



FOUNTAIN OF THE SUN

**ARCHITECTURAL REVIEW COMMITTEE
POLICIES AND PROCEDURES**

(As Amended April 9, 2018)

**FOUNTAIN OF THE SUN HOMEOWNERS ASSOCIATION
(Herein referred to as FOSHA)
Mesa, Arizona**

FOUNTAIN OF THE SUN HOMEOWNERS ASSOCIATION

ARCHITECTURAL REVIEW COMMITTEE POLICIES AND PROCEDURES

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ARCHITECTURAL REVIEW COMMITTEE POLICIES AND PROCEDURES

WHEREAS:

“Association” or “FOSHA” shall mean the Fountain of the Sun Homeowners Association.

WHEREAS:

The Association is tasked with enforcing the Declaration of Covenants, Conditions, and Restrictions that govern and bind the parcels that are a part of the Association (the “CC&Rs”); the Articles of Incorporation; the Bylaws; and any Rules, Regulations, Policies, and Procedures adopted by the Association’s Board of Directors (the “Board”). Collectively, the foregoing documents are referred to as the “Governing Documents.” (CC&Rs – B).

WHEREAS:

The Association is charged with ensuring owners improve their properties in such a manner as to prevent inharmonious development (CC&Rs – B, C, D-2).

WHEREAS:

It is the intent of the Board that the Association and its Owners adhere to the Governing Documents to, among other things, enhance the Association’s facilities, maintain harmonious development throughout the community, and provide for the environment, health and safety of the Association’s residents (By-Laws – Art. I, Sec. II).

WHEREAS:

The Association, in its sole discretion, is responsible for approving any proposed improvements to the property. The Association may promulgate rules, regulations and standards with respect to procedures for obtaining approval of dwellings, mobile homes and structures to be placed on lots, and criteria to be employed in granting or denying such approval (CC&Rs – D-2).

WHEREAS:

“Structure” shall mean and refer to any building, improvement, structure, fixture, fence or other enclosure not otherwise specified (CC&Rs – B).

WHEREAS:

Several policies and procedures for preventing inharmonious development and ensuring appropriate improvements are contained in the Governing Documents and the minutes of Board meetings.

NOW, THEREFORE, this Board does hereby ratify the prior establishment of an Architectural Review Committee (formerly known as “Environmental Control Committee”) and resolve that the following Architectural Review Committee Policies and Procedures (the “Policy”) shall be binding on this and succeeding Boards, but may be amended by a majority vote of the Board pursuant to the Board’s rulemaking authority (Articles – Art. 5(b), Bylaws – Art. III, Sec. 1):

A. THE COMMITTEE

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1. The name of the committee shall hereby be "Architectural Review Committee" in order to more accurately indicate its sphere of activities. The name "Architectural Review" was applied to this activity in a letter transferring partial enforcement responsibility to the Association that was referenced in the Board Meeting of November 10, 1981.
2. The committee shall consist of a Chairman, who shall be a member of the Board; a Deputy Chairman, who shall also be a member of the Board; and whatever number of additional committee members the Chairman shall choose, who need not be members of the Board, but must be members of the Association. The Chairman shall select the members of this committee. Members of this committee should have some background in the areas of home construction, remodeling or inspections, or other related industries.
3. This committee's sphere of responsibility shall be the approval or disapproval of all projects, construction, remodeling or landscaping which will change the exterior appearance of the properties.

B. REQUESTS FOR APPROVAL

The committee shall require that any member of the Association who is contemplating construction, remodeling, or in any way changing the exterior appearance of his/her home and/or lot, to submit a written request for approval of his/her plans. This request should be submitted on a printed form available at the FOSHA office. The Request Form Package may include the standard application form, a copy of the homeowner's plat, and instructions. The request should be submitted, giving ample time for the committee, or the Board, if necessary, to take appropriate action. Ample time can mean anywhere from one day to one month, depending on the complexity and controversial nature of the request. No work on the contemplated project may be started until the Association's written approval of the request is delivered to the homeowner.

C. CONTENT OF REQUESTS

1. Each written request must be signed and submitted by the Owner, on the FOSHA standard form, completed in detail.
2. Detail shall include:
 - a. Owner's name, lot number, street address and phone number where the applicant can be contacted.
 - b. Contractor's name and contact information (name of person, phone number, etc.).
 - c. Building Permit Status: The City of Mesa has agreed to refuse building permits, where required, until approval has been received from FOSHA

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(Meeting 4-8-87).

- d. Proposed work descriptions must include a floor plan and an elevation for any structures, including new construction, room additions, patios, garages, shed, walls and fences. The floor plans must be drawn and located as nearly to scale as possible, on an accurate copy of the plat plan.
- e. If any painting is to be done, the owner must select one of the pre-approved color palettes in the FOSHA office and a paint chip of the selected color must be included.

D. RESPONSE TO REQUESTS

1. Requests for approval will be received at the FOSHA office, where they will be date-stamped and entered in a log maintained by the Manager. The information will be maintained in the Owner's file.
2. The Committee shall, upon their determination of the action to be taken, either respond to the Owner or refer the request to the Board. The Owner may, upon denial of his request by the Committee, request and receive a hearing by the Board, whose decision will be final.
3. In any case, the Committee will, upon determination, respond to the Owner in written form. In the event of approval, the response should include any conditions or restrictions which apply and instructions to contractors, if applicable, regarding use of streets, parking and dumping of debris. Such approval shall be valid for six (6) months from date of application. In the event of denial, explicit reasons for such actions must be provided to the Owner and the level of the decision should be noted.

E. ARCHITECTURAL REVIEW RULES AND REGULATIONS

These Rules and Regulations apply to all Owners who are members of the Association (all single family dwellings) within Fountain of the Sun.

It should be understood that all Owners are also subject to the laws and codes of the City of Mesa, Maricopa County, the State of Arizona, and the United States. No immunity from these laws is provided by the following Rules and Regulations. In all cases, the laws of the higher level government will prevail.

The following rules are a composite of rules contained in the Governing Documents, Board Meeting Minutes, and those passed on to FOSHA by the Developer. These rules must be considered by the Committee, and the Board if applicable, in making its decision for approval or denial of any request.

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1. All Structures - General

a. General

No mobile home, nor dwelling, nor other structure shall be placed on any lot until such mobile home, dwelling, or structure (and the location thereof on the lot) has been approved by the Association (CC&Rs – D-2).

b. Easements

- (I) No permanent structure (including sheds, patios, or dwellings) may be constructed, placed or permitted to remain on areas subject to easements (CC&Rs – D-17). These easements are shown clearly by dotted lines on the plats of all parcels, except Parcel 6, in which all lots have eight (8) foot easements in the rear and three (3) foot easements on the sides.
- (II) However, it has been the policy of the Developer, and subsequently the Association, to permit fences and/or walls to be constructed, and vegetation to be planted, in recorded utility easements with the understanding that should the utility companies ever require access, it would be the responsibility of the Owner to remove and replace those fences and/or walls or plantings as required.
- (III) It has also been the policy of the Developer and the Association to permit fences and/or walls to be constructed, and vegetation to be planted in drainage easements, so long as the natural flow of water is not obstructed.
- (IV) In the event of approval of any Architectural Review requests wherein fences, walls, or plantings are to be located in easements, the Chairman shall point out the Owner's responsibilities as specified in paragraphs (2) and (3) above.

c. Setbacks – Conventional Homes

- (I) All setbacks and side yards shall conform to the zoning requirements of Maricopa County and the City of Mesa and shall also conform to setbacks shown on the recorded plats. (CC&Rs – D-20 as amended April 1992). These minimum setbacks are:
- (II) Front – Twenty (20) feet from the right of way. Note that there is a variance for carport to garage conversions, or garage extensions, in existence, permitting a seventeen (17) foot setback from the top edge of the curb.
- (III) Side – minimum of five (5) feet from the lot line, but a total of

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fifteen (15) feet per lot. If one side abuts a street, the setback from the right-of-way must be ten (10) feet.

- (IV) Rear – twenty (20) feet from the lot line. If the rear abuts a street, the setback from the right-of-way must be thirty-five (35) feet. Covered but non-enclosed patios may extend to within fifteen (15) feet of the rear lot line.

2. Right of Ingress

Right of Ingress and egress to and from any part of the property (all of FOSHA) are reserved to the Association for the purpose of investigating possible or actual violations of the Governing Documents and correcting such violations (CC&Rs – D-18).

3. Occupancy of Homes

No residence shall be occupied in any manner while in the course of construction or prior to its being fully completed, without the written approval of the Association (CC&Rs – D-4).

4. Relocated Buildings

- a. All buildings or structures, other than mobile homes, erected on the property (FOSHA) shall be of new construction (CC&Rs – D-5).
- b. However, it has been the policy of the Board to allow newer used mobile homes upon inspection and approval of the FOSHA Board or Committee.

5. Mobile/Manufactured Homes

- a. Not more than one mobile/manufactured home residence may be placed on any one lot (CC&Rs – D-21-A).
- b. All mobile/manufactured homes kept on the lots shall be installed and maintained on a lot so that the underside of the mobile/manufactured home is at ground level and any wheels, axles and other apparatus below the underside of the mobile home shall be below the normal ground level of the lot (CC&Rs – D-21-B).
- c. No mobile/manufactured home less than twenty-four (24) feet wide may be placed on any lot (CC&Rs – D-21-C).
- d. The definition of “mobile/manufactured home” as used herein shall not include vehicles which are used for recreational purposes, such as motor homes, vans, trailers, fifth-wheelers, or campers of any kind (CC&Rs – D-21-D).

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- e. Mobile/manufactured homes are prohibited in parcels 3B, 6, 7B and 13 (CC&Rs – D-22), and in parcels 3A and 4, by Mesa Zoning Ordinance.
- f. Metal awnings are acceptable for use as carports, patio covers, and room and shed covers, but must match the existing home in construction and color.

6. Tract and Custom Homes

- a. Single family dwellings (excluding mobile homes) shall have a minimum area of one thousand (1000) square feet, exclusive of carports, breezeways, garages, open patios and porches. The maximum height of any single family dwelling shall be two (2) stories above grade (CC&Rs – D-19).
- b. Metal awnings for carports and patio covers are acceptable on tract or custom homes if the fascia matches the siding and the roof matches the roof of the home (Meeting 1-31-78).

7. Storage/Work Sheds – Mobile/Manufactured Homes

- a. Sheds may be placed under an awning, such as carport or patio roof, unattached to the mobile home, at least six (6) ft. from the mobile/manufactured home and of the same construction and color as the mobile/manufactured home as long as it is under two hundred (200) sq. ft. in size.
- b. Sheds may also be placed to the rear of the home, under an extension of an existing awning, and on a concrete foundation at least six (6) ft. from the mobile/manufactured home.
- c. Custom constructed sheds require submission, with the request for approval, of accurate drawings showing door and window locations, and an elevation drawing of the street-facing side.

8. Storage/Work Sheds – Custom & Tract Homes

No retail/commercial or detached storage sheds are allowed on lots with custom or tract homes (CC&Rs – D-4 as amended April 1992). Sheds must be attached to the house, have a firewall and a city of Mesa permit. (Updated per City of Mesa codes on 12/9/2013).

9. Garages, Carport and Patio Enclosures

- a. Garages, carports and patio enclosures must be constructed of the same material and color as the existing home, and attached to the existing home.

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- b. A variance has been granted by the City of Mesa Zoning Commission allowing a reduction of the front setback from twenty (20) feet to seventeen (17) feet, to allow adequate space for the carport to garage conversions and garage extensions.
- c. A building permit must be obtained from the City of Mesa after approval is granted by FOSHA.

10. Walls and Fences and Driveways

- a. No fences (or walls) in a front yard that are within fifteen (15) feet of the street shall be constructed over six (6) inches in height (CC&Rs – D-15).
- b. No fences (or walls) located other than in a front yard shall be constructed over four (4) feet in height, nor shall any fence be constructed of chain link or chicken wire (CC&Rs – D-15). However, fences around swimming pools and/or hot tubs must be six (6) feet high to conform with City of Mesa codes.
- c. Walls may be of ornamental block, or of common concrete block or natural wood, if painted to match the home. Fences (or walls) in the front yard, except within the fifteen (15) foot setback, must not be over two (2) feet high.
- d. All driveways must be concrete, and be located only where the curbs are cut for that purpose (CC&Rs – D-3, D-10).
- e. All fences, walls and driveways must be approved by the Association, in writing, as to location, condition and appearance.

11. Appurtenances

- a. **Any structures**
Appurtenances include any structures except for those that were in place before the April 1992 adoption of the amendments to the CC&Rs are not affected by the following rules (CC&Rs – D-8 as amended April 1992).
- b. **All appurtenances**
Require submission of detailed requests for approval by the Association.
- c. **Compatibility of the color**
All appurtenances must be of a comparable color to that of the home.
- d. **Antennas**
 - (l) Television, radio, short wave, or any other type of antennas, poles, or towers may be placed, constructed, or maintained on the rear of the property as long as they follow FCC Regulations (CC&Rs – D-8(d) as amended April 1992).

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- (II) Satellite scanning dishes are permitted provided the unit is located in the rear portion of the house or property with prior approval from FOSHA Architectural Committee (CC&Rs D-8(f)).

e. Heating, Ventilation and Air Conditioning Equipment

- (I) Equipment for heating, ventilation, and air conditioning must be placed within the home or living quarters, except that heat exchangers such as heat pumps or compressors/condenser units may be placed outside the exterior walls of the home or living quarters, but no nearer to any side lot line than is permissible or approved by the Association or Easement Requirements (CC&Rs – D-8(a) as amended April 1992).
- (II) Evaporative coolers must be installed at grade level on a concrete slab, as a thru-wall mounted type, on a suspended platform on a gable with the entire unit below the roof line and made attractive to adjacent properties, or on the roof (using a low profile type unit) properly screened from view of the neighborhood or street. (CC&Rs – D-8(b)).

f. Solar Panels

Solar panels may be installed upon the roof of a building containing a living unit, provided prior approval is obtained from the FOSHA Architectural Committee (CC&Rs – D-8(c)).

g. Light Posts and Flag Poles

No light posts of any kind that exceed the height of eight (8) feet above grade shall be installed or maintained on any property (CC&Rs – D-8(e) as amended). There are no restrictions of flag poles.

12. Tanks

No elevated tanks of any kind shall be erected, placed or permitted on any lots. Any tanks, including tanks for the storage of fuel, must be buried or attractively screened to conceal it from neighboring tracts, roads, or streets (CC&Rs – D-9).

13. Landscaping

All lots must be landscaped within sixty (60) days of occupancy. The owners are required to maintain their landscaping in a clean, neat and attractive condition, and neatly trimmed and cultivated.

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F. ENFORCEMENT

1. In the event that the Committee should be made aware of any proposed construction or construction in progress that has not been approved, a Committee Member shall visit the site to determine the status. He/she then will contact the Owner in person or by phone and explain the need for an approval from the Association. Any unapproved work in process shall be stopped immediately. The Committee should then work with the Owner to expedite a request and approval.
2. In the event that construction has been completed, the Committee shall visit the site, and contact the Owner, explaining the need for Association approval and compliance with the Rules and Regulations. The Committee should then work with the Owner to achieve compliance with the Rules and Regulations by reworking the project if necessary, and to submit a proper request.
3. In the event that the Owner refuses to cooperate, the Committee shall refer the Owner to the Compliance Committee to begin the enforcement process, which may result in the Association assessing fines for the violation or obtaining an injunction that requires the Owner to remove the unapproved work or enlisting the Association's attorney to assist with ensuring compliance.

ATTESTATION

This policy was passed and duly enacted by the Board of Directors of Fountain of the Sun Homeowners Association on April 9, 2018 and is effective immediately.

Prepared by Board Directors Marilyn Block and Keith Kellen.

Reviewed by CARPENTER, HAZLEWOOD, DELGADO & BOLEN, LLP Attorney's office, Allison Preston.

