

## **Rules and Regulations**

### **“NO-BUSINESS and COMMERCIAL USE”**

#### **INTERPRETIVE POLICY**

##### **Article IX, Section 4 of the CC&Rs:**

Article IX, Section 4 General Protective Covenants of the Homeowners Declaration of Covenants, Conditions and Restrictions (the “Section”) states in pertinent part:

“No trade, craft, business, profession, commercial or manufacturing enterprise or business or commercial activity of any kind shall be conducted or carried on upon any residential lot, or within any building located on residential lot, nor shall any goods, equipment, vehicles (including busses, trucks and trailer of any description) or materials or supplies used in connection with any trade, service or business, whenever the same may be conducted, ..... which may be or may become an annoyance or nuisance to the neighborhood.”

The Fairwood Greens HOA Board of Trustees is aware that today there are many people, with many professions, who are able to conduct their business by computer, fax and phones without ever having to leave their homes, and without any surrounding neighbors ever being aware of this business activity. The Section we are addressing was created many years ago, when business conduct primarily involved physical indicia and impact adverse to the residential character of a community. The Board now wishes to address how, and to what extent, this Section should be enforced.

The Fairwood Greens HOA Board has considered the possible dilemma posed by this Section, with a view towards reconciling its apparent reading and enforcement with the current state of technology and cultural values. Our culture and the interests of our society are fostering and encouraging people to work out of or from home more and more. Doing so saves time, saves fuel, reduces pollution, and, hopefully, provides more flexibility so that people can spend more time with their family.

The Board sought and has received input from our Association attorney on how this Section should be enforced, and the Board has considered the stated purpose of the Homeowners’ covenants, which indicate in the preamble they are for “the purpose of protecting the value and desirability of our community”. And in considering this purpose, the Board has also recognized that to strictly enforce this Section, so that even invisible business conduct is shut down, may ironically harm marketability and the value of our homes and community, because purchasers of homes may be discouraged from purchasing homes in our community if they believe they cannot telecommute from home, or conduct some business activity within the four walls of their home even where their conduct is not visible and has no impact on neighbors or the neighborhood.

Lastly, the Board has considered the practical question of how the Association would learn about or investigate owners/members conducting a business activity solely within their home and without any visible indication to the outside world.

Based on the many factors considered by the Board, and to enhance the purpose of the covenants, the following enforcement policy is adopted regarding Article IX, Section 4 as it pertains to conducting business within a home and/or residential lot:

**I. Policy:**

Hereafter, the Association will interpret and enforce those parts of Article IX, Section 4 (hereinafter the "Section"), regarding prohibiting business conduct or activities on lots or homes, by considering whether the particular conduct or activity involved in each case has any impact on the neighbors, the neighborhood and/or the community as a whole (hereinafter collectively the "community"). If the conduct or activity of an owner/member of the Association would otherwise normally be considered a business or commercial activity but has no impact or effect on the community and its residential character, the Association will not seek to shut it down or ban it under this Section.

In determining whether a particular Homeowner's business activity or conduct has no impact on the community, certain factors will be considered by the Board or Committee appointed to deal with enforcement, including without limitation the following:

- (1) There are no signs or advertising of any kind posted, displayed, exhibited or visible on or near any lot or from any building or vehicle parked on or near the lot. However, this shall not apply to magnetic signs or advertising printing on vehicles unless the vehicle is parked on or near the lot for unreasonably long periods of time;
- (2) The business activities do not utilize, include, or involve the use of any heavy equipment, power tools or power sources not common to residential use;
- (3) There are no employees of owner, part or full time, on or about the lot or in any buildings on the lot;
- (4) There is no regular use of or frequent delivery by commercial delivery or supply companies that aid in conducting a commercial enterprise;
- (5) The owner's conduct or activity does not cause, result in, or contribute to anything which has a visible or auditory impact outside of the lot, including without limitation exterior noise, dust, glare, vibration, odor or smoke;
- (6) There are no additional vehicles being parked on, about or near the lot, or any other indications that any business conduct or activities are being conducted on the lot or within any building located on the lot.

The intention of the above indicia is to provide examples of factors which are normally associated with business conduct or activity, which the Association will consider as adverse to the residential character of the community. It is not comprehensive, and owners should be aware that other conduct or activity which adversely impacts residential character of the community will result in the conduct or activity being considered as a violation of Article IX, Section 4.

Any business or other activity which would adversely impact the single family residential nature and character of the community remains prohibited, including without limitation children's day

care centers, vehicle repair activities and no more than two (2) garage/yard/estate sales annually. These specific business types or references are made because of the adverse or negative impact inherent in such activities based on increased noise, traffic, and esthetics decline (especially referencing vehicle repair activities which would have vehicles on and about the lot or property involved). General adverse impact factors which will be considered by the Board of the Association shall include without limitation noise level, additional traffic, parking on the street, noxious odors and other things that impact residential, quiet use of the homes by, and the safety of, community members.

The intent of this section is to give the Board some discretion or flexibility, so that in-home business activities such as telecommuting or working from the home in an unobtrusive and unseen manner will be permitted, while undesirable business conduct or activities which are not compatible or in keeping with the residential character and/or quality of the community will continue to be proscribed and prevented by the Section.

A business which violates or fails to satisfy on a continuing basis one or more of the criteria set forth in this section, shall not be permitted and is expressly prohibited. The Board of Trustees shall exercise reasonable discretion in the use of this policy, with the primary objective protecting the residential character of the community.

Nothing in or about this policy is intended to change, alter or amend any part of Article IX, Section 4, and its provisions remain the same and will be properly enforced by the Association.

## **II. Infractions:**

Once a violation has been reported and confirmed, the violating Homeowner shall be notified in writing, and, if not corrected in a timely manner, fines may be imposed and assessed according to Section IV.

At the Board's discretion, legal action may be taken against the violating Homeowner at any point once a violation has been confirmed. Additional fines will continue to be imposed and accrue while the legal action is in process if the Homeowner remains in violation of this Rule or any other provisions of the Association's governing documents.

The opportunity to appeal the Board's decision is available under the Association's Rules and Regulations on "Appeal Process".

## **III. Fines:**

a. Continuous:

No-Business / Commercial Use:

- 1) Offense and all Subsequent Offenses - \$50/day

b. Intermittent:

Garage/Yard/Estate Sale

- 1) First Violation- \$100
- 2) Second Violation- \$200
- 3) Third and all subsequent Violations- \$500

The Association will bill the violating Homeowner the applicable fines at such time and for such periods as the Association considers reasonable.

All fines imposed by the Association upon an owner which remain unpaid for 60 days shall automatically constitute a lien on the lot and all its improvements, and may be handled and foreclosed upon in the same fashion as if it were a lien for unpaid assessments under the Association's governing documents and the laws of the State of Washington. The Association may file a formal lien with the county in order to further protect its interests regarding the unpaid fine(s). The amount of the lien and lien rights shall include interest, and all costs and expenses, including attorney fees, incurred by the Association in the imposition and collection of such unpaid fine(s).

#### **IV. Rule Enforceability**

If any portion of this rule is determined to be legally unenforceable, it shall not negate the enforceability of the remaining portions of the rule.

Dated and adopted this **28<sup>th</sup> day of April 2009**