

**Calabay Parc at Towerlake
Homeowners Association, Inc.**

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Parking Issue

01/30/2023

INTRODUCTION

This treatise notice is to serve as official notification to all Owners within the Calabay Parc Homeowners Association of the Board approved and adopted supplemental definition for parking. The purpose of this treatise is to provide the definition of and reasons for parking allowances and parking restrictions that constitute that policy. Furthermore, this treatise also provides the legal and rational basis for the Board's adoption of the policy.

It's important to first acknowledge that due to the complexity of the relevant Florida Statutes and Officially Recorded Governing Documents, seeking answers to questions can be challenging and require considerable concentration and effort to navigate through the "legalese" to the correct answer to one's question. This treatise hopes to help pave the way through these complexities to the answer to the possible questions from homeowners in regards to parking restrictions within the Governing Documents of the Community.

BACKGROUND

Many homeowners and tenants were unaware that they were buying or renting in a Deed Restricted Community with a Homeowners Association (HOA) including covenants, conditions, restrictions and rules. As such they were unfamiliar with requirements for specific matters such as garbage can placement, parking, lawn care, pets, exterior modifications, etc. Considering the unfamiliarity with an HOA, coupled with the complexity of the Governing Documents and Statutes, it is understandable that violations and misunderstandings can and do occur in spite of attempts by the HOA to inform them via a website, bulletin board and newsletters.

ISSUES and BASIS and AUTHORITY

Some homeowners, while reviewing the restriction on street parking, will see in Article V Section 3.5. Parking of the Declaration of Covenants, Conditions and Restrictions (Declaration) as to parking, which states:

***Article V, Section 3.5- Parking.** No truck or van, boat, trailer, recreational vehicle, commercial vehicle or other types of non-passenger vehicles, equipment, implements or accessories shall be parked, stored or otherwise kept on any portion of the Property unless the same are fully enclosed within the garage constituting an integral part of a Unit. The term “commercial vehicle” shall include, without limitation, all autos, trucks, vans and other vehicular equipment, which bear signs or shall have printed thereon any reference to a commercial undertaking or enterprise or which are otherwise reasonable obvious for as to their intended use. Vehicles regulated by this Section which are in the process of loading or unloading shall not be considered to be “parked” so long as such vehicles shall not be kept on the Property overnight....*

***Article VI, Section 3.5- Parking Amendment.** Street parking tends to conceal children at play, creates accident scenarios and restricts emergency vehicle ingress and egress. Therefore, the Board of Directors resolves that the proper use of the driveway and garage is to accommodate the resident’s vehicles. The first choice for parking should always be the garage. When it cannot accommodate the vehicle(s), the next option is the driveway. The street should only be used for parking when the garage and driveway are full with vehicles and not sufficient to accommodate additional vehicles. Other legitimate situations could be for temporary cases such as, but not limited to: when services are being provided by contractors; or for more visiting guests than the driveway can accommodate; or when cleaning the driveway; or when children are at play on the driveway. All owners, residents and guests should park in the garage and driveway whenever possible. The improper use of the street for parking would be when there is sufficient room on the driveway as well as parking facing in such a direction that is against the flow of traffic. The HOA will also be enforcing all local governmental laws as to not allow parking in the driveway so that any portion of the vehicle is extended onto the street, as well as all vehicles are to be parked in a driveway so that they are not restricting access to the sidewalk within the community. Per federal law, no vehicle may be parked to restrict access of a mailbox to impede with federal employees delivering mail to each address. As per the governing documents of the community, the streets are privately owned by the Association and will be governed accordingly. Per Florida Statutes 715.07, towing will be enforced within the HOA for improper parking per the Supplementary Definition as described above as proper signs are posted at the entrance of the community in accordance with Florida Statues.*

This section is a **well-defined clear** policy on parking on the street as much as it is to not park anywhere else on the property (i.e. lawns). However, these documents were drafted and recorded as the community was designed as a short-term rental community where the amount of vehicles would differ from the current climate of the community. This is where the current issues begin. Had this section been written to help address the evolution of the community, the verbiage would have drafted differently.

We know the drafters didn’t omit safety aspects or evolutionary community change of any provision intentionally including parking because they stated such unequivocally right-up-front in the Declaration Article V, Section 3.19:

“...the foregoing shall not be construed as an implied prohibition preventing the Association from extending the scope of such prohibitions and restrictions from time to time by adopting further rules and regulations not inconsistent with this Declaration...”

The question then is how did the drafters provide for the HOA to be able to perpetuate their intention for health, safety and welfare of the residents when it is discovered that in some cases the Declaration covenants, conditions, restrictions, rules and regulations are inadequate or silent in that respect. Moreover, how did they provide to do so expeditiously without having to secure a two-thirds vote on every matter? The answer is a provision in the Declaration in Article IX Section 9.6. Rules and Regulations:

“The Association may from time to time adopt, alter, amend and rescind rules and regulations further governing the use of the Lots and of the Common Area, which rules and regulations shall be consistent with the rights and duties established by this Declaration.”

In addition to the issue created by Article V Section 3.5 (reprinted previously), if a homeowner should ask: “If the Board adopts a policy that contradicts an existing covenant, condition, restriction or rule, wouldn’t it be necessary to get a two-thirds vote from the homeowners to amend the Declaration?” The answer would be yes. An example of that would be if the Board adopted a policy that stated “parking on a paved street is not allowed at any time,” that would be a contradiction to one part of Article V Section 3.5.

Pursuant to the Declaration the Board clarified and augmented reasonable rules and regulations for when and under what conditions on the amount of visiting vehicles may park in the community. The community has had the re-occurring issue of homes having 15+ vehicles parked at one home for over a weekend preventing vehicle access. With the newly adopted amendment which only allows for parking on one side of the street, this will cause many of these vehicles to be towed and will not allow proper parking in the community. Unlawful use of the street for parking is when the vehicle is parked in front of a fire hydrant or mailbox, parked facing oncoming traffic, parked blocking the street, or parked in a “no parking zone.”

SUMMARY

Pursuant to the Recorded Governing Documents the Board drafted, via promulgation, an augmentation and clarification of Article V Section 3.9 and Article IX, Section 9.6 with reasonable rules and regulations for visitor parking. The Board has defined proper and improper amount of visitor vehicles to be allowed to a single home.

The Board posted a public notice for a hearing including place date and time.

The Board conducted the hearing at the specified place, date and time on the issue of visitor parking including the augmentation and adopted the rules and regulations at that hearing.

Accordingly, the Board began enforcing the rules and regulations.

Article VI Restrictive Covenants
Supplementary Definition to Section 3.5
Adopted by the Board of Directors
01/30/2023

Parking

Street parking tends to conceal children at play, creates accident scenarios and restricts emergency vehicle ingress and egress. Therefore, the Board of Directors resolves that the Association will restrict the amount of visiting vehicles to each address to a maximum of 6 vehicles at one time. This restriction is not restricting the amount of visitors, simply the amount of vehicles in order to allow proper parking within the community. The Board of Directors also resolve the maximum amount of permanent vehicles for Homeowners/full-time residents to 6 vehicles. Any Homes who have more than the 6-car allotment, that are also registered with the Association and have received decals, prior to the enactment of this policy will be allowed the additional vehicles with no penalty, provided that if a vehicle is sold another vehicle will not be able to be added in its place and the home will then adhere to the 6-car maximum rule.

The Board of Directors understand that there might be times in which a homeowner would like to have a gathering at their home in which might require the need for additional visitor vehicles. Any homeowner who is looking to have an event and would like to request additional visitor vehicles, the homeowner will require to submit a request for additional vehicles at least 2 weeks in advance and will need to include: date, time frame, property address(es) and number of vehicles. Requests will be done by the discretion of the Board and on a first come-first served basis. Submitting a request will not guarantee approval.

The HOA will also be enforcing all HOA restrictions and local governmental laws as strictly prohibited and can result in violation or possible towing by law enforcement. Per law, no vehicle may be parked to restrict access of a mailbox to impede with federal employees delivering mail to each address (5 feet) and, within 30 feet of an intersection and within 15 feet of fire hydrants. Per Florida Statutes 715.07, towing will be enforced within the HOA for improper parking in front of mailboxes, fire hydrants or intersections in accordance with Florida Statues and applicable state/county law.

** Additional Clarification of New Supplemental Definition:*

Please note: If a vehicle is not owned by the homeowner or a resident who lives in the home it will be considered a visitor vehicle.

In order to help decipher vehicles, owners/residents are STRONGLY encouraged to get vehicle decals.