

FOOTHILLS CLUSTERS HOMEOWNERS ASSOCIATION (FCHOA)
DRAFT COMPLIANCE ASSESSMENT POLICY

6/7/2023

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A. Statement of Intent

It is the intent of the FCHOA to maintain a program of periodic assessments of property subject to our Covenants, Codes and Restrictions (CC&Rs) for the purpose of determining compliance. The assessment frequency shall be at least semi-annually and shall be performed or directed by a Compliance and Enforcement Committee consisting of 3-5 members appointed by the Board of Directors, a majority of whom shall be members of the Board of Directors. The Compliance and Enforcement Committee shall be responsible for carrying out the Compliance Assessment Policy and the Enforcement Policies of the FCHOA under the direction of the Board of Directors.

B. Compliance and Enforcement Committee

1. Composition

The Compliance and Enforcement Committee shall be appointed by the FCHOA Board of Directors to consist of 3-5 members, a majority of whom shall be Directors. The Committee shall be responsible for carrying out the Compliance Assessment Policy and the various Enforcement Policies of the FCHOA. Upon any circumstance that results in the Committee having less than 3 active members or lacking a majority of Directors, the Committee may continue to carry out its responsibilities until the next regularly scheduled meeting of the Board of Directors, at which time the Committee shall be suspended until a new member(s) is appointed to restore the required composition of the Committee.

2. Duties

The Compliance and Enforcement Committee shall provide a monthly report of its activities to the Board of Directors, and shall endeavor to identify issues and concerns related to the Compliance Assessment Policy and the Enforcement Policies which require direction from the Board of Directors or its legal counsel. The Committee may propose for Board of Director approval certain guidance to assist in the compliance and enforcement process. A Compliance Assessment Form shall be developed by the Compliance and Enforcement Committee and may be subsequently modified by majority vote of the Committee.

C. Compliance Assessment Procedure

Compliance assessments including the taking of photos for the purpose of documenting the conditions at the time of assessment, shall be conducted from the private street right-of-way and the common area, unless otherwise authorized at the time of inspection by the occupant of the home.

The name of the person conducting the assessment, the date and time of the assessment, and any notes shall be recorded on or attached to the Compliance Assessment Form. All records shall be maintained for a period of at least 1 year if a Notice of Violation is issued. A Compliance Assessment Form is not required to be completed if no compliance concerns are noted during an assessment.

D. Response to Individual Reports of Non-Compliance

Upon receipt of a verbal or written report to any member of the FCHOA Board of Directors alleging non-compliance with the CC&Rs, that member shall provide notice of such report to the Compliance and Enforcement Committee for review and inspection. This does not prevent any member of the Board of Directors from acting on their own to issue a Notice of Violation or schedule a Hearing Panel as described in the FCHOA Enforcement Policy of January 2020.

E. Pre-Enforcement Compliance Review

When a compliance assessment finds that a property may be in a state of non-compliance with the CC&Rs, the assessment report and any related information shall be distributed to the Compliance and Enforcement Committee for review before the Courtesy Notice or Notice of Violation is sent to the homeowner. Per the Enforcement Policy, any member of the Committee who is also a member of the FCHOA Board of Directors may issue the Courtesy Notice or Notice of Violation after the Committee has had an opportunity to review the report. While consensus among the Committee members should be sought, it is not required in order to issue a Courtesy Notice and Notice of Violation. Per the Enforcement Policy, any dispute as to the validity of the alleged non-compliance, if unresolved by the Committee, may be addressed at the time of the Hearing Panel.

F. Definition and Process for Documenting Non-Conforming Condition

When an apparent violation of the CC&Rs is documented, a Courtesy Notice or Notice of Violation, consistent with the requirements of the FCHOA Enforcement Policy, shall be sent to the homeowner. If a homeowner asserts and provides evidence in response to such Notice that the violation has existed for at least the past 2 years without prior notice of non-compliance, and if in the opinion of the Compliance and Enforcement Committee there is sufficient evidence to support this assertion, no further action will be taken under the Enforcement Policy unless otherwise determined by a vote of the Board of Directors. Instead, the homeowner will be given the option to receive a Notice of Non-conforming Condition as an alternative to compliance.

The Notice of Non-Conforming Condition shall be binding on the homeowner and the FCHOA and shall allow the homeowner to maintain the described condition in

its current state. Any significant modification of the Non-Conforming Condition may subject the homeowner to potential enforcement action. At the time the property is listed for sale, the FCHOA may elect to notify a prospective purchaser of the Non-Conforming Condition but may not require that the Condition be removed at a later date.

G. Related Guidance.

1. Enforcement Against White and Near-White Roofs Prohibited by FCHOA CC&Rs Article VII, Section 10 (Roofs).

The prohibition against white and near-white roofs in the CC&Rs applies to both pitched and flat roofs. When a near-white or white roof is observed by a member of the Compliance and Enforcement Committee, the Committee shall contact the homeowner and advise them that their roof appears to not be in compliance with the CC&Rs and that the homeowner must attain compliance within one year of the date of the notice by first applying to the Architectural Control Committee for approval and subsequently coating the roof with the approved coating.

If the homeowner disputes the observation of the Committee, and is willing to provide the Committee with access to the roof, the color of the roof shall be evaluated, in the presence of the homeowner if available, by either,

1) comparing the color of the roof with a board painted with Sherwin Williams SW7571, "Casa Blanca", which has been designated by the FCHOA as the reference color for determining if a roof meets the requirements of the CC&RS. The color "Casa Blanca" has a light reflective value (LRV) of 76, substantially lighter than the approved roof coating colors of Henry 288 Desert Tan or Tucson Roofing Company 7000T Tan. Or,

2) measuring the LRV of the roof using an appropriate electronic measuring device, such as an LRV meter, if the FCHOA or the homeowner has access to such a device. An LRV value of 76 or lower shall be deemed to be in compliance with the CC&Rs.

If the homeowner refuses to allow the Compliance and Inspection Committee to make a direct comparison of the threshold color against the roof surface by either method described above, the inspector is authorized to make a determination by viewing the roof surface from the public street or by review of an aerial photograph posted on a public website. If the inspector determines that the roof appears to be lighter than the "Casa Blanca" reference color, the roof shall be deemed to not be in compliance with the CC&Rs.

2. Enforcement of the Enclosure and Concealment Requirements of Foothills Clusters CC&Rs, Article VII, Section 4 (Concealed Activities) .

To provide a consistent understanding and enforcement of the Foothills Clusters Covenants, Conditions and Restrictions (CC&Rs) regarding concealment of equipment and storage piles, the following standards and guidance shall be applied.

a) Exemption for original construction: A homeowner shall be deemed to have met the requirements of Section 4 if the regulated activity is maintained behind an enclosure constructed before the date that the home was first occupied, so long as that structure has been maintained to its original size, shape and condition, even if the enclosure does not fully conceal the equipment from all views but does conceal the equipment from a pedestrian standing on the street directly in front of the center of the house. Any modifications to the size and shape of a pre-existing enclosure or installation of new regulated equipment or activities that occurs after the date of enactment of this policy requires approval from the Architectural Control Committee.

b) Exemption for active construction: Temporary piles of soil, landscaping materials, and construction materials necessary for the construction of a structure approved by the Architectural Control Committee shall be exempt during the period that a building permit is maintained for that construction, but must be removed or concealed immediately upon the expiration of that permit. Piles of landscaping materials used in routine landscape improvement projects may be maintained for a reasonable period of time but may be required to be removed or concealed upon complaint.

c) Exemption for HVAC equipment: This policy does not apply to heat pumps, air conditioning compressors, swamp coolers or associated equipment.

d) Visibility: The goal of enclosure and concealment is to achieve **nearly zero** visibility of the regulated equipment or activity. Enclosure for the purpose of compliance with Article VII, Section 4 means completely surrounding the area to be concealed with materials that are fully opaque, or at least 90 percent opaque in combination with vegetation to reduce visibility to nearly zero. For the purposes of evaluating whether equipment or an activity is adequately concealed the FCHOA shall consider views from a pedestrian of average height standing at any point outside the boundaries of the subject lot upon approximately the original surface of the street or lot, whether natural or manmade, at the time of construction. Views from elevated constructed features, such as a pool slide or roof, or from a distant lot at a significantly higher surface elevation, shall not be considered in evaluating compliance. Distant views that occur because of the natural topography of the Foothills Clusters area shall not be reason for denial of an application.

3. Enforcement and Approval of the Storage of Vehicles and Equipment as Required by Foothills Clusters CC&Rs Article VII, Section 8 (Vehicles and Equipment).

To provide a consistent understanding and enforcement of the CC&Rs) regarding storage of habitable motor vehicles, including camping trailers; commercial vehicles including hauling trailers; construction vehicles and trailers; boats, or like equipment, the following standards and guidance shall be applied.

a) *Enforcement.* If any of the above equipment is found to be fully or partially visible on a lot, or is not in compliance with the provisions for temporary parking of such equipment according to the Vehicle and Equipment Parking Policy, the homeowner shall be contacted and given the opportunity to submit an application to the FCHOA, as detailed below, in a timely manner. Enforcement under the Vehicle and Equipment Parking Policy shall be stayed pending submittal and review of the application.

b) *Application for Approval:* An application for the purpose of obtaining written approval as required by Article VII, Section 8 shall be submitted to the Architectural Control Committee and shall include the following:

1. The lot number, address, and name of the property owner(s) requesting approval.
2. A physical description of the vehicle or equipment, including its color, approximate dimensions, make and model if known to the applicant, and a copy of the title, registration, and license number if applicable. Photographs may be used to convey this information.
3. A description of the limits of the area within which the vehicle or equipment will be stored. This may consist of either a surveyed description or a description of measured distance and direction from a fixed point, such as a wall or survey stake. For example, if an applicants backyard is partially visible from the neighboring lot, the homeowner may seek approval to store equipment in that portion of the backyard that is concealed from the neighboring lot, but must identify the limits of that area in a manner that can subsequently be verified.
4. A signature or other proof of contact from each neighbor adjacent to or directly across the street from the proposed storage area. The signature simply indicates that the neighbor is aware of the proposal, not necessarily opposed to or in favor of it.
5. The application does not need to be in any specified form or format so long as it contains and clearly communicates the required information, but

must be distinct and separate from any application for construction of walls or other structures necessary to demonstrate enclosure.

c) Application Review Process: When an application has been received and is deemed complete, the Architectural Control Committee will contact the applicant to request access to the property for the purpose of reviewing the site conditions and clarifying the application. Following the date of that review the Architectural Control Committee will make a recommendation to the FCHOA Board of Directors within 30 days, and the matter shall be placed on the agenda of the Board for discussion and possible action at the next scheduled meeting of the Board. The Board at that time may approve, reject, or continue the application for discussion at a future meeting.

d) Agreement: Upon approval, the applicant will be required to sign an agreement stating that they will abide by the conditions specified in the application as well as any additional requirements imposed by the Board

e) Transferability: Because the approval is specific to a particular vehicle or equipment, it is not transferable to a subsequent property owner unless the subject vehicle or equipment is also transferred to the new property owner. If a homeowner with a current approval under Article VII, Section 8 replaces the subject vehicle or equipment with a similar item, they must seek a new authorization from the Board to store that equipment. However, the presumption shall be that approval will be granted unless the Board can reasonably show that the equipment or area of storage is significantly different so as to create new visual impacts that were not associated with the previous vehicle or equipment storage.

f) Exemption for Previously Approved Vehicles and Equipment: This policy shall not apply to any vehicles and equipment regulated by Article VII, Section 8 that were approved for onsite storage by the FCHOA prior to the date of enactment of the Compliance Assessment policy so long as the vehicle or equipment remains fully enclosed as defined in (g) below.

g). Complete Enclosure (Full or Partial): For purposes of Section 8 approvals, the Board retains the discretion to require either full enclosure, meaning completely surrounding opaque walls and a roof, or partial enclosure, leaving a portion of the equipment visible within an unroofed enclosure of completely surrounding opaque walls, taking into consideration such factors as the appearance of the vehicle or equipment, any vegetation that would partially screen visibility, and the potential frequency and proximity of views from the streets and nearby lots. For example, the Board may require different measures to mitigate views from an adjacent lot than those intended to mitigate views from a street or Common Area. In every case the equipment must be fully enclosed (no portion visible) from any adjacent rear yard. At the discretion of the Board partial visibility from an adjacent side yard or street view may be allowed.

For the purposes of evaluating whether equipment or an activity is adequately concealed Board shall consider views from a pedestrian of average height standing at any point outside the boundaries of the subject lot upon approximately the original grade of the street or lot, whether natural or manmade. Views from an elevated constructed feature, such as a pool slide or roof or from a distant lot at a significantly higher surface elevation, shall not be considered in evaluating compliance. Distant views that occur because of the natural topography of the Foothills Clusters area shall not be reason for denial of an application.

h) Exercise of Discretion: Each case of this nature is unique and exercise of discretion in review and enforcement is understood to be site-specific and cannot be relied upon as a precedent that must be applied to existing or proposed uses of other residents, but is applicable to future homeowners of the subject property unless and until they request modification

4. Enforcement and Approval of Native Plant Removal

The prohibition against removal or destruction of native plants on private property or the Limited Common Area without prior approval of the HOA is intended solely for the purpose of neighborhood aesthetic harmony and, as stated in the community guidelines, to maintain the abundance of trees and natural desert plant species that provide natural buffers around the homes of the community and maintain a feeling of privacy among neighbors.

Homeowners are cautioned to comply with all applicable federal, state and local requirements concerning native plants; the FCHOA is neither knowledgeable of or responsible for enforcement of such requirements. For purposes of evaluating compliance with the CC&Rs, the FCHOA considers native plants to include all species listed in Chapter 18.72.040 of the Pima County Ordinance. Currently this includes 56 species and is available for review at https://codelibrary.amlegal.com/codes/pimacounty/latest/pimacounty_az/0-0-0-21996 .

Consistent with the Pima County standards (Table 18.72.090-1), FCHOA enforcement shall be limited to the unapproved removal or destruction of all saguaros, listed cacti of greater than two feet in height or diameter, ocotillo of greater than two feet in height or diameter, listed succulents and shrubs of greater than 2 feet in height, and listed trees of greater than 4 inches in caliper (the diameter as measured 4-5 feet above the surface of the soil)., Anyone seeking to remove or destroy plants of this size or greater is expected to consult with the FCHOA, and may contest a determination of the FCHOA that the plant(s) in question is in fact native as described in this section. However, in the event a homeowner fails to do so and the FCHOA has good cause to believe that the plants which were destroyed or removed were native per this section based on physical or photographic evidence, or witness testimony, it shall be the

responsibility of the homeowner to prove otherwise in order to avoid enforcement of the CC&Rs.

Upon receipt of a request, approval to remove vegetation shall be granted in all cases unless the removal would have a negative impact to the aesthetic harmony of the lot and streetscape. The prohibition shall not be enforced to apply to any members of the listed species that are dead or diseased through natural causes or are planted in ornamental planters or pots. Approval shall be given if the plant is found to present an obvious hazard to the occupants or structures of the property. Enforcement of the prohibition may rely on publicly available photographs of the lot to determine whether the destroyed or removed plant was a healthy specimen of a listed species.

It is not the intent of the FCHOA to routinely use the native plant removal use restriction to block construction of structures approved by the Architectural Control Committee. The Architectural Control Committee may in unusual circumstances require modification of structures to protect a particularly prominent or otherwise important native plant, or to protect vegetation that provides privacy between neighboring lots. Enforcement in the case of unauthorized removal of a native plant may include a fine consistent with the FCHOA Enforcement Policy, a requirement to replace the plant in kind, or both.

Most desert plants require minimal pruning and accepted pruning practices do not constitute removal or destruction. Homeowners are cautioned to communicate with their neighbors before pruning plants that may grow along common property lines.

Appendix A

Example (Draft) Compliance Assessment Checklist

All assessments will be conducted from public streets, right-of-ways, and in limited cases, if access is granted, from other locations on private property. Inspections may be supplemented by a review of aerial photographs and street views available from public websites. Where possible findings shall be documented by notes and photographs.

Address _____ Date _____

Owner Name and Contact Info _____

Inspector _____

1. Are overhead electrical lines visible? Are exterior antennae or satellite dishes present anywhere other than on a rooftop? Are rooftop receiving antennae or satellite dishes higher than five feet above the highest point on the roof? (Article VII, Section 3).

2. Is there evidence that a room or other portion of the house is rented for residential use, including short-term vacation rentals or that the home is being used as a business location? The CC&Rs only permit rental of an entire house and forbids commercial activities through use of the phrase "single family residential purposes"... (Article VII, Section 1).

3. Are billboards or advertising signs present? (Other types of signs such as No Trespassing, Beware of the Dog, Political, Welcome, etc. are acceptable if they total less than 6 square feet per Pima County ordinance. Normal advertising on passenger vehicles used for work is also permitted.) (Article VII, Section 5)

4. Are there nuisances (defined as unclean, untidy, obnoxious to the eye, creating objectionable odors or noise) in public view? (Article VII, Section 6). Recent enforcement actions include piles of landscape debris and construction debris.

5. Are storage piles, garbage cans, mechanical equipment, soft water tanks, or pool equipment in public view from the street? (Article VII, Section 4). Is any heating, cooling, or mechanical equipment present on the roof? (Article VII, Section 10).

6. Vehicles

a. Are recreational vehicles, trailers, commercial vehicles, boats, or construction vehicles stored on the lot without prior approval? (Article VII, Section 8.)

b. Are vehicles parked on landscape (not in a driveway or an otherwise approved and defined parking area)? (Vehicle and Parking Policy)

c. Are vehicles parked on the street between 1 AM and 6 AM? (Vehicle and Parking Policy)

d. Are recreational vehicles, derelict vehicles, vehicles under repair, or commercial vehicles parked on streets? With what frequency? (Vehicle and Parking Policy)

7. Is there evidence of recent or ongoing unapproved destruction of native growth? (Article VII, Section 9)

8. Does the roof of the residence appear white or near white according to the standard established by the FCHOA? (Article VII, Section 10)

9. Are patio walls that face the street constructed of the same material as the primary residence? (Article VII, Section 11) Does not apply to patio gates.

10. Are basketball hoops visible? (Article VII, Section 12). Note- equipment associated with approved backyard sports courts are allowed.

11. Are unlawful animals (other than dogs, pets, and pet birds) maintained on the property? (Article VII, Section 7)

Appendix B

Listing of Related Compliance and Enforcement Policies of the Foothills Clusters Homeowners Association

Vehicle and Parking Policy, April 2019.

Vehicle and Parking Policy Enforcement Process, April 2019

Enforcement Policy, January 2020

General Violation Fine Schedule, February 2018

Each of these policies may be accessed at the FCHOA website,
www.foothillsclusters.com.