

First Reading of Draft 3: Proposed amendment to LMC Regulation V, the Appeals section. Approved by CRC at their 1/16/12 meeting. First submitted to the board 9/22/11; approved by Operations, ACC and GBC with one change; submitted to the board 12/22/11 as Draft 2; referred to CRC and Workshop on 1/13/12; revised by CRC 1/16/12; final revision of Draft 3 submitted to the Board on 1/26/12.

To: LMC Board of Trustees
From: Covenants and Regulations Committee
Date: January 26, 2012
Subject: **AMENDMENT TO LMC REGULATION V
APPEALS AND ENFORCEMENT**

Rationale: The following amendment to Regulation V, Articles I and II is submitted to the Board of Trustees by the Covenants and Regulations Committee (CRC) as requested. The revision was undertaken to aid members and future boards by providing a clear and concise process for Appeals.

In that the term “enforcement” has been used ambiguously, CRC suggests that the Architectural Control Committee (ACC), Greenbelt Committee (GBC) and Operations be referred to as “Regulatory Committees”. Enforcement is more properly applied when members refuse to come into compliance as determined by the committee and are referred to the board for enforcement procedures. This revision assumes that conforming language concerning non-compliance will be developed to appear in each of the individual committee sections of the Regulations.

Note: Due to substantive changes and reorganization of sections in proposed Regulation V, Appeals, no line-in/line-out version will be prepared. Readers are asked to compare this version side-by-side with the current version in the Regulations.

REGULATION V

APPEALS AND ENFORCEMENT

ARTICLE I

Three standing committees of the LMC, known as Regulatory Committees, are as follows:

1. The LMC Operations Committee: The Operations Committee monitors compliance with Regulation I concerning land use, and Regulation IV concerning the use of the Beach Club and other facilities owned by LMC.
2. The Architectural Control Committee: The Architectural Control Committee (ACC) regulates provisions in Regulation II pertaining to land improvements.
3. The Greenbelt Committee: The Greenbelt Committee (GBC) carries out the provisions of Regulation III pertaining to designated reserve areas, referred to as greenbelt.

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ARTICLE II

APPEALS

1. Appeals of Affected Parties.
 - a. A member who identifies him/herself as a party adversely affected by a decision of a committee and having exhausted efforts for corrective action through the appropriate committee may appeal that decision to the LMC Board of Trustees.
 - b. A member who identifies him/herself as adversely affected by a perceived violation of the LMC Regulations and having exhausted efforts for corrective action through the appropriate committee may appeal to the LMC Board of Trustees.
2. Notice of Intent to Appeal. The notice of intent to appeal shall be sent to the LMC Board of Trustees by one of the following means:
 - a. The appeal shall be signed and filed in writing and delivered in person or deposited in the U.S. Mail addressed to the LMC Board of Trustees in care of the General Manager at the Beach Club, P. O. Box 65060, Port Ludlow WA 98365, within 30 calendar days after the postmarked date of the committee determination letter.
 - b. Facsimile or electronic transmission of the signed original document shall be the same as delivery of an original.
3. Justification for the Appeal. The notice of intent to appeal must include all applicable items listed below:
 - a. Description of an arbitrary or subjective decision made by the committee.
 - b. Description of the perceived violation, condition or decision.
 - c. Description of the negative impact of the perceived violation, condition or decision on the appellant.
 - d. Steps taken to reach a reasonable resolution between the parties who disagree.

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4. Board Action upon Notice of Intent to Appeal.

- a. After its receipt, the notice of intent to appeal shall be read into the minutes at the next regularly scheduled meeting of the LMC Board of Trustees.
- b. The LMC Board of Trustees may stay the committee decision until disposition of the requested appeal.
- c. The LMC Board of Trustees shall act upon the appeal within 45 calendar days after the appeal letter is read into the minutes at a regularly scheduled meeting of the board.

5. Scheduling the Appeal. If the board has decided that the appeal is warranted, the LMC General Manager in consultation with the board, the appellant and the appropriate committee chair shall arrange a mutually agreeable time for the appeal hearing. A letter shall be sent to the appellant by First Class U.S. Mail and a duplicate sent Certified, Return Receipt requested confirming the date, time and place of the hearing. A copy of the letter shall be sent by First Class U.S. Mail to the committee chair and to all owners who were advised of the committee decision.

6. Preparing for the Appeal.

- a. The parties involved shall provide the LMC Board of Trustees with supporting documents, photographs, and any other factual materials related to the appeal that will assist the board in making a determination.
- b. Documentation on which the committee decision was based and the appellant's justification for the appeal shall be the only items considered during the appeal hearing. If any significant new information is presented, the appellant shall be referred back to the ruling committee.
- c. For the trustees to have reasonable time to prepare for the appeal, these documents shall be delivered to the Beach Club office at least five (5) business days prior to the day of the hearing.

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7. Procedural Rules at the Appeal Hearing.

- a. At the beginning of the appeal hearing, the presiding officer shall set procedural rules.
- b. The appeal hearing is divided into three parts:
 - i. an open meeting during which the appellant and the committee chair or committee representative present their cases and documentation;
 - ii. a closed executive session during which the trustees deliberate; and
 - iii. an open meeting in which the trustees vote and the decision is announced.
- c. Board members having a conflict of interest, bias or prejudice should recuse themselves from both the deliberation and decision of the board.
- d. A board member who participated in the committee decision should not participate as a trustee in the appeal hearing.

8. Time Extension. If all parties agree, the time limit may be extended.

9. The Ruling.

- a. The final decision of the LMC Board of Trustees to affirm, reverse or modify the committee's decision shall be in writing.
- b. A copy of the decision with rationale and/or supporting documentation shall be delivered in person to the appellant and the committee chair or deposited in the U.S. Mail, sent Certified, Return Receipt Requested, addressed to the appellant's address shown on the record of the LMC. A notice of the decision shall be posted on the LMC website.
- c. If the board directs reconsideration, reversal or modification of the committee's decision, the committee shall meet promptly and take such action as is necessary to comply fully.

ARTICLE III

ENFORCEMENT

(For possible reconsideration in 2012)

Currently members are restricted from use of LMC amenities; Legal Action