

Kensington Courts Community Association Covenants & Conditions Policy Statement #5

Vehicles

The KCCA Declaration of Covenants, Conditions & Restrictions, as Amended states in Article IV, Section 3 that, “No noxious or offensive activity shall be carried on upon any Common Area nor shall anything be done thereon which will become an annoyance or nuisance to the neighborhood.”

The KCCA Declaration of Covenants, Conditions & Restrictions, as Amended states in Article IV, Section 5 that, “The right of each Owner to use the Common Areas shall be subject to the terms, conditions, and provisions as set forth in this Declaration and, to any rule or regulation now or hereafter adapted by the Association for the safety, care, maintenance, good order, and cleanliness of the Common Areas. All such terms, conditions, provisions, rules, and regulations shall inure to the benefit of and be enforceable by the Association and the Company, or either of them, their respective successors and assigns, against any Owner, or any other person, violating, or attempting to violate the same, either by an action at law for damages or a suit in equity to enjoin a breach or violation, or to enforce performance of any term, condition, provision, rule or regulation. The Association and the Company shall each have the right, summarily, to abate and remove any breach or violation by any Owner at the cost and expense of the Owner.”

The KCCA Declaration of Covenants, Conditions & Restrictions, as Amended states in Article VII that, “In the event the Owner of a Lot fails to comply with a provision of this Declaration or engages in a prohibited use, all costs including legal fees incurred by the Association in connection with obtaining compliance with this Declaration shall be reimbursed by the Owner to the Association upon demand. All unreimbursed costs shall be a lien upon the Lot until reimbursement is made. The lien may be enforced in the same manner as a lien for an unpaid assessment levied in accordance with Article VI of this Declaration.”

The KCCA Declaration of Covenants, Conditions & Restrictions, as Amended states in Article IX, Section 2 that:

“(a) No noxious or offensive trade or activity shall be carried on upon any Lot or within any dwelling or any other part of the Property, nor shall anything be done therein or thereon which may be or become an annoyance or nuisance to the neighborhood or other Members.

(d) Vehicles must be parked in the driveway and driveways must be maintained by Owners. Except for parking within closed garages, and except as herein elsewhere provided, no junk or dilapidated vehicle, commercial vehicle, exceeding 3/4 tons (including vans used for commercial use), trucks, exceeding 3/4 tons, unlicensed or inoperable motor vehicle (which shall include, without limitation, any vehicle which would not pass applicable state inspection criteria), trailer, recreational vehicle, camper, bus, camp truck, house trailer, boat or other similar vehicles, machinery or equipment of any kind or character (except for such equipment and machinery as may be reasonable, customary and usual in connection with the use and maintenance of any dwelling and except for such equipment and machinery as the Association may require in connection with the maintenance and operation of the Common Area) shall be kept upon the Property or upon the public or private streets adjacent to the Property nor (except for bona fide emergencies) shall the repair or extraordinary maintenance of automobiles or other vehicles be carried out thereon. In any event, no vehicles of any kind shall be permitted at any time in the backyard of any Lot. No three or four wheeled ATV vehicles, dirt bikes, or unlicensed motorcycles will be operated in the development.

In no event shall motorized recreational vehicles be used in the common areas. Boats may only be kept in the backyard of any Lot provided they are covered with brown, grey or green tarp and are on a trailer.

The Transportation Article within the Maryland Code, at Section 11-127 defines “Highway” as, “the entire width between the boundary lines of any way or thoroughfare of which any part is used by the public for vehicular travel, whether or not the way or thoroughfare has been dedicated to the public and accepted by any proper authority.”

The Transportation Article within the Maryland Code, at Section 11-176 defines a “Vehicle” as, “any device in, on, or by which any individual or property is or might be transported or towed on a highway...” There are a couple of exceptions, but none address motorcycles or ATVs.

The Transportation Article within the Maryland Code, at Section 22-101 establishes that, “A person may not drive and the owner may not cause or knowingly permit to be driven on any highway any vehicle or combination of vehicles that: (i) Is in such unsafe condition as to endanger any person; (ii) Does not contain those parts or is not at all times equipped with lamps and other equipment in proper condition and adjustment as required in this title; or (iii) Is equipped in any manner in violation of this title.”

The Transportation Article within the Maryland Code, at Section 22-203 establishes that, “Every motor vehicle, other than a motorcycle, shall be equipped with at least two headlamps with at least one on each side of the front of the motor vehicle, which headlamps shall emit white light and comply with the requirements and limitations set forth in this title. Every headlamp on every motor vehicle, including every motorcycle, shall be located at a height of not more than 54 inches nor less than 24 inches.

Under the “Trespass” Sub-Title of the Criminal Code:

The Criminal Law Article within the Maryland Code, at Section 6-401 defines “off-road vehicle” as, “a motorized vehicle designed for or capable of cross-country travel on or immediately over land, water, snow, ice, marsh, swampland, or other natural terrain. “Off-road vehicle” includes (i) a four-wheel drive or low-pressure-tire vehicle; (ii) a motorcycle or a related two-wheel vehicle”.

The Criminal Law Article within the Maryland Code, at Section 6-404 establishes that, “Except when traveling on a clearly designated private driveway, a person may not use a vehicle or off-road vehicle on private property unless the person has in the person's possession the written permission of the owner or tenant of the private property. A person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 90 days or a fine not exceeding \$500 or both.”

The Criminal Law Article within the Maryland Code, at Section 6-405 establishes that, “Except as otherwise allowed by law, a person may not use an off-road vehicle on property known by the person to be owned or leased by the State or a political subdivision. A person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 90 days or a fine not exceeding \$500 or both.”

The Criminal Law Article within the Maryland Code, at Section 6-301 establishes that, “**Malicious destruction - Generally** (a) A person may not willfully and maliciously destroy, injure, or deface the real or personal property of another. (b) *Penalty - Property damage of at least \$500.-* A person who, in violation of this section, causes damage of at least \$500 to the property is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 3 years or a fine not exceeding \$2,500 or both. (c) *Same - Property damage of less than \$500.-* A person who, in violation of this section, causes damage of less than \$500 to the property is guilty of a misdemeanor

and on conviction is subject to imprisonment not exceeding 60 days or a fine not exceeding \$500 or both.” “

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Board Evaluation- Vehicles, in General.

The meaning of most of this section is fairly self-evident. Therefore it is the policy of this board to interpret this restriction as follows:

COVENANT COMPLIANCE RULE 5-1: JUNK VEHICLES- No derelict or unlicensed vehicles (as determined by the Board of the Association) may be kept upon the Common Areas or on Private Lots, anywhere within the development, including the public and/or private streets adjacent to these areas. No automotive maintenance activities can be conducted in any of these areas, other than minor maintenance of a very short term and occasional nature. Exception: Junk Vehicles may be stored in closed garages, and longer term, personal mechanical work (not as a business) may be performed in garages, provided that it is kept out of the public view by garage doors being kept closed, except for brief periods when it is not necessary for moving things in and out of that garage.

Failure of a member to refrain from these impermissible uses constitutes a violation, subject to fines & other enforcement measures, pursuant to Refs. #2.6 and/or #2.7 of the KCCA Violations Fine Table, as last published.

COVENANT COMPLIANCE RULE 5-2: COMMERCIAL VEHICLES & TRUCKS- Unless it can be, and IS, stored within a closed garage, no Commercial Vehicles or Trucks exceeding ¾ Ton may be kept anywhere within the development, including the Common Areas, Private Lots, Private Streets, and Public Streets. Vehicles under ¾ ton may be kept on property, pursuant to the other requirements of these covenants.

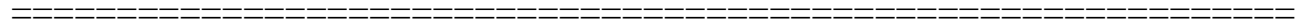
Failure of a member to refrain from these impermissible uses constitutes a violation, subject to fines & other enforcement measures, pursuant to Ref. #2.8 of the KCCA Violations Fine Table, as last published.

COVENANT COMPLIANCE RULE 5-3: RECREATIONAL VEHICLES- Unless they can be, and ARE, stored within a closed garage, no Trailers, Recreational Vehicles (including motor homes), Campers, Buses, or similar vehicles, may be kept anywhere within the development, including the Common Areas, Private Lots, Private Streets, and Public Streets. Exception: R.V.s or campers may be parked on a private driveway for short term periods if it is an infrequent event. For example: (1) for loading and unloading for occasional, personal trips; or (2) short term periods (2 weeks or less) if family members are visiting from distant areas, not more than once per year. Permanent or recurring “storage” of these vehicles on property is expressly prohibited.

Failure of a member to refrain from these impermissible uses constitutes a violation, subject to fines & other enforcement measures, pursuant to Ref. #2.9 and/or #2.10 of the KCCA Violations Fine Table, as last published.

COVENANT COMPLIANCE RULE 5-4: MACHINERY & EQUIPMENT- Unless they can be, and ARE, stored within a closed garage, no Machinery or Equipment of any kind or character may be kept anywhere within the development, including the Common Areas, Private Lots, Private Streets, and Public Streets. Exception: (1) Machinery that is “reasonable and customary” in the use and maintenance of a home (such as lawn mowers, trimmers, water pumps, emergency generators, small compressors, etc.) may be kept in garages or sheds; and (2) equipment and machinery required by the Association in connection with maintenance and operation of the Common Area may be stored on the property, as the Board Determines.

Failure of a member to refrain from these impermissible uses constitutes a violation, subject to fines & other enforcement measures, pursuant to Refs. #2.11 or #4.1 of the KCCA Violations Fine Table, as last published.



Board Evaluation- Boats.

Pursuant to **Article IX, Section 2(d)** of our Covenants (as shown above) Recreational Vehicles (including trailers) are generally prohibited from being stored anywhere in the development, but a specific exception is listed for boats. Under that exception, boats may be kept only in the backyard of any Lot, provided they are covered with a brown, grey, or green tarp, and are on a trailer.

In addition to this, **Section 10.08.090(A) of the Elkton Town Code** provides that, “A person shall not park or leave unattended any trailer, boat trailer, camping trailer, fifth wheel trailer, pole trailer, semitrailer or travel trailer, as defined under the Maryland Transportation Article, Title 11, upon any street, parking lot or other land owned by the town for a period exceeding forty-eight hours.”

Also, **Section 43.10.700 of the Elkton Zoning Ordinance** provides that, “Storage of recreational vehicles, detached caps, boats, and boat trailers may be stored on premises subject to the following limitations... 2. These vehicles may not be stored in front yards. They may be stored in rear or side yards provided that they are at least three (3) feet from the property line and in the case of side yard storage, provided that they are at least three (3) feet from the property line and are situated at least ten (10) feet to the rear of a lateral projection of the front foundation of the building. Such vehicle may be stored in any completely enclosed garage.

The obligation of the Association to enforce the covenant (which requires boats to be kept in the back yards of residential lots) will remain clear & compelling until such time as a referendum within the community alters that covenant.

However, a concern has been raised about the enforceability of the covenant as written, based in the simultaneous obligation of the Association to administer rules of enforcement which are fair and consistent.

It has been pointed out that it would be impractical, if not impossible, to differentiate between genuine ‘violations’ and *those transitory boat movements*, which should be naturally expected to occur frequently within a community, which is “held out” to be a ‘boating community’.

Therefore, in order to avoid the imposition of fines in an inconsistent or unreasonable manner, the Board of Directors has adopted the following “normalizing” Policy, with respect to enforcement of the Boat Storage Restriction.

COVENANT COMPLIANCE RULE 5-5: BOATS- As a matter of current Board Policy, for purposes of enabling reasonable enforcement of the boat storage covenant, “Boating Season” shall be defined as running from May 1st to October 31st of each year.

During “Boating Season” boats on side yards or side driveways, shall be presumed to be “in transit” from, or to, backyard storage, and from, or to, recreational use, and will not be deemed to be in violation.

However, Boats parked or stored in driveways (except on sides of houses), in front yards, on common areas, or on streets, at *any* time of the year, constitute a violation, subject to fines & other enforcement measures, pursuant to Ref. # 2.12 of the KCCA Violations Fine Table, and if that violation condition is not corrected by deadline of an issued Correction Notice, constitutes an additional violation, subject to additional fines & enforcement measures, pursuant to Ref. #2.13 of that same Fine Table.

Notwithstanding this, beginning November 1st of each year, and through April 30th of each year, any boat located at any location *other* than within a back yard of a residential lot, shall be deemed in violation, and shall be subject to a fines under both of those same Fine Table Refs..

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Board Evaluation- ATVs and Dirt Bikes.

The operation of “All Terrain Vehicles (ATVs)” and off-road motorcycles (together referred to as “off road vehicles”) within our development has resulted in more complaints (from members and the police) than any other issue. Accordingly, stiff measures must be undertaken to stem this illegal activity. It must be clearly understood that this activity is illegal on MANY levels.

From a “Civil” standpoint, it is expressly prohibited under our Declaration of Covenants, which state, No three or four wheeled ATV vehicles, dirt bikes, or unlicensed motorcycles will be operated in the development. In no event shall motorized recreational vehicles be used in the common areas.” Operation of these vehicles in the common areas (including the wooded areas surrounding the development) (1) constitutes a serious threat to the safety of other members; (2) has serious legal liability and insurance implications; (3) destroys vegetation and wildlife habitats; (4) creates unsightly ruts and mud trenches; (5) interferes with natural water runoff; (6) creates a level of noise that is an unacceptable “disturbance of the peace” for a residential community; IN ADDITION TO being a violation of our Declaration of Covenants.

The Association has the Authority and the Duty (given the number of complaints from members) to assess significant civil fines for violations, up to and including court enforced permanent removal of the vehicles from the community.

In addition to this, there are multiple provisions in State Law, which make it a **criminal offense** to violate these restrictions, both on the roadways AND on the Common Areas..

Roadways- Under Section 22-101 as listed above, a person can be charged with a simple traffic offense for operating an off-road vehicle on public roadways (even those not yet dedicated to the

towns) because they are not equipped with all of the lights and devices, required of a vehicle registered for use on the public highways.

HOWEVER, a person can also be Charged with a misdemeanor under the Public Trespass statute, Section 6-405, which could result in a sentence of 90 days in jail, plus a \$500 fine.

Common Area- *In addition to* the Civil fines that may be imposed for operating off-road vehicles on the common areas (as described above), criminal penalties may be assessed as well.

Section 6-404 provides that any person operating an off-road vehicle on private property (the common area) without **written** permission from the owner (the Association) is guilty of a misdemeanor, and may be punished by 90 days in jail and a \$500 fine. Since everyone in the development has been notified (through various means) that this is a prohibited activity by covenant, and that therefore permission can never be properly granted (short of some sort of “maintenance” activity, authorized in writing by the Board), everyone knows (including the police) that any occurrence is an automatic criminal violation.

On top of that, if the damage to the ground and vegetation would require more than \$500 worth of landscaping work to repair, a person is guilty of “Malicious Destruction” under section 6-301, which can result in (1) a 3-year prison term; (2) a \$2,500 fine; plus restitution for the damages.

Of course, the requirement for restitution can be imposed, regardless of the amount of damage.

It should be clear that this is a serious violation, which can (and will) result in serious consequences.

COVENANT COMPLIANCE RULE 5-6: ATVs & DIRT BIKES- Except for the lawful operation of Registered and Tagged Motor Vehicles on the streets of the development, the operation of “All Terrain Vehicles (ATVs)” and motorcycles (together referred to as “off road vehicles”) within our development is expressly and strictly prohibited.

Failure of a Member, including family members, guests, leasees, etc., to refrain from engaging in these prohibited acts constitutes a violation, subject to fines & other enforcement measures, pursuant to Ref. #1.2 of the KCCA Violations Fine Table, as last published.

It should be noted that upon a 4th violation of this prohibition, the member’s privilege to keep off-road vehicles anywhere within the development (including owner’s own lot) will be forfeit for a period of 10 years.

In addition to this repeated violations may result in criminal prosecution.

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COVENANT COMPLIANCE RULE 5-7: DANGEROUS DRIVING- Reckless or otherwise Dangerous Driving within the Development, which could reasonably be expected to put community residents or visitors at risk, including speeding, running stop signs, or other traffic violations, and including the dangerous operation of any vehicle, anywhere within the development, constitutes a violation, subject to fines & other enforcement measures, pursuant to Ref. #1.3 of the KCCA Violations Fine Table, as last published.

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