



Park Mediterrania HOA Board of Directors  
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Subjects:

Two undated mailers from Board of Directors received 10/28/2019

(1) Parking And Traffic Rules & Regulations - It lists 12 items followed by Permit Procedures

(2) **Parking Permit Distribution**

States "The HOA has implemented the use of parking permits for the residents..."

Also states "Homeowner account **must** be current in HOA dues (**Tows obviously would be illegal under California law**)

Dear Park Mediterrania Board of Directors:

11/05/2019

I don't deny the Park Mediterrania Board of Directors has the legal authority to implement Parking Permits.

See below for the way the BOD is doing it violates several State of California laws. And why it is unnecessary due to there are more available parking spaces than the HOA will ever need.

You may want to skip to the end of this letter to read why the BOD's hasty implementation **this month** of parking permits **violates State of California laws** pertaining to Adopting & Amending Operating Rules (AKA Rules & Regulations). The BOD's skipping of primary requirements #1 and #2 going directly to #3 **would make all tows based upon no parking permits illegal**.

Of course, if it is being done in the belief that there is a shortage of parking spaces that is NOT true. About nine years ago one of the two tennis courts was opened up to allow overflow parking. I have noticed even late at night there still are empty spaces. So, there is NOT a shortage of parking spaces.

As the remaining tennis court has not been used by tennis players for many years due to wide cracks in the surface not repaired by the BOD causing a trip hazard (and the BOD padlocking the gate) **it too can be opened up for overflow parking**. A scrap metal dealer would probably take down and remove the entire chain link fence, at no cost to Park Mediterrania, if allowed to take the fence material.

**I wonder if the BOD has given any thought to unintended consequences. For example, what if an owner wants to sell their property or rent it out. Gets an agent to hold an open house for tentative buyers or come by to show the property to prospective renters. While the agent is here showing the unit to buyers or renters their vehicle(s) without parking permits are being towed away.**

<https://findhoalaw.com/topic-index/ownership-rights-interests/>

## **OWNERSHIP RIGHTS & INTERESTS**

Under **Common Area & Exclusive Use** are the following links:

**COMMON AREA** (The table includes: “Carports and/or **parking spaces** or lots”)

**RIGHTS OF INGRESS & EGRESS OVER COMMON AREA**

<https://findhoalaw.com/common-area/>

## **COMMON AREA**

“The table below illustrates the typical common areas within a condominium project as compared to common areas within a planned development:”

[OMG, WOW, see the really nice amenities that other HOA’s have. We only have one amenity, the swimming pool. Actually, we didn’t have it this year, because the BOD chose to keep it locked up all year. Years ago, we used to have a second one, trash containers, next to the mail stands to throw our junk mail in, but the BOD chose to toss them out in the dumpsters].

[Among the many listed common areas illustrated in the table are the following: (1) Tennis Courts; (2) Swimming Pools; and (3) Carports and/or parking spaces or lots. Many years ago, the BOD choose not to maintain our 2 tennis courts then later cut a large hole in the chain link fence for vehicles to drive through and park on one of the courts. This year the BOD chose not to repair the swimming pool roof and restrooms and to leave the swimming locked all year long preventing all residents the enjoyment of using the swimming pool.]

[This year the BOD chose to deny parking permits for the parking spaces to many of the homeowners stating in the undated mailer Parking Permit Distribution: “Homeowner account **must** be current in HOA dues.” The undated mailer Parking And Traffic Rules & Regulations in the Permit Procedures section states in part: “3. Any vehicles parked in the spaces with an incorrect or without a permit will be subject to tow at the owner’s expense.”]

[So, after the BOD has chosen to deny many of the homeowners (and those with tenants) parking permits for parking spaces in the common area, the BOD has clearly stated in writing that it will tow those homeowner (and tenant) vehicles without parking permits parked in spaces in the common area.

Towing those vehicles is a violation of State of California law as shown in the following **RIGHTS OF INGRESS & EGRESS OVER COMMON AREA**]

<https://findhoalaw.com/rights-ingress-egress-over-common-area/>

## **RIGHTS OF INGRESS & EGRESS OVER COMMON AREA**

Unless otherwise provided in an association’s [CC&Rs](#), the association’s members have legal rights of ingress, egress and support through and over the [common areas](#) located in the [common interest development](#) (“CID”). ([Civ. Code § 4505](#).) The legal form of these rights (rights vs. easements) differ slightly based upon the category of CID and the ownership structure of the common areas:

<https://findhoalaw.com/towing-of-vehicles/>

## **TOWING OF VEHICLES**

[I highlighted the more relevant text in red.]

The procedure through which an association may remove (tow) vehicles from its [common area](#) and/or [exclusive use common area](#) parking spaces is governed by the requirements set forth in [California Vehicle Code \(CVC\) § 22658](#). Those requirements involve (1) **the prior notice given to vehicle owners**, (2) the written authorization required for tows, and (3) the mandatory reporting requirements to local traffic law enforcement and to the vehicle owner in certain circumstances. These requirements are discussed further below.

## Circumstances for Towing of Vehicles

When a vehicle is improperly parked upon an association's common areas, the association may have the vehicle towed under any of the following circumstances:

Where "there is displayed, in plain view at all entrances to the property, a sign not less than 17 inches by 22 inches in size, with lettering not less than one inch in height, **prohibiting public parking** and indicating that vehicles will be removed at the owner's expense, and containing the telephone number of the local traffic law enforcement agency and the name and telephone number of each towing company that is a party to a written general towing authorization agreement with the owner or person in lawful possession of the property" ([CVC § 22658\(a\)\(1\)](#)); *or*

[Note that under California Vehicle Code circumstance #1 only applies to "prohibiting public parking."]

**Where "the vehicle has been issued a notice of parking violation, and 96 hours have elapsed since the issuance of the notice" ([CVC § 22658\(a\)\(2\)](#)); *or***

[Note that under California Vehicle Code circumstance #2 the vehicle has to be FIRST issued a notice of parking violation. Without that notice the tow is illegal. The undated mailer Parking And Traffic Rules & Regulations states: No parking is allowed in any designated space for a period longer than 96 hours or the vehicle will be towed at the owner's expense. The way the undated mailer is worded it sounds like the BOD is skipping issuing a notice of parking violation which is an illegal tow.]

Where "the vehicle is on private property and lacks an engine, transmission, wheels, tires, or other equipment necessary to operate safely on the highways, the owner or person in lawful possession of the private property has notified the local traffic law enforcement agency, and 24 hours have elapsed since that notification" ([CVC § 22658\(a\)\(3\)](#)); *or*

Where "the lot upon which the vehicle is parked is improved with a single family dwelling." ([CVC § 22658\(a\)\(4\)](#)).

## Authorization Given to Towing Vendor

An association's towing vendor may not tow a vehicle without first having written authorization from the association. That authorization may be in the form of a *general* authorization or a *specific* authorization depending upon the circumstances giving rise to the tow:

### General Towing Authorization

A general authorization may be given for the towing of vehicles in any of the following three (3) circumstances: ([CVC § 22658\(1\)\(1\)\(E\)](#).)

**Vehicles parked in fire lanes; *or***

**Vehicles unlawfully parked within fifteen feet (15') of fire hydrants; *or***

**Vehicles parked in a manner that interferes with ingress or egress to, from or within the community.**

In any of these three (3) circumstances, the general authorization would authorize the towing vendor to patrol the parking areas within the community and, in the towing company's discretion and without additional authorization from the association, tow the offending vehicle. Upon claiming his/her vehicle towed under any of the above three (3) circumstances, the vehicle owner must be provided without charge: (a) a copy of the association's general authorization with the towing vendor, **and (b) a photograph taken by the towing vendor at the time of the tow that clearly depicts the parking violation for which the vehicle was towed.** ([CVC § 22658\(1\)\(2\)](#).)

[The undated mailer Parking And Traffic Rules & Regulations begins with a sentence that ends with: ...all vehicles illegally parked may be towed without warning and at the owner's expense. Note the phrase "without warning." The undated mailer does not define what is meant by "illegally parked." Actually, the definition of the word "illegally" refers to government law not a HOA Rules & Regulations. Any vehicle that violates any of the above 3 circumstances is illegally parked. Any vehicle that violates any of the above 3 circumstances can be towed away without warning. A vehicle without a parking permit is not illegally parked. A vehicle without a parking permit can't be towed without

warning. A vehicle without a parking permit must be FIRST issued a warning then SECOND 96 hours has to pass before it is towed.]

### ***Specific Towing Authorization***

In situations where an association seeks to have a vehicle towed in circumstances that do not fall within a general authorization, a representative of the association (i.e., its managing agent) must provide *specific* authorization to the towing vendor for that particular tow. **Additionally, at the time of the tow, the association's representative must be present somewhere within the community, though he/she is not required to be physically present at the location of the tow.** ([CVC § 22658\(l\)\(1\)\(A\).](#))

That specific authorization given by the association's representative to the towing vendor must include all of the following: ([CVC § 22658\(l\)\(1\)\(B\).](#))

The make, model, VIN#, and license plate # of the vehicle to be towed; *and*

The name, signature, job title, residential or business address and working telephone number of the association's representative who authorized the tow; *and the grounds for towing the vehicle; and the time when the vehicle was first observed parked in the community; and the time that the authorization to tow the vehicle was given.*

[Stating the authorization must have "the time when the vehicle was first observed parked in the community; *and the time that the authorization to tow the vehicle was given*" implies 96 has to pass before the tow].

When the vehicle owner claims his/her vehicle, the owner must be provided without charge a copy of the specific authorization. In providing this information, the towing vendor is required to redact the information pertaining to the association's representative who authorized the tow. ([CVC § 22658\(l\)\(1\)\(C\).](#))

### **Reporting Requirements**

[California Vehicle Code Section 22658](#) also imposes certain reporting requirements on both the Association and its towing vendor in connection with the towing of a vehicle:

#### ***Towing Vendor Reporting Requirements***

If the towing vendor knows or is able to obtain from the association "the name and address of the registered and legal owner of the vehicle," the towing vendor is required to immediately provide the vehicle owner with written notice of the tow, the grounds for removal, and also indicate the place to which the vehicle has been towed. ([CVC § 22658\(b\).](#)) If the towing vendor is unable to give such notice (i.e., if the towing vendor "does not know and is not able to ascertain" the information regarding the vehicle owner), and the vehicle is not returned to the owner within one hundred and twenty (120) hours, the towing vendor must send a written report of the removal to the Department of Justice and also file a copy of the notice with the facility where the vehicle is being stored. ([CVC § 22658\(c\).](#))

#### ***Association Reporting Requirements***

When authorizing a specific tow, the association's representative must telephone the local traffic law enforcement within one (1) hour after authorizing the tow. If doing so is "impractical" for any reason, then local traffic law enforcement must be notified by the "most expeditious means available." ([CVC § 22658\(f\).](#)) If the vehicle owner asks the association to tell him/her the basis for the tow, the association must state the grounds for the tow. ([CVC § 22658\(f\).](#))

### **Liability for Invalid Tows & Damaged Vehicles**

[California Vehicle Code Section 22658](#) provides that towing vendors are generally not responsible in any situation for determining whether a tow authorized by the association is valid. ([CVC § 22658\(f\).](#))

The towing vendor, not the association, is liable for any damage caused to towed vehicles. However, if it can be shown that the damage was attributable to an "intentional or negligent act" of the association, the association can be made liable. ([CVC § 22658\(l\)\(1\)\(D\).](#))

### **Interrupted Tows**

The towing vendor is required, at the vehicle owner's request, to immediately and unconditionally set down the vehicle that is hitched and/or ready for tow but that is not yet in transit (i.e., the vehicle is still within the boundaries of the association's development). ([CVC § 22658\(g\)\(1\)\(B\).](#)) In such a case, the towing vendor is entitled to payment from the

vehicle owner of up to fifty percent (50%) of the towing charge if the association's representative requests such payment on the towing vendor's behalf. ([CVC § 22658\(h\)](#).)

<https://findhoalaw.com/alternative-dispute-resolution-adr/>  
**ALTERNATIVE DISPUTE RESOLUTION (ADR)**

### Exceptions to ADR Requirement

Offering ADR is not required in connection with the following enforcement actions:

If the party is filing a claim in small claims court for money damages; (*Civ. Code § 5930(c)*.)

<https://findhoalaw.com/civil-code-section-5930-adr-prerequisite-to-enforcement-action/>  
**CIVIL CODE SECTION 5930. ADR PREREQUISITE TO ENFORCEMENT ACTION**

(c) This section does not apply to a small claims action.

According to the above **ALTERNATIVE DISPUTE RESOLUTION (ADR)** and **CIVIL CODE SECTION 5930. ADR PREREQUISITE TO ENFORCEMENT ACTION** webpages residents living in the Park Mediterrania HOA can file a claim in small claims court for money damages. Yes, after a resident in Park Mediterrania HOA has their car towed they can file a claim in small claims court for money damages, if the resident shows it was illegally towed Park Mediterrania HOA will be ordered to pay the towing fees and storage.

Before moving to this HOA I lived about a mile away at Terrace Oak Apartments. My apartment was almost directly above the apartment managers office. From a bedroom window I could see the parking spaces just outside their office which were reserved for visitors to their office. After their office hours, I frequently saw cars being towed from these spaces. WTF, the office was closed? I had two vehicles and parked them at the two numbered spaces assigned to my apartment. One day one of my vehicles was illegally towed along with 12 to 17 other vehicles. I sued Terrace Oak Apartments in Small Claims Court and proved my vehicle was illegally towed. When I left the court room I saw and heard one of the apartment managers talking to someone on her cell phone and saying I had a smirk on my face. The following is a photo copy of the check I received for \$5,080.00



<https://findhoalaw.com/adopting-amending-operating-rules/>  
**ADOPTING & AMENDING OPERATING RULES (AKA RULES & AND REGULATIONS)**

[Civil Code Section 4360](#) sets forth a specific procedure that a [board](#) must follow when seeking to adopt or amend an association's [operating rules](#) (to perform a "rule change"). That procedure includes the following primary requirements:

1. **Notice of Proposed Rule Change** – the board must provide [general notice](#) pursuant to [Civil Code Section 4045](#) of a proposed rule change at least twenty eight (28) days before making the rule change. The notice must include (1) the text

of the proposed rule change, and (2) a description of the purpose and effect of the proposed rule change. This notice is not required where “the board determines that an immediate rule change is necessary to address an imminent threat to public health or safety or imminent risk of substantial economic loss to the association.” ([Civ. Code § 4360\(a\)](#).)

**2. Decision Made at Board Meeting** – the board’s decision on whether to adopt or amend an operating rule must be made at a [board meeting](#) “after consideration of any comments made by association members.” ([Civ. Code § 4360\(b\)](#).) The proposed rule adoption or amendment must have been listed as an [agenda item](#) for that meeting in order for the board to discuss or vote on it at the meeting. ([Civ. Code § 4930\(a\)](#)); *See also* “[Board Meeting Agenda Requirements](#).”)

**3. Notice After Making Rule Change** – after the board makes a decision to adopt or amend an operating rule, the board must, “as soon as possible...but not more than 15 days after making the rule change,” deliver [general notice](#) pursuant to [Civil Code Section 4045](#) of the rule change. ([Civ. Code § 4360\(b\)](#).)

[The current BOD violated State of California Civil Code requirements for Adopting & Amending Operating Rules. I have the BOD Agenda for 10/10/2019. The agenda does not mention parking permits. The current BOD skipped primary requirement #1 and #2 then implemented #3. The following link to one of my webpages shows how a previous BOD correctly adopted and amended our Rules & Regulations. <http://parkmediterrania.com/gov/r-and-r-parking-2007-02-22.pdf> The BOD letter dated February 22, 2007 has subject line: Proposed Changes to the Rules and Regulations Regarding Parking. The BOD letter states the Current Parking Rules than states the Proposed Parking Rules]

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