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Response to Violation Notice — Vehicle Parked Overnight on the Street; Request for Records and Hearing

Dear Members of the Board:

I am writing in response to the violation notice I received from Oak Hills HOA, which states that the Association observed my vehicle parked overnight on the street, and that the vehicle was present between 11:30 p.m. and 6:15 a.m. I appreciate the Board's attention to community standards, and I am writing to identify several points in the notice that I would ask the Board to address before any fine is assessed or collected.

First, the notice does not mention my right to request a hearing. Tex. Prop. Code § 209.006(b)(2)(B) provides that the notice must inform the owner that the owner "may request a hearing under Section 209.007 on or before the 30th day after the date the notice was mailed to the owner." Under § 209.007(a), "[e]xcept as provided by Subsection (d) and only if the owner is entitled to an opportunity to cure the violation, the owner has the right to submit a written request for a hearing to discuss and verify facts and resolve the matter in issue before the board" — the hearing is before the board itself, not a committee. Under § 209.007(c), "[t]he association shall hold a hearing under this section not later than the 30th day after the date the board receives the owner's request for a hearing and shall notify the owner of the date, time, and place of the hearing not later than the 10th day before the date of the hearing. The board or the owner may request a postponement, and, if requested, a postponement shall be granted for a period of not more than 10 days." I would note that the former § 209.007(b), which permitted the hearing to be held before a board-appointed committee, was repealed by Acts 2021, 87th Leg., R.S., Ch. 951 (S.B. 1588), Sec. 22(2), eff. September 1, 2021. The statute grants a hearing right, and the notice does not mention it.

Second, the cure period stated in the notice does not match the period set out in the governing documents. The CC&Rs provide at p. 3: "The Association shall give the Owner written notice and fourteen (14) days to cure before any fine is levied." The notice gives 10 days, but the CC&Rs require at least 14 days. I ask the Board to confirm the cure period that applies to this notice and to correct the period stated if appropriate.

Third, the notice does not describe the hearing procedure contained in the governing documents. The CC&Rs provide at p. 3: "An Owner may request a hearing before the Board within thirty (30) days of notice." The CC&Rs provide the hearing procedure — "Owner may request a hearing before the Board within 30 days of notice, with a reasonable opportunity to be heard" — but the notice does not mention it.

Fourth, the fine amount stated in the notice does not appear to correspond to an adopted schedule. The CC&Rs provide at p. 3: "Any fine must be reasonable and consistent with an adopted schedule." The notice imposes a \$100 fine, which exceeds the largest CC&R fine of \$50. I ask the Board to identify the adopted schedule relied upon and the line item that supports the amount assessed.

In connection with the above, and consistent with Tex. Prop. Code ch. 209, I request copies of the following records relevant to this notice: the currently adopted fine schedule and the minutes or resolution adopting it; the Association's written policy or procedures for notices, cure periods, and hearings; the inspection or observation records, photographs, logs, and any complaint relating to the vehicle observation described in the notice, including the date and time of observation; the mailing record for the notice; the provision of the governing documents and any parking rule relied upon; and my account ledger showing any charges assessed in connection with this matter.

I also request a hearing before the Board under Tex. Prop. Code § 209.007 and under the hearing procedure set out at p. 3 of the CC&Rs. Please notify me of the date, time, and place of the hearing in accordance with § 209.007(c).

Finally, in light of the points above, I ask that the Board withdraw the notice, or alternatively provide written clarification of the applicable cure period, the hearing procedure, and the basis for the fine amount, and reissue a corrected notice.

Thank you for your time and consideration. I can be reached at the contact information on file and am glad to provide any additional information the Board may need.

Respectfully,

Homeowner

Sent by certified mail - keep your receipt.