

Recommendation to the PTCA Board of DirectorsIssue No. 1***Should the Association consider adding Leasing Restrictions to the Declaration?*****CURRENT RESTRICTIONS & VOTE REQUIRED TO AMEND**

- A. The only language in our governing documents limiting leases is found on page 37 of the Rules & Regulations Handbook (2015), in a section titled "Rental Policy." Neither the Declaration nor the By-laws makes reference to limitations on leasing.
- B. Amending the Declaration to incorporate a limitation on leasing would be governed by Paragraph 19 of the Declaration and would require the notarized signatures of all Board members and approval by 75% of unit owners.

RECOMMENDATION

That the Board consider **AMENDING** the Declaration by adding the following statement:

"Pursuant to the Board's general authority under the By-Laws to adopt rules and regulations and amendments thereto, the Board shall have the specific authority to adopt rules and regulations and amendments thereto, limiting the ability of owners of residential Units to enter into rental arrangements with new tenants during time periods when the percentage of residential Units exceeds a specified threshold."

CONSIDERATIONS

- 1. While the committee is not aware of any significant challenge or threat of litigation regarding the Rental Policy, the committee believes that having enabling language such as the foregoing in the Declaration would make it clear that the Board has the authority to adopt such a rule and would make a legal challenge less likely. That being said, we've identified two possible arguments to the contrary:
 - (a) Recent court rulings [References C and J below], while not setting precedent, suggest that the Declaration being silent on leasing may itself be adequate protection against a challenge.
 - (b) A failed vote to include such a statement in the Declaration could leave us open to litigation by giving someone the idea that a legal challenge is possible despite the Declaration's being silent on the matter.
- 2. A rule limiting leasing can be weakened by short sales or the threats thereof, and circumvented by such acts as an owner keeping his name on a wait list "just in case," placing the property in a trust and then renting back, creating a situation in which the "tenant" owns a share equal to the security deposit, and an owner-financed sale to the "tenant."

3. As with any Rule, the board can change the details of its Rental Policy to fit conditions. The Committee encourages the board to:
 - (a) State as a part of the Rental Rule the formula for determining percentage of units currently rented.
 - (b) As the percentage of leased units approaches the current cap, consider whether that cap continues to be appropriate in view of current economic conditions [Reference (8) below].
4. The committee thinks this amendment might draw considerable support and increase the likelihood that a large number of owners (including non-resident/investment) will actually turn out to vote on this and other amendment proposals that are included with it. However, the committee also suggests the board take into consideration that by waiting until the rental cap decreases closer to current target, the likelihood of passage of this particular amendment may increase.

REFERENCES (PDF copy of this report provides “one-click” hyperlinks)

- a) <http://www.chicagotribune.com/classified/realestate/ct-nre-1213-condo-living-20151208-column.html> (Buyers want flexibility to take an out-of-town job; Buyers fear not being able to sell when necessary.)
- b) <http://www.chicagotribune.com/classified/realestate/ct-mre-0823-condo-living-20150818-column.html> (While many buyers don't want to live in a predominantly rental building, they do want multiple exit strategies if their situations change.)
- c) <https://chicagoagentmagazine.com/2012/04/30/rental-caps-in-chicago-condo-buildings-make-sales-difficult/> (FHA/Fannie May rental cap requirement; Too low a rental cap discourages potential buyers (both young people and investors) and could result in foreclosures.)
- d) <http://www.chicagobusiness.com/realestate/20110531/CRED0701/110539995/2-condo-towers-move-to-limit-rentals> (Owners worry invasion of renters will change character and depress values due to not able to get financing; Downturn in market could increase foreclosures.)
- e) <https://secure.marketwatch.com/story/condo-owners-face-rental-hurdles-2012-04-30> (Pros and cons of rental caps; Owners worry renters will not take care of property.)
- f) <http://www.lexology.com/library/detail.aspx?g=3e810dbf-c83c-4b73-81df-11288a82756c> (Recent court action re leasing restriction rules and amendments; It is a myth that owners take better care of property v. renters.)
- g) <http://www.dailyherald.com/article/20160220/entlife/160229979/> (Leasing restriction when declaration “silent” on leasing.)
- h) http://articles.chicagotribune.com/2010-11-19/classified/ct-mre-1114-hardship-rentals-20101119_1_rental-restrictions-condo-rentals-renters (Having board flexibility in the declaration allows cap adjustments/policies due to economic conditions; Lost assessments when not able to rent.)

- i) <http://www.keaycostello.com/board-operations/the-return-of-leasing-and-restrictions-at-associations/> (Recent court decisions)
- j) <http://www.illinoiscourts.gov/Opinions/AppellateCourt/2016/1stDistrict/1141427.pdf>
(Recent court decisions)
- a. http://il.findacase.com/research/wfrmDocViewer.aspx/xq/fac.19951215_9998.il.htm/qx
(Recent court decisions)

Recommendation to the PTCA Board of DirectorsIssue No. 2

Should the Association consider banning smoking throughout the building, including in all units?

CURRENT RESTRICTIONS & VOTE REQUIRED TO AMEND

There is currently no provision in our governing documents that bans smoking throughout the building, including in all units. Amending the Declaration to incorporate such a ban would require the notarized signatures of all Board members and approval of 75% of the Unit Owners, with notice given to each mortgagee with a lien on a Unit. (Declaration, Paragraph 19).

RECOMMENDATIONS

That the Board consider **AMENDING** the Declaration to:

1. Prohibit smoking by all residents, tenants, personnel and their guests throughout Park Tower, including in all units, common elements, including corridors and stairwells, the entire second floor sundeck and roof garden, laundry facilities, lobby and mall, limited common elements, and parking areas, up to fifteen (15) feet beyond the property line, except for the following area designated as smoking areas: in the loading dock area away from all doorways by at least 25 feet. (Preference is to discontinue smoking in the NE corner of the Circle Drive; it is very unattractive especially for our front entrance.)
2. Establish as the effective date, the January 1 next following the one-year anniversary of the recording of the amendment with the office of the Recorder of Deeds of Cook County. This date reasonably accommodates, for renters of residential units, the option to exit from a mandatory two-year lease at 1 year given a 60-day notice by either party. It also allows time for smokers of medical marijuana to establish medical necessity and for the association to consider other issues/solutions that might arise from the implementation of the smoking prohibition.
3. Whether in the amendment itself or in a corollary rule:
 - A. Define the terms, "smoke" and "smoking," as the burning, vaporizing, carrying, inhaling or exhaling of tobacco, marijuana, herbs and other organic substances in the forms of cigarettes, cigars, pipes, electronic cigarettes, hookahs and other smoking and vaporizing equipment.
 - B. Include an accommodation for compassionate use of marijuana. The user should be required:
 - i. To be a resident, not a guest, and to request the accommodation.
 - ii. To be properly licensed, with proof provided to the association in the form of a copy of the registration card issued by the Department of Public Health, which is then kept as part of the resident's file in the management office. Additionally, a note stating that smoking is the only form of ingestion effective for the resident (as opposed to some form of food), signed by a doctor, should be submitted for placing in the resident's file in the management office.

- iii. To use marijuana only in the private areas designated by the association, never in the common elements.
 - iv. If the designated private area is the user's own unit, then he/she is required to smoke the marijuana through a vaporizer and/or to install and use a filtering system to eliminate as much as possible odors and toxins from permeating other units and common elements. Should there be persistent complaints despite these precautions, then the smoker will be required to smoke only in another designated area or outside the property of the building.
- C. That the Board should define the fines and state that they may be altered in the future by vote of the board, these fines to be assessed against any unit owner who violates this ban, or whose guest or tenant violates this ban. The association should reserve the right to request entry into the violator's unit upon reasonable written notice to make sure that the owner has complied with the requirements. Failure to grant entrance may result in the initiation of legal action. Each complaint against a unit is considered a separate offense each of which is subject to a fine.
- D. That the board clarify its rights with regard to this issue so that besides the right to levy fines against the unit owner, it also maintain all rights not limited to the right to maintain an action for possession against the unit owner and/or their tenant an injunction and other equitable relief or an action at law for damages. Any action brought by the association and/or board to enforce this amendment shall subject the unit owner to the payment of all costs and attorney's fees at the time they are incurred by the association. All unpaid charges as a result of the foregoing shall be deemed to be a lien against the unit and collectible as any other unpaid regular or special assessment, including late fees and interest on the unpaid balance.
- E. That the association use all means of communication to make sure all unit owners and residents are aware of the prohibition, including when it takes effect and fines for violations) Special notice should be given to unit owners who rent out their units and to prospective buyers. Unit owners who are also landlords should be asked to include a prohibition on smoking in their leases to make it clear to prospective renters.

In making its recommendations, the committee has noted the documentation generously provided to it by two other D&K condominium associations: 3550 N. Lake Shore Drive (a recorded amendment to its declaration), and 50 East Bellevue (a recorded rule change). The rule is included in the Appendix to this report, and the amendment (multiple pages) is available from the committee upon request.

The committee understands that declarations and its amendments are subject to fewer legal restrictions than are rules and regulations. And because the committee understands that amendments to the declaration are better able to withstand court judgment, they are also less likely to be challenged.

CONSIDERATIONS (PDF copy of this report provides "one-click" hyperlinks)

- a) Park Tower is dependent on the free movement of air throughout the building. This includes air entering individual units from the hallways and exiting via bathroom and kitchen vents. Additionally, air flows from unit to unit horizontally and vertically through electrical receptacles, around and through plumbing and HVAC pipes, through various unsealed openings, and gaps between the curtain wall and concrete floors. Changes in air pressure from opening windows also affect air flow.

The system of air flow is well documented and understood. Smoking has been banned in the common areas of our building, through city ordinance, since 2008 and smoking in units that causes a nuisance to other residents is prohibited by PTCA Rules and Regulations. Because of the construction of our building, the adverse effects of smoking on neighboring units requires further remedial action.

Secondhand smoke is a nuisance. It is also a proven carrier of 7,000 toxins, at least 70 of which are carcinogenic. These toxins and carcinogens first became apparent to the general public with the issue of the 1982 Surgeon General's Report on Smoking and Health by C. Everett Koop. (<http://www.surgeongeneral.gov/library/reports/>)

Subsequent documentation, such as from the Centers for Disease Control and Prevention (CDC) (http://www.cdc.gov/tobacco/data_statistics/fact_sheets/secondhand_smoke/general_facts/index.htm) further substantiates the danger of secondhand smoke.

The CDC factsheet rules out air filters as an effective means of eliminating the carcinogens of secondhand smoke, even though they might help to reduce the odor. Also, the factsheet indicates that adults exposed to secondhand smoke are subject to heart disease, lung cancer and stroke. Furthermore, "Smoke-free laws can reduce the risk for heart disease and lung cancer among nonsmokers."

Smoking, whether ignited or vaporized, conveys toxins into the air, including those which are carcinogenic, to adjacent units and common element hallways. The conveyance is likely regardless of whether the odor of the smoking is a nuisance or not.

- b) Smoke is identified in the ***Park Tower Condominium Association Rules & Regulations Handbook*** as a nuisance and is thus subject to the nuisance section of our declaration. The addition of a smoking ban for the entire building would underline the seriousness of the offense. ***Paragraph 11(g) of the Declaration*** states, "No noxious or offensive activity shall be carried on in any Unit or in the Common Elements, nor shall anything be done therein, either willfully or negligently, which may be or become an annoyance or nuisance to the other Unit Owners or occupants." Condominiums often prohibit pets, loud music, barking dogs or dirty living conditions. Smoke may be banned in a similar manner.

- c) Smoke is also a cost issue. Smoke permeates porous materials and remains on the surface of nonporous materials. Thus smoking in a unit adds to the expense of preparing a unit for sale or for rent. Association members who smoke in their units, or are landlords of tenants who smoke in their units, spend more money on remodeling due to the stains and smell of smoke remaining in their carpeting, tile, wood, paint, plaster, etc. Those materials permeated by smoke retain the odor and are undesirable by new potential buyers/renters until cleaned and/or replaced. Walls often have to be sealed before they are repainted, screens washed, ductwork cleaned, filters replaced, wood deep cleaned, and upholstery, window shades, carpets and padding replaced.
- d) Current rules and regulations regarding smoking as a nuisance are time consuming for management and security, costly to the association, and delay fixing the problem. These problems are described below in a personal email correspondence between Tim Patricio, Property Manager, PTCA and Sheldon Atovsky, PTCA Declaration & By-Laws Ad Hoc Committee, committee member. Quotes are used by permission from both correspondents.

"It is probably the most difficult nuisance issue for us to deal with. It is sometimes impossible to identify the source. Even when we have complaints over and over and over, and then schedule inspections of the surrounding units, we have had cases where even then we could not find a culprit."

"Cigarettes last about 5 minutes, and by the time we can respond, the air could be cleared out or at least dissipated enough into the surroundings that we just can't reasonably determine the source. Also, air flow in the building is influenced by dozens of variables, which can fool even the most veteran security person. And, the smoke can clear fast, so every minute trying to track it down, the evidence is dispersing even further so the security person is just chasing their tail."

"I think we deal with smoking issues every week; sometimes every day. I have copied Marlon and will have him try to give some stats on how often we are dealing with smoke."

"We are fortunate to have had some success getting problem smokers to go outdoors. And where we have been able to identify problems, the Board has passed fines. But just to guess, in terms of labor tracking down smokers, dealing with them – and the time spent dealing with their neighbors, who write angry letters/emails, call the office and stop by the office, I would guess we are talking about thousands of dollars in time spent dealing with it. It would be impossible to quantify, but my guess is at least 3 or 4 hours a week if you total collective efforts."

"The biggest issue I think, though, is quality of life. And by association, property values. To me, this makes it a no brainer. With how tough it is to track smokers when it's a problem, coupled with the fact that really, not much gives us the right to tell them not to smoke, a "Smoke Free Building" would be a huge victory for owners."

"Also – I believe there would be a lot of support for this and it could be an issue that gets folks that may have ignored the notice, to actually vote. I think your toughest obstacle with any change to the Declaration is getting the requisite % of owners to pick up a pen and fill out the ballot. With a quality life issue, this may help get people to actually care about voting on whatever the owners are presented with."

- e) Smoking bans are well-established in rental and condominium buildings in Chicago. The website, <https://www.forrent.com/find/IL/metro-Chicago/extras-Smoke+Free+Community> lists 48 rental buildings (as of 06-16-2016) with smoking bans in the Chicago metro area (as defined by this website), including Presidential Towers which has 2,346 apartments. Specifically, smoking bans are in place at condos at 2626 N.Lakeview, 1418 N. Lake Shore Drive, 416-22 W. Deming Place, 2650 N. Lakeview, and at 505 N. McClurg Court (ParkView at RiverEast).

New York City and the State of California have led the way on smoking bans in condominium associations. There is little court precedent on the issue. One suit was in Colorado and the association won against an owner living in the building before the ban was put into place. (<http://www.tobaccocontrolaws.org/litigation/decisions/us-20061107-christiansen-v.-heritage-hills>)

Five buildings managed by D&K, including 3550 North Lake Shore Drive, have made changes to their declarations that ban smoking. One indicates the current owners were grandfathered, but all new sales were prohibited. (But that was a building with under 100 units – one smoker; they had to have 100% approval for the change, so they bribed the one smoking hold-out by putting in the grandfather clause. Grandfathering such a declaration change here would be impossible to administrate so that just would likely not work here.) One, 50 East Bellevue, did it by rule change first, but then approved the rule as an amendment to the declaration.

- f) A relatively new, unknown issue, related to a ban on smoking, is the use of medical marijuana. Medical cannabis is made from sinsemilla, the unfertilized flowers of the female plants. It is unlike non-medical cannabis which uses both the whole male and female plants, including more stems and leaves and thus, possibly, more toxins.

Secondhand smoke from sinsemilla has almost twice as much tar as tobacco smoke, as well as 20 times as much ammonia (possibly from hydroponic fertilizer), and over twice as much hydrogen cyanide, which is a highly poisonous gas or liquid. Secondhand medical cannabis smoke, like secondhand tobacco smoke, numbs the body's ability to naturally widen arteries as necessary and contributes to atherosclerosis. Note that the Illinois Compassionate Use of Medical Cannabis (<http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=3503>) is a pilot program and without further legislation will be repealed January 1, 2018. Senate Bill 2981 was introduced May 13, 2016 and, if successful, would extend the repeal of the current pilot program to January 1, 2021.

Marijuana may be ingested in pill or food form as well as smoked. Some patients require smoking as the only effective means of benefitting from the medical use of marijuana. This may prove to be an issue similar to the inclusion of service dogs in our building but remains unknown. If proof from a doctor demonstrates that a person must smoke the marijuana to be effective, perhaps PTCA may establish that windows must remain closed, the person must smoke close to an operating vent in their unit, and other means by which to minimize the travel of the second hand smoke from one unit to another.

- g) A ban on smoking is not uncontroversial. Smoking bans may deter some potential buyers and renters, but it's also possible they would help buildings stand out to non-smokers. Current resident owners who smoke in their units may consider it an incentive to stop smoking or an impingement on their rights. The best bans are immediate, upon adoption of the change, and do not allow for any grandfathering. Most of the condo buildings, in Chicago, that have adopted smoking bans have had good responses, although a few owners have sold their units and left the buildings.

In addition to the wording in our **Declaration** regarding nuisances [Observation b) above], our **Rules & Regulations Handbook** references smoking as follows:

"Smoking is prohibited in the stairwells, corridors or any common areas of the building."
(Corridors and Stairways)

"Smoking and eating are prohibited in the laundry facilities." (Laundry Room)

"Prolonged socializing is not allowed in the lobby or at the front desk; neither are eating, drinking or smoking," (Roof Garden and Sundeck)

"The release of smoke and other toxic gases and particles from cigarettes, electronic cigarettes, marijuana, and other tobacco products used in an individual unit that permeates any other unit or the common elements is hereby classified as a noxious or offensive activity pursuant to Paragraph 11(g) of the Declaration."

Recommendation to the PTCA Board of Directors

Issue No. 3

Should the Association consider lowering the voting threshold to adopt certain amendments?

CURRENT REQUIREMENTS

The following is the hierarchy of governing authorities, and a brief statement regarding the process for amending each of them:

- A. The Illinois Condominium Property Act (ICPA) is the supreme governing authority and trumps both the Declaration and the By-Laws. The ICPA is amended from time to time by the state legislature. (Note that copies of the ICPA may be downloaded in PDF form at: <http://www.arnstein.com/images/cms/2015-ArnsteinLehr-Condo-ICPA.pdf>.)
- B. The Declaration of Condominium was adopted on February 1, 1979, pursuant to the ICPA. Amendments require (1) the signatures of all Board members, (2) approval of 75% of all unit owners and (3) depending on the provision being amended, *either* (i) approval by each mortgagee with a lien on any unit or (ii) notice to each mortgagee with a lien on any unit.
- C. The By-Laws of Park Tower Condominium Association have been adopted pursuant to the ICPA. Generally, amendments to the By-Laws require a 66-2/3% vote of all unit owners, but certain provisions can be amended only by following the procedure required for amendments to the Declaration
- D. The Rules and Regulations may be amended by a majority vote of the Board, subject to a veto by 75% of the unit owners.

The Appendix includes a detailed chart showing the current voting and approval requirements to take various actions.

RECOMMENDATION

That **NO CHANGE** is recommended in the current voting and approval requirements to take various actions.

CONSIDERATIONS

- 1. Initially, the committee was concerned that Paragraph 19 of the Declaration provides that certain provisions of the Declaration require the notarized signatures of 100% of the unit owners and each mortgagee with a lien on any unit. It appeared that this would be impossible to achieve in an Association of the size of PTCA.

2. However, through our study of the matter (including a consultation by the committee chair with Attorney David Bendoff of the firm of Kovitz Shifrin Nesbit, attorneys to PTCA), we became aware of the following additional factors:
 - a) Section 27(a)(i) of the ICPA provides that in no event shall condominium instruments require more than a 75% vote of all unit owners. That overrides the provision in Paragraph 19 of the Declaration that requires 100% approval of the unit owners to take certain actions and effectively "blue pencils" it down to a 75% approval.
 - b) On the other hand, Section 27(a)(ii) of the ICPA specifically authorizes a condominium instrument to require "the approval of, or notice to, any mortgagees or other lienholders of record" -- which has the effect of leaving in place the requirement of 100% approval of lienholders to take certain actions. Attorney Bendoff suggested that a possible workaround might be to give notice to lienholders and specify a reasonable time period after which failure to object would be deemed to be consent. Mr. Bendoff acknowledged, however, that such an approach might be vulnerable to a judicial challenge.
 - c) Section 18.8(e) of the ICPA provides that "no action required or permitted by any condominium instrument or any provision of this Act need be acknowledged before a notary public if the identity and signature of the person can otherwise be authenticated to the satisfaction of the board of directors or board of managers." That means that an appropriate proxy voting system can be used in lieu of requiring notarized signatures of unit owners or lien holders.
 - d) Attorney Bendoff expressed the view that when the Declaration specifies that amendments must be signed by all of the Board members, such signatures do not necessarily mean that all Board members agree with the substance of the amendment, but rather that they agree as a procedural matter that the amendment was properly adopted.
 - e) Section 27(b)(1) of the ICPA provides as follows: "If there is an omission, error, or inconsistency in a condominium instrument, such that a provision of a condominium instrument does not conform to this Act or to another applicable statute, the association may correct the omission, error, or inconsistency to conform the condominium instrument to this Act or to another applicable statute by an amendment adopted by vote of two-thirds of the Board of Managers, without a unit owner vote. A provision in a condominium instrument requiring or allowing unit owners, mortgagees, or other lienholders of record to vote to approve an amendment to a condominium instrument, or for the mortgagees or other lienholders of record to be given notice of an amendment to a condominium instrument, is not applicable to an amendment to the extent that the amendment corrects an omission, error, or inconsistency to conform the condominium instrument to this Act or to another applicable statute." By way of example, the foregoing provision would allow the Board, by a 2/3 vote, to change the approval requirement in Paragraph 19 of the Declaration from 100% of unit owners to 75% of unit owners (see paragraph (a) above).
3. In light of the foregoing, the committee concluded that the current provisions in the Declaration and By-Laws that require approval of a 75% or 66-2/3% supermajority of unit owners to take certain actions are an appropriate safeguard against highly consequential actions being taken by a simple majority of unit owners with inadequate deliberation.

4. The committee also considered that the protections provided to lien holders in Paragraph 19 of the Declaration serve an important function of reassuring mortgage lenders that their interests will be protected, and that in the absence of such protections lenders might be reluctant to make mortgage financing available for the purchase of units at Park Tower.

Recommendation to the PTCA Board of Directors

Issue No. 4

Should the Association consider removing the ban on pet cats and dogs in our building?

CURRENT RESTRICTIONS & VOTE REQUIRED TO AMEND

The first sentence of Paragraph 11(f) of our Declaration currently provides: “No animals, livestock, fowl or poultry of any kind shall be raised, bred, or kept in any Unit or in the Common Elements, except that household pets, other than dogs or cats, may be kept in Units, subject to rules and regulations adopted by the Association, which rule or regulation may exclude any kind of pet by type or category, provided that permitted household pets are not kept, bred, or maintained for any commercial purpose; and provided further that any authorized pet causing or creating a nuisance or unreasonable disturbance shall be permanently removed from the Property upon three (3) days’ written notice from the Association.”

Amendment of the foregoing provision would require the notarized signatures of all Board members and the approval of 75% of the Unit Owners, with notice given to each mortgagee with a lien on a Unit. (Declaration, Paragraph 19).

RECOMMENDATIONS

1. That the board consider **PROPOSING AN AMENDMENT** to Section 11(f) of the Declaration that would eliminate the prohibition on dogs and cats and place them on the same basis as other household pets.
2. That either in the amendment itself, or by corollary rule, specific guidelines be adopted to regulate the specifics of pet ownership, including registration, insurance, pet behavior, and the like [see GUIDELINES in Appendix].
3. That the Board provide, as part of the materials furnished to unit owners as part of the approval process, statements outlining the “pro” and “con” viewpoints on allowing pet dogs and cats to reside at Park Tower, as well as sample guidelines regarding their registration, behavior, etc. This would be comparable to the county or state providing “pro” and “con” statements regarding referenda on which citizens are asked to vote.

While the committee is not recommending a “YES” vote for such an amendment, the committee believes there is a variety of views on the subject and that owners should be given an opportunity to vote for or against dogs and/or cats in order that our declaration may reflect the current will of the community.

We also note the following observations:

- A. *Were owners to vote simultaneously on two amendments – one allowing detection animals and the other allowing dogs/cats – owners who favor the former but not the latter would be able to vote accordingly. (That being said, the wording of each amendment would have to allow for either passage or defeat of the other. And court challenges to either would still be possible.)*

- B. Failure of the pets amendment to pass would shine a light on the currently existing ban on pet cats and dogs and, in view of Parker v. Park Tower, could be seen as a mandate for board and management to aggressively pursue the enforcement of that ban against owners who are keeping cats and dogs in violation of the ban. It is hard to imagine a method of finding these animals that would not be invasive and highly objectionable to owners.*
- C. The possibility of allowing pet dogs, in particular, might trigger a bitter and divisive fight within our community.*
- D. Putting forward a pets amendment will either incentivize owners to vote or turn them off. If the latter, then it could threaten the passage of any proposed amendments due to insufficient turnout.*

CONSIDERATIONS

- 1) Reasons some owners might prefer not to have dogs and/or cats.
 - a) When unit owners – including those with allergies and asthma – bought units at PTCA, they did so with the understanding that there would be no pet dogs or cats.
 - b) Dogs and cats produce allergens to which some residents may be allergic.
 - c) Dogs present additional health hazards. Compylobacteriosis is a bacterial infection found in dog feces that causes diarrhea in humans. Toxocarisis is an illness in humans caused by roundworms transmitted via dog waste.
 - d) Dogs and cats can be the source of maintenance problems for our building.
 - i. Dogs require increased use of service elevators in order to walk them outside several times a day.
 - ii. Dogs have to be monitored to prevent them from defecating, urinating, and tracking in mud/dirt.
 - iii. Dogs are a source of fleas and shed fur that collects on baseboards, on top of the fan blades, and gets trapped in the air filters; and both dogs and cats can scratch common elements and wear down carpeting.
 - iv. Dogs must be monitored so they don't create a nuisance, including, but not limited to excessive barking while on the property.
 - v. There is no adequate space within our common elements for dogs to run freely without interfering with other tenants.
 - vi. Cat litter may be improperly disposed of, as for instance flushed down toilets or improperly bagged and dumped down the garbage chute.
 - e) It is our understanding that there are already living in the building, as of March, 2016, 4 legal service dogs, 1 working dog, possibly unidentified pet dogs, and an unknown number of illegal cats – all of which already present the aforementioned health and maintenance problems – enough already!

2) Reasons some owners might welcome dogs and/or cats.

- a) Pet advocates have suggested that buildings that are pet friendly are usually friendlier buildings.
- b) There is some evidence that buildings that accept pets have higher property values than comparable buildings with pet bans.
- c) Many condo associations in competition with us already allow pets.
- d) It may turn out that the only way we can legally have detection animals in residence at Park Tower is to allow pets, including dogs.
- e) Lifting the ban on cats and dogs would be the best way to preclude a lawsuit against the association for not aggressively enforcing our declaration, which currently bans pet cats and dogs, especially because we already know that many cats are living here and possibly also dogs.
- f) Lifting the ban on cats and dogs would protect management from requiring that maintenance act as spies, reporting illegal animals when they find them in units. Concern has been expressed that residents with illegal animals might try to avoid being discovered and reported by refusing admittance to association employees and contractors who need to change air filters, fix leaking faucets, provide pest control treatments, etc – all of which would be a detriment to our association.

GUIDELINES

The committee believes a set of Guidelines is essential if dogs and cats are to live here, and that owners should have a good idea of what would be included in those Guidelines before being asked to vote for or against.

A very specific set of guidelines/rules can be found at

http://www.humanesociety.org/assets/pdfs/pets/renting_with_pets/recommended_pet_policies.pdf

Less restrictive guidelines/rules, used by Edgewater Plaza at 5455 N Sheridan Rd and Harbor Point at 155 No Harbor Drive, are available from management of those associations. From various sources, then, here are some suggested guidelines/rules.

See Appendix for additional thoughts on Guidelines.

Recommendation to the PTCA Board of Directors

Issue No. 5

Should the Association consider buying residential or commercial units when they become available and/or selling such units when they are unoccupied for extended periods?

CURRENT VOTING REQUIREMENTS FOR BUYING AND SELLING UNITS UNDER THE DEC AND BY-LAWS

The Declaration and By-laws permit the Association to buy and sell commercial or residential units for the Association's own account, but require the prior written consent of 66-2/3 percent of unit owners for any such purchase [Declaration, Paragraph 7(g)] and the affirmative vote of 66-2/3 percent of unit owners for any such sale (By-laws, Article III, Section 7(d))

Note: Our Declaration states, "The words 'Commercial Unit' mean a Unit so designated on the Plat with the letter "C" preceding a number. Unless otherwise expressly specified here, the word Unit shall always be taken to include Commercial Unit." [Declaration, Paragraph 1 (g)]

It has been suggested that buying and selling units may, in some situations, allow the Association to fine-tune its amenities and/or benefit its bottom line.

RECOMMENDATIONS

1. That **NO CHANGE** is recommended to the voting threshold required by the Declaration or By-laws. The required threshold of 66-2/3 percent approval by unit owners seems appropriate for the Association to acquire additional units. Selling is a moot point, since Tim Patricio reports that all Association-owned units, both residential and commercial, are occupied and likely to remain so.
2. That the Board consider **SEEKING UNIT OWNER APPROVAL** to allow the Association to acquire Unit 12C, which is a currently vacant commercial unit. From what we have learned from Tim about Unit 12C, the unit could be put to worthwhile use as a common element for the benefit of the Association, and at virtually no acquisition cost.

Equipped with large storage lockers, for use by renovators as auxiliary work space, or for other income-producing purposes, the revenue generated would serve to offset taxes, assessment, and maintenance expenses. Even if it were to produce no income – eg, to expand management office space or provide an additional meeting room – the cost of owning and maintaining that space would be negligible when spread out equitably among unit owners.

3. That the Board **NOT CONSIDER** acquiring residential units for use by residents as accommodations for visitors. (Edgewater Beach Apartments – the pink building – has converted some of its apartments into lovely, one room + bath, hotel-like units that can be rented by owners for short-term use by friends and relatives.)

While it would be a nice amenity – and inviting when a unit is available at a distressed price – the disadvantages include the Association's needing to assume the assessment; a new class of rentals of a few days, a week or a month; management not equipped to "housekeep" such units; sound and odor isolation less certain here than in more conventional buildings; and whether such an arrangement would be fair to neighboring units.

This is not to say, "never," but rather point to the need for additional, focused study should the Association ever contemplate establishing guest facilities of this type.

Recommendation to the PTCA Board of Directors

Issue No. 6

Should Park Tower change parking, especially on 2P, to deeded spaces versus the current licensed spaces?

RECOMMENDATION

That **NO CHANGE** is recommended to the current arrangement of licensing parking spaces on 1P and 2P. The PTCA Garage should continue to operate on a licensed-space basis and not change to deeded parking.

The garage generates income for the association. The committee was reminded of how the City of Chicago sold off the parking meters and what a bad deal that was for the residents of Chicago.

CONSIDERATIONS

- A. **Garage Income** 198 spaces on 2P with a license rate of \$120/month generate an income potential of 285,120. If we sell the spaces on 2P we would eventually lose the benefit of the income received on the sale. The chart below illustrates an estimate with available market values and garage assessment amounts from Catalpa Gardens at 1122 W Catalpa.

<u>Current 2P</u>	<u>Calculation</u>	<u>Amount</u>
Spaces		198
Income Per Space Per Year	\$120*12	1,440
Income Per Year for 2P Parking	198*1,440	285,120
<u>Sale of 2P Spaces based on recent at 1122 Catalpa</u>		
Spaces		198
Estimated Market Value Per Space	mls market data	13,000
Estimated Income from sale	198*13,000	2,574,000
<u>2P Monthly Assessment Collection Forecast once Sold</u>		
Spaces		198
Income Per Space Per Year based on 1122 Catalpa	\$50*12	600
Income Per Year for 2P Parking	198*600	118,800
<u>Years to exhaust financial benefit from sale</u>		
Estimated Income from Sale / Current Income for 2P	2,574,000/285,120	9
<u>Loss of garage income per year</u>	285,120-118,800	(166,320)

The table below – showing a revised projection with sales prices to be driven up above the current market to \$25,000 – illustrates that even at this higher price point there is an expiration on the benefit of the sale.

<u>Current 2P</u>	<u>Calculation</u>	<u>Amount</u>
Spaces		198
Income Per Space Per Year	\$120*12	1,440
Income Per Year for 2P Parking	198*1,440	285,120
<u>Sale of 2P Spaces based on recent at 1122 Catalpa</u>		
Spaces		198
Above Market Value Per Space	above market	25,000
Estimated Income from sale	198*25,000	4,950,000
<u>2P Monthly Assessment Collection Forecast once Sold</u>		
Spaces		198
Income Per Space Per Year based on 1122 Catalpa	\$50*12	600
Income Per Year for 2P Parking	198*600	118,800
<u>Years to exhaust financial benefit from sale</u>		
Estimated Income from Sale / Current Income for 2P	4,950,000/285,120	17
If we do sell 2P- loss of income per year	285,120-118,800	(166,320)

- B. **% Ownership Redistribution** Each of our units has a percentage of ownership assigned to it in our Declaration, Exhibit B, Unit % Interest. Deeding parking on 2P would require us to revisit and likely redistribute the % of ownership for each and every unit, both residential and commercial. Deeded parking owners would then pay an assessment for their parking space based on that % of ownership to the association, instead of the monthly license fee. The professional fees to redistribute the % of ownership would reduce the financial benefit of the initial sale of parking spaces.
- C. We would have to assess what changes to our governing documents and what number of unit owners' votes would be required to make the change.
- D. PT Residency Requirement: Our Declaration Sec. 12 Parking is vague regarding who can use the garage. Exhibit C to the Declaration and Article VI, Sec 2(d) of the By-laws only refer to garage charges.
- E. By contrast Catalpa Gardens governing documents specifically state that P2 and P3 are designated for residents only, and that P1 does not have a residency requirement.
- F. If we choose to deed parking on 2P and are unsuccessful amending our association documents to restrict who can purchase parking on 2P we would open up the possibility of non-residents attempts to acquire parking.

- G. Limitations on purchases: We discussed the potential of our more wealthy resident owners and investor owners of purchasing a disproportionate share of desirable parking spaces leaving fewer self-park spaces available for those who may not be in an immediate financial position to purchase a space, or to those renting from a landlord who chooses not to purchase a self-park space.

Recommendation to the PTCA Board of Directors

Issue No. 7

Should Park Tower Health Club remain a Membership Club or should the Health Club become a Park Tower Common Element Amenity included in Owners' Assessments and available to all residents?

RECOMMENDATIONS

1. That the Board consider **NO CHANGE** to the current situation. The PT Health Club should remain as a Membership Club with membership fees and not changed to a Common Element Amenity included in owners' assessments and available to all residents.
2. That the Board consider **AMENDING** the By-Laws Article VI, Section 2 (d) on page c-14 and c-15 to remove the language allowing designees of Park Tower Realty to use the Park Tower Health Club facilities at the same user fees charged to Park Tower residents, in order that the PT Board may have the flexibility to charge higher membership fees to non-PT residents. We suggest the following wording for the amended section ..

"The Association may allow people other than Unit Owners to use the recreational facilities (defined to include the swimming and wading pools, exercise room, locker rooms, saunas, and racketball courts) on such terms and at such fees as the Association determines. ; provided, however, that Designees of Park Tower Realty, Inc., or its successors and assigns, shall be allowed to use the recreational facilities (defined to include the swimming and wading pools, exercise room, locker rooms, saunas, and racketball courts) on the same basis and at the same user fees, if any, which are charged by the Association to Unit Owners for the use of the recreational facilities, provided that each Designee shall be from among the following class of people: Owners of condominium Units of any condominium the Developer of which (as defined in the Declaration of Condominium) is a corporation or partnership of which Robert Sheridan, Dorothy Sheridan, Park Tower Realty, Inc., an Illinois corporation, or Edgemont Corporation, an Illinois corporation is a shareholder or partner, provided said condominium is located on either side of North Sheridan Road and South of the South line of Bryn Mawr Avenue, extended Easterly, and North of the North line of Balmoral Avenue, extended Easterly, in Chicago, Illinois, and provided further that the number of Designees shall not exceed 150. A Designee shall be deemed to be a Unit Owner when considering use of the recreational facilities and shall therefore be allowed to have such types of memberships and such number of guests as might be allowed to a Unit Owner."

Some condominiums in Chicago include their Health Club as a Common Element and others charge a membership fee. There is no standard procedure. It seems buildings with small health club facilities (only a few machines) include the club in their assessments, but buildings with larger club facilities are more likely to charge a separate membership fee and not increase assessments. Only a limited survey was conducted on this subject.

Would a Common Element Health Club increase the resale value of units in Park Tower? There are two sides to this issue, depending on whether or not a potential owner is interested in the Health Club and willing to pay a higher Assessments if the Health Club were to be a Common Element.

A brief survey of local health clubs provided no information on membership or club usage. They are reluctant to disclose this information to an outsider.

CONSIDERATIONS

- A. **Assessments** The 2016 Budget includes \$103,000 Membership Dues from the Health Club. This represents 2.17% increase in PT Revenue beyond the Budgeted Assessments of \$4,749,000. This revenue would have to be made up with an increase of 2.17% in Unit Assessments.

Using the Percentage Interest of Units factors, the following assessment increases would be required for a representative sample of units of four different sizes on Floor 30.

Unit No.	PT % Interest	Increase in Assessment	
		Monthly	Annual
#3001	.00223425	\$ 19.18	\$ 230.13
#3005	.00134269	\$ 11.52	\$ 138.30
#3009	.00107362	\$ 9.22	\$ 110.58
#3010	.00080588	\$ 6.92	\$ 83.01

Even though a portion of Health Club costs are already included in Owners' Assessments, this additional increase would have to be justified to Owner Units. Many owners would not be happy, especially if they do not use the Health Club facilities. Raising this issue for public discussion would, no doubt, cause many current Owners to question the amount of today's assessment that is allocated to the Health Club. Most residents do not use the Health Club. It may be opening Pandora's Box.

- B. **Rental Units** Owners would have an increased assessment that may cause them to increase rents. Renters would be able to use the Health Club, without paying extra membership fees. This could be a positive factor for some rentals, but only in those cases where the renter uses the Health Club. Each Owner would have to pay the additional assessment regardless of whether or not the renter intends to use the facility and would pass this cost to the renter.
- C. **Club Usage** All residents, owners and renters, would be able to use the facility, 1200-1500 people. This would cause a significant increase usage of equipment and crowded conditions at popular workout hours. The PT Health Club, even after renovation, is not large enough nor is there enough equipment to bear the burden of heavy usage or accommodate so many users.
- D. **Club Attendant** If the pool and health club were open and available to all residents of the building, there would be an increase in usage. It would be necessary to have an attendant at all times the facility is open to supervise, resolve equipment usage issues and mediate conflicts between users. This could become a problem.
- E. **Club Maintenance** Increased usage and wear-and-tear on facilities would require increase maintenance and cleaning, and increased costs.

- F. **Children** If all residents were to have access to the health club and pool, there would be many younger children in the building who would be able to use the facilities (with supervision of an adult household member). This would require a full-time attendant to ensure rules for young children are followed. It could result in a crowded and noisy pool at certain times with many complaints from other swimmers who want to swim laps.
- G. **5445 and 5455 Building** The PTCA By-Laws provide that residents of these neighboring condos may use the PTCA Health Club facilities for the same fees as PTCA charges to Park Tower Owners. That arrangement would no longer work if Park Tower residents were charged zero fees as a result of the Health Club membership becoming a PTCA amenity that is paid for out of Unit Owners' assessments. (We note that residents of the 5445 and 5455 buildings are currently being charged more for a 12-month Single Membership than are Park Tower residents, and similarly, the neighboring Condo Associations are charging Park Tower residents higher fees to use their outdoor pool and tennis court than they charge their own residents.)
- H. **Owners' Vote** We have not analyzed whether an Owners' vote would be required to change the Health Club arrangements. This would have to be discussed with our attorneys but, nevertheless, it would be a controversial issue with the owners at Park Tower.

COMMENTS RE PTCA DECLARATION AND PTCA BY-LAWS

- i. PTCA Declaration Document does not specifically mention the Pool or Health Club in Paragraph 4 (page 3) covering Description and Use of Common Elements.

Conclusion *The Health Club is not included or excluded in definition of Common Elements.*

- ii. PTCA By-Laws , Article VI, Section 2 (d) (page C-14) says the Association may establish User Fees with respect to the use of the swimming pool. Such charges shall be billed to the Unit Owner who, or whose guest, makes use of the facility. Nothing in the By-Laws shall require the establishment of User Charges with respect to such amenities.

Conclusion *PTCA has decided to charge User Fees and requires Club Membership, but there is no requirement to do so or not.*

- iii. PTCA By-Laws, Article XII (page C-20), says that Article VI, Section 2 (d) may be altered, amended or repealed as set forth in Paragraph 19 of the Declaration. According to Paragraph 19 (page 20 & 21) of the PTCA Declaration, this article requires an affirmative vote of 75% of Unit Owners.

Conclusion *The By-laws do not state whether or not User Fees are established (it is optional), so it may not be necessary to have a formal vote of Unit Owners to charge the current arrangement.*

- iv. The same section of the By-Laws (page C-14 and C-15) says that designees of ParkTower Realty or its successors and assigns shall be allowed to use the recreational facilities (defined to mean the swimming and wading pools, exercise room, locker rooms, saunas and racquetball court) on the same basis and at the same user fees, if any, which are charged by the Association to Unit Owners for the use of the recreational facilities.
- v.

Conclusion *Residents of the condominiums at 5445 and 5455 N. Sheridan Road are eligible to join the PTCA Health Club and pay Membership Fees higher than Park Tower members for 12-month Single Membership. This could be a problem of charging fees to these outside members if the Health Club becomes a Common Element included in Part Tower Assessments and there are no PTCA Membership Fees.*

(Note: 5445 and 5455 Condo Associations are supposed to allow Park Tower residents to use the outdoor pool and tennis courts at the same fee as 5445 and 5455 residents. However, 5445 does not allow Park Tower to use the tennis courts and 5455 charges Park Tower residents a higher fee than their own residents. Park Tower now charges 5445 and 5455 members a higher fee. (We understand that this is done pursuant to an informal agreement, but have seen no documentation of such an agreement.)

Recommendation to the PTCA Board of DirectorsIssue No. 8

Should the Association consider updating its governing instruments to reflect changes in law?

RECOMMENDATIONS

1. That the Association's attorney, David Bendoff of the firm of Kovitz Shifrin Nesbit, be requested to perform a comprehensive review of our Declaration and By-Laws and to recommend changes to (1) bring them into conformity with the current Illinois Condominium Property Act (ICPA) and with current best practice for such instruments, (2) remedy any errors, omissions, inconsistencies or ambiguities and (3) update the language to use "plain English" as much as practicable.
2. In the interests of efficiency, that such review by Attorney Bendoff be combined with his review of this committee's recommendations, so that one comprehensive set of proposed amendments may be drafted for consideration by the Board and the unit owners, addressing both the updating of our governing instruments described in paragraph 1 above and the implementation of such of the committee's recommendations as the Board shall see fit to bring forward.

CONSIDERATIONS

- A. Please refer to the committee's report on Issue No.3 for a discussion of the Association's governing instruments and the process for amending them.
- B. Our Declaration and By-Laws are several decades old and have not changed to keep pace with subsequent changes to the ICPA. Although the ICPA trumps the provisions of the Declaration and By-Laws, having discrepancies between the two causes unnecessary confusion and is not in the best interests of the Association and its unit owners.
- C. The committee understands that Attorney Bendoff has offered, for a fixed fee, to perform a complete review of our Declaration and By-Laws and to recommend changes to bring them into conformity with the current ICPA and with current best practice for such instruments, and to remedy any errors, omissions, inconsistencies or ambiguities.
- D. The committee believes that it would be well worth the expense to have Attorney Bendoff perform such a review, with a view toward making our governing instruments the best they can be, and that now is an ideal time to perform such a review, so that it can be combined with Mr. Bendoff's review of the committee's recommendations and the drafting of appropriate amendments to implement such of the committee's recommendations as the Board shall see fit to bring forward.
- E. The committee notes that although certain amendments to the governing instruments may be able to be effectuated through Board action alone (see, for example, consideration 2(e) in the committee's report on Issue No. 3), at least some of the recommended changes will require action by unit owners and lien holders.

.....

Recommendation to the PTCA Board of DirectorsIssue No. 9***Should the Association allow specifically identified
detection animals to work and/or reside in the building?*****CURRENT RESTRICTIONS & REQUIRED TO AMEND (in addition to all Board members' notarized signatures)**

- A. Paragraph 11(f) of the Declaration specifically disallows dogs and cats from being "kept" in units. (Paragraph 19: approval of 75% of all unit owners required to amend, with notice given to each mortgagee with a lien on a Unit.) (See related paper on Issue No. 4)
- B. Paragraph 11(b) of the Declaration disallows a business of any kind from being "conducted, maintained, or permitted on any part of the property." (Paragraph 19: approval of 100% of unit owners and mortgagees required to amend.)
- C. However, Paragraph 11(p) of the Declaration provides an important clarification of what constitutes conducting a business for purposes of the prohibition in Paragraph 11(b) when it states: "This Paragraph 11 shall not be construed to prevent or prohibit a Unit Owner from maintaining his personal professional library, keeping his personal business or professional records or accounts, handling his personal business or professional telephone calls, or conferring with business or professional associates, clients or customers, in his Unit." [See reference H below]
- D. Addition of a new subparagraph to Paragraph 11 of the Declaration would require approval of 75% of all unit owners required to amend, with notice given to each mortgagee with a lien on a Unit.

RECOMMENDATIONS

- 1. That the Board consider **AMENDING** the Declaration to add a new subparagraph 11(q), which would clarify that Paragraph 11 shall not be construed to prevent or prohibit a "detection animal" that provides services to the association from being housed in an owner's unit or from working in the building. That provision would clarify both Paragraph 11(b) and Paragraph 11(f).
- 2. That the amendment either spell out or refer to Rules that require such animals to meet specified requirements such as certification, not create a nuisance (such as noise) or (importantly) not affect, say, an existing neighbor allergic to the animal (allergens move as easily as smoke in our building).
- 3. That any proposed amendment be accompanied by a pamphlet or other written material explaining the thinking behind the proposal.

CONSIDERATIONS

Opinions generally shared by committee members are:

Having Scout at Park Tower has reduced the instances of bed bugs from scores all at once to an occasional case here and there. In addition to the routine inspections, having an animal like Scout residing on the premises means it is always available to inspect new move-ins and people returning from trips. Additionally, Scout is also able to sniff the common areas multiple times per day.

However, an animal residing in a particular unit could be considered a nuisance if the resident of an adjacent unit is highly allergic. Similarly, barking or other disturbances could unduly impact neighboring units.

Having a clause in the Declaration expressly permitting detection animals may weigh in our favor should there be litigation in the future similar to the Parker case.

REFERENCES (PDF copy of this report provides "one-click" hyperlinks)

- a) <http://www.parktower.us/Parker-and-Gold-Bed-Bug-Lawsuits.pdf> (Any amendment must take into account the details of this decision.)
- b) (https://en.wikipedia.org/wiki/Detection_dog (Well-established that dogs are capable of detecting insects, disease & explosives)
- c) http://mold-dog.com/about_us_detail.htm (and mold)
- d) <http://voices.nationalgeographic.com/2014/01/10/cancer-dogs-disease-health-science-sniffing/> (Other animals are also capable of being trained to sniff.)
- e) <http://www.bedbugs.org/dogs/> (Detail as to the use, training and care of bed-bug sniffing dogs)
- f) <http://www.chicagotribune.com/business/ct-bed-bugs-orkin-chicago-0114-biz-20160113-story.html> (Into 2016, Chicago continues to be #1 for confirmed cases of bed bugs in the nation, based on data from Orkin Pest Control.)
- g) http://www.newtechbio.com/wiki/index.php?title=How_fast_do_Bed_Bugs_spread%3F (Bed bugs spread quickly.)
- h) <http://www.mountprospect.org/Modules/ShowDocument.aspx?documentid=2773> (From "The 100 Most Commonly Asked Questions About Illinois Condominiums," prepared by Kovitz Shifrin Nesbit)

Q-81. Our Declaration states that we cannot conduct "business" in our unit. What does this mean?

A-81. The Courts have never fully defined what is meant by "business" in a unit. However, if the business has an adverse impact upon the Common Elements, such as increased traffic going to and from the unit, it is probably prohibited. If, however, receiving business calls, correspondence and maintaining records may not be prohibited. However, the Association should check the municipality's laws for zoning and business restrictions.

Recommendation to the PTCA Board of Directors

Issue No. 10

Should Park Tower change 1P Parking to be entirely Self-Parking and eliminate the Car Hikers and Valet Parking?

RECOMMENDATION

That **NO CHANGE** is recommended to the current arrangement; 1P Parking should remain as it is.

1P Parking is not a Park Tower Condo Declaration or By-Laws issue. The Board can change it with a majority vote of the Board Members. Amending the By-Laws is not required. The issue of 1P parking has been addressed by the Finance Committee and the Board several times in the last 15 years with the same conclusion: leave the parking as it is.

CONSIDERATIONS

- A. A policy of the Condo Association is that any Owner is eligible for parking in the 5415 Parking Garage. This is considered an important Plus Value for the building. Many condos do not have parking.
- B. Availability of Guest Parking is also considered an important Plus Value for the building. All guests would have to find street parking if we did not offer valet parking. Even guests for large parties can be accommodated in valet parking with advance notice.
- C. If we converted 1P to entirely self-park, we would still need someone on-site in the garage to keep control of the situation, considering tandem parking and the need to keep commercial spaces open M-F, 8am-6pm, and keep resident's reserved spaces open for resident's own cars.

- D. There are not enough parking spaces on 1P to accommodate Self-Parking.

228	No. of Spaces Available, including Tandem Spaces
<u>- 180</u>	No. of Spaces Reserved for Commercial Leases and Tenants Self-Park Permits
48	No. of Open, non-Reserved Spaces
<u>- 120</u>	No. of Resident's Valet Parking Permits
(72)	Shortfall of Spaces, except when commercial spaces are available in non-work hours.

- i. 78 Commercial Spaces are reserved, Mon-Fri, 8am to 6pm. They are available for valet parking at all other times, but must be open between 8am-6pm every weekday.
- ii. 102 Resident's Reserved Spaces are reserved 24/7 and are only available for temporary valet parking when the resident's car is not here. Valet parked cars are moved when the resident's car returns.
- iii. The Car Hikers move cars between available spaces as they become empty and often park cars in the aisles, which would not be an acceptable self-park space.
- iv. Before 8am, all Reserved Commercial Spaces must be freed up from overnight valet parking.

Appendix

Issue No. 2 (Smoking)

A recorded rule for the condo association at 50 East Bellevue.

50 E. Bellevue Condominium Association

No Smoking Policy

**This Section shall replace the "No Smoking Policy" set forth on page 36 of the Association's Rules and Regulations and is effective as of March 15, 2015.*

1). Restrictions on Smoking

Pursuant to the Amendment to Article VII the Declaration of Condominium Ownership, recorded on February 27, 2014, smoking shall not be permitted in a Unit, Limited Common Elements or Common Elements at the Association.

The term "smoke" or "smoking" means the smoking of burning tobacco, herbs, or other organic matter by means of a pipe, cigar, cigarette or other smoking equipment, such as an electronic cigarette. Smoking is not permitted in Units, Limited Common Elements or in the Common Elements, including but not limited to common-use areas of the property and parking areas, or within twenty-five (25) feet of the exterior of the Property.

Unit owners shall not permit guests or tenants to smoke in these areas. No Unit Owner shall make or permit any disruptive or noxious fumes in his or her Unit that interfere with the rights, comforts, or enjoyment of other Unit Owners. Unit Owners shall not throw cigars, cigarettes, or any other objects from windows, patios, or balconies.

a.) The Compassionate Use of Medical Cannabis Pilot Program

The Association and unit owners acknowledge that the "Act" allows Residents, not their guests, to use medical marijuana under the Act's requirements. A registered patient may obtain 2.5 ounces of medical grade marijuana every 14 days from a licensed dispensary.

An individual who is properly licensed to smoke marijuana for medical reasons (and who provides proof of this fact to the Board) may do so on that portion of the property designated by the Board. Medical cannabis is expressly restricted from private patios and prohibited in all Common Areas of the premises. In the event such individual requests a reasonable accommodation due to a disability, on the basis that the restrictions above adverse effect his/her ability to smoke marijuana in the aforesaid designated location, if the Board grants such an accommodation, it may do so under the condition that the individual smoke marijuana through a vaporizer and/or subsequent to the installation or operation of a filter system both of which are designed to reduce the odor of the smoke and eliminate its dangers on a secondhand smoke basis. However, in the event such measures fail to eliminate the odor and or secondhand smoke resulting in a complaint to the Board, such individual's smoking of marijuana must take place at the designated location outside the building or off the property completely.

In order to qualify to use medical marijuana in the building, residents and/or caregivers must bring a copy of the registration card provided by the Department of Public Health to the Management Office. The card will be kept on file and become part of the residents' file.

2). Penalty for Violating Smoking Restrictions

If a complaint is made against a specific unit, alleging that the transmission of smoke is being permitted to occur into other units or the common elements, the Association reserves the right to request entry into the unit upon reasonable written notice to confirm the unit's compliance with the above requirements. Failure to grant access to the Association within a reasonable amount of time may result in the initiation of legal action.

Each complaint that is received by the Board of Managers/Management shall constitute a separate violation and subject the unit owner to a reasonable fine as determined by the Board of Directors.

Any Unit Owner who violates this Section is subject to fine(s) as determined by the Board. Violations of this Section by any guest, invitee, agent or tenant of a Unit Owner will be assessed against the Unit Owner.

The Board of Directors may impose a fine for the violation of these Rules as follows:

First Violation: \$200

Second Violation: \$350

Third Violation: \$500

The Board of Directors reserves the right to alter these fines depending on the circumstances of the violation.

Approved and adopted by the Board of Directors on March 10, 2015.

Appendix

Issue No. 3 (Voting Thresholds)

VOTING AND APPROVAL REQUIREMENTS TO TAKE VARIOUS ACTIONS

Abbreviations:

Act Illinois Condominium Property Act, 765 ILCS 605/1 *et seq.*

Dec. Declaration of Condominium, adopted February 1, 1979, pursuant to the *Act*

B/L By-Laws of Park Tower Condominium Association, adopted pursuant to the *Act*

Proposed Action		Approval(s) Required	Citation
Exercise of the Association's first right and option to purchase a unit under <i>Dec.</i> ¶ 7		Written consent of 66-2/3% of the unit owners	<i>Dec.</i> ¶ 7(g)
Purchase of a unit in a judicial sale		Written consent of 66-2/3% of the unit owners	<i>Dec.</i> ¶ 7(g)
Purchase and sale of land or units on behalf of the unit owners	66-2/3% vote of all unit owners	<i>B/L</i> , Art. III, § 7(c)	
Combination or division of units	Approval of a majority of the Board	<i>Dec.</i> ¶ 20(b)	
Amendment of <i>Dec.</i> ¶ 1 (definitions of terms)	All Board members, 75% of unit owners and each mortgagee with a lien on any unit	<i>Dec.</i> ¶ 19; <i>ICPA</i> § 27(a)(i)	
Amendment of <i>Dec.</i> ¶ 2 (legal description of parcel)	All Board members, 75% of unit owners and each mortgagee with a lien on any unit	<i>Dec.</i> ¶ 19; <i>ICPA</i> § 27(a)(i)	
Amendment of <i>Dec.</i> ¶ 3 (legal description of units described in exhibits to the <i>Dec.</i>)	All Board members, 75% of unit owners and each mortgagee with a lien on any unit	<i>Dec.</i> ¶ 19; <i>ICPA</i> § 27(a)(i)	
Amendment of <i>Dec.</i> ¶ 4 (ownership and use of the Common Elements)	All Board members, 75% of unit owners and each mortgagee with a lien on any unit	<i>Dec.</i> ¶ 19; <i>ICPA</i> § 27(a)(i)	
Amendment of <i>Dec.</i> ¶ 5 (encroachments and easements)	All Board members, 75% of unit owners and each mortgagee with a lien on any unit	<i>Dec.</i> ¶ 19; <i>ICPA</i> § 27(a)(i)	
Amendment of <i>Dec.</i> ¶ 6 (pipes, etc. serving more than one unit)	All Board members, 75% of unit owners and each mortgagee with a lien on any unit	<i>Dec.</i> ¶ 19; <i>ICPA</i> § 27(a)(i)	
Amendment of <i>Dec.</i> ¶ 7(G)(iv) – an apparent typo – possibly ¶ 7(j)(iv) was intended	All Board members, 75% of unit owners and	<i>Dec.</i> ¶ 19; <i>ICPA</i> § 27(a)(i)	

Proposed Action		Approval(s) Required	Citation
(exemptions of mortgagees who have foreclosed on a unit from the Association's first right and option to purchase)	each mortgagee with a lien on any unit		
Amendment of Dec. ¶ 11(a) and (b) (except for commercial units, all units must be used as single-family residences, and no business activities (for-profit or non-profit) may be conducted)	All Board members, 75% of unit owners and each mortgagee with a lien on any unit	Dec. ¶ 19; ICPA § 27(a)(i)	
Amendment of Dec. ¶ 19 (vote required to amend the Dec)	All Board members, 75% of unit owners and each mortgagee with a lien on any unit	Dec. ¶ 19; ICPA § 27(a)(i)	
Amendment of Dec. ¶ 20 (combination and division of units)	All Board members, 75% of unit owners and each mortgagee with a lien on any unit	Dec. ¶ 19; ICPA § 27(a)(i)	
Any amendments to the Dec., other than as described above	All Board members, 75% of unit owners, with notice given to each mortgagee with a lien on any unit	Dec. ¶ 19	
Allocation of voting power if 30% or fewer of the units <i>do not</i> possess over 50% of the voting power	Voting power is allocated based on percentage ownership interests	B/L, Art. II, § 2(d)	
Allocation of voting power if 30% or fewer of the units <i>do</i> possess over 50% of the voting power	Voting power is allocated based on number of units	B/L, Art. II, § 2(d)	
Voting by proxy	Permitted for any votes taken at a meeting of unit owners	B/L, Art. III, § 6	
Calling a special meeting of unit owners	Special meetings may be called by the Board, the President or 20% of the unit owners	B/L, Art. III, § 2	
Quorum at meetings of unit owners	Unit owners representing 33-1/3% of the voting power	B/L, Art. III, § 5	
Merger or consolidation of the Association	66-2/3% vote of all unit owners	B/L, Art. III, § 7(a)	
Sale, lease, exchange, mortgage, pledge or other disposition of all, or	66-2/3% vote of all unit owners	B/L, Art. III, § 7(b)	

Proposed Action		Approval(s) Required	Citation
substantially all, of the assets of the Association			
Commencing litigation on behalf of the Association or the unit owners (other than collection lawsuits)	66-2/3% vote of all unit owners	B/L, Art. VI, § 2(l)	
Removal of a Board member	66-2/3% vote of all unit owners	B/L, Art. IV, § 10	
Adoption of rules and regulations	Majority of the Board	B/L, Art. IV, § 11	
Vetoing a rule or regulation adopted by the Board (which can only be done during the 60-day waiting period after the rule is adopted and before it is effective)	75% vote of all unit owners	B/L, Art. IV, § 11	
Amendment of B/L, Art. VI, § 2(d) (annual budget, user fees for amenities, privileges of residents of neighboring buildings, ability to assess commercial units for insurance costs)	All Board members, 75% of unit owners, with notice given to each mortgagee with a lien on any unit	B/L, Art. XII; Dec. ¶ 19	
Amendment of B/L, Art. VI, § 2(h) (superiority of rights of first mortgagees to Association liens)	All Board members, 75% of unit owners, with notice given to each mortgagee with a lien on any unit	B/L, Art. XII; Dec. ¶ 19	
Amendment of B/L, Art. XII (vote required to amend the B/L)	Not amendable	B/L, Art. XII	
Amendment of B/L, Art. XIV (rules of construction of the B/L)	Not amendable	B/L, Art. XII	
Any amendments to the B/L, other than as described above	66-2/3% vote of all unit owners	B/L, Art. XII	
Any action at a meeting of unit owners other than as described above	A majority (more than 50%) of the unit owners represented at the meeting	B/L, Art. III, § 7	

Appendix

Issue No. 4 (Pets)

Additional thoughts on Guidelines

Screening/Registration

1. All residents keeping pets in their units must pre-register their pet with Management, including a photo, and make a request of the Board for permission to keep their pet(s) in their unit. See sample application form from the Humane Society. Pets not registered with Management are not permitted in the building.
2. Service animals are exempt from rules related to pets and follow their own set of rules. Notwithstanding any other provision, service animals may be kept in units. Furthermore, nothing herein shall hinder full access to the apartments and the common areas by individuals with service animals.
4. Animal caretakers, other than residents, whether volunteer or paid, must be registered with Management in order to take registered pets in or out of the building.
5. Prospective pets and their owners should be evaluated on an individual basis. Breed and size do not indicate a pet's temperament or suitability as a member of our community. For example, weight limits for dogs are usually only useful for units on upper floors of buildings that lack carpeting or other means of effective soundproofing. This is because responsibly-kept larger dogs will generally cause fewer problems for neighbors than irresponsibly kept smaller dogs.

So be sure to evaluate each animal on his or her own merits. When possible, check with previous landlords or condominium managers to find out whether the applicants or their pets caused any problems. Interview prospective residents to determine their commitment to providing responsible pet care. For guidance on conducting such an interview, see the Humane Society's Checklist for Rental Managers.

6. Require that approved pet owners sign a pet agreement. This agreement should state that the resident understands all stated pet-keeping policies. It should also outline the steps that will be taken in the event a pet-related dispute occurs such as warnings, fines and the potential ban of the pet from Park Tower.
7. Require reasonable registration and annual maintenance fees to cover any damage caused by pets, for extra use of elevator, and for extra janitorial services. Annual fees of up to \$500 or \$1000 per pet would more than cover any potential damage, extra work by maintenance and extra wear and tear on elevators and infrastructure. Such high fees would also discourage those not serious about taking good care of their pets.
8. Dogs must have their DNA registered with Management in order to monitor their droppings.

Permissible Pets/non-permissible Pets

1. Dogs may be limited to one or to two per Unit and weight not to exceed 50 pounds.

2. Dogs may also be further restricted by breed.

Some restrictions are due to nuisance factors, see

<http://www.realtor.com/advice/rent/worst-dog-breeds-for-apartments/>)

Yorkies and Pomeranians: barks a lot at a high and loud pitch

Labradors: needs a lot of exercise

Dachsunds: hard to house train

Chihuahuas: barks frequently; has propensity to go indoors

Beagles: bays a lot

Border collies: bred to run back and forth; a herding dog

Briards: a herding dog

Some restrictions are due to risk and lack of insurability, see

<https://www.psychologytoday.com/blog/canine-corner/201405/14-dog-breeds-blacklisted-insurance-companies> (Uninsurable due to risk based on a study issued by the U.S. National Center for Injury Prevention and Control that was published in 2000. It looked at the statistics on fatal dog bites.)

Pit Bull Terriers .. Staffordshire Terriers .. Rottweilers .. German Shepherds .. Presa Canarios

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Chows Chows .. Doberman Pinschers .. Akitas .. Wolf-hybrids .. Mastiffs .. Cane Corsos ..

Great Danes .. Alaskan Malamutes .. Siberian Huskies ..

3. Cats: Number allowed 2
4. Rabbits: Number allowed 2
5. Birds: Number allowed not restricted
6. Small Caged Animals (limited to guinea pigs, hamsters, and gerbils): Number allowed not restricted
7. Snakes, insects, spiders, ferrets, mice and rats will not be permitted in any unit.

Restrictions on admissible pets

1. Require that resident dogs, cats, and rabbits be sterilized before they reach six months of age. Sterilized animals are much less likely to bite or spray urine. And they won't go through noisy heat cycles. Of course, sterilizing pets also helps reduce pet overpopulation and prevents pets from breeding in your house, apartment building, or condominium. Require written proof of sterilization from a veterinarian, and keep it on file. (Most veterinarians routinely fulfill such requests for their clients.) Make exceptions for pets if they are certified by a veterinarian to be too old or sick to undergo spay or neuter surgeries.
2. Require that cats and dogs be licensed and up-to-date on rabies and other vaccinations. Dogs and cats should be licensed with the local animal control agency and vaccinated against rabies as required by state or local law. Require written proof of licensure and vaccination status, and keep it on file. (Most veterinarians routinely fulfill such requests for their clients.)
3. Require that pets be kept under control at all times. Cats should be kept indoors, moved in a cage or on a harness under direct human supervision while in common areas. Dogs should be on a leash and under human control while in common areas.

4. Cats and dogs must wear collars with up-to-date identification at all times. In the event a resident's pet escapes and becomes lost, this will make it easier to return the animal to his or her owner.
5. Residents with pets must sign and follow a written set of rules related to the responsible keeping of pets in their units. These guidelines should include proper disposal of pet waste, and use of designated "pet-only" washers and dryers.
6. Pets shall not be kept, bred, or used for any commercial purpose. All cats, dogs, and rabbits must be spayed or neutered by six months of age unless the procedure is deemed medically unsafe by a veterinarian.
7. Pets must be confined to the pet owner's unit and must not be allowed to roam free or be tethered. Pets must not be left unattended on patios or balconies. Pets in transit are to be carried, restrained by a leash, or placed in an animal carrier. Resident dog caregivers in transit may take their pet out of the building only by way of: the service elevator and direct access to the loading dock or a vehicle in the parking garage. Pets shall never be exercised on the property of Park Tower but only off the premises of the building and its property.
8. Persons who walk pets are responsible for immediately cleaning up after their animals and discarding securely bagged pet droppings directly into the metal trash bins behind the loading dock. Cat litter may not be disposed of in toilets. No pet waste may be dropped down trash chutes but must be brought down to metal garbage bins outside the back of the building.
9. Pet caregivers shall use designated "pet-only" washers and dryers to launder pets' bedding, toys, blankets, etc.
10. Pet caregivers are responsible for any damage caused by their pets. Any damage caused by cleaning chemicals or other such materials used in an attempt to remedy said damage is also the full responsibility of the pet owner.
11. No pet shall be allowed to become a nuisance or create any unreasonable disturbance. Examples of nuisance behavior for the purposes of this paragraph are:
 - a. Pets whose unruly behavior causes personal injury or property damage.
 - b. Pets that make noise continuously and/or incessantly for a period of 10 minutes or intermittently for one hour or more to the disturbance of any person at any time of day or night.
 - c. Pets in common areas that are not under the complete physical control of a responsible human companion and on a hand-held leash of no more than twenty inches in length or in a pet carrier.
 - d. Pets that relieve themselves on walls or floors of common areas.
 - e. Pets who exhibit aggressive or other dangerous or potentially dangerous behavior.
 - f. Pets that are conspicuously unclean or parasite infested.

12. Pet owners shall indemnify the association and hold it harmless against loss or liability of any kind arising from their pet(s).
13. All pets must use Service Elevators only.
14. Any pets judged by the board to be aggressive must be muzzled in common areas.
15. No animals, livestock, fowl or poultry of any kind shall be raised, bred, or kept in any Unit or in the Common Elements, except that household pets, **including dogs or cats**, may be kept in Units, subject to rules and regulations adopted by the Association, which rule or regulation may exclude any kind of pet by type or category, provided that permitted household pets are not kept, bred, or maintained for any commercial purpose; and provided further that any authorized pet causing or creating a nuisance or unreasonable disturbance shall be permanently removed from the Property upon three (3) days' written notice from the Association. Dogs or cats which are kept as pets in Units as of the date this Amendment to the Declaration is recorded may be kept in Units subject to the terms of the Declaration and the Rules and Regulations of this condominium association. (Grandfathering.)

Enforcement

Park Tower Condominium Association has the right to enforce the restrictions on pets through notices, fines and court order until the objectionable behavior has stopped. Furthermore the Board may rescind its approval of a pet if it becomes a nuisance or danger to the community, under which case it must be removed and may no longer reside at Park Tower.

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