

Pets in Summer Gardens

The current rules are in the Declaration, the By-laws, and the Rules. This memo discusses proposed changes (page 4 onwards), as raised at the AGM and the Town Hall meeting.

Summer Gardens Declaration:

6 PETS

6.01 Owners shall be allowed to keep household pets in their units and such pets shall be permitted ingress to and egress from such units provided that the keeping of such pets and their control shall be strictly in compliance with the rules and regulations relating to pets.

Comment: The Declaration is our “constitution” and governs the rights and obligations of owners. It provides that owners have the right to keep household pets (plural) in their units, with the right of ingress and egress. Owners are required to comply with the rules and regulations (presumably meaning the By-Laws and Common Element Rules) relating to pets, but those rules must not be inconsistent with the Declaration.

Summer Gardens By-Laws

Article XI - Provisions Respecting the Use and Occupation of Units

1. In addition to the provisions of the Declaration, the use and occupation of the units shall be in accordance with the following restrictions and stipulations:

.....

- (d) No animal or pet which is deemed by the Board in its sole discretion to be a nuisance shall be kept by any owner, visitor or occupant in any unit or on any other part of the property. Any pet owner who keeps any animal or pet in the unit or any part of the property, shall at the request of the Board, remove such animal or pet therefrom forthwith on receipt of a written notice from the Board or the General Manager requesting such removal;

Comment: The Act permits the By-laws to contain provisions governing the use of the units “for the purpose of preventing unreasonable interference with the use and enjoyment of the common elements and other units”. This clause, which is focused on pets that constitute a nuisance, meets that standard. However, in exercising its “sole discretion” as to what constitutes a nuisance, the Board must be mindful of the statutory

standard that it must be a nuisance that constitutes “unreasonable interference” – it cannot be a trivial nuisance.

Summer Gardens Common Element Rules (“New Rules”)

Pets

46. The right to maintain a pet in Summer Gardens can be revoked at any time by the Board of Directors, in their discretion, if the pet is or appears vicious, is annoying other residents, or is otherwise a nuisance, or if the resident fails to comply with these Rules and Regulations pertaining to pets.

Comment: To the extent that this rule purports to deal with keeping of pets in the units, it is probably not a valid Common Element Rule. However, the Board has power to deal with vicious or seriously annoying pets under the By-Law. To the extent that it merely repeats the By-law it is unnecessary. See proposed changes.

46. Pets must be under the control of their owner or other responsible person at all times.

Comment: To the extent that this rule purports to deal with keeping of pets in the units, it is probably not a valid Common Element Rule. However, the Board has power to deal with vicious or seriously annoying pets under the By-Law. However, to the extent that it deals with pets in the common elements it is a valid Common Element Rule.

47. No pets may be kept on the common elements, including exclusive-use common elements (balconies). Pets are prohibited in hallways, except for ingress and egress.

Comment: Valid Common Element Rule

48. Animals other than service dogs must enter or leave the building through the back entrance or through the parking garage, and not through the main entrance.

Comment: Valid Common Element Rule, but many owners feel it is unnecessary and unfair. See proposed changes.

49. Pets must be walked off the condominium property must not be curbed on the external common elements. Pet owners must always clean up after their pets.

Comment: Valid Common Element Rule

50. Residents are responsible for any damage to persons or property caused by their pet. Residents must always clean up after their pets.

Comment: Valid Common Element Rule, although there may be a question of whether a Common Element Rule can impose liability on an owner. Under the Act, the Corporation must repair damage to the Common Elements, but it may recover from the unit owner the cost of repairs for which he or she is responsible, up to the amount of the deductible under the condominium's insurance policy. Under the Declaration (s.12.01) owners must indemnify the Condominium for damage caused by the owner, his or her tenants or guests. Any questions of liability will be determined under those provisions – not this Rule.

51. Any pets brought into the building by visitors or guests must abide by all the rules pertaining to pets and residents are responsible for their guests and their pets.

Comment: Valid Common Element Rule

52. No pets or animals shall be kept or maintained in or about the Condominium property, except dogs, cats and small birds in suitable cage.

53. Only one dog or cat may be kept in a unit.

Comment: Rules 52 and 53 are carried forward verbatim from the old Rules and Regulations. They purport to deal with use of the units or to arbitrarily fetter the discretion of the Board in determining what is an “unreasonable interference” and are therefore probably invalid. (It cannot be said that the presence of two cats in a unit necessarily constitutes an “unreasonable interference with the use and enjoyment of the common elements or the units”.) The Board proposes to remove these.

Discussion:

At the Town Hall Meeting it was clear that many pet owners feel that it is unreasonable to restrict them from taking well-behaved pets out the front door. Some owners said that they are not comfortable leaving and returning through the back door after dark. Nobody spoke against relaxing the rule prohibiting pets to be taken through the front door. We propose to relax this rule.

The rules arbitrarily limiting pets to “dogs, cats and small birds”, and limiting residents to one dog or cat, are probably invalid and of questionable value. We propose to remove them. If any rules of this sort are desired, they should be in the By-laws if we are satisfied that they are directed at “unreasonable interference”, or in the Declaration if they do not meet that standard. We do not recommend amending either the Declaration or the By-Laws to add such terms.

The Board invites comments from Owners on the proposal to replace Rules 46 – 53 of the Common Element Rules approved at the last AGM with the following:

Common Element Rules: Pets

Pets

46. The right to maintain a pet in Summer Gardens is governed by the Declaration¹ and the By-laws², and can be revoked at any time by the Board of Directors if, in their discretion, the pet is or appears vicious, is annoying other residents, or is otherwise a nuisance, or if the resident fails to comply with these Rules pertaining to pets.
47. Pets must be under the control of their owner or other responsible person at all times. Small pets may be carried by the responsible person, and all other pets must be on leash at all times while in the common elements.
48. No pets may be kept on the common elements, including exclusive-use common elements (balconies). Pets are prohibited in hallways or lobbies, except for ingress and egress.
49. The Board may direct that any pet other than a service dog must enter or leave the building through the back entrance or through the parking garage and not through the main entrance if the Board determines in its sole discretion that the pet is unreasonably dirty, is or appears threatening to others, or constitutes an unreasonable nuisance to other residents or guests.

¹ *Summer Gardens Declaration:*

6 PETS

6.01 Owners shall be allowed to keep household pets in their units and such pets shall be permitted ingress to and egress from such units provided that the keeping of such pets and their control shall be strictly in compliance with the rules and regulations relating to pets.

² *Summer Gardens By-Laws*

Article XI - Provisions Respecting the Use and Occupation of Units

1. In addition to the provisions of the Declaration, the use and occupation of the units shall be in accordance with the following restrictions and stipulations:
 - (d) No animal or pet which is deemed by the Board in its sole discretion to be a nuisance shall be kept by any owner, visitor or occupant in any unit or on any other part of the property. Any pet owner who keeps any animal or pet in the unit or any part of the property, shall at the request of the Board, remove such animal or pet therefrom forthwith on receipt of a written notice from the Board or the General Manager requesting such removal;

50. Pets must be walked off the condominium property and must not be curbed on the external common elements. Residents or guests must always clean up after their pets.
51. Residents are responsible for any damage to persons or property caused by their pet.
52. Any pets brought into the building by visitors or guests must abide by all the rules pertaining to pets and residents are responsible for their guests and their pets.