's architect with changes, if any.

- (4) Final Submittal Checklist – Part IV of the Design Rules shall be submitted by the owner's architect to the DRC. The DRC will respond to owner's architect with changes, if any. Note that in the interest of time, steps 1-4 may be combined.
- (5) The complete amended plans will be considered by the DRC for at their next scheduled meeting (usually monthly). Plans will be reviewed if they have been received in good order one week before the scheduled meeting.
- (6) The secretary of the DRC will inform the owner within 15 days after the meeting whether or not the plans have been approved.

If approved, the lot owner is free to begin construction. If rejected, a letter will be sent to the owner listing the deficiencies and specifying action.

- (7) Rejected plans may be resubmitted at the next DRC meeting provided corrective action has been taken.

13. REGISTRATION OF OWNERS, OCCUPANTS AND AGENTS:

- a. Upon becoming an owner, every dwelling or property owner shall promptly notify the association management company of his/her ownership of dwelling. Such notification shall include the dwelling owner's name, address, telephone number, e-mail (if available) and date of ownership or occupancy.
- b. Dwelling owners who do not live in the dwelling shall notify the association management company of the name and telephone number of occupants, tenants or guests who are residing in the dwelling so contact may be made in emergency situations or to obtain information needed to resolve an issue before the Board of Directors.
- c. When a dwelling is being rented or leased to a tenant and the dwelling owner is off island for a period of thirty (30) days or more, it is strongly suggested that the dwelling owner shall designate a local agent or resident to represent his/her interest and to act for the dwelling owner in his/her absence. An agent's name, address and telephone number should promptly be furnished to the association management company. See HRS par. 521-43, Tenant-Landlord code.

14. REPORTING VIOLATIONS:

- a. Except for emergency situations, complaints regarding violations of these Rules and Regulations should be in writing and directed to the association management company.
- b. Noise violations or pet violations may be referred directly to the police as a civil matter or brought to attention of Board of Directors.
- c. Damages to the common areas shall be surveyed by the Site Manager or Management Company and the cost of repair or replacement and any legal fees incurred may be assessed by the Board of Directors against the dwelling owner responsible for the damage or for damage caused by dwelling occupant, tenant, guest, invitee, or construction personnel.
- d. See Fine Enforcement Policy, Appendix A, below.

Appendix 1 Fine Enforcement Policy

Kohala By The Sea Homeowners Association

FINE ENFORCEMENT POLICY

Effective 9-25-19

Approved by the Board of Directors on 9-25-19.

On 9-25-19, the Board of Directors adopted the following schedule of fines for any violation of the Association's CC&R's, Community Rules and Regulations, By-Laws or Design Review Guidelines. These fines were adopted by the Board under its authority stated in Article VI, Section 6.4 (h) of the Declaration, and I-IRS §421J-10(3), which resolution the Board has determined to be necessary and proper for the peace, health, comfort, safety and in the best interests of the members of the Association. These fines shall be imposed against the owner. Owners will be responsible for their own actions and the actions of their tenants, family members, guests, agents, employees, or anyone else using the property who violates any project documents.

A. Courtesy Notice:

Before any notices go out, a member of the Board, SRC, or DRC will make the initial contact via telephone (preferred method), letter, or in person with an owner if there is a violation or question of a violation. If the violation turns out to be a valid violation, then if that violation isn't remedied within the predetermined time limit, the following will occur:

1. AMOUNT OF FINES.

B. First Offense-

A written citation and a \$100 fine (\$1,000 for a violation of the minimum rental rule) will be assessed to the property owner. Any costs of enforcement, including Management Co. and/or attorneys' fees incurred by the Association to rectify a violation will be chargeable to the owner and would, together with the fine itself, become a lien against the owner's property.

C. Second Offense-

A written citation and a \$200 fine (\$2,000 for a violation of the minimum rental rule) will be assessed to the property owner. Any costs of enforcement, including Management Co. and/or attorneys' fees incurred by the Association to rectify a violation will be chargeable to the owner and would, together with the fine itself, become a lien against the owner's property.

D. Third Offense-

A written citation and a \$300 fine (\$3,000 for a violation of the minimum rental rule) will be assessed to the property owner. Any costs of enforcement, including Management Co. and/or attorneys' fees incurred by the Association to rectify a

violation will be chargeable to the owner and would, together with the fine itself, become a lien against the owner's property.

E. Continuing Violations-

Fines may be assessed for one continuing violation. The fine will be assessed at a maximum of \$500 dollars per month (\$3,000 per month for a violation of the minimum rental rule) until the violation is remedied. Any costs of enforcement, including attorneys' fees incurred by the Association to rectify a violation, will be chargeable to the Owner, and would, together with the fine itself, become a lien against the Owner's property. A "continuing violation" means a transient activity or condition which continues to exist after notice thereof is given to an owner and is not remedied as required by such notice, and the determination by the Board of Directors is final as to such violating owner, subject to appeal as called for in Section 4 of this Fine Enforcement Policy.

2. CITATIONS.

Each citation issued shall briefly describe in detail the nature of the violation. Copies of citations issued to the property owner who is responsible for themselves, their tenants, guests, family members, agent, or employees will be kept on file with the records of the Association.

3. PAYMENT OF FINES AND LIABILITY.

Unless appealed as permitted below, a fine must be paid to the Association within thirty (30) days of the citation and assessment of the fine.

A. Owners shall be liable for their own fines and for the fine assessed against their tenants, guests, family members, agents, or employees. If the owner fails to pay or appeal a fine within thirty (30) days after the fines is assessed against the owner or against their tenants, guests, family members, agents, or employees, the fine shall be deemed a common expense chargeable against the owner's lot. The Association may file a lien against the owner's lot for the unpaid fines and may collect the unpaid fines.

4. APPEAL OF FINES. (Any fine may be appealed as provided in this subsection)

- Owners shall be given full opportunity to present to the Board any facts, which may bear on the propriety and/or amount of fine, and to present such evidence as may be necessary to support that position. Owners may request reconsideration of an appeal ONLY where information not available at the time of the original appeal becomes known. Such request for re-consideration must be sent in writing to the Managing Agent no later than ten (10) days after the Board disposes of the original appeal.

- Within thirty (30) days of the date of a fine, an owner shall have the right to appeal to the Board of Directors by mailing or delivering written notice of appeal to the Managing Agent.
- The Board of Directors will acknowledge receipt of appeal, review, and present a decision to the owner within (60) days.
- The Board may reduce or rescind any citation or fine after consideration of the appeal.
- A fine may only be appealed to the Board of Directors one-time. No future consideration will be allowed except for allowable requests for reconsideration as described above.
- Only after all appeals have been exhausted, an Owner may apply for mediation pursuant to HRS 4211.13 for any allowable dispute regarding the enforcement of the CC&R's, but such request for mediation must (a) be made within thirty (30) days after the Board has taken final action on any violation and (b) such request for mediation will not stay the enforcement of the fine(s) and assessment of costs and fees, and a Notice of Lien may be filed by the Association immediately after the final appeal has been determined by the Board.
- The Design Review Committee shall be authorized from time to time to recommend that the Board consider enforcement of the Design Rules and the applicable portions of the CC&R's, including the imposition of fines. In the event of such a referral from the Design Review Committee, the above rules shall otherwise apply, for which the Board will make an independent determination of the propriety and amount, if any, of such fines or other assessments.

5. MISCELLANEOUS. This schedule of fines shall be sent to all current owners of record of Kohala By The Sea and should be kept with the owners Association Documents. The Board reserves the right to establish a new schedule of fines at any time.

NOTHING CONTAINED IN THIS RESOLUTION SHALL BE INTERPRETED TO PREVENT OR DELAY THE BOARD OR THE MANAGING AGENT FROM ENJOINING, ABATING, REMOVING OR REMEDYING ANY VIOLATION OR BREACH WHICH MAY IMPAIR OR IN ANY WAY AFFECT THE VALUE OR SAFETY OF THE PROPERTY OR THE USE, ENJOYMENT, SAFETY OR HEALTH OF ANY OWNER.

This Resolution was adopted on 9-25-19 and will become effective on 9-25-19.