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COMMUNITY UPDATE

INSIGHTS, ANALYSIS & IDEAS FOR COMMUNITY LEADERS SINCE 1980

Summertime Grilling on a Condominium Balcony... Think Again!

In Florida, there are plenty of days that are just perfect for a good old fashioned barbeque. After all, who doesn't love a good steak on the grill (except for maybe this vegetarian)? Even those who lived in condominiums were able to enjoy what northerners only dream of during the cold, snowy winters. Many multi-family dwellers took advantage, even though they were required to plug in rather than light up. That is, until December 31, 2011, when the 2010 Florida Fire Prevention Code was published. Much to the dismay of condominium unit owners, even electric grills are now prohibited. And though electric grills can be used and stored in the unit, as of December 31, 2014, when the Fifth Edition of the Florida Fire Prevention Code was published, no grills of any kind can be stored on a balcony.

Though these prohibitions have been in place for some time, this has only recently become a subject of heated debate among those who feel that condominium associations that are enforcing the Florida Fire Prevention Code are infringing upon the unit owners' freedom to cook outdoors. Sadly though, those condominium associations are only following the law, as the State of Florida mandates that local governments adopt all National Fire Protection Association codes and requirements and counties and municipalities are required to enforce the current Florida Fire Prevention Code. Even though a condominium association's rules and regulations may permit the use of electric grills, it is the Florida Fire Prevention Code that controls.

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There may be some confusion regarding this prohibition given that the current version of the Florida Fire Prevention Code does not explicitly reference electric grills. However, a quick read through the previous versions of the Florida Fire Prevention Code addresses this. Section 10.11.7 of the 2007 Florida Fire Prevention Code (effective December 31, 2008) provided the following relative to grills being used in multi-family dwellings:

For other than one- and two- family dwellings, no hibachi, gas-fired grill, charcoal grill, or other similar devices used for cooking, heating, or any other purpose, shall be used or kindled on any balcony or under any overhanging portion or within 10 ft (3 m) of any structure. Listed electric ranges, grills, or similar electrical apparatus shall be permitted.

Thus, the 2007 Florida Fire Prevention Code distinguished between the types of grills that could and could not be used in a residential setting in other than one- and two- family dwellings. While gas-fired and charcoal grills could not be used on any balcony or under any overhanging portion or within 10 feet of any structure, listed electric ranges, grills, or similar electrical apparatus were explicitly permitted.

Three years later, the 2010 Florida Fire Prevention Code was implemented. Section 10.11.6 of the 2010 edition removed the distinction found in the 2007 edition:

For other than one- and two- family dwellings, no hibachi, grill, or other similar devices used for cooking, heating, or any other purpose shall be used or kindled on any balcony, under any overhanging portion, or within 10 ft (3 m) of any structure.

The only exception provided was for "listed equipment permanently installed in accordance with its listing, applicable codes, and manufacturer's instructions," though the 2010 edition specifically states that the inclusion of this exception does not allow for the permanent installation of portable equipment unless it is permitted by its listing. Therefore, as of December 31, 2011, electric grills could no longer be used on balconies, but there was no express provision against storage of these items.

Storage is now addressed in the latest version of the Florida Fire Prevention Code. Section 10.11.6 of the Fifth Edition, effective on December 31, 2014, now provides as follows:

COOKING EQUIPMENT.

10.11.6.1 For other than one- and two-family dwellings, no hibachi, grill, or other similar devices used for cooking, heating, or any other purpose shall be used or kindled on any balcony, under any overhanging portion, or within 10 ft (3 m) of any structure.

10.11.6.2 For other than one- and two-family dwellings, no hibachi, grill, or other similar devices used for cooking shall be stored on a balcony.

10.11.6.3 Listed equipment permanently installed in accordance with its listing, applicable codes, and manufacturer's instructions shall be permitted.

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Sadly, much to George Foreman's dismay, condominium unit owners are now even prohibited from storing their electric grills on their balconies. The exception relative to "listed equipment permanently installed," however, was carried forward. With the approval of your local fire marshal and the applicable building department, and the assistance of a licensed electrician, there are electric grills that are designed to be "permanently installed." Before going to too much trouble, though, you will want to make certain that your association has not adopted a prohibition against grilling of any kind, despite the exception in the Florida Fire Prevention Code.

How Can Associations Enforce Traffic Laws on Private Roads in the Community?

For communities with internal private roads, enforcement of speed limits, stop signs and other regular traffic laws can be problematic. While the governing documents for a community might require residents to drive safely and follow traffic laws on the streets within the community, these types of violations are nearly impossible to enforce in the same manner as other violations. Additionally, where the streets in a community are private, law enforcement does not have the authority, on its own, to come in and enforce Florida traffic laws. Associations are not powerless to address these issues, however. Under section 316.006, Florida Statutes, the owners of private streets can enter into agreements with cities and counties for the enforcement of Florida traffic laws over their private streets.

For the enforcement of traffic laws within a community located within the city limits, Section 316.006(2)(b), Florida Statutes, provides:

A municipality may exercise jurisdiction over any private road or roads . . . located within its boundaries if the municipality and party or parties owning or controlling such road or roads provide, by written agreement approved by the governing body of the municipality, for municipal traffic control jurisdiction over the road or roads encompassed by such agreement.

Correspondingly, for the enforcement of traffic laws within a community located within an unincorporated area of a county, Section 316.006(3)(b), Florida Statutes, provides:

A county may exercise jurisdiction over any private road or roads . . . located in the unincorporated area within its boundaries if the county and party or parties owning or controlling such road or roads provide, by written agreement approved by the governing body of the county, for county traffic control jurisdiction over the road or roads encompassed by such agreement.

Some county and city websites include the specific requirements and procedures for entering into a traffic enforcement agreement. These can vary, with some governmental bodies requiring a processing fee, a certified traffic survey by a licensed traffic consultant or engineering firm, a copy of the Association's Articles of Incorporation, proof of ownership of the roads within the community, and/or maps of the community, among other things. In addition to the requirements of specific governing bodies, a typical traffic enforcement agreement will include provisions related to:

-Reimbursement for actual costs of traffic control and enforcement: In some instances, an Association might not be charged anything; while in others, an Association might be charged a reasonable fee based upon the enforcement activities which will be required.

-Liability Insurance and Indemnification: Proof of general liability insurance of a specified minimum amount will likely be required, as will an indemnification provision in favor of the governing body and law enforcement agency related to any of the enforcement activities considered under the agreement.

-Signage: Signs within the community must meet standards of Uniform Traffic Control Devices.

-Term of Agreement: Generally one or two year terms with automatic renewals unless terminated by the parties.

-Road Maintenance: Provision stating that no duty of maintenance of the roads shall be imposed upon the city or county as a result of the agreement.

Because of the variables in negotiating these traffic enforcement agreements, it is advisable that Associations consult with their Association attorney who can assist with the negotiation process. It is important to keep in mind, too, that these agreements can sometimes take two or three months to process. Once entered, though, such traffic enforcement agreements provide an excellent way for Associations to increase safety on the roads within the community.

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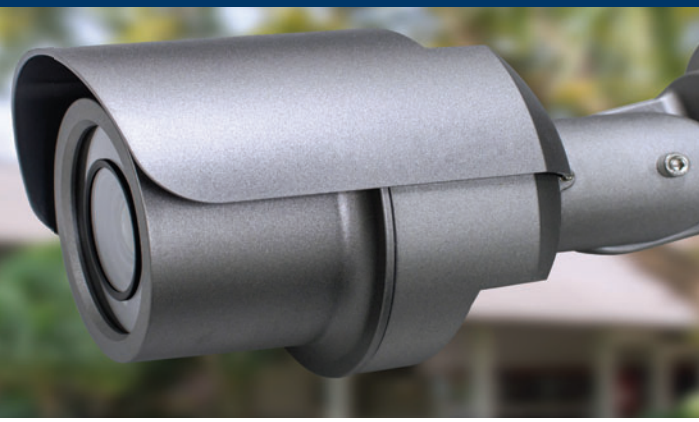
Surveillance Cameras: Friend or Foe to an Association?



Video "security" cameras seem to be everywhere these days and many community associations are jumping on the trend. However, while the safety of its community should be of paramount importance to an association, not all communities need cameras. In fact, video cameras may expose an association to certain risks and liabilities that would otherwise not exist.

Unless the governing documents provide otherwise, an association does not owe any specific security obligations to its membership. However, an association can assume certain obligations and liabilities by appearing to provide security protections to its members and residents. While security concerns cannot be ignored, the mere act of installing camera equipment can create the assumption that an association is a security provider for its community.

In fact, Florida courts have routinely held that if an association undertakes, or appears to undertake, the duty to provide security for its community, it must also take certain measures to prevent criminal activity from occurring on the premises. Community associations have also been held responsible for failing to adequately protect residents from "reasonably foreseeable" criminal conduct of third parties. Therefore, before jumping on the costly video camera bandwagon, an association should carefully assess whether its security needs outweigh the potential risks of installing the cameras, as the lawsuits related to this issue are not cheap.

The installation of "security" cameras is considered a material alteration of an association's common elements. As such, generally speaking, 75% of the total voting interests of an association must approve the installation of the cameras. Although there is an exception to this voting requirement, falling under its umbrella is not the norm for most associations. Moreover, if the exception doesn't apply and an association installs the cameras without the voting approval, it will have to remove the cameras and restore the property to its previous condition.

Further, video cameras should never be described as "security" cameras. They should be called "surveillance" cameras and an association's board of directors should describe their purpose as such and nothing more. Also, if an association installs surveillance cameras, it must then ensure that they are functioning and properly maintained. Regular inspections of the camera equipment should be conducted and documented by experienced professionals. Procedures for the testing and operation of the cameras should also be implemented and routinely followed. Therefore, part of an association's budget should be allocated for such expenses.

As an aside, a surveillance camera's recording footage is not considered an official record of an association. As such, camera recordings are not open for review by an association's membership. Moreover, an association is not legally obligated to store them for any specific period of time. Nonetheless, the recordings should be kept, in a secure location for a reasonable period of time, and access to them should be limited to an association's manager and board of directors.

Likewise, an association should be careful of how it disposes of a camera's video recordings. Towards that end, a procedure regarding the storage and destruction of any recordings should also be adopted. Additionally, to the extent possible, any video recording that an association wishes to keep should be preserved in its original and uneditable format.

Surveillance cameras should only be installed in the common elements of an association's community. Common sense and privacy concerns also dictate that cameras should not be installed in locker rooms, bathrooms, or facing a particular dock slip, balcony, resident window, or patio either, unless there is a specific and palpable criminal activity and/or egregious nuisance concern related to one of those locations.

Further, barring any known nuisance and or potential criminal activity issue, care should be taken by an association to ensure that no particular common area is effected by the cameras, to the exclusion of others. This will help deter any possible argument that a member may have regarding being singled out by a camera installation placement. Likewise, as to any potential claims related to the unequal treatment of members of an association.

Finally, if an association installs surveillance cameras in its community, the following additional course of action is recommended: the cameras used should be capable of attaching a date and time stamp to the digital image, or some other means of capturing the specifics of a particular recording; signs should be posted in conspicuous locations near the cameras which advise of their use; and, the association should notify its insurance agent of the installations, as the cameras may result in a reduction of the association's insurance premiums.

The bottom line is that, when used properly, surveillance cameras may deter certain criminal and other unwanted activities. However, they can also evoke a false sense of security and create as many problems and headaches as they prevent. Therefore, an association should think twice before installing surveillance cameras in its community.

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Did you know?

B&P wants to make sure that all persons in community associations, whether Board members, Managers, owners or residents understand what it means to live in communities more commonly referred to as Condominiums, Homeowner Associations, Cooperatives and Mobile Homes. To reach that goal, B&P provides online resources available to everyone with simply the click of the mouse. Three of those resources are Blogs, geared specifically to community living:

Florida Condo and HOA Law Blog
www.floridacondohoalawblog.com

B&P's hallmark blog for communities throughout Florida. Contributors include Joe Adams whose Q&A posts help members in need of knowledge better understand their associations and Yeline Goin (focus of last month's Did You Know? about CALL) who keeps everyone informed of what is happening at the legislative level.

The Community Association Law Blog
www.communityassociationlawblog.com

Authored by Donna DiMaggio Berger, it provides great insight into various common problems faced by communities. Key to Donna's blog is her use of every day occurrences to help associations work better with members to accomplish the goal of communal living. Walking a mile in someone's shoes really does change perspective.

CondoMundoUSA
www.CondoMundoUSA.com

Authored by Martha "Martica" Miguez Platts and Marilyn Perez-Martinez, it provides key insight tailored to Hispanic board members and residents of Condos, HOAs, Cooperatives and other shared-ownership communities throughout Florida.

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7-Day Rental Application Processing Requirement for Service Members

If your community requires a prospective lessee to be approved by the association, you will want to take note of a new law that becomes effective on July 1, 2016. In short, SB 184, relating to military and veteran affairs, by Senator Bean requires community associations to process rental applications from service members within 7 days after submission regardless of the time frame provided in your governing documents.

To ensure that your community does not inadvertently violate the new law, your association should consider amending its application to include a question asking whether the prospective tenant is a service member as defined in s. 250.01, Florida Statutes.

Specifically, the bill provides . . .

- If a condominium, cooperative, or homeowners' association requires a prospective tenant to complete a rental application before residing in a unit within the association, the association must complete processing of the rental application submitted by a prospective tenant who is a service member, as defined in s. 250.01, within 7 days after submission.
- The association must, within that 7-day period, notify the service member in writing of an application approval or denial and, if denied, the reason for the denial.
- Absent a timely denial, the association must allow the owner to lease the unit or parcel to the service member and the landlord must lease the unit or parcel to the service member if all other terms of the application and lease are complied with.
- The parties may not waive or modify the provisions of the law.
- The term "service member" is defined to include any person serving as a member of the United States Armed Forces on active duty or state active duty and all members of the Florida National Guard and United States Reserve Forces.

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