

Kensington Courts Community Association Covenants & Conditions Policy Statement #2

Animals

The KCCA Declaration of Covenants, Conditions & Restrictions, as Amended state in Article IX, Section 2(b) that, “the maintenance, keeping, boarding or raising of animals, including, livestock, or poultry of any kind, regardless of number shall be and is hereby prohibited on any Lot or within any dwelling or other part of the Property, except that this shall not prohibit the keeping of two (2) dogs (no Pit Bulls), two (2) cats, or any combination thereof, and a reasonable number of caged birds or other small domestic animals as pets provided (i) they are not kept, bred or maintained for commercial purposes; (ii) such domestic pets are not a source of annoyance or nuisance to the neighborhood or other Members; and (iii) such pets are maintained in strict conformance to all laws and ordinances. The Board of Directors or, upon resolution of the Board of Directors, the Covenant Committee, shall have the authority, after hearing, to determine whether a particular pet is a nuisance or a source of annoyance to other Members, and such determination shall be conclusive. Pets shall be attended at all times and shall be registered, licensed and inoculated as may from time to time be required by law. Pets shall not be permitted upon the Common Area unless accompanied by a responsible person and unless they are carried or leashed. The Board of Directors shall have the right to adopt such additional rules and regulations regarding pets as it may from time to time consider necessary or appropriate. Dog run maximum size, 10’ by 10’. Dog houses are allowed, provided the house is of the same color and material as the dwelling.

Elkton Code, Section 6.04.010 states, “No dog shall be permitted to run at large at any time whatsoever within the town. All dogs shall be confined to the property of their owner or other person who has possession or control of such dogs, by fencing, trolley line, unless leashed and accompanied by the owner or other person.”

Elkton Code, Section 6.04.020 states, “It is unlawful for any person to have in his possession or own any dog which, by barking, howling or in any other manner, disturbs the peace, order and quiet of the town, or creates a danger to any person(s).”

Elkton Code, Section 6.04.030 states, “No person owning, harboring, controlling or keeping any dog(s) shall deposit or permit the dog(s) to deposit fecal matter on any property not that of the owner or custodian.

Elkton Code, Section 6.04.040 states, “A violation of any provision of this chapter shall be deemed a civil infraction and shall be punished as provided in the Charter, § C14-1., B.”

Elkton Charter, Article XIV, § C14-1, B states, “Every act or omission which by ordinance is made an infraction shall be subject to a fine not to exceed one hundred dollars (\$100.00). The fine shall be paid by the offender to the town within twenty (20) calendar days of receipt of a citation. Repeat offenders may be assessed a fine not to exceed two hundred dollars (\$200.00) for each repeated offense. Each day a violation continues shall, unless otherwise provided, constitute a separate or repeat offense.”

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Board Evaluation- Maximum Count of Dogs and Cats.

Based upon the Rules of Statutory Construction (as established in Sutherlands Rules of Statutory Construction and more recently reiterated by the UNIFORM STATUTE AND RULE CONSTRUCTION ACT (1995)), which would be the standards by which a court would most likely interpret the language of our covenants, it is not entirely clear what was intended by the provision, restricting the number of dogs and cats that a homeowner may keep.

If the language had been “two dogs, OR two cats, OR any combination thereof” it would have been highly suggestive that the combination of 2 dogs AND 2 cats, would have been prohibited as an option, but since it is not worded that way; since “any combination thereof” takes on a rather silly meaning if it is to be interpreted as representing only the “single available combination of one dog and one cat”; and since the board cannot be sure that the authors did not intend the “implied meaning” to be “two dogs AND two cats, or any lesser combination”, THEN there is (at least) insufficient justification for taking the more restrictive posture.

Therefore it is the policy of this board to interpret this restriction as follows:

COVENANT COMPLIANCE RULE 2-1: The prohibition against keeping animals shall not prohibit the keeping of No More than Two dogs AND No More than Two cats. Any lesser numbered combinations are permissible. The keeping of more than Two Dogs or Two Cats, or Any Other Covenant Prohibited Animal shall constitute a violation, subject to fines & other enforcement measures, pursuant to Ref. #3.1 of the KCCA Violations Fine Table, as last published.

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Board Evaluation- Other Animal Violations.

COVENANT COMPLIANCE RULE 2-2: Pursuant to the covenants & ordinances revered above, no member shall permit any animal owned or kept by them, their family, visitors, leasees, etc. to cause material damage to the personal property of others, to community property, or to public property, or to behave so as to cause others to reasonably fear for their safety. Any failure to prevent such occurrence shall constitute a violation, subject to fines & other enforcement measures, pursuant to Ref. #1.1 of the KCCA Violations Fine Table, as last published, and has the potential to result in an animal being declared to be a Nuisance Animal and Removed from the Community pursuant to Ref. #2.1 of that same Fine Table. **Note:** Severe instances may result in an animal being immediately declared an nuisance animal, resulting in the issuance of a notice for immediate removal.

COVENANT COMPLIANCE RULE 2-3: Pursuant to the covenants & ordinances revered above, no member shall permit any animal owned or kept by them, their family, visitors, leasees, etc. to be present anywhere within the community, outside of a home or fenced-in back yard, without being accompanied by a responsible person, either carried or on a leash, and at all times registered, licensed, & inoculated as required by law. Any failure to prevent such occurrence shall

constitute a violation, subject to fines & other enforcement measures, pursuant to Ref. #2.2 of the KCCA Violations Fine Table, as last published, and has the potential to lead towards an animal being declared to be a Nuisance Animal and Removed from the Community pursuant to Ref. #2.1 of that same Fine Table.

COVENANT COMPLIANCE RULE 2-4: Pursuant to the covenants & ordinances revered above, no member shall permit any animal owned or kept by them, their family, visitors, leasees, etc. to defecate on any community or public lands, or on any other property that is not that of the member. Any failure to prevent such occurrence shall constitute a violation, subject to fines & other enforcement measures, pursuant to Ref. #2.3 of the KCCA Violations Fine Table, as last published, and has the potential to lead towards an animal being declared to be a Nuisance Animal and Removed from the Community pursuant to Ref. #2.1 of that same Fine Table.

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Board Evaluation- Nuisance Animals.

Pursuant to the covenants revered above, any animal that is not being kept in accordance with the Rules as Established and Authorized by Association Covenants, may be declared, by the Covenants Committee, to be a nuisance animal, and thereby becomes expressly prohibited from being kept anywhere within the community.

COVENANT COMPLIANCE RULE 2-5: Pursuant to the covenants revered above, an animal may be declared to be an nuisance animal for any of three reasons: (1) it meets the definition of a “Pit Bull” as defined by association Policy; (2) it has demonstrated itself to be a clear and present danger to the community; or (3) there has been a pattern of covenant violations, regarding the presence of this animal within the community, and the owner has been insufficiently responsive to multiple written notifications, regarding those violations.

In the event that an animal is found by the covenants committee or Board of KCCA to be a “nuisance animal” a Formal Notice Requiring Immediate Removal will be issued to the resident (and owner, if the residence is a leased property). Failure to comply with this Notice will constitute a Violation, subject to fines & other enforcement measures, pursuant to Ref. #2.1, of the KCCA Violations Fine Table, as last published.

Note: “Offense Recognition”, for purposes of computing and assessing fine amounts, and for purposes of supporting the finding an animal to be a “nuisance animal” will be counted, assessed and tracked against the individual animal, meaning that offenses involving multiple animals may result in multiple fines.

Right to Hearing. Along with the Notice Requesting Removal, a resident will be informed of their right to a hearing on the designation of their animal as a “nuisance animal”, and if that resident requests that hearing within 14 days of the issuance of that Notice, the 30 day period for removal will be suspended, pending the results of that hearing. The Board or Covenants Committee will notify the resident of the time and place of that hearing. If the resident does not appear at that hearing the final determination of that panel shall be made upon the evidence then in the possession of the panel and the decision of that panel shall be final. In the event that the finding of “nuisance animal” is upheld, the 30 day period will resume, with the new deadline being 30 days from the date of a Notice of Final Determination, less the number of days that had already expired (in the first 30 day period), those being the days between the date of the original Notice of Removal, and the date of the resident’s request for hearing.

In the case of a animal being declared a nuisance, as a clear and present danger to the community, the resident must remove the animal from the community within 24 hours, regardless, but may still request a hearing within 14 days of the date of Notice Requesting Removal. In the event that the Board or Covenants Committee finds in favor of the resident, that there is insufficient justification for the designation of “nuisance animal”, the resident may return that animal to the community upon receipt of a Notice of Final Determination, which grants the resident authority to do so.

In any case, the finding that an animal is not a nuisance, does not shield that same animal from a future finding, if additional adverse incidents occur, or if new and compelling information is discovered.

COVENANT COMPLIANCE RULE 2-6: Fine Payment- Any and all fines assessed for any of the above infractions must be paid within 30 days of the receipt of a Notice of Fine. If Fines are not paid within this timeframe, the animal will immediately be declared a nuisance and legal action will be initiated to (1) remove the animal from the community, and (2) to collect the past due fine assessments, along with any and all collection costs, including attorneys fees and court costs. Requests for Hearing will result in this 30 day fine period, being extended & reinitiated as of the date of the Notice of Final Determination.

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Board Evaluation- Pit Bulls.

As clearly stated in the Covenants referenced above, Pit Bulls are expressly prohibited from being kept in the community. There is one exception to this. According to the original covenants, Block 11 (which includes Heather Court and Four homes in the 100 Block of Highland Drive) was not initially subject to the prohibition against owning Pit Bulls, and was not subject to that prohibition until the universal covenant was extended to the entire development by way of this Policy. This created a potential problem for anyone in Block 11 that legitimately acquired a Pit Bull before it became prohibited. Enforcement of this prohibition in such a situation would be morally questionable, if not legally impossible. Therefore, the Board has decided to adopt a

“grandfathering” position ONLY for those dogs, which would be prohibited by this policy, but which were obtained by their owners (who reside in Block 11) before May 1st 2006. Otherwise, the prohibition is complete.

Additionally, some question has been raised about the technical definition of the term “Pit Bull”. Under the express and implied authority that an administrative body has to interpret the rules and regulations it is charged to enforce, the Board has the authority to reach its own definition of that term, provided, only that it is a reasonable interpretation, within the probable scope of the intent of the provision, and not tending towards inequitable application.

In the good faith attempt to determine the most reasonable definition for the term, “Pit Bull”, a number of authoritative sources were investigated.

According to The American Heritage® Dictionary of the English Language, Fourth Edition (Houghton Mifflin Company, 2004), the definition is “a member of any of a number of breeds of dogs developed from the Old English Bulldog. Breeds recognized as pit bulls include the American Pit Bull Terrier and the American Staffordshire Terrier, although the name is also often used to refer to other breeds of similar characteristics, such as the American Bulldog and Staffordshire Bull Terrier, and mixed breeds that include any of these breeds.”

If there was any uncertainty about the appropriateness of including the Staffordshire Bull Terrier, within the scope of the definition of the term “Pit Bull”, the American Kennel Club, removes that doubt. According to the AKC, under the history of the Staffordshire Bull Terrier, this breed began many centuries ago in England (as a derivation of the Old English Bulldog, which at that time was also linked closely to the Mastiff. They were initially used for “bull baiting” and “bear baiting” (apparently arena blood sports involving these animals). By the early 19th century they were bred towards a smaller size in response to the developing popularity of dog fighting. During this timeframe the Staffordshire Bull Terrier was also called a “Bulldog Terrier” and “Bull and Terrier”. In about 1860 James Hinks crossed the “Old Pit Bull Terrier”, now known as the Staffordshire Bull Terrier, and produced the all-white English Bull Terrier. Bull Terrier breeds are believed to arrive in North America sometime in the mid 1880s, when they were bred towards larger size. Today’s American Staffordshire Terrier is the result.

Checking with the Maryland Attorney General’s office, there are no state restrictions on the possession of Pit Bulls, but neither are there any restrictions, prohibiting lesser agencies from imposing such restrictions. In fact, Prince George’s County in Maryland has an ordinance prohibiting the possession of Pit Bulls anywhere in the County. The County voluntarily “grandfathered in”, any Pit Bulls, already owned within the county, as of the implementation date of the new ordinance. (County Code Section 3-185.01, effective 2/3/97). However, very strict regulations were imposed upon those residual Pit Bulls, including registration, neutering, strict control requirements, liability implications, breeding prohibitions, transfer prohibitions, and stiff penalties for violations. According to this Prince George’s County ordinance, the term, “Pit Bull” is defined to include (1) Staffordshire Bull Terrier; (2) American Staffordshire Terrier; (3) American Pit Bull Terrier; or (4) any other dog that exhibits the characteristics of a Pit Bull more than any other breed of dog.

Given this research, the Board is comfortable in arriving at its “reasonable interpretation”.

Therefore it is the policy of this board to implement this provision as follows:

COVENANT COMPLIANCE RULE 2-7: For purposes of enforcement of the community prohibition against the keeping of Pit Bulls, the term “Pit Bull” is hereby defined to include the following: All breeds that are determined by the Board to be concentrated derivatives of the cross-breeding between Old English Bulldogs, and Early English Terriers. These expressly include (1) Staffordshire Terrier; (2)

Staffordshire Bull Terrier; (3) American Staffordshire Terrier; (4) American Bull Terrier; (5) American Pit Bull Terrier; (6) any mixed breed that includes any of these breeds- which, by definition, must include all Bull Terrier mixes; and (because the association does not intend to accept the obligation to do DNA testing on dogs) (7) any animal that appears (in the reasonable judgment of the board) to exhibit the physical appearance of one of these breeds or mixed breeds. The determination of the Board, as to a dog’s “Reasonable Pit Bullness”, is final, except in the case of compelling evidence to the contrary, that a dog is not of a breed that is generally in this line of descent. In that case, the Board has a duty to act in a non-capricious manner, and respond reasonably.

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Board Evaluation- Dog Houses and Dog Runs.

The covenants are clear as to their meaning and intent. Therefore, the Policy is stated clearly below. NOTE: The Block Section including Heather Court is expressly prohibited from having Dog Runs (though Dog Houses are permitted). The Board does not have the authority to revise this restriction, short of a referendum election, throughout the community.

COVENANT COMPLIANCE RULE 2-8: Dog Houses are permitted, provided that they are the same color and materials of the primary dwelling on a member lot. Dog Runs are permitted throughout the development EXCEPT for Block 11 (including Heather Court and the 100 block of Highland Drive), which is expressly prohibited from having Dog Runs. For those areas permitted to have Dog Runs, they must be rectangular or square, and may not exceed a length of 10 feet on any side.

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Board Evaluation- Dog Size.

COVENANT COMPLIANCE RULE 2-9: Pursuant to an Amendment to the Covenants, Conditions and Restrictions, which was passed by community referendum, there are no longer any size restrictions, on dogs within this development.

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Any other Policies, that need to be resolved with respect to the Keeping of Animals, will be appended here.

This policy may be updated or amended as necessary, as the requirement to do so becomes apparent.

The Board of Directors, KCCA, Inc.