

CANDLELIGHT FOREST WEST MAINTENANCE FUND, INC.

TPC 209 HEARINGS PROCEDURE

STATE OF TEXAS §
COUNTY OF HARRIS § KNOW ALL PERSONS BY THESE PRESENTS:
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WHEREAS various sections of chapter 209 of the Texas Property Code ("Code" or "TPC") provides opportunities for property owners to have a hearing with the leaders of their property owners' association to discuss and verify facts and resolve matters in issue; and

WHEREAS Candlelight Forest West Maintenance Fund, Inc. ("Association") is the property owners' association charged with administering and enforcing those certain covenants, conditions and restrictions contained in the recorded Declarations for the various sections of the subdivision (referred to collectively as "Declarations"); and

WHEREAS, the Board of Directors ("Board") of the Association desires to create clear guidelines in compliance with the Code to assist property owners in understanding the steps to initiate a hearing and hearing process that will follow;

NOW, THEREFORE, the Board has duly adopted this TPC 209 Hearings Procedure:

- (1) **Right to Hearing.** A property owner is entitled to a hearing under the Code:
 - a. after disapproval by the Association's architectural review authority ("ARA") of an owner's application for the construction of improvements on their property;
 - b. prior to the Association suspending an owner's right to use a common area;
 - c. prior to the Association filing a lawsuit against an owner other than a suit to collect a regular or special assessment or foreclose under an Association's lien;
 - d. prior to the Association charging an owner for property damage; or
 - e. prior to the Association levying a fine for a violation of terms of any dedicatory instrument of the Association.

Hearings under this section do not apply if the Association files a lawsuit seeking a temporary restraining order or temporary injunctive relief or files a lawsuit that includes foreclosure as a cause of action.

Hearings under this section do not apply to a temporary suspension of a person's right to use common areas if the temporary suspension is the result of a violation that occurred in a common area and involved a significant and immediate risk of harm to others in the subdivision. The temporary suspension is effective until the board makes a final determination on the suspension

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action after following the procedures prescribed by this section.

(2) **Notice for ARA Disapproval.** In the case of an "ARA" disapproval, written notice must be given to the owner by certified mail, hand delivery or electronic delivery. The notice must:

- a. describe the basis for the denial in reasonable detail and changes, if any, to the application or improvements required as a condition to approval; and
- b. inform the owner that the owner may request a hearing on or before the 30th day after the date the disapproval notice was mailed or delivered to the owner.

(3) **Notice Prior to Enforcement Action.** In all other cases in section 1 above, prior to such enforcement action, notice must be given to the owner by certified or verified mail describing the violation or property damage that is the basis for the enforcement action. Such notice must:

- a. provide a reasonable cure period with a specific date to cure the violation if the violation is of a curable nature and does not pose a threat to public health or safety;
- b. inform the owner that they may have special rights or relief under federal law including the Servicemembers Civil Relief Act (50 U.S.C. App. Section 501 et seq.), if the owner is serving on active military duty; and
- c. inform the owner that the owner may request a hearing on or before the 30th day after the notice was mailed to the owner;

If the owner has previously been given notice under his section within the last six (6) months and the opportunity to exercise any rights available under this section, no further notice is required before enforcement action may be taken.

For purposes of this section, a violation is considered a threat to public health or safety if the violation could materially affect the physical health or safety of an ordinary resident.

For purposes of this section, a violation is considered incurable if the violation has occurred but is not a continuous action or a condition capable of being remedied by affirmative action. For purposes of this subsection, the non-repetition of a one-time violation or other violation that is not ongoing is not considered an adequate remedy.

By way of example, the following acts are considered incurable:

- a. shooting fireworks;
- b. an act constituting a threat to health or safety;
- c. a noise violation that is not ongoing;
- d. damage to property owned or maintained by the association; and
- e. holding a garage sale or other event prohibited by a dedicatory instrument.

By way of example, the following acts are considered curable:

- a. a parking violation;
- b. a maintenance violation;
- c. the failure to construct improvements or modifications in accordance with approved plans and specifications; and
- d. an ongoing noise violation such as a barking dog.

(4) **Request a Hearing.** To request a hearing, an owner must make a written request which specifies the matter from section 1 above for which the hearing is requested. The request must include a description of the issues in dispute, the basis for dispute and the owner's desired outcome from the hearing. Such request must be mailed, hand delivered or electronically delivered to the Association's address on the most recently filed management certificate. Because the hearing steps begin upon receipt of such request by the Association, the owner should verify receipt by Association if no response is received within a reasonable timeframe.

(5) **Hearing Date.** Hearings must be held not later than the 30th day after the date the Association receives the owner's request for a hearing. However, the Association or the owner may request a postponement which shall be granted for a period of not more than ten (10) days. Additional postponements may be granted by agreement of both parties.

Not later than the 10th day before the date of the hearing, the Association must notify the owner in writing of the date, time, and place of the hearing. In addition, not later than the 10th day before the date of the hearing, the Association must provide the owner a packet containing all documents, photographs and communications relating to the matter that the Association intends to introduce at the hearing. Such notice and packet may be provided by mail, hand delivery or electronic delivery.

As provided under Code section 209.051, all hearings will be held with the Board at a duly called meeting where notice is provided to the members. All hearings will be held in closed executive session.

(6) **Attendance at Hearing.** On behalf of the Association, the Board, their designated representative and, if related to an ARA disapproval and if invited by the Board, a representative of the ARA may attend the hearing. On behalf of the owner, the owner and the owner's designated representative may attend the hearing.

If the owner desires to be represented by an attorney at the hearing, the owner must notify the Association in writing at least ten (10) days in advance so the Board may determine if it wishes the Association's attorney to be present. If attorneys are present, each party must pay their own legal fees related to their attorney's preparation, attendance and immediate follow-up to the hearing.

If the owner is not able to attend the hearing but will send a representative, the owner must inform the Association of the name of the person who has authority to be their designated representative at the hearing prior to the start of the Board meeting in which the hearing will be held.

If such advance notice is not possible then the designated representative may provide written evidence that they have authority to represent the owner at the hearing.

If the owner or their designated representative does not attend the hearing as scheduled, the Association will have satisfied its obligation under the Code to offer a hearing to the owner.

(7) **During the Hearing.** The Association may set a reasonable duration for the hearing giving adequate time to the topic at hand. During a hearing, a member of the Board or the Association's designated representative shall first present the Association's case against the owner. An owner or the owner's designated representative is entitled to present the owner's information and issues relevant to the appeal or dispute.

The Board may ask clarifying questions of the owner or their designated representative to better understand their position or request.

If the hearing is requested after an ARA denial, either party may make an audio recording of the hearing by announcing that an audio recording is being made. The recording device should be placed in a position such that all voices can be heard and recorded.

(8) **After the Hearing.** After the hearing is concluded, the owner and their designated representative will leave the hearing so the Board may continue their executive session to discuss and consider the information presented. If needed, the Board made take any action authorized under the Association's dedicatory instruments or the Code.

Normally within ten (10) days after the hearing, the Association will provide the owner with a written notice with their decision, if any, regarding the matter of the hearing.

This procedure is effective upon recordation in the Public Records of Harris County, and supersedes any TPC 209 Hearings Procedure which may have previously been in effect. Except as affected by Code chapter 209 and/or by this procedure, all other provisions contained in the Declarations or any other dedicatory instruments of the Association remain in full force and effect.

Approved and adopted by the Board on this 24th day of August 2021.

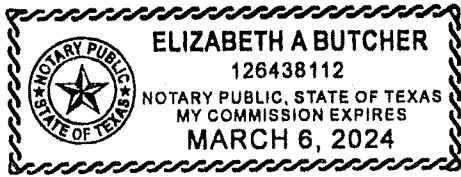
Candlelight Forest West Maintenance Fund, Inc.

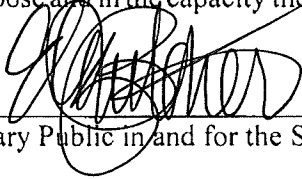
By: Dr. Jon Enloe
Dr. Jon Enloe, President

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BEFORE ME, the undersigned notary public, on this 24th day of August 2021 personally appeared Dr. Jon Enloe, President of Candlelight Forest West Maintenance Fund, Inc., known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purpose and in the capacity therein expressed.





Notary Public in and for the State of Texas

AFTER RECORDING RETURN TO:
BARTLEY & SPEARS, P.C.
2002 W Grand Parkway N, Ste. 150
Katy, Texas 77449

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Pages 6
08/25/2021 01:43 PM
e-Filed & e-Recorded in the
Official Public Records of
HARRIS COUNTY
TENESHIA HUDSPETH
COUNTY CLERK
Fees \$34.00

RECORDERS MEMORANDUM

This instrument was received and recorded electronically and any blackouts, additions or changes were present at the time the instrument was filed and recorded.

Any provision herein which restricts the sale, rental, or use of the described real property because of color or race is invalid and unenforceable under federal law.

THE STATE OF TEXAS
COUNTY OF HARRIS

I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stamped hereon by me; and was duly RECORDED in the Official Public Records of Real Property of Harris County, Texas.



Teneshia Hudspeth
COUNTY CLERK
HARRIS COUNTY, TEXAS

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