

## PLQ Memorandum

### Parking Rules and Regulations

Dear Parc La Quinta Homeowners,

We have a serious issue with our Board of Directors taking action where none is needed and failing to take action when needed.

This email examines the "New" parking policy that was implemented by our Board to address the burden of the 6 parking violations that they have dealt with over the last 2-years; that's just 3 violations per year. Also included is a method to communicate with the Board when it does not want to hear from you and obtain a response.

Importantly, we question the validity of the Board's authority and rationale to impose the new parking rules and ask that you might consider what our Board has imposed, its business judgement and thought process.

#### **1) Background:**

When you purchased your home, you could park vehicles on the street as needed for up to 24 hours per the 2008 CC&Rs recorded on your property. All of us at one time or another have done so without limits or incident, until the Board enacted unwritten rules for parking which now does not allow any homeowner parking on the street overnight and is enforced by a paid parking patrol.

Today, if a vehicle is left on the street overnight it may receive a "Notice of Violation" that warns that the vehicle will be towed if found in violation again and cites two sections of the California Vehicle Code (CVC) as well as a vague reference to our Association's Parking Rules and Regulations.

Below, are relevant sections of the CVC codes cited and the HOA rules alluded to that show the Notice, any fines imposed and towing are not valid and the unwritten change in the HOA Rules are not enforceable and even worse is that if a vehicle is towed the HOA (all of us) is liable for double the cost of towing to the vehicle owner.

#### **2) The California Vehicle Codes:**

**CVC 22658.** (a) The owner or person in lawful possession of private property, including an association of a common interest development, as defined in Sections 4080 and 4100 or Sections 6528 and 6534 of the Civil Code, may cause the removal of a vehicle parked on the property to a storage facility that meets the requirements of subdivision (n) under any of the following circumstances:

(1) There is displayed, in plain view at all entrances to the property, a sign not less than 17 inches by 22 inches in size, with lettering not less than one inch in height, prohibiting public parking and indicating that vehicles will be removed at the owner's expense, and containing the telephone

number of the local traffic law enforcement agency and the name and telephone number of each towing company that is a party to a written general towing authorization agreement with the owner or person in lawful possession of the property. The sign may also indicate that a citation may also be issued for the violation. **There is no signage! (nor do we want any)**

(2) The vehicle has been issued a notice of parking violation, and 96 hours have elapsed since the issuance of that notice. **Not considered by the HOA Rules. State regulations overrule the Association rules.**

(e) (1) An owner or person in lawful possession of private property, or an association of a common interest development, causing the removal of a vehicle parked on that property is liable for double the storage or towing charges whenever there has been a failure to comply with paragraph (1), (2), **Was this considered by the Board & Management?**

#### **CVC 22953 APPLIES TO THE HOA RULES, BUT NOT FOR THE OVERNIGHT PARKING AT ISSUE**

(a) An owner or person in lawful possession of private property that is held open to the public, or a discernible portion thereof, for parking of vehicles at no fee, or an employee or agent thereof, shall not tow or remove, or cause the towing or removal, of a vehicle within one hour of the vehicle being parked.

(b) Notwithstanding subdivision (a), a vehicle may be removed immediately after being illegally parked within 15 feet of a fire hydrant, in a fire lane, in a manner that interferes with an entrance to, or an exit from, the private property, or in a parking space or stall legally designated for disabled persons.

(c) Subdivision (a) does not apply to property designated for parking at residential property, or to property designated for parking at a hotel or motel where the parking stalls or spaces are clearly marked for a specific room.

(d) It is the intent of the Legislature in the adoption of subdivision (a) to avoid causing the unnecessary stranding of motorists and placing them in dangerous situations, when traffic citations and other civil remedies are available, thereby promoting the safety of the general public.

(e) A person who violates subdivision (a) is civilly liable to the owner of the vehicle or his or her agent for two times the amount of the towing and storage charges.

#### **Now to our PLQ CC&Rs:**

**Section 5.8.1** Only “conventional passenger vehicles” are permitted to park within the Property. Except for temporary parking as defined in this Section, no commercial vehicles shall be permitted to remain within any area of the Property, including, without limitation, streets, driveways, Common Area, or the Residential Lot side and rear yards unless parked within the enclosed garage of the Residential Lot Owner. The Association shall have the power, but not the obligation, to have any vehicle which is parked in violation of the Association's Governing Documents towed from the Property at the expense of the owner of such vehicle. Nothing

contained in this Section 5.8 shall preclude the parking of an operable vehicle within the enclosed garage of a Residential Lot.

**Section 5.8.4** Except as otherwise provided in this Section 5.8, in order to maintain the aesthetic environment of the Property, no conventional passenger vehicle, or any other motorized vehicle may be parked upon any street within the Property for a period of over twenty-four (24) consecutive hours. **This is NOT what is being enforced.**

Vehicles of all Owners, their guests and invitees should be kept in garages and residential driveways of the Residential Lot; provided, however, this Section shall not be construed to permit the parking in the above-described areas of any vehicle whose parking in the Property is otherwise prohibited or the parking of any inoperable vehicle.

**Section 5.8.10** Temporary parking "shall" mean parking for a short period of time for the purposes of furnishing services to an Owner or for loading and unloading purposes related to the Owner(s)' Residential Lot. Temporary parking shall only be permitted during normal business and construction hours as may be identified by the Association from time to time. There shall be no temporary parking overnight within any portion of the Property.

**Note:** In legal, contract, and technical drafting, "shall" indicates a mandatory obligation (equivalent to "must" or "has a duty to"). Conversely, "should" signifies a recommendation, best practice, or advisory suggestion that is not binding. "Shall" is used to define strict requirements, while "should" indicates a preferred, but optional, action.

Last, but not least, is that the parking patrol operated and issued Notices for three months without a signed contract and when the contract was signed it was backdated. The backdating could be easily viewed as illegal and fraudulent since there was parking fines assessed and the backdating used to legitimize the Notices and fines.

It appears that the Board operates in a vacuum, without regard to following proper procedures and that Professional Property Management is not helping the Board with professional guidance.

Anyone who has an issue with the parking, Notices, or fines, and any other matter, should contact the Board in writing and set up an Internal Dispute Resolution (IDR) meeting which is cost free, does not require an attorney and is designed for open communication with the HOA Board.

The Board has made it clear that they refuse to meet with homeowners to discuss issues so this is a way to circumvent this nonsensical refusal to communicate and have questions answered.

Below, is the information about the IDR requirements and process.

#### **Civil Code § 5910. Minimum Requirements for Internal Dispute Resolution**

A fair, reasonable, and expeditious dispute resolution procedure shall, at a minimum, satisfy all of the following requirements:

(a) The procedure may be invoked by either party to the dispute. A request invoking the procedure shall be in writing.

(b) The procedure shall provide for prompt deadlines. The procedure shall state the maximum time for the association to act on a request invoking the procedure.

(c) If the procedure is invoked by a member, the association shall participate in the procedure.

(d) If the procedure is invoked by the association, the member may elect not to participate in the procedure. If the member participates but the dispute is resolved other than by agreement of the member, the member shall have a right of appeal to the board.

(e) A written resolution, signed by both parties, of a dispute pursuant to the procedure that is not in conflict with the law or the governing documents binds the association and is judicially enforceable. A written agreement, signed by both parties, reached pursuant to the procedure that is not in conflict with the law or the governing documents binds the parties and is judicially enforceable.

(f) The procedure shall provide a means by which the member and the association may explain their positions. The member and association may be assisted by an attorney or another person in explaining their positions at their own cost.

(g) A member of the association shall not be charged a fee to participate in the process.

#### **Civil Code § 5915. Default Meet and Confer Procedure**

(a) This section applies to an association that does not otherwise provide a fair, reasonable, and expeditious dispute resolution procedure. The procedure provided in this section is fair, reasonable, and expeditious within the meaning of this article.

(b) Either party to a dispute within the scope of this article may invoke the following procedure:

(1) The party may request the other party to meet and confer in an effort to resolve the dispute. The request shall be in writing.

(2) A member of an association may refuse a request to meet and confer. The association shall not refuse a request to meet and confer.

(3) The board shall designate a director to meet and confer.

(4) The parties shall meet promptly at a mutually convenient time and place, explain their positions to each other, and confer in [good faith](#) in an effort to resolve the dispute. The parties may be assisted by an attorney or another person at their own cost when conferring.

(5) A resolution of the dispute agreed to by the parties shall be memorialized in writing and signed by the parties, including the board designee on behalf of the association.

(c) A written agreement reached under this section binds the parties and is judicially enforceable if it is signed by both parties and both of the following conditions are satisfied:

(1) The agreement is not in conflict with law or the governing documents of the common interest development or association.

(2) The agreement is either consistent with the authority granted by the board to its designee or the agreement is ratified by the board.

(d) A member shall not be charged a fee to participate in the process.

Sorry for all the detail, but we hope this helps any affected homeowners and provides some useful information for all. If help is needed preparing your letter to the Board just email your request to [info@plqhomeowners.com](mailto:info@plqhomeowners.com).

In closing, we love it here, but we want our Board to understand the implications of its actions without sufficient forethought and moreover, to focus upon regulations and improvements that will enhance our community, increase our home values and improve the development's reputation in the City of La Quinta.

Thank you.

K.C. Wilson | Parc La Quinta homeowner