

### **What is the procedure for fining the builders?**

All builders are subject to the same covenant and fine policy as homeowners. If the lot has a visible property address a covenant enforcement letter is issued following the covenant enforcement policy.

Historically the District has not processed letters to lots *under development or vacant* that are owned by builders for covenant violations. Letters are mailed to a corporate offices/ mailing address indicated on the County records for the property owner, and in our experience the issues identified in the violation letter are not addressed and costs the District additional expense without providing a timely resolution. The District's management team has done and continues to note undeveloped lots maintenance issues during monthly inspections and reaches out to the local sales teams and builder personnel on site to correct the issues. Additionally, the District's management team communicates builder covenant violations and/or lack of responses and timely resolution to the developer to also address with their partners.

### **Who is responsible for fixing the builder issues?**

The builder/owner of the lot is responsible for fixing the issues on all lots owned. It is the responsibility of the Declarant (Barefoot LLC) and the Metropolitan District to encourage beneficial partnerships and enforce compliance.

All builders are responsible for following the Covenant Codes & Restrictions (CC&R) that are recorded on all residential lots within the community, and train sales team members to provide accurate information regarding the community that they are selling homes within.

If the builder issue is related to a public/common area that has not been accepted by the District it is the developer's responsibility to address.

### **Who do you contact for the builder issues?**

To report a covenant violation on any lot within Barefoot Lakes – contact the District's management team at [updates@svlmd-barefootlakes.com](mailto:updates@svlmd-barefootlakes.com) or file a violation on the District's website (<https://www.svlmd-barefootlakes.com/contact-us/report-a-violation/>) The District's management team has collected contact information for local on-site sale staff and builder employees to address lot issues.

Street parking or equipment blocking driveways is enforced by the Town of Firestone, as they are the governmental entity that will own and maintain street way improvements. Snow removal and construction equipment impeding pedestrians foot traffic on sidewalks is also enforced by Town of Firestone. The District's management team relays these violations to the Town during District inspections and when a complaint is submitted to the District. Please see Memorandum Regarding District Regulation of Street Parking. Attach for reference legal memo re: street parking/ Josh confirming with TOF.

### **What is the acceptable timeframe for responses from management and the builders?**

All covenant violations are provided 30 days to remedy before further enforcement to cure is taken by the District. The District has implemented a 48-hour response time. Emails and voicemails are

responded to on Monday, Wednesday, and Friday. The developer provides responses to the District within 5 business days for any area that is under the developer's maintenance program.

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## MEMORANDUM

**TO:** The Board of Directors for St. Vrain Lakes Metropolitan District No. 1

**FROM:** Blair M. Dickhoner, Esq. and Eve M.G. Velasco, Esq.

**DATE:** May 5, 2020

**RE:** District Regulation of Street Parking

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It has been requested that we provide background information to the Board of Directors for St. Vrain Lakes Metropolitan District No. 1 (the “District”) on the current parking rules and regulations enforced by the District and discuss the feasibility of expanding the District’s enforcement of parking rules to cover parking on the streets within the community, which have been dedicated to the Town of Firestone (the “Town”).

### Current Parking Rules in Governing Documents

The District currently enforces the parking rules found in Section 3.9 of the Amended and Restated Declaration of Covenant, Conditions and Restrictions for Barefoot Lakes, recorded on September 1, 2017 at Reception No. 4332320 in the real property records of Weld County, Colorado (the “Declaration”). The Declaration requires vehicles to be parked in garages, driveways or other places on the Lots that have been approved by the District’s Architectural Review Committee (Section 3.9.1). The Declaration also prohibits certain types of vehicles, such as trailers and commercial vehicles, from being parked or stored on the Lots (Section 3.9.3). The Declaration also provides that the District may tow or boot a vehicle that is blocking another vehicle or access to another Lot or creates a hazardous condition (Section 3.9.9).

### Feasibility of Regulating Parking on Dedicated Streets

The District’s Manager has received numerous complaints from residents concerning commercial vehicles and trailers parked on the dedicated streets within the community. The Declaration does not prohibit parking such vehicles on the streets, only on the Lots, and thus, the District does not issue covenant violation notices or fines for such vehicles parked on the streets. In order for the District to begin to regulate street parking, the Declaration would need to be amended to include street parking restrictions for the District to enforce.

Furthermore, District regulation of street parking is an unsettled area of law in Colorado and thus, the District's regulation of street parking could open the door to legal challenges. These challenges could arise because it is questionable whether the District has the authority to regulate parking on streets dedicated to the Town. Courts weigh a variety of factors including the timing of plat recording, contract theory and how the "community" is defined to evaluate the legal authority of a parking enforcement policy. Although there are legal arguments to support the District's authority to regulate street parking within the community, courts in Colorado are divided on these arguments and there is no state-wide legal precedent to guide courts in their review of legal challenges to District regulation of parking on dedicated streets. As such, if the District's authority to regulate street parking were challenged, it is not clear whether the District's arguments would prevail, thus exposing the District to uncertainty and potential legal liability.

On the practical enforcement side, regulation of street parking in addition to on-Lot parking would create additional work for the District Manager in inspecting, citing and pursuing violations of the restrictions. The District Manager can provide additional detail on the anticipated costs of such additional enforcement activity and the District should weigh this factor in any decision it makes.

### **Process for Amending Governing Documents**

If the District's Board of Directors determines that regulating parking on the dedicated streets within the community is in the District's best interests, and decides to rely on the legal arguments available to support the District's authority to regulate street parking, the Declaration can be amended to include street parking restrictions. Under the terms of the Declaration, an amendment would require approval of the owners of 67% of the Lots subject to the Declaration. The amendment approval process can be a time-consuming and costly process. Furthermore, even if the amendment to the Declaration is approved, the District would still face the risk that its enforcement would be challenged, as described above.

### **Conclusion**

The District does not and cannot currently regulate street parking. In order to be able to regulate street parking, the District would need to amend the Declaration with the approval of the owners of 67% of the Lots in the community. Even if the Declaration were to be amended, the District's authority to regulate street parking is subject to legal challenges and could expose the District to additional liability. Thus, while it is technically possible for the District to pursue the regulation of street parking, the District must weigh the risks, primarily legal and financial, against the benefits of a policy change before determining whether to pursue such action.