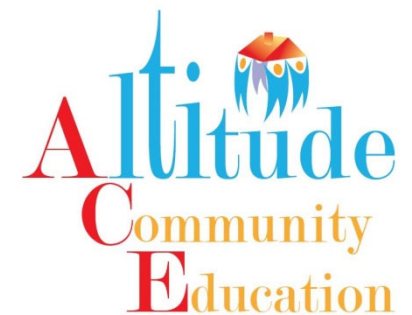


# Thou Shall Not Ban...

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# GENERAL CONSIDERATIONS

- The law **supersedes** your governing documents to the extent of inconsistency
- The law does not require you to **amend** your Declaration to be consistent
- The Board **should revise** its rules/regs, policies (to remove inconsistencies) and/or **draft new** rules, regs, policies on those topics that are important to the community



# 1. FLAGS

- C.R.S. §38-33.3-106.5(1)(a)
  - Based on subject matter, message or content
  - Location: on an Owner's property, in window, or on balcony adjoining Unit
  - Exception: Flags bearing commercial messages
  - Assn may adopt reasonable, content-neutral rules on number, location and size, but no ban on flag/flagpoles



## 2. SIGNS

- C.R.S. §38-33.3-106.5(1)(c)
  - Based on subject matter, message or content
  - Location: Within the Unit boundaries or in the window
  - Exception: Signs bearing commercial messages
  - Assn may adopt reasonable, content-neutral regulations on number, placement, or size, or on other objective factors.



# 3. RELIGIOUS ITEM OR SYMBOL

- C.R.S. §38-33.3-106.5(1)(c.5)
  - Definition: A “religious item or symbol” is “an item or symbol displayed because of a sincerely held religious belief.”
  - Location: On entry door or entry door frame of Unit
  - Maintenance: May have to remove when Assn is performing maintenance, repair or replacement



# RELIGIOUS ITEM/SYMBOL (cont.)

- Exceptions: Assn may ban the item/symbol if:
  - Threatens public health or safety
  - Hinders opening/closing of a door
  - Violates federal or state law or municipal ordinance
  - Contains graphics, language or any display that is obscene or otherwise illegal; or
  - Individually or combined with other religious items/symbols, is larger than 36 square inches.



# 4. EMERGENCY VEHICLE

- C.R.S. §38-33.3-106.5(1)(d)
  - An “emergency vehicle” must meet following criteria:
    - Required to be at residence as condition of employment
    - Gross vehicle weight of 10,000 lbs. or less
    - Member of volunteer fire dept, or employed by primary provider of emergency firefighting, law enforcement, ambulance or emergency medical services
    - Bears official emblem or other visible emergency service provider designation



# EMERGENCY VEHICLE (cont.)

- An “emergency vehicle” must meet following criteria (cont.):
  - Vehicle will not obstruct emergency access or interfere w/ reasonable needs of others to use streets, driveways, and guest parking
- Location: Cannot ban from parking on the street, driveway, or guest parking area





# 5. XERISCAPE AND ARTIFICIAL TURF

- C.R.S. §38-33.3-106.5(i) and C.R.S. §37-60-126
  - Definitions:
    - “Xeriscape” means “the combined application of the seven principles of landscape planning and design, soil analysis and improvement, hydro zoning of plants, use of practical turf areas, uses of mulches, irrigation efficiency, and appropriate maintenance under section 38-35.7-107(1) (a) (III) (A).”



# XERISCAPE AND ARTIFICIAL TURF (Cont.)

- Location: Property for which an Owner is responsible, including a Limited Common Element
  - Artificial turf: Can restrict artificial turf to the back yard (i.e., you don't need to allow it in front or side yard)
- Assn may adopt & enforce design/aesthetic guidelines/rules that apply to drought-tolerant vegetative/nonvegetative landscapes or regulate type, number & placement of drought-tolerant plantings and hardscapes



# 6. RAIN BARRELS

- C.R.S. §38-33.3-106.5(j)
  - Definition: A “rain barrel” is a storage container with a sealable lid that it:
    - Located aboveground outside of a residential home; and
    - Used for collecting precipitation from a downspout of a rooftop
  - Collect precipitation from residential rooftop in accordance with 37-96.5.103 (next page)



# RAIN BARRELS (Cont.)

- No more than 2 rain barrels with combined storage capacity of 110 gallons or less are used to
- Collected from rooftop of single-family residence or multi-family with 4 or fewer units
- Precipitation is used for outdoor purposes including irrigation of lawns and gardens (cannot use for drinking water/indoor household purposes), and
- Precipitation is used on residential property on which the precipitation is collected



# RAIN BARRELS (Cont.)

- C.R.S. §38-33.3-106.5(j)
  - Exception: An Assn may ban installation on property that is:
    - Leased (unless lessor gives permission)
    - Common or Limited Common Element
    - Maintained by Assn
    - Attached to one or more Units (unless other owners give permission)



# 7. CHILD-CARE HOMES

- C.R.S. §38-33.3-106.5(k)
  - Definition: A “family child care home” is a facility for child care in a place of residence of a family or person for the purpose of providing less than twenty-four-hour care for children under the age of eighteen years who are not related to the head of such home. “Family child care home” may include the types of family child care homes designated by rules of the state board pursuant to CRS 26-6-102(2)(p) as the state board deems necessary and appropriate.



# CHILD-CARE HOMES (Cont.)

- Must be licensed
- Does not supersede Assn's regs on architectural control, parking, landscaping, noise or other matters not specific to operation of business per se
  - Exception: Must make reasonable accommodations for fencing requirements
- Assn may require insurance
  - Assn shall be named additional insured
  - Owner's insurance is primary



# 8. RENEWABLE ENERGY GENERATION DEVICES

- C.R.S. §38-33.3-106.5 (1.5)
  - Solar energy devices (CRS 38-32.5-100.3) and windmills (CRS 40-2-124)
  - Location: On property owned by the Owner
    - Not leased (except with permission from lessor)
    - Not on any Common or Limited Common Element





# RENEWABLE ENERGY GENERATION DEVICES (Cont.)

- Assn may adopt aesthetic provisions that impose reasonable restrictions on the dimensions, placement or external appearance of the device and that do not:
  - Increase the cost of the device by more than 10%, or
  - Decrease its performance or efficiency by more than 10%, or
  - Require review period that exceeds 60 days from date of application
- Bona fide safety requirements
- For windmills: reasonable restrictions to address noise



# 9. ENERGY EFFICIENCY MEASURE

- C.R.S. §38-33.3-106.7

- An “energy efficiency measure” is limited to:

- (i) an awning, shutter, trellis, ramada, or other shade structure that is marketed for the purpose of reducing energy consumption;
    - (ii) A garage or attic fan and any associated vents or louvers;
    - (iii) An evaporative cooler;
    - (iv) An energy-efficient outdoor lighting device, including without limitation a light fixture containing a coiled or straight fluorescent light bulb, and any solar recharging panel, motion detector, or other equipment connected to the lighting device;
    - (v) A retractable clothesline



# ENERGY EFFICIENCY (Cont.)

- C.R.S. §38-33.3-106.7
  - Location: On property owned by the Owner
    - Not leased (except with permission from lessor)
    - Not on any Common or Limited Common Element
  - Assn may adopt reasonable aesthetic provisions that govern dimensions, placement or external appearance, that consider:
    - Impact on purchase price and operating costs of measure,
    - Impact on performance of measure, and
    - Criteria contained in governing documents



# 10. EV CHARGING SYSTEM

- C.R.S. §38-33.3-106.8
  - Definitions of “electric vehicle charging system” and “level 1” and “level 2” are in subsection (7) of 38-33.3-106.8
  - Can’t ban a level 1 or level 2 electric vehicle charging station
  - Location: Limited Common Element parking space, carport or garage owned by owner or assigned to owner
  - Assn may require reimbursement for: (i) actual cost of electricity OR (ii) a reasonable fee for access



# EV CHARGING SYSTEM (Cont.)

– Assn may:

- Adopt bona fide safety requirements
- Require that the EV charging system be registered with Assn within 30 days after installation
- Adopt reasonable aesthetic provisions that govern the dimensions, placement of external appearance of the system



# EV CHARGING SYSTEM (Cont.)

- Owner must agree in writing to:
  - Comply with Assn's design specifications
  - Engage licensed/registered electrical contractor familiar with installation/code requirements of EV charging systems
  - Bear cost of installation, including restoration of any Common Elements disturbed
  - Provide a certificate of insurance that meets statute



# EV CHARGING SYSTEM (Cont.)

- Owner (including successors) is responsible for any damages caused by installation, maintenance, repair, removal, or replacement of system
- Insurance must be maintained
- Owner must remove system if needed for Assn to perform work on Common Elements
- The system is the property of the Owner



# 11. SATELLITE DISHES

- Federal Over-the-Air Reception Device Rule (“OTARD”)
  - Assn cannot enforce regs that impair the installation, maintenance or use of a protected satellite dish (must be 1 meter in diameter or less)
  - LOCATION: On property owned by owner, or over which owner has exclusive use





# SATELLITE DISHES

- Regs/Restrictions cannot be enforced if they:
  - Unreasonably delay or prevent installation
  - Unreasonably increase cost of installation, maintenance or use of
  - Preclude subscriber from receiving an acceptable quality signal
- Sample Prohibited/Allowed Regs/Restrictions
  - Prohibited: Any requirement for prior approval
  - Allowed: Notice of intent to install
  - Allowed: Preferred locations for installation



# SATELLITE DISHES

## – Sample Prohibited/Allowed Regs/Restrictions (cont.):

- Prohibited: Administrative fees for review
- Allowed: Requirement to place antennas in location where they would not be visible from street (as long as signal reception is not impaired, and requirements do not unreasonably delay or increase cost of installation, maintenance or use)
- Allowed: May require painting of dish (not mountain materials, accessories or cabling if this voids/violates warranty)
- Allowed: safety restrictions



# SATELLITE DISHES

- Detached Single Family Homes: Less authority to regulate as Owner owns residence and Lot
- Townhomes: Less authority to regulate as Owner owns residence (including the roof) and Lot, even though Assn might maintain
- Condos: More authority to regulate as Owner typically owns only air space within perimeter walls, floors and ceilings
  - But LCE balconies, patios, etc. are protected



Questions?  
Thank You!

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