

**LAKE POINTE MUNICIPAL UTILITY DISTRICT
CONSTRUCTION DEPOSIT RULES
RULE NO. 2018-08-09**

A RULE REQUIRING PROPERTY OWNERS TO DEPOSIT FUNDS WITH THE DISTRICT PRIOR TO COMMENCING CONSTRUCTION; DECLARING THE FAILURE OF OWNERS OR CONTRACTORS TO REMOVE CONSTRUCTION DEBRIS, TRASH, AND EXCESS MATERIAL DEPOSITED OR LEFT REMAINING ON PROPERTY OR ON ROADWAYS OR ALLEYWAYS WITHIN THE DISTRICT TO BE A NUISANCE AND TO CAUSE HARM TO THE DISTRICT'S DRAINAGE AND WATER QUALITY PROTECTION SYSTEMS; PROVIDING PENALTIES FOR VIOLATION OF THIS RULE; PROVIDING THAT THIS RULE SHALL BE APPLICABLE AND IN FORCE WITHIN THE DISTRICT AND ON ANY PROPERTY OWNED BY THE DISTRICT AND SHALL ALSO BE APPLICABLE AND IN FORCE WITHIN THE AREA IMMEDIATELY ADJACENT AND CONTIGUOUS TO THE BOUNDARIES OF LAKE POINTE MUNICIPAL UTILITY DISTRICT; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AUTHORIZING PUBLICATION; AND ESTABLISHING AN EFFECTIVE DATE.

THE BOARD OF DIRECTORS OF THE LAKE POINTE MUNICIPAL UTILITY DISTRICT ESTABLISHES A RULE AS FOLLOWS:

SECTION 1. POLICY AND PURPOSE

The failure of Contractors to remove trash, debris, and other construction materials that comes from the construction (or remodeling) of homes, pools, hardscape or any other significant structure or feature within the boundaries of the Lake Pointe Municipal Utility District (the "District") creates a substantial threat to health and safety in the District, to the safety of all property that the District controls, and can subject the District's drainage and water quality systems to harm, damage, or failure. The Board, therefore, finds that the adoption and implementation of this rule will preserve the health and safety condition of all property that the District controls and will prevent the harm, damage, or failure of the drainage and water quality systems that the District owns or controls.

SECTION 2. DEFINITIONS

When used in this Rule, the following definitions shall apply unless the context clearly indicates otherwise:

"Contractor" means the person, individual, firm, corporation, partnership, company, or business entity that contracts or agrees with the Property Owner to perform any construction activity within the District.

“District” means Lake Pointe Municipal Utility District.

“Person” shall mean and include any natural person, association of persons, partnerships, corporations, agent, or officer of corporation, and shall also include all warehousemen, common and private carriers, bailees, trustees, receivers, executors, and administrators.

“Property Owner” means the person who owns fee title to a lot or tract, or that person’s agents, employees, representatives, attorneys, or tenants.

SECTION 3. RULE REQUIREMENTS

(a) **CONSTRUCTION DEPOSIT.** Prior to commencement of any construction activity, the Property Owner within the District shall deposit with the District funds in the amount established in paragraph 3(d), “Construction Deposit Amount.” The District, its designated representative, or both shall place the deposited funds in a separate account. The District shall refund, without interest, any remainder of the deposit to the Contractor upon the following:

- (1) the Contractor’s completion of all construction and removal of all construction debris, trash, and other construction material in a manner deemed satisfactory to the District and/or its representative, in its sole discretion;
- (2) the Owner, receiving a written notice of completion from the District’s designated representative; and
- (3) the District subtracting any fines, penalties, and/or costs associated with the Contractor’s failure to comply with the District’s rules, including this rule.

The District shall refund any remainder of the deposit within 45 days after the latest occurrence of the three milestone activities defined in paragraphs 3(a)(1-3) above.

(b) **USE OF CONTRACTOR DEPOSIT.** The District may use the funds as follows:

- (1) To pay the cost of any repairs to or cleanup of the District’s property, including repairs to storm sewer lines, trash collection necessitated by builder or his authorized agent's negligence, or repairs to the water quality ponds;
- (2) For the payment of any fines or penalties levied by the District against the Contractor for violation of the District’s Rules, Orders or Resolutions; and
- (3) The cost of any inspections of the construction site.

(c) **MAXIMUM AVAILABLE REFUND.** The District shall retain a minimum of \$500 of the deposited amount to the Property Owner, if the District has not used any of the funds for costs incurred as described in paragraph 3(b) above.

(d) CONSTRUCTION DEPOSIT AMOUNT. The following schedule includes the minimum amount that each Property Owner within the District must deposit with the District per construction site prior to commencement of any construction project:

(1)	New Home Construction	\$5000
(2)	Pool Installation	\$2000
(3)	Home Remodel or Repair	\$2,000
(4)	Landscape Installation	\$2,000
(5)	All other Construction	\$1,000

SECTION 4. PRE-CONSTRUCTION EROSION CONTROL AND ENVIRONMENTAL PROTECTION

- (a) The Property Owner must maintain on site a construction dumpster or other sufficient, secure container for the disposal of refuse acceptable to the District's Representative (the "Dumpster"). The Property Owner must maintain the Dumpster on site at a location convenient to the construction activity at all times during any construction activity on property within the District. The Property Owner must place all construction debris, litter, and other refuse within the Dumpster. This rule prohibits the Contractor, the Property Owner, and all other Persons from dumping, disposing, or leaving any materials unsecured upon any property within the District. No one may place or dispose of any concrete on any property, roadway or alleyway within the District except as a part of approved structural placements. All concrete from the washout of delivery trucks or equipment and all waste concrete is hereby declared construction debris, and the Contractor must confine all construction debris by use of appropriate control and disposal devices.
- (b) The Property Owner and the Contractor violate these Rules if the Contractor causes or allows to be placed, deposited, or discharged any trash, debris or foreign material into or onto any property, easement, roadway, alleyway or facility within the District. The District hereby declares each Property Owner responsible for every contractor and subcontractor working on the site, and the Property Owner must ensure that contractors and subcontractors comply with these Rules. During construction, the Property Owner must contain all trash, debris, refuse, waste, or any other material created on site as a result of construction or construction-related activities by or associated with contractors or subcontractors, in such a manner as to prohibit its blowing off site or otherwise leaving the property and being deposited onto any property, easement, roadway, alleyway or facility within the District. This requirement includes, without limitation, the District's Preserve.
- (c) Upon completion of construction or development, the Property Owner must remove from the site all containers, construction debris, and rubbish from the site, and the Property Owner must repair at its own expense any damage to the District's easements, drainage systems, or facilities. District shall not consider any project complete or accepted until the Property Owner has completed all required restoration and revegetation, removed all non-permanent erosion and sedimentation controls in a manner deemed appropriate by the District.

- (d) The Property Owner and the Contractor violate these Rules if any person causes or allows another to place, deposit or discharge any human excreta into or onto any property, easement, or facility within the District other than as described in Section 341.014 of the Texas Health & Safety Code. Each Property Owner is responsible for its contractors' and subcontractors' compliance with these Rules at all time. This requirement includes, without limitation, the District's Preserve.

SECTION 5. PROTECTION OF DRAINAGE AND WATER QUALITY SYSTEMS

- (a) The Property Owner and each Contractor must protect the District's drainage and water quality systems, including all drainage easements, channels, storm sewer facilities, detention/water quality ponds and all other facilities owned, maintained, or controlled by the District for the purpose of collecting, controlling, storing, managing or distributing storm and flood waters or run off, from abuse, in order to assure the proper functioning of all such facilities for the benefit of all property owners and residents of the District through protection of the State's water resources.
- (b) The Property Owner and each Contractor is prohibited from placing, throwing, disposing of, depositing, discharging, allowing to migrate any materials or debris, including, but not limited to, construction debris or silt, washout from concrete trucks, trash, motor oil, grass, leaves or tree clippings, into the District's drainage systems. Any violator of this rule is subject to fine as well as the cost to repair any resulting damage to the District's systems.

SECTION 6. PENALTY AND ENFORCEMENT

- (a) Under Section 54.206 of the Texas Water Code, the Courts shall recognize these Rules and Regulations as if the rules were penal ordinances of a city.
- (b) Under Section 54.209 of the Texas Water Code, the District shall enforce these Rules by complaints filed in the appropriate court of jurisdiction in Travis County, Texas.
- (c) Prior to formal enforcement, the District shall provide notice in writing, via facsimile, hand-delivery, certified mail, or electronic format such as Email, to the Property Owner, detailing the violation and the required remedial action to achieve compliance. The Owner must achieve compliance within 24 hours of receipt of notice of violation, after which the District may commence enforcement action, including pursuit of a temporary restraining order in a court of competent jurisdiction to halt all construction at the job site. Upon commencement of enforcement action, the District will also initiate steps to correct the violation and draw down on the Construction Deposit for all costs associated with those corrective actions. The District may also collect any penalties or fines by draw down of the Construction Deposit.

- (d) The Property Owner shall notify District's Representative in writing, via hand-delivery, certified mail, or electronic format such as Email upon correction of the violation and/or completion of all construction at the home site. The District's Representative must review the site within five (5) days of receipt of notice of correction. The penalty clock on a violation is stopped only when the District's Representative issues a certificate of compliance.
- (e) Any Property Owner who violates any provision of this Rule is subject to a fine in an amount of up to \$1,000.00 per offense. Each day of violation constitutes a separate offense. In addition, the offending party is liable to the District for any costs incurred by the District in connection with any repairs, corrections, and court costs necessitated by the violation. The following violations are subject to the fines as set forth below:
 - (1) Failure to keep trash contained and secured - \$100/day;
 - (2) Mud on public or District roads - \$100/day;
 - (3) Damage to District facilities - \$100/day;
 - (4) Allow building occupation before CO issuance - \$100/day;
 - (5) Failure to maintain proper silt fence - \$100/day.

If the Board of the District or the District's Representative, in its sole discretion, determines that the deposit is insufficient to cover the costs associated with the violation of any portion of this rule by the Property Owner or Contractor, then the Board or the District Representative may increase the amount of the deposit up to 10% of the total value of the home, including the value of the lot.

- (f) Any person who violates any provision of this Rule shall be guilty of a misdemeanor and be subject to the appropriate fine, imprisonment, or both.
- (g) The General Counsel is authorized to pursue all judicial remedies available to the District including filing complaints in the court of appropriate jurisdiction to enforce the provisions of this ordinance.

SECTION 9. INSPECTION AND IMPOSITION OF FINE

- (a) The District's Operation Manager (the "Manager") will serve as the District's Representative in identifying violations and establishing the appropriate fines for violations of these Rules. Upon receipt of the Construction Deposit, the District will provide the contact information for the Manager to the Property Owner.
- (b) The Manager will be the District official who issues written notice to the Property Owner of a violation of this ordinance. The written notice also will include the amount of the imposed fine, the date or dates of the violations, and any other information the Manager deems appropriate. The written notice will further advise the Property Owner that the Board of Directors of the District will review the fine at its next regular meeting, and that the offending party may appear at that meeting to appeal the imposition of the fine. The Manager will include the date, time, and place of the meeting in the notice. The Manager will also provide a copy of the notice to the Board of Directors of the District.

- (c) The Board of Directors of the District shall review all fines imposed by the Manager at its next regular meeting following imposition of the fine. The Manager will ensure that the imposition of the fine is placed on the meeting agenda. At the meeting, the Board will review the action of the Manager, permit the offending party to address the Board to appeal the imposition of the fine(s), and either affirm or overrule the imposition of the fine(s). In making its decision, the Board may consider any evidence it deems appropriate.
- (d) The term, extent and scope of the violation(s) and their associated fines will not be mitigated, or in any way affected, by the timing or duration of the Board's review. That is, the clock on the fines will not stop during the appeals process.

SECTION 8. REPEAL OF CONFLICTING PROVISIONS

All provisions in all other rules in conflict with this Rule are repealed, which repeal shall take effect upon the effective date of this Rule.

SECTION 9. SEVERABILITY

If a Court of competent jurisdiction holds any portion of this Rule invalid or unenforceable for any reason, that holding shall not be construed to affect any other portion of this Rule and all other portions shall remain in full force and effect.


SECTION 10. AUTHORIZATION TO PUBLISH AND EFFECTIVE DATE

- (a) The Board of Directors of the District hereby authorizes the General Counsel of the District to publish notice of this Rule in accordance with Section 54.207 of the Texas Water Code.
- (b) This Rule shall become effective on the fifth day after the publication of notice of a substantive statement of the rule and the penalty for its violation.

PASSED and APPROVED on the 9th day of August 2018.

LAKE POINTE MUNICIPAL
UTILITY DISTRICT

[SEAL]



Steven Knuff, President

ATTEST:



Frederick W. Goff, Secretary