

U270055

531-12-2429

Restr.

RULES AND RESTRICTIONS
for
ANTENNA INSTALLATION, MAINTENANCE, AND USE
in
WESTWIND TOWNHOMES 3/10/00 300780002 U270055 *15.00*

INTRODUCTION

These rules are adopted by the Board of Directors of Westwind Townhomes Association, Inc. (the "Board") on the 26 day of JANUARY, 2000, which rules shall all supercede and replace all prior guidelines related to the installation of antennas and satellite dishes.

RECITALS

WHEREAS, Westwind Townhomes Association, Inc. (the "Association") has jurisdiction over all the property known as Westwind Townhomes (the "Property") as described in and restricted by those certain instruments respectively entitled "Declaration of Covenants, Conditions and Restrictions, Westwind Townhomes"; "Amendment to Declaration of Covenants, Conditions and Restrictions Westwind Townhomes" and "Articles of Annexation to Westwind Townhomes" respectively filed of record in the Official Public Records of Real Property of Harris County, Texas under County Clerk's File Nos. F883613, F973858, G851820 and H658212 (the "Restrictions"); and

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WHEREAS, the Federal Communications Commission ("FCC") adopted a rule effective October 14, 1996, and amended effective January 4th and 22nd and February 16, 1999, preempting certain association restrictions on the installation, maintenance, and use of direct broadcast satellite, television broadcast, and multipoint distribution service antennas ("Covered Antennas"); and

WHEREAS, Section 204.010(a) of the Texas Property Code (the "Code") empowers the Association, acting through its Board of Directors, to "regulate the use, maintenance, repair, replacement, modification and appearance" of the Property; and

WHEREAS, the Restrictions provide no improvements shall be erected or altered in Property until same has been approved by the Board of Directors of the Association; and

WHEREAS, Section 204.010(a)(18) of the Code provides the Board may adopt and modify architectural guidelines as the needs of the Property change; and

WHEREAS, the Board wishes to adopt reasonable restrictions governing installation, maintenance, and use of antennas in the best interests of the Property and consistent with the FCC OTARD rule.

NOW, THEREFORE, the Board adopts the following rules and restrictions (the "Rules") for the Property, which shall be binding upon all owners and residents and their grantees, lessees, tenants, occupants, successors, heirs, and assigns and which shall supersede any inconsistent provisions in the Restrictions.

I. DEFINITIONS

- 1.1. **Antenna:** any device used for the transmission and receipt of video or audio services, including direct broadcast satellite (DBS), television broadcast, and multipoint distribution service (MDS). A mast, cabling, supports, guy wires, conduits, wiring, fasteners, or other accessories necessary for the proper installation, maintenance, and use of a reception antenna shall be considered part of the antenna.
- 1.2. **Central Antenna System:** an antenna system installed by the Association to serve more than one resident simultaneously.
- 1.3. **Covered Antenna:** an Antenna covered by the FCC's Over the Air Reception Devices (OTARD) Rule.
- 1.4. **Common Property:** property owned by the Association.
- 1.5. **Individual Antenna:** antenna installed by one Resident for reception by that Resident.
- 1.6. **Individually Owned Property:** property defined in a recorded deed as being owned solely by the Resident.
- 1.7. **Mast:** structure to which an Antenna is attached that raises the Antenna height to enable the Antenna to receive acceptable-quality signals.
- 1.8. **Resident:** any person residing in the Property.
- 1.9. **Transmission-Only Antenna:** an Antenna that has limited transmission capability and is designed for the Resident to select or use video programming.

II. ANTENNA SIZE AND TYPE

Subject to criteria detailed elsewhere in these Rules, the following are Covered Antennas and may be installed. All other Antennas (including amateur or ham radio antennas) not covered by the FCC's OTARD Rule as amended must be placed inside the townhome or approved in writing by the Board as required by the Restrictions.

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- 2.1. Antennas designed to receive Direct Broadcast Satellite (DBS) service that are 39.4 inches (1 meter) or less in diameter.
- 2.2. Antennas designed to receive Multipoint Distribution Service (MDS) that are 39.4 inches (1 meter) or less in diameter.
- 2.3. Antennas designed to receive television broadcast signals.
- 2.4. Transmission Only Antennas that are necessary for the use of Covered Antennas.
- 2.5. Masts that are required for the installation of Covered Antennas, subject to Article VII of these Rules.

III. GENERAL RULES

- 3.1. Residents may install Covered Antennas according to the following rules, provided that these rules do not: unreasonably delay Covered Antenna installation, maintenance, or use; unreasonably increase the cost of Covered Antenna installation, maintenance, or use; or preclude reception of acceptable quality signals from Covered Antennas.

3.2. LOCATION

- 3.2.1. Covered Antennas shall be installed solely on Individually Owned Property.
- 3.2.2. Television broadcast Covered Antennas must be installed inside a townhome (e.g., inside an attic or atrium) whenever possible.
- 3.2.3. Covered Antennas shall not encroach upon any Common Property, any other Residents' Individually Owned Property, Common Property airspace, or the airspace of another Resident's Individually Owned Property.
- 3.2.4. If an acceptable quality signal cannot be received under Section 3.2.2 above, Covered Antennas shall be located in a place shielded from view from other townhomes, from streets, or from outside the Property to the maximum extent possible. If Covered Antennas can receive acceptable quality signals from more than one location, then Covered Antennas must be located in the least visible preferred location. This section does not permit installation on Common Property, even if an acceptable quality signal cannot be received from Individually Owned Property.

- 3.2.5. If an installation cannot comply with Section 3.2.4 because the installation

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would unreasonably delay, unreasonably increase the cost, or preclude reception of acceptable quality signals, the Resident must ensure that the installation location is as close to a conforming location as possible. The Resident should submit an explanation to the Association why the nonconforming location is necessary. If it is determined that an installation cannot comply with Section 3.2.4, (and only in this case) the Resident may install the Covered Antenna on the fascia boards of the interior of the atrium of the Residents' Individually Owned Property; if an installation cannot receive an acceptable quality signal from an installation on the interior of an atrium (and only in this case), the Resident may install the Covered Antenna on the fascia board at the rear of the garage on the Residents' Individually Owned Property.

3.3. INSTALLATION

- 3.3.1. Covered Antennas shall be neither larger nor installed higher than is absolutely necessary for reception of an acceptable quality signal.
- 3.3.2. All installations shall be completed so that they do not materially damage any Property.
- 3.3.3. A Resident is not required to hire a professional antenna installer, however, any installer other than the Resident shall employ qualified personnel to install the Covered Antenna.
- 3.3.4. Covered Antennas must be secured so that they do not jeopardize the soundness or safety of any structure or the safety of any person at or near the Covered Antennas, or cause property damage, including damage from wind velocity.
- 3.3.5. Residents are liable for any personal injury or damage occurring to Common Property or other Residents' Individually Owned Property arising from installation, maintenance, or use of a Covered Antenna.

3.4. MAINTENANCE

- 3.4.1. Residents shall not permit their Covered Antennas to fall into disrepair or to become a safety hazard. Residents shall be responsible for Covered Antenna maintenance, repair, and replacement, and the correction of any safety hazard within 30 days after notification of the need for repair.
- 3.4.2. If Covered Antennas detach, Residents shall remove the Covered Antennas or repair such detachment within 72 two hours of the

detachment.

3.4.3. Residents shall be responsible for Covered Antenna maintenance if the exterior surfaces of the Covered Antennas deteriorate.

3.5. COVERED ANTENNA CAMOUFLAGING

3.5.1 Covered Antennas shall be neutral in color or painted to match the color of the structure (wall, railing) on which they are installed.

3.5.2. Covered Antennas installed on the ground and visible from any street or other Residents' Individually Owned Property must be camouflaged. A Covered Antenna preferably should be camouflaged by existing landscaping or screening. If existing landscaping will not adequately camouflage the Covered Antenna, then the Association may require additional camouflage. If the camouflaging will cause an unreasonable cost increase, then the Association has the option to pay for additional camouflaging.

3.5.3. Exterior Covered Antenna wiring shall be installed so as to be minimally visible and blend into the material to which it is attached.

IV. SAFETY

Because the Association has a legitimate safety interest in preventing personal injury or property damage occurring due to improper or unsafe Covered Antenna installation, Residents must follow the listed safety guidelines:

- 4.1. Covered Antennas shall be installed and secured in a manner that complies with all applicable codes, safety ordinances, city and state laws and regulations, and manufacturer's instructions.
- 4.2. In no event shall Covered Antennas be placed where they may come into contact with electrical power lines. The purpose of this requirement is to prevent injury or damage resulting from Covered Antenna contact with power lines.
- 4.3. To prevent electrical and fire damage, Covered Antennas shall be permanently and effectively grounded.
- 4.4. To prevent detachment during a storm, Covered Antennas shall be installed to withstand wind speeds of 70 mph.
- 4.5. To prevent roof damage and possible resultant personal injury, Covered Antennas shall be attached to withstand the pressure of snow and ice.

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- 4.6 Covered Antennas shall not obstruct access to or exit from any doorway or window of a unit, walk-way, ingress or egress, electrical service equipment, water shut-off valves, or any other areas necessary for the safe operation of the Property. The purpose of this requirement is to ensure the safe ingress or egress of association Residents and personnel, and to ensure safe and easy access to the Association's physical plant.

V. NUMBER OF COVERED ANTENNAS

No more than one Covered Antenna providing the same service from the same provider may be installed by a Resident.

VI. ASSOCIATION USE OF COMMON PROPERTY FOR COVERED ANTENNA INSTALLATION.

- 6.6 The Association may choose to set aside a portion of Common Property for the installation of a Central Antenna System to receive telecommunications signals. If the Association chooses to install a Central Antenna System, the Association may prohibit Individual Antenna installations provided that the following conditions are met:
- a. The Central Antenna System offers the same service from the same provider as the Individual Antenna;
 - b. The proportionate costs for both Central Antenna System installation and signal reception (including any service fees) must be equal to or lower than costs for installation and service of an Individual Antenna;
 - c. The quality of signals received from the Central Antenna System is equal to or better than that of signals received from Individual Antennas; and
 - d. There is no unreasonable delay in receiving the signals.
- 6.7. If the Association installs a Central Antenna System, it may order the removal of Individual Antennas provided that the Association pays for the removal of the Individual Antennas and reimburses the Residents the value of the Individual Antenna.

VII. MAST INSTALLATION

- 7.1. Mast height may be no higher than absolutely necessary to receive acceptable quality signals.

- 7.2. Masts extending 12 feet or less beyond the roofline may be installed on Individually Owned Property, subject to the regular notification process (see below). Masts that extend more than 12 feet above the roofline or are installed nearer to the lot Line than the total height of the Mast and Covered Antenna above the roof must be pre-approved due to safety concerns posed by wind loads and the risk of falling Covered Antennas and Masts. Any application for a Mast higher than 12 feet must include a description of the Covered Antenna and the Mast, the location of Mast and Covered Antenna installation, a description of the means and method of installation, including any manufacturer specifications, and an explanation of the necessity for a Mast higher than 12 feet. If this installation will pose a safety hazard to Residents, then the Association may prohibit such installation. The notice of rejection shall specify these safety risks.
- 7.3. Since Masts extending more than 12 feet above the roofline pose risks of personal injury and damage to Common and other Residents' Individually Owned Property, these Masts shall be installed by a insured Covered Antenna installer to ensure proper and secure installation.
- 7.4. Masts must be painted the appropriate color to match their surroundings.
- 7.5. Masts shall not be installed nearer to electric power lines than a distance equal to the total height of the Mast and Covered Antenna above the roof. The purpose of this regulation is to avoid damage to electric lines if the mast should fall in a storm.
- 7.6. Masts shall not encroach upon Common Property or another Resident's Individually Owned Property.
- 7.7. To prevent personal injury and property damage, Masts must be installed to safely withstand environmental conditions natural to Association's location.

VIII. COVERED ANTENNA REMOVAL

Covered Antenna removal requires restoration of the installation location and any other affected locations, if any, to their original condition. Residents shall be responsible for all costs relating to restoration of these areas.

IX. ASSOCIATION MAINTENANCE OF LOCATIONS UPON WHICH COVERED ANTENNAS ARE INSTALLED.

- 9.1 If Covered Antennas are installed on Property that is maintained by the Association, the Residents retain responsibility for Covered Antenna maintenance. Covered Antennas must not be installed in a manner that will result in increased maintenance

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costs for the Association or for other Residents. If increased maintenance or damage occurs, Residents are responsible for all such costs.

- 9.2 If maintenance requires the temporary removal of Covered Antennas, the Association shall provide Residents with ten (10) days written notice. Residents shall be responsible for removing or relocating Covered Antennas before maintenance begins and replacing Covered Antennas afterward. If they are not removed in the required time, then the Association may do so, at the Residents' expense. The Association is not liable for any damage to Covered Antennas caused by Association removal. The Association is not responsible for reinstalling Covered Antennas.
- 9.3 If Covered Antennas pose immediate threats to Residents and personnel or property, then the Association has the right to remove Covered Antennas. The Association is not liable for any damage to Covered Antennas caused by this removal.

X. NOTIFICATION PROCESS

- 10.1 Any Resident desiring to install a Covered Antenna must complete a notification form and submit it to the Board. The installation may then begin immediately. The purpose of the notification process is to allow the Association to provide Covered Antenna installation rules and other information to Residents and to determine whether the installation could pose a safety hazard.
- 10.2 The Association may hire an independent contractor to determine whether an installation in a nonconforming location is necessary. If the independent contractor finds that installation in a conforming location is possible, then the Resident will be required to relocate the Covered Antenna.

XI. INSTALLATION BY TENANTS

These rules shall apply in all respects to all Residents, whether owners or tenants.

XII. ENFORCEMENT

- 11.1 If these rules are violated, the Association, after providing the Resident with notice and opportunity to be heard, may bring action for declaratory relief with the FCC or any court of competent jurisdiction.
- 11.2 If Covered Antenna installation poses a serious, immediate safety hazard, the Association may seek injunctive relief to prohibit the installation or seek removal of the installation.

