

***A COVENANT-PROTECTED COMMUNITY***

# NEWSLETTER

## **Short-Term Rental Ban Passed with Overwhelming Support**

With an overall vote of 194 to 19 (91% to 9%), the Amendment to prohibit short-term rentals (STRs) passed in all 14 filings in Top of Skyway on June 22, 2020. The vote breakdown by filing can be found below. The certified Amendments have been formally recorded, and STRs are now prohibited by the relevant covenants associated with every property in the neighborhood. STRs are defined by the Amendment as any rental shorter than 180 days.

The TOSHA Board of Directors would like to extend a big “thank you” to every neighbor who voted. The TOSHA Board believes that passage of the Amendment will help keep Top of Skyway the type of neighborhood we all know and love. The TOSHA Board is currently developing an interpretation document that will control how the Amendment will be enforced. Enforcement will be evenly applied and will be guided by the interpretation document. Your input is welcome. Please contact the TOSHA Board with your thoughts or concerns. One method to reach the Board is through our website “Contact Us” tab at [www.TopOfSkyway.com](http://www.TopOfSkyway.com).

There are already some suggestions that will likely be added to the interpretation document. These include protection for property owners who intend to rent their property for 180 days or more, but whose tenant does not stay that long for reasons not created by the property

### **Contents**

STR Ban Passed with Overwhelming Support  
TOSHA Board of Directors  
Event Dates for 2020  
Welcome New Neighbors  
2020 Resident Directory  
Speed Bumps  
Dog Etiquette  
Beetles & Pines  
Architectural Control Committee Q&As  
2019 Treasury Report  
Invitation to Annual Picnic August 16

☆ **Sign up for the Annual Picnic on Sunday, Aug. 16**  
☆ **Slash pickup week of Aug. 24 - register on-line for free pickup**  
**More details on page 3.....**

owner. Also month-to-month extensions of long-term rental agreements will be permitted if the total number of consecutive days of tenancy is at least 180 days. Occasional house sitters and pet sitters who stay at a property for less than 180 days will not trigger an enforcement action if the only benefits received by the property owner are the care and maintenance of the property and/or pets. Those benefits will not be deemed “compensation” in exchange for tenancy. Violations of the covenants, including the Amendment, will be addressed by TOSHA if brought to their attention through a complaint, or by the obvious nature of the violation.

Existing STR operations became eligible for a “grace period” policy once the Amendment passed. The “grace period” allows those operations to honor any confirmed 2020 reservations they held as of June 22, 2020 at 8:30pm, IF they provided TOSHA with the dates and number of guests for each reservation. Reservations for 2021 are not allowed under the “grace period” policy. All known STR operations in the neighborhood are in compliance with the Amendment under the “grace period” policy. If you live near an STR, please note that all STR activity should cease over the next few months. Please feel free to contact TOSHA to learn whether a particular reservation was included in the “grace period.” TOSHA can also tell you the end date of the last eligible reservation for any STR operation near you. If you believe STRs are occurring outside of the “grace period” policy provisions, please notify TOSHA.

Here are the final passing vote tallies for each filing:

Filing 1: 29 for, 2 against	Filing 9: 11 for, 1 against
Filing 3: 24 for, 5 against	Filing 10: 8 for, 0 against
Filing 4: 8 for, 0 against	Filing 10B: 16 for, 0 against
Filing 5 & 5A: 16 for, 1 against	Filing 11: 16 for, 1 against
Filing 6: 20 for, 1 against	Filing 12: 10 for, 0 against
Filing 7: 12 for, 3 against	Filing 13: 10 for, 4 against
Filing 8: 5 for, 1 against	Filing 14: 9 for, 0 against

Overall vote: 194 to 19 (91% to 9%)

## **Event Dates for 2020**

### ***TOSHA Annual Picnic***

Sunday, August 16, 4:30-7:30pm, Bear Creek Park Pavilion #1. Live music, catered by Front Range BBQ. TOSHA members attend for free! RSVP by Aug 12.

***Even though we are outside, please bring your mask and remember to social distance.*** We are limited to 69 people as required by El Paso County Parks. Your invitation with more details is attached at the back of this newsletter.

### ***CSFD Mitigation Slash/Chipping Program***

Our second annual pickup is the week of August 24. ***ALL residents must register in advance with the Colorado Springs Fire Department*** at <https://coloradosprings.gov/fire-department/page/neighborhood-chipping-program>.

## **TOSHA Board of Directors**

President - Prince Dunn

719-482-4374

[business.doctor@comcast.net](mailto:business.doctor@comcast.net)

Vice President - Pete Reaves

919-450-7757

[preaves20@gmail.com](mailto:preaves20@gmail.com)

Secretary & Treasurer

Janet Adessa

719-660-9967

[jadessa2009@gmail.com](mailto:jadessa2009@gmail.com)

Ben Guedry

ACC Chairperson

312-282-7934

[bguedry@gmail.com](mailto:bguedry@gmail.com)

## **Welcome New Neighbors**

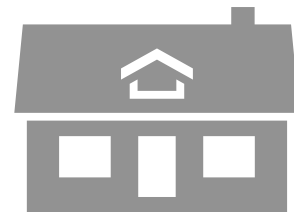
Several new residents have joined Top of Skyway since the February 2020 newsletter. Please stop by, introduce yourself and welcome them into our beautiful neighborhood!

Doug Bram & Tawnia Valdez, 2835 Halley's Ct.

Todd & Jennifer Gregory, 820 Pollux Dr.

Bill & Brandi Mills, 3338 Orion Dr.

Emma Pinell, 735 Palomar Lane



## **TOS Neighborhood Directory**

Come to the August 16 annual picnic and pick up your new 2020 Top of Skyway Directory! All TOSHA members receive a copy for free. Not a member yet? Join for only \$75/year at [www.TopOfSkyway.com](http://www.TopOfSkyway.com). All members not able to attend the picnic will get a copy delivered to their home.

## **Should We Install Speed Bumps?**

Excessive speeding and hazardous driving has become a safety concern on our streets. We are considering asking the City about installing speed bumps on selected streets such as Orion, Pollux and maybe others. Many homeowners have young children who enjoy playing outside, people ride bikes in the streets and many of us take a daily walk with our dogs, not to mention the deer crossing. It is very dangerous to have vehicles speeding up and down the hills and around the curves where they can come upon pedestrians or wildlife and not be able to stop.

Lately there has been a commercial business, plus private individuals, that bring long boarders and downhill trikes to the upper portion of Orion who then travel down the hill at high speeds.

On July 19 at midnight, a car was speeding up Orion Drive and spun out of control at Pollux, hit a tree and had to be towed away. Fortunately no one was hurt.

We would like your input with regard to this proposed action. Please send your comments to [TopOfSkywayAssociation@gmail.com](mailto:TopOfSkywayAssociation@gmail.com).

## **Dog Etiquette**

Please make sure Invisible Fences are working properly and keep the battery in your dog's collar fresh. A proper sign should be displayed in your yard that your dog is under control of an Invisible Fence. All dogs must be walked on a leash. Please clean up after your dog has done their "business." All dogs should be licensed with the Humane Society of Pikes Peak Region. Feed your dogs inside so bears are not attracted to their food. Covenants allow up to 3 dogs per household. And please do not allow your dog to bark excessively.

## **Beetles and Pines**

Are your pine trees browning, fading, or dying? TOSHA has noted that many of our neighborhood's pines, particularly our Ponderosas, are subject to Ips Beetle attacks.

Affected homeowners will note that their trees will begin to brown, either as a whole tree or in sections. Ips Beetles enter and tunnel under the bark of the tree leaving small holes and sometimes yellowish dust at the tree's base. The larval tunnels then cause affected trees to discolor or die. Woodpeckers are natural predators of Ips Beetles, so when large sections of bark are missing from your pine's branches, this is yet another sign of beetle infestation.

So, what can our community do?

- Unlike the more aggressive Mountain Pine Beetle, Ips Beetles generally do not attack healthy pines. But due to recent years of drought, many of our pines are now vulnerable. Adequate (but not excessive) watering may be required in our dryer months.
- Freshly cut material resulting from pruning or thinning, especially during our slash pick-ups, should be removed and stored well away from live trees. Never stack infested slash branches near healthy trees. Use caution too in firewood storage areas. Firewood stacks breed Ips Beetles and could be a source of outside contamination.
- High-value trees, especially those near already infected trees, can be protected via annual preventative spraying treatments applied by a professional arborist. These treatments are generally applied annually, usually in the early Spring, and most arborists will discount sprayings based on the number of trees sprayed.
- Keep in mind that no treatment exists for a tree that is already infected. Once infected, there is little that can be done so residents are advised to take a proactive vs. reactive approach to their lot's pine management. Trees killed by beetle infestation should be removed from the property immediately and burned.

### **Architectural Control Committee Q&As:**

Our recently completed short-term rental (STR) initiative has brought much change to the ACC. Over the past two years, TOSHA's Board of Directors and the ACC have made great strides in our legal education and with that, our recognition of needed reforms in the way TOSHA conducts its business. Gone are the days of "good old boy" agreements and selective enforcement. So, with that in mind, let's address some common legal questions we often get asked at the ACC.

Q: My neighbor doesn't pay dues to TOSHA. As a result, she claims her home doesn't fall under the jurisdiction of TOSHA. Can TOSHA do anything about her neon green shutters she recently installed?

A: Yes, of course. It's important to note that the ACC has an obligation to investigate, especially if a complaint is received from a surrounding neighbor. We're obligated to act because we must avoid something called "capricious and arbitrary behavior," meaning the ACC must always apply its policies consistently and without exception to all homeowners. We can neither conduct ourselves as tyrants, nor selectively enforce to favor our friends. That said, whether a homeowner pays dues or not has no bearing on TOSHA's jurisdiction, obligation to act, or on the homeowner's obligation to follow our covenants. Our dues are voluntary only because TOSHA's Board has determined that our reserve fund is sufficiently funded today, and that contributions should not be mandated.

Q: I just learned that my fence doesn't comply with TOSHA's covenants, but it was installed twelve years ago. Can the ACC ask me to remove it?

A: Absolutely not. All Colorado HOAs are regulated under the Colorado Common Interest Ownership Act (CCIOA). This Act states that an HOA has one-year from the date *it learns of a violation*, to initiate action for enforcement. Additionally, TOSHA's ACC does not "police" our neighborhood looking for standing violations.

Q: My husband and I just invested \$25,000 in a new stone-coated steel roof, but our deck overlooks our neighbor's badly deteriorating asphalt roof. It was our understanding that asphalt roofing is strictly prohibited within TOSHA. Our neighbor said he installed his roof when the HOA was dormant. Will he be allowed to install another asphalt roof in the future?

A: No. Under CCIOA, an HOA cannot "undo" past irregularities that occurred due to dormancy or improper previous approvals (i.e., ask that his current roof be removed). But today's TOSHA must and will enforce our covenants when it comes time for this homeowner's roof to be renewed.

Q: If TOSHA becomes dormant again in the future, what's to prevent homeowners from violating our covenants and installing prohibited materials?

A: In the event of a dormant HOA, covenants regulating a property remain in place and affixed to our properties. Homeowners would still be expected to maintain their properties with compliance to the covenants that run with the land. In addition, the language of our covenants does allow for a homeowner to take action against another homeowner in the event a covenant is violated. Fortunately, we're not aware that this has ever taken place within TOSHA.

Q: My wife and I are new residents and purchased our home last year. Having learned a little more about our covenants, we now know that our asphalt roof is non-compliant. It doesn't seem fair that we're going to be stuck with the cost of eventually bringing our home into compliance. Do we have options today?

A: Yes. Your home's non-compliant asphalt roof should have been disclosed to you during closing under the Common Interest Community Section (Part O) of the El Paso County Seller's Property Disclosure. Any homeowner who fails to properly disclose non-compliance with local HOA covenants could carry a burden of legal exposure for up to five years.

Q: My neighbor was operating an Airbnb next door but has told TOSHA that she is no longer operating. But I still see a variety of people transiting her home on a regular basis. I've asked her if she is still renting the facility and she claims that these are friends who pay no money. But I'm sure these are renters. What should I do?

A: You should contact the ACC immediately. Because our STR prohibition is new, TOSHA's Board is prepared for the possibility that enforcement may be tested. TOSHA will investigate with the highest priority any complaint or suspicion that an STR continues to operate in our subdivision.

Under Colorado's CCIOA, TOSHA would have one-year from the date of *each infraction* to file suit against a homeowner operating an STR. Because CO law provides for recoupment of enforcement legal expenses, financial liability could add up quickly for a defiant operator. Since the risk is so financially prohibitive, we do not expect violations of our new STR covenant to occur.



### **Questions and/or Comments?**

Visit our website at [www.TopOfSkyway.com](http://www.TopOfSkyway.com).

Messages may be sent from the website under "Contact Us" tab.

Emails may be sent to [TopOfSkywayAssociation@gmail.com](mailto:TopOfSkywayAssociation@gmail.com).