



PARKS / POOLS / PROGRAMS

Memorandum

To: Board of Directors
From: Jack Seward, Operations Specialist
Date: August 13, 2021
Subject: Report on Covenant Compliance and Enforcement

Dear Members of the Board,

I. Purpose and Intent

I write to you today to provide a report on Covenant Compliance and Enforcement. This report also includes information pertaining to specific maintenance matters undertaken as a result of compliance issues.

II. Background

The Amended and Restated Community Declaration (Community Declaration) establishes a number of “general restrictions” placed on owners here in the Central Park neighborhood. These are found mostly in Article 7 of the Community Declaration but are other sections are also the subject of inquires of the Master Community Association (MCA).

Pursuant to the Community Declaration the MCA has adopted the [Rules and Regulations for Community Maintenance](#) (Exhibit 1). These rules and regulations seek to clarify and quantify Sections 7.5, 7.6 and 7.9 of the Community Declaration. These sections are most often the cause for inquiry by the MCA.

On May 1, 2020, the MCA entered into the Second Amended and Restated Management Agreement with the Park Creek Metropolitan District (PCMD). The terms of this agreement delegate the operation of PCMD infrastructure, including public streets, to the MCA. Streets owned by the PCMD are public streets, they were built with public money and will one day be turned over to the city for operation, these streets should be considered under development. Because the streets are still under development they are viewed as private streets by the City and County of Denver (City) and therefore the city is unable to enforce the parking laws on these streets. Because of the MCAs agreement with the PCMD parking enforcement falls to us. Though our conversations with the PCMD they have directed that we enforce the city’s parking ordinance on the PCMD streets until they are turned over to the city. Therefore, the MCA had adopted the [Parking Rules and Regulations](#) which mirror city law (Exhibit 2).

As a matter of policy, the MCA does not conduct proactive or periodic inspection of properties, the only time the MCA will become involved in a potential violation is when we receive a complaint from a resident or member of the public. At that point we investigate. I have been appointed the Compliance Coordinator for the MCA and in policy that directs the Compliance Coordinator to take an action that individual is me.

III. Covenant Violations

Violation of the Rules and Regulations for Community Maintenance are considered covenant violations. This because these rules and regulations are an extension of Sections 7.5, 7.6 and 7.9 of the Community Declaration. All the cases we open related to these types of violation come to in the form of a complaint. Once a complaint is received, I then inspect the property and photograph the condition. If a violation is observed during my inspection the offending property is issued a notice of violation. This notice provides the property owner ten (10) days to remedy the identified violation. After the ten (10) days the property is reinspected. If the violation has been cured the matter is closed and the property receives a notice of compliance. If the violation is not corrected the MCA declares the property a nuisance under Section 11.1 of the Community Declaration. Once the property is declared a nuisance the MCA assess a fine consistent with our fine schedule. We provide the property another ten (10) days to remedy the violation then we issue another fine. We repeat this process until the property is either brought into compliance or the fine amount reaches \$500. At that point the property is referred to the association's attorney for collection. At any point during this process the property may request a hearing before the Compliance Committee to dispute the violation, where the MCA bears the burden of proving a violation exists.

Year to date the MCA has opened 41 covenant violation cases. 26 cases have been resolved to the satisfaction of the MCA. Of the 41 cases about 50% have required a fine. In only one case have we collected a fine from a property. In the other cases, the property has either cured the violation and the fine has been vacated or the case is still pending. Last year in 2020 we opened 56 cases, all but two of those cases were resolved. The two outstanding cases have both been turned over to the association's attorney for collection. In addition to the property still being nuisance the overdue fines are in the amount of \$2,000 or more including late fees.

In any case our objective is to seek voluntary compliance from an offending property. A common occurrence this year has been the presence of dead trees. The rules and regulations require that any tree on a property must be alive and in good health. Dead trees must be removed. There is no requirement that a tree that is removed is replaced. Because of the sheer number of dead trees that we have found in the neighborhood this year we have taken the additional step of issuing a dead tree notice before opening a violation case. Year to date we have issued 43 dead tree notices; I would gage that about 80% of those notices resulted in compliance. Most cases involve dead grass, other dead landscaping, or dead trees.

Another area that takes considerable staff time relates to the storage of trash collection bins and trash in the alley. The rules and regulations prohibit the storage of trash or rubbish in the alley except for the night before extra trash pickup. But there is no prohibition on the storage of trash collection bins in the alley. While we recommend the bins be stored behind a fence or in a garage, this is to prevent wildlife from getting into them. A trash collection bin may be stored wherever it does not obstruct the free movement of traffic though the alley.

Another topic of recent conversation relates to obstruction of the “common element”. Section 7.9 of the Community Declaration prohibits the obstruction of the “common element” without the written consent of the MCA. The “common element” is that real property that is cared for by the MCA. Examples being the alleys, parks, and open space. The alley is the concrete surface to the rear of the residence and an additional three feet on each side of the concrete. The “common element” does not include the front of the home or the sidewalk, street, and tree lawn, this area is right-of-way. Right-of-way is regulated by the city. The rules and regulations do require the maintenance of the right-of-way by the abutting owner, this is consistent with city code which makes the same requirement. A common question we receive is where a basketball hoop or other sports apparatus can be installed? The response to that question is, as far as the MCA is concerned, not within three feet of an alley. The city has an encumbrance ordinance which I have seen used to relocate a basketball hoop to private property, but this tends to only occur when said item is placed in the street. In any case an item or article placed in the tree lawn or street is not placed in a “common element” but instead the right-of-way and the MCA has no regulation regarding this use.

Another item that has been the topic of conversation with the association’s attorney is the exterior color of a residence. Our counsel has opined that the Community Declaration lacks the authority for the MCA to in any way shape or form regulate the exterior color of someone’s home, this is specifically listed as an improvement that the MCA cannot require design review for (Exhibit 3).

IV. Parking Violations

As I wrote about in section ii above the MCA operates the infrastructure owned by the PCMD. This includes public streets that are still under development and therefore the city has determined that they still qualify as private streets. Year to date the MCA has seen an increase in complaints related to parking that fall on PCMD roads. Since June we have received 43 written parking complaints through our online report a complaint portal, even more have come to us over the phone. While I am unable to provide a year over year comparison in data, I can say with certainty that we have received more parking complaints this year than any year before.

It is important to note that the city has at its disposal law enforcement agencies that are equipped with resources to investigate parking violations. We are a non-profit organization, not the government and therefore our resources are significantly decreased. Our processes for addressing a parking violation are time consuming and cumbersome. We cannot look up the ownership of a vehicle all we can do is put a notice on the windshield and send a letter to the property it is parked in front of. This takes considerable staff time and there are days where tracking down vehicles is all we do.

The largest increase in parking violations we have observed this year relates to recreational vehicles, either oversized motor homes or automobile trailers. It is unlawful to park a vehicle that exceeds 22 feet in length, or a trailer not attached to a licensed vehicle for any amount of time on the public right-of-way. And all vehicles must move at least 100 feet every 72 hours. Since June, which is when we started collecting this data, we have issued notices to 54 vehicles that we classify as a recreational vehicle either motor home or trailer. This mostly in the

northern parts of the neighborhood. I have attached photographs of what we consider to be a motor home (Exhibit 3) and an automobile trailer (Exhibit 4). I've also dealt with three boat trailers. Residents are generally pretty unhappy when we notice them that they cannot park their camper in front of their house. One went so far as accuse us of masterminding a grand conspiracy to tow all the campers off the street. I will remind everyone that no one is driving around looking for campers but when someone complains the vehicle will get a visit from me.

As for process, when we identify a vehicle that is in violation of the rules and regulations, we affix a parking violation notice to the offending vehicle (Exhibit 5). This notice outlines the violation provides the rules and regulations and seeks voluntary compliance. There is no fine associated with this notice. If we return and the vehicle is still in violation of the rules and regulations, we have the ability to issue a fine, said fine is issued to the property that is adjacent to where the vehicle is parked since we cannot fine the vehicle itself. If the property owner where to contest the fine because they do not own the vehicle then we would tow the vehicle.

We try not to make a habit of towing cars; we are not in the car towing business. Year to date we have had two vehicles towed after determining they were both abandoned. Our process with an abandoned vehicle would start with a complaint, we then issue a parking violation notice, 90% of the time we then get a phone call saying the car is not abandoned and we close the matter. If we do not hear from the owner, then about a week later we will place a sticker on the driver's side window of the vehicle. This is followed by a letter to the adjacent property to determine if they own the vehicle. You can park a vehicle you own in front of your home. If there is no response to the letter or the property owner tells us the vehicle is not theirs, we return and place a final notice sticker on the driver's side window. If the vehicle remains unmoved after about a week, we will order the vehicle towed. Once towed a vehicle is impounded by our contractor Extreme Towing. Year to date we have issued 23 abandoned vehicle notices and again only two vehicles have been towed.

We have issued 18 oversized vehicle notices, mostly to semi-trucks that are parked in residential areas. The streets surrounding Runway 35 are a constant location where semi-trucks like to park. We also see a lot of semi-trucks parked in the vicinity of the Sysco warehouse. Usually, it is just the trailer not the cab. My theory is truckers drop their trailers in the neighborhood to avoid having to pay a storage fee.

Parking complaints in the alley are rare, year to date we have only received six. In two cases we are looking to install No Parking signs in the alley to reduce the parking. We just recently received the signs and are now waiting for signposts. Of the six complaints four resulted in violation notices.

V. Homeless Encampments

As homelessness concerns grow across the city and region the MCA has not been immune from these issues. In the past the MCA has become aware of an involved in maybe one or two urban camps a year. Issues that generally can be addressed by simple phone call to the city. In the past year due in large part to an exponential increase in urban camping the MCA has become inundated with issues relating to homelessness in the neighborhood. These are incredibly complex issues and require excessive staff time.

A homeless encampment presents a couple of unique challenges. The first is if the encampment is located on property managed by the MCA, then the property is private, and the city is of little help in addressing these situations because they have their own property to deal with. We must balance the needs of the individual experiencing homelessness with the public health and safety issues related to the urban camp. This is the hard part because the MCA is not equipped to be social workers but more and more this is a role we are being forced to play.

As for process, when the MCA becomes aware of urban camping, be that a complaint or staff observation, those concerns are routed to me. I then track down the location of the encampment and determine property ownership, if it is city property I refer the matter to the Denver Park Rangers, if it is MCA property, I leave a notice on the tent or structure indicating it is private land and camping is prohibited. This notice provides 24 hours to vacate the property. Never has a camp vacated in 24 hours. I will attempt to make contact with the occupant of the camp and if this occurs, I will have a conversation with the individual, provide them a list of resources, that I compiled, and then ask them to vacate the property. Sometimes this is successful other times it is not. When my conversation is unsuccessful, I make a call to the Denver Police Department (DPD) District 5 Homeless Outreach Officer. This officer and the districts outreach case worker will then make their own contact with the individual and eventually ensure they have vacated the property.

The reason we cannot allow an encampment to exist on our property is the sanitary, fire and other safety concerns that go with them. Beneath the pile of personal belongings are soiled clothing, food, needles, fleas, and caustic or flammable substances like stove fuel. In tandem, you have diseases like MRSA, Hepatitis A, B, C, E. coli, and HIV (Exhibit 6). These hazards must be abated, and the area has to be cleaned and restored. Many of our parks act as storm water retention sites and the existence of these hazards threatens the water quality in the community. There is also considerable natural resource damage.

As I noted above this is becoming more and more common place. Since this time last year, we have identified 26 camps. To address these issues, we have contracted [Environmental Hazmat Services](#), a local company that specializes in this type of work. Any time biohazardous materials exist (blood, vomit, chemicals, bodily fluids, and human excrement), property owners must follow strict OSHA standards for thorough on how to deal with, clean, and properly dispose of such materials.

In total we have removed 122 bags of material from these sites, this is in addition to the items like mattresses that cannot fit in a bag. We estimate we have removed 4,876 pounds of waste including approximately 313 hypodermic needles. This has cost the MCA \$16,348.89. This figure does not include the cost of MCA staff time.

On more than one occasion our investigation into a homeless encampment has resulted in the identification of a transient sex offender that had taken up residence in the vicinity of our schools. We approach these situations concerned about the safety of our entire community.

VI. Conclusion

I will end by noting that compliance related issues in the community are nothing new, it is my full-time job to deal with these issues. I will say that it seems like there are more and more issues, but this could also be because the community is growing. Folks are also a lot more confrontational but that seems to be the way of the world these days.

If you ever have a concern, please feel free to give the office a call and ask for me or send me an email. My email is jseward@mca80238.org. You can also submit a complaint online through our website. Even if you just have questions about what is or is not a complaint. I am more than happy to answer your questions and see if we can get any concern solved. Please do not hesitate to reach out.

Sincerely,

A handwritten signature in blue ink that reads "Jack Seward". The signature is written in a cursive style with a long horizontal stroke at the end.

Jack Seward
Operations Specialist