

STATE OF TEXAS §

COUNTY OF TRAVIS §

AMENDMENT OF RULES AND REGULATIONS OF

BROOKFIELD OWNERS ASSOCIATION, INC.

(Regarding Standby Electric Generators and Deed Restriction Enforcement)

Document reference. Reference is hereby made to that certain Amended and Restated Declaration of Covenants, Conditions, and Restrictions - Brookfield, filed under Document No. 2002096768 in the Official Public Records of Travis County, Texas (together with all amendments and supplements, the "Declaration").

Reference is further made to the Resolutions of the Board of Directors Adopting Rules for the Brookfield Estates HOA, filed as Document No. 2006166355 (the "**Fine Resolution**") in the Official Public Records of Travis County, Texas, to the rules attached as Exhibit "A" to the Notice of Filing of Dedicatory Instruments, filed as Document No. 2013191802 in the Official Public Records of Travis County, Texas, to the Resolution of Board of Directors, filed as Document No. 2014125008 in the Official Public Records of Travis County, Texas, and to the Amendment to Rules and Regulations of Brookfield Owners Association, Inc., filed as Document No. 2014164194 in the Official Public Records of Travis County, Texas (together with any amendments or supplements, the "**Rules**").

The Fine Resolution is hereby **repealed and superseded** by this filing. All other Rules remain in effect.

WHEREAS the Declaration provides that owners of lots subject to the Declaration are automatically made members of Brookfield Owners Association, Inc. (the "**Association**");

WHEREAS the Association, acting through its board of directors (the "**Board**"), is authorized to adopt and amend rules and regulations governing the property subject to the Declaration and the operations of the Association pursuant to Article 6.04 (A) of the Declaration and has previously adopted the Rules; and

WHEREAS the Board has voted to adopt the rules attached as Exhibit "A" to replace and supersede the Fine Resolution and to supplement the rest of the previously-adopted Rules and ;

THEREFORE the rules attached as Exhibit "A" have been, and by these presents are, ADOPTED and APPROVED.

Subject solely to the amendments contained in Exhibit "A", the Rules remain in full force and effect.

BROOKFIELD OWNERS ASSOCIATION, INC.

Acting by and through its Board of Directors


Signature: 
 Printed Name: Jennifer Schmidt
 Title: President

Exhibit "A": Additional Rules

Acknowledgement

STATE OF TEXAS §

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This instrument was executed before me on the 22nd day of February,
2016, by Jennifer Schmidt in the capacity stated above.

Lori Hollis
Notary Public, State of Texas

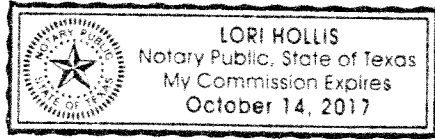


EXHIBIT "A"

STANDBY ELECTRIC GENERATORS

1. **General.** Unless otherwise approved in writing by the Architectural Committee (the "AC"), which approval may be denied, approved, or approved with conditions, an Owner may not install a standby electric generator except in compliance with this rule.
2. **Scope of Rule.** A standby electric generator is the only device that may be used to provide backup electric service to a residence. A "standby electric generator" means a device that converts mechanical energy to electric energy and is:
 - a. Powered by natural gas, liquefied petroleum gas, diesel fuel, or hydrogen;
 - b. Fully enclosed in an integral manufacturer-supplied sound attenuating enclosure;
 - c. Connected to the main electrical panel of a residence by a manual or automatic transfer switch;
 - d. Rated for a generating capacity of not less than seven (7) kilowatts; and
 - e. Permanently installed on a lot.
3. **Conflict with Other Provisions.** Per state law, this rule relating to standby electric generators controls over any contrary provision in the Association's governing documents.
4. **Prior Approval Required.** Prior to the installation of any standby electric generator or any part thereof, an owner must receive written approval of the AC. Owners wishing to install standby electric generators must submit plans and specifications to the AC. The following requirements apply to plans and specifications:
 - a. An owner must provide a reasonably accurate and scaled schematic of the lot showing the property boundaries of the lot and the location of the residence, other permanent structures, fencing, and any adjoining streets. The schematic must also contain a scaled drawing of the generator at the proposed location, and indicate the distance (in feet and inches) from the closest rear and side lot line.
 - b. All other applicable information typically required by the Association for architectural approval (e.g., color samples, samples of screening materials, etc.) and necessary to ensure compliance with this rule must also be provided.
5. **Installation.** The following installation requirements apply to standby electric generators:
 - a. Installation must be done in compliance with the manufacturer's specifications and applicable governmental health, safety, electrical, and building codes.
 - b. All electrical, plumbing, and fuel line connections must be installed by a licensed contractor.
 - c. All electrical connections must be installed in accordance with applicable governmental health, safety, electric, and building codes.
 - d. All natural gas, diesel fuel, biodiesel fuel, or hydrogen fuel line connections must be installed in accordance with applicable governmental health, safety, electrical, and building codes.
 - e. All liquefied petroleum gas fuel line connections must be installed in accordance with rules and standards promulgated and adopted by the Railroad Commission of Texas and other applicable governmental health, safety, electrical, and building codes.
 - f. If a generator uses a fuel tank that is separate from the generator (i.e., the tank is not manufactured as an integral part of the generator system), the fuel tank must be installed in compliance with municipal zoning ordinances and governmental health, safety, electrical, and building codes.

6. Maintenance. The following maintenance requirements apply to standby electric generators:
 - a. The generator and its electrical and fuel lines must be maintained in good condition at all times, including maintenance that is in compliance with the manufacturer's specifications and applicable governmental health, safety, electric, and building codes.
 - b. Any deteriorated or unsafe component of a standby electric generator, including electrical and fuel line, must be promptly repaired, replaced, or removed.
 - c. A generator may be tested for preventative maintenance only between 9:00AM and 6:00PM and not more frequently than suggested by the manufacturer.

7. Location. The following requirements apply to the location of a standby electric generator:
 - a. Generators must be located in the rear yard area of the lot (behind the rear-most building line of the home). The generator may not be visible from a street, any common area, or the ground level of another lot unless it is screened in compliance with section 8.
 - b. The AC may, in its sole discretion, grant a variance to allow the generator to be located in an area other than as described in subsection (a) if the AC deems that a variance is appropriate as a result of topographical or other issues and a plan for adequate screening of the generator is submitted and approved.
 - c. The AC will grant a variance allowing the generator to be installed in a location other than as required under subsection (a) if the owner can document in a format reasonably acceptable to the AC that locating the generator in the rear yard will increase the installation cost by more than 10% or increase the cost of installing and connecting fuel lines by more than 20%. Even if such a variance is granted, the screening requirements outlined in section 8 must be met.
 - d. Generators are expressly prohibited from being located on Association common areas or any other areas maintained by the Association.
 - e. No portion of the generator may be installed within any applicable setback.

8. Screening. Owners must completely screen a standby electric generator from view if the generator is:
 - a. Visible from the street faced by the dwelling;
 - b. Located in an unfenced side or rear yard of a residence and is visible either from an adjoining residence or from adjoining property owned or maintained by the Association;
or
 - c. Located in a side or rear yard fenced by a wrought iron or residential aluminum fence and is visible through the fence either from an adjoining residence or from adjoining property owned or maintained by the Association.

Submitted plans must include as-installed dimensions and types of all landscaping to be used for screening and the color, materials, and dimensions of any proposed screening materials and/or structures.

9. Allowable Use. A standby electric generator may not be used to generate all or substantially all of the electrical power to a residence except when utility-generated electrical power is unavailable or intermittent due to causes other than nonpayment for utility service to the residence.

ENFORCEMENT POLICY

Summary of Enforcement Policy

1. Send Courtesy Warning Letter (curable violations only - optional)
2. Send 209 Violation Notice (In accordance with Texas Property Code Ch. 209)
3. Levy fines and/or damage assessments as appropriate
4. Subsequent Violation Notices (optional)

The Board may vary from this policy on a case-by-case basis so long as the enforcement process meets state law requirements. Variances may include sending no Courtesy Warning Letter, sending more than one, and/or setting fines at levels other than as indicated on the Standard Fine Schedule.

1. **Types of Violations and Acts Covered.** The Board has adopted this policy to address situations where an owner has committed or is responsible for a violation of the deed restrictions other than by failing to pay assessments or other sums due to the Association. Delinquency violations are handled by an alternate process. This policy also covers situations where an owner or someone the owner is responsible for has damaged Association property.
2. **Violation Notices.**
 - i. Courtesy Warning Letter (curable violations only). Upon becoming aware of a deed restriction violation that is curable (*see* Section 3(i) below) and at the sole option of the Board or management professional, the Association may send a Courtesy Warning Letter requesting that the owner cure that violation by a date certain to avoid fines or other enforcement action.
 - ii. 209 Violation Notice. If a violation is not cured in response to any Courtesy Warning Letter or if a Courtesy Warning Letter is not sent, the Board, in addition to all other available remedies, may:
 - A. Levy a fine;
 - B. Suspend the owner's right to use common area, if allowed under the governing documents; and/or
 - C. Charge the owner for damage to common area.

Any such action shall be initiated by sending a 209 Violation Notice to the owner. The 209 Violation Notice shall:

- A. Be in writing and sent certified mail to the most current owner address shown on the Association's records;
- B. Describe the violation or property damage at issue;
- C. State the amount of any proposed fine or property damage charge against the owner and if the violation is incurable, the deadline for payment;
- D. If the violation is curable and does not pose a threat to public health or safety, state a reasonable, specific date by which the owner may cure the violation and avoid any fine; (there is no right to cure if the violation is incurable, poses a threat to health or safety, or involves damage to property);
- E. Inform the owner that he has a right to request a Board hearing to discuss the enforcement action on or before the 30th day after the notice was mailed to the owner (*see* Section 6 below);
- F. Inform the owner that he will be responsible for attorney fees and costs incurred in relation to the violation if the violation continues after a specific date; such fees and costs may be assessed to the owner's account after a hearing is held or, if a hearing is not requested, after the deadline for requesting a hearing has passed;

- G. Inform the owner that he may have special rights or relief related to enforcement under federal law, including the Servicemembers Civil Relief Act; and
- H. Otherwise comply with Section 209 of the Texas Property Code and state law.

iii. Subsequent Violation Notices for continuing or repeat violations. If an owner has been sent a 209 Violation Notice for a particular violation and the same violation continues or a similar violation is committed within six months of the 209 Violation Notice, the Association may levy additional fines either with or without notice to the owner. If it desires to send notice of additional fines, the Association shall do so by means of a Subsequent Violation Notice. A Subsequent Violation Notice may be of any form and sent in any manner, as such notices are not required to comply with Section 209 of the Texas Property Code, including the requirements set forth in Section 2(ii) above.

3. 209 Violation Notices – Curable vs. Uncurable Violations.

- i. Curable Violation. Curable violations are those that are ongoing or otherwise can be remedied by affirmative action. The following is a non-exhaustive list of curable violations: ongoing parking violations; maintenance violations; failing to construct improvements or modifications in accordance with approved plans and specifications; and ongoing noise violations such as a barking dog.
- ii. Uncurable Violation. Uncurable violations include those that are not of an ongoing nature, involve conditions that otherwise cannot be remedied by affirmative action, and those that pose a threat to public health or safety. The following is a non-exhaustive list of uncurable violations: shooting fireworks, committing a noise violation that is not ongoing, damaging common area property, and holding a prohibited gathering.

4. 209 Violation Notices -- When a fine or damage assessment may be imposed after levy; Board hearings.

- i. Curable Violations – Initial Fine. If an owner is sent a 209 Violation Notice for a curable violation and cures that violation by the deadline in such notice, no fine shall be assessed. If the owner fails to cure the violation by the deadline, any fine noted in the 209 Violation Notice shall be imposed after the time has lapsed for the owner to request a Board hearing, or, if a hearing is timely requested, after the date the hearing is held and a decision is made to uphold the fine.
- ii. Uncurable Violations – Initial Fine/damage assessment. A fine or property damage assessment may be imposed in a 209 Violation Notice for an uncurable violation, regardless of whether the owner subsequently requests a Board hearing.
- iii. Subsequent Fines. This Section 4 does not apply to fines levied after the initial fine. (See Section 2(iii) – Subsequent Violations, above.)

5. Standard Fine Schedule. Below is the Standard Fine Schedule for deed restriction violations. *The Board may vary from this schedule on a case-by-case basis (i.e., set fines higher or lower than indicated below), so long as that decision is based upon the facts surrounding that particular violation. The Board also may change the fine amounts in this Standard Fine Schedule at any time by resolution, with no need to formally amend this Enforcement Policy.*

i. Curable Violations.

- A. Courtesy Warning Notice: No fine.
- B. 209 Violation Notice: \$25.00 fine (daily/weekly or one-time); and/or

Suspension of common area usage rights, if allowed under the governing documents.

- C. Subsequent Violation Notices: \$50.00 fine (daily/weekly or one-time);
\$100.00 fine (daily/weekly or one-time);
\$125.00 fine (daily/weekly or one-time);
(Increases \$25.00 for each additional notice).

ii. Uncurable Violations.

- A. 209 Violation Notice: \$50.00 fine; or
Property damage assessment.
- B. Subsequent Violation Notices: \$75.00 fine;
\$100.00 fine;
\$125.00 fine;
(Increases \$25.00 for each additional notice).

6. **Hearings.** If an owner receives a 209 Violation Notice and requests a hearing in a timely manner, that hearing shall be held in accordance with Section 209.007 of the Texas Property Code. The Board may impose rules of conduct for the hearing and limit the amount of time allotted to an owner to present his information to the Board. The Board may either make its decision at the hearing or take the matter under advisement and communicate its decision to the owner at a later date.
7. **Authority of agents.** The management company, Association attorney, and other authorized agents of the Association are granted authority to send violation notices, levy fines according to the Standard Fine Schedule (including subsequent fines), and levy property damage assessments, all in accordance with this Enforcement Policy. Such parties may act without further vote or action of the Board. The enforcing party shall communicate with the Board and/or certain designated officers or agents on a routine basis with regard to enforcement actions. The foregoing notwithstanding, the Board reserves the right to make decisions about particular enforcement actions on a case-by-case basis at a properly noticed meeting if and when it deems appropriate.
8. **Force mows and other self-help enforcement action.** The Association may exercise self-help remedies. See also Section XI of the Rules and Regulations filed in document no 2013191802 of the Official Public Records Travis County Texas. The language of such rule is hereby incorporated into this rule for ease of reference:

If a violation of the deed restrictions that can be cured or partially cured by self-help (the association entering a Lot and remedying the violation, such as force-mow, debris removal, or other such action) is noted, the association's managing agent shall have the authority without further Board action, unless otherwise directed on a case-by-case basis by the Board, to pursue the self-help remedy as provided in the governing documents of the Association. Such remedy shall be pursued only after 24-hour written notice to the owner, per Declaration §6.04(E). All associated costs shall be the responsibility of the owner and collectible in the same manner as Assessments, including lien rights, per Declaration §6.04.

9. **Owners as Responsible Party.** If a family member, guest, tenant or invitee of an owner damages Association property or commits a violation of the Association's governing documents, the related enforcement action shall be taken against the owner, with all related damage assessments, fines, legal fees, and other charges levied against that owner and the related lot.

After recording, please return to:

Nieman & Heyer, L.L.P.
Attorneys At Law
Westgate Building, Suite 313
1122 Colorado Street
Austin, Texas 78701

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Dana Debeauvoir

DANA DEBEAUVOIR, COUNTY CLERK
TRAVIS COUNTY, TEXAS

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