

Regulations for Public Access to Falling Water Subdivision

MONDAY, NOVEMBER 14, 2016

1. Definitions

- 1.1. Public Access – Any circumstance likely to result in free and open access to the subdivision of any number of non-owner vehicles with or without control of travel within the subdivision. Public Access is effectively the same as opening the gate for anyone to enter the Property whether it is opened for each vehicle or whether it remains open for an indefinite period of time.
- 1.2. Estate Sale – A liquidation sale or auction conducted by a recognized event management company that regularly manages such sales. The purpose of an Estate Sale is for disposing of a clear majority of the Owner's personal property to facilitate a move out of Falling Water. The sale may not be conducted by the Owner or by a private individual or company who does not regularly perform such service.
- 1.3. Association – Association shall mean and refer to Kerr and Kendall Counties Falling Water Property Owners' Association, Inc. (a Texas non-profit corporation), its successors and assigns.
- 1.4. Board – The Board of Directors of the Association.
- 1.5. Common Area - Common Area shall mean all real property (including the improvements thereto) leased, owned or maintained by the Association for the common use and enjoyment of the owners. By way of illustration, common Area may include, but not necessarily be limited to, the following: private streets, signs, street medians, entry gates, landscaping, lighting, entrance signs, walls, bridges, and other similar or appurtenant improvements.
- 1.6. Owner - Owner shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

2. Background

- 2.1. On March 19, 2007, the Board passed unanimously in a properly held regular public monthly meeting that the gates will be normally closed 24/7. This decision became effective on May 15, 2007 and continues to be in effect today. This action was taken as a result of an informal membership poll conducted at the 2006 Annual Meeting.
- 2.2. The above decision facilitates the privacy of our community and, while it is not a dependable security mechanism, it enhances our safety and serenity by minimizing Public Access.
- 2.3. Owners are issued unique codes that cause the entrance gate to open when the code is entered via the keypad. Remote RF transmitters can be purchased that also will open the gate. With either method of entry, the gate will remain open for a short time and then it will return to the closed position

- 2.4. A Special Board Meeting was held on April 11, 2016 regarding the review of an estate sale conducted just prior to the meeting and another estate sale scheduled shortly after the meeting. Many residents attended this meeting and they provided valuable input that was used in the development of this document including four written documents from Owners.
- 2.5. The annual meeting held October 8, 2016 had a question on the ballot regarding allowance of Public Access to Falling Water for certain activities. The results were almost 2 to 1 against. The exact counts were 64 AGAINST, 37 FOR, with 71 not voting. These results and the input from the Special Board Meeting were considered in the development of this document.

3. Policy

- 3.1. No Falling Water Property Owner or Owners or any other person or entity may cause or allow Public Access to the subdivision for any reason or by any method. Typical methods include but are not limited to:
 - 3.1.1. Enabling Public Access by advertising or otherwise divulging confidential gate codes to the general public;
 - 3.1.2. Assigning a person to the gate area for the purpose of opening the gate by any means for anyone who enters the entry lane;
 - 3.1.3. Advertising Public Access to Falling Water on Highway 87 by signage or any other method;
 - 3.1.4. Any other action that has the effect of allowing Public Access to the subdivision.
- 3.2. The purpose of this policy is to protect the members, their property, and property of the Association.
- 3.3. The Board has the power to adopt and enforce rules and regulations regarding the use and enjoyment of the Common Area in accordance with the Covenants, Conditions, and Restrictions (CCRs) by Article III, Section 1, Paragraph D and by Article IV, Section 3, Paragraph B and D and by the By-Laws Article VIII, Section 1, Paragraph A.
- 3.4. By the powers vested in the Board in accordance with the CCRs and By-Laws as stated above, and by the clear margin indicated by the membership in the recent election, the Board has unanimously adopted this policy at the regular monthly Board meeting held November 14, 2016. A copy of this policy is available on the Falling Water website and it is on file in the Kerr and Kendall County Courthouses.

4. Exceptions

- 4.1. A construction, maintenance, electrical, or damage issue to the gates or entry area could require an exception to this policy for the length of time required to reinstate normal operation.
- 4.2. The Board may grant a formal exception to the above Public Access Policy for a bona fide Estate Sale or auction requested as a result of a major life event such as death or catastrophic illness, event, or accident. In such a sale, a clear majority of the Owner's personal property located at the residence within Falling Water must be liquidated to facilitate a move out of

Falling Water. This exception may be granted only once for the current Owner of a particular lot.

- 4.3. There may be a circumstance unforeseen by this policy where an Owner requests an exception to the policy for Public Access to an event other than the exception outlined above in 4.2. The Board will examine the circumstances surrounding this request with respect to the spirit of the exception requirements as outlined in 4.2 above and elsewhere in this document before rendering a decision to proceed with an Application for Exception.
- 4.4. Weddings, funerals, birthdays, graduations, and similar short-term activities of a family nature where attendees are individually invited and where such activities are reasonable in size and duration are not considered Public Access. The Board requests notification of such activity depending on the number of vehicles that will be entering or if any special signage will be used at the entrance area or within the subdivision. These activities do not require an exception to the Public Access Policy.
- 4.5. Real Estate public open houses are covered in a separate policy that has been successfully used for a considerable time and it is documented elsewhere. It is essentially an open house for other real estate agents, not the public, therefore it does not require an exception to the Public Access Policy.
- 4.6. The Board will not grant an exception for Garage Sales, Yard Sales, Parades of Homes, or any similar activity whether by an individual Owner, a group of Owners, or any other entity, where Public Access is proposed.
- 4.7. The Board will not grant an exception for any activity disguised as an Estate Sale or auction where the event management company or Owner offers goods from people other than the Owner for sale or if there is not a major life event such as death or catastrophic illness, event, or accident driving the need for the sale. Using a Falling Water residence in this manner provides a venue for the event management company to operate their business within Falling Water and which is prohibited by the CCRs under Article II, Section 1.

5. Application for an Exception

- 5.1. **It is strongly suggested that this application and the Owner Meeting described below take place before signing a contract with the event management company.** The Owner will notify any Board Member by any written method at least 45 days in advance of the proposed event date. If circumstances do not allow this much advance notice, the Board may, at its sole discretion and without setting precedent, accept shorter notice with reasonable cause and sufficient remaining time to plan;
- 5.2. The Board member contacted in 5.1 above will immediately notify the remainder of the Board and request the Secretary to forward a copy of this policy via email and a link to same document located on the FW website to the Owner.
- 5.3. A Board Representative will be assigned as quickly as possible. An Owner's request for a certain Board Member will be honored if possible. The assigned Board Representative will notify the Owner of the assignment and provide contact information. This will be the Owner's Board contact for the entire process.

- 5.4. The Owner will send an email or other form of written notice of Request for Exception to the Board Representative within 3 days of notice of assignment of a Board Representative that includes the following information:
 - 5.4.1. Owner name, address, lot number, primary and alternate phone, email address, reason for the sale, proposed dates and times for sale, general description, quantity, and source of goods for sale. In addition, if available, the proposed event management company name, address, business phone, contact name, phone, and email address.
 - 5.4.2. A date and time when the Owner is available to meet with the Board Representative. The purpose of this meeting is to arrive at an agreement outlining the details of how the event will operate with regards to the use of the Common Area using section 7 below as a starting point. This meeting should happen as soon as possible.
 - 5.4.3. If the initial contact to the Board was less than 45 days in advance of the proposed event, the Request for Exception will include a reasonable cause for not providing timely notice; If this is the case, expedited Board Approval will be required to proceed with the application process.
- 5.5. The Owner may assign an Owner's Representative who will assume the Owner's position in all interaction with the Board Representative. Notice of such assignment must be sent to the Board Representative by email or other method in writing as soon as possible. All reference to the Owner below means the Owner's Representative, if assigned.

6. Owner Meeting with the Board Representative

- 6.1. **It is to the Owners advantage to schedule this meeting before signing the contract with the event management company.**
- 6.2. The purpose of this meeting is to review all the POA requirements listed in section 7 below. The Board Representative will use these requirements as a basis to negotiate an agreement outlining all aspects of the event operation with regards to the use of the Falling Water Common Area as it pertains to the particular details surrounding this event.
- 6.3. The Board Representative will enter requested modifications and clarifications into the agreement as negotiated with the Owner by inserting text in red font below each modified paragraph. Examples of clarification entries are staffing, parking, and front gate area operation. These modifications pertain only to this particular event based on location, topography, resident traffic, and other factors peculiar to this event and they do not set precedent for any future exception.
- 6.4. **The agreement determined in this meeting is subject to Board approval.** The Board will consider the completed agreement and issue a decision on the proposal within 7 days of submission. When the agreement between the Owner and Board Representative is signed by all parties, all monies are paid, and the Board has approved the agreement, Public Access to the event is authorized.
- 6.5. If the Owner has already signed a contract with the event management company and if the agreement between the Owner and the Association is in conflict with the event management

company contract, the Association agreement rules and the Owner is responsible for assuring compliance by the event management company.

7. Requirements for an exception

- 7.1. The Association's interests in granting an exception include the safety and wellbeing of everyone involved, control of traffic flow and congestion, orderly parking, fire risks, and the liability of the Association resulting from Board approved public use of our roads.
- 7.2. The proposed date of this event may not coincide with any previously approved Public Access event, deer harvesting activity, scheduled road repair, or any other activity that could be impeded or disrupted by traffic to and from such event in Falling Water.
- 7.3. The Owner accepts full liability for personal injury and property damage resulting from public use of Falling Water Common Areas. This includes any damage to Falling Water Common Areas over and above normal wear covered in the road fee, any judgements, attorney fees and expenses, court costs, and any other expenses incurred in litigation brought against the Association relative to this event.
- 7.4. A road use fee in the amount \$125 for each day of the event is due and payable to the Association at the signing this agreement. This fee covers the deterioration of the road edges caused by driving off the side of the road for parking and for wear and tear on the roads and the gate apparatus.
- 7.5. The Owner will be present or readily available to the Board Representative for the duration of the event. This requirement facilitates rapid response in the event some adjustment is required in the operation of the event for safety or any other reason.
- 7.6. All labor and material expenses will be the responsibility of the Owner. The Association will bear no expense and is not required to solicit volunteers to comply with these requirements. The Owner or the event management company will provide adequate staffing and equipment to support the event in accordance with this agreement.
- 7.7. An off duty uniformed police officer may be required to manage issues such as traffic control, congestion, parking, and other safety issues on Falling Water Common Area or on Highway 87 as needed. If this is the case, the Board Representative will negotiate a contract between the Association and the police officer at the Owner's expense. A deposit, based on the current rates for such an officer, is due and payable to the Association at the signing of this agreement. If at the meeting between the Owner and the Board Representative, it is determined that no officer is required, the reasons for this omission must be forwarded with the proposed agreement for Board review and approval.
- 7.8. At least one person will be present at the entrance gate for the duration of the event to screen arriving traffic, provide a map, issue a bright-colored sequentially numbered Post It note mounted to inside of the windshield, and open the gate by entering the assigned code. The numbered note serves as a vehicle count and identifies event attendees to parking and other traffic control personnel. The person at the gate will report the daily car count in a timely manner to the Board Representative. A sample map will be presented to the Board for review along with the proposed agreement.

- 7.8.1. The map will include large font written instructions to get to and from the event and an advisory note in smaller font to 'Please stay on the route'. At the bottom of the map, 'Falling Water POA is not responsible for accidents or injuries' will appear in easily readable font. Lastly, a speed limit notice such as 'Speed Limit 25 MPH' will appear at a convenient location on the map in bold font.
- 7.8.2. Attendees will not be allowed to proceed to the event before the time stated in the agreement. Parking personnel must be in place at the agreed start time when attendees begin to proceed to the event. Public Access will be terminated at the time stated in the agreement. Transit time from the gate to the event location will be taken into consideration to determine a cutoff time at the gate.
 - 7.8.2.1. It is acceptable to the Association to temporarily line early arrivals along one side of Kendall Falls Road until the designated opening time as an alternative to lining vehicles along highway 87. Do not block driveways. In this case, there will be a need for additional personnel at the gate area to manage the staging of those vehicles and possibly an escort vehicle for the initial trip to the event.
 - 7.8.2.2. This staging process may also be employed if parking is restricted at the site of the event where a limited number of vehicles may be parked simultaneously.
- 7.9. The Board Representative will request a gate code for this specific event to be issued no more than 7 days before the event and it will be deactivated no later than 7 days after the last day of the event. The entrance and exit gates will be operated normally during the event. That is, they are both closed until activated by an entry code or the approach of a vehicle preparing to exit.
- 7.10. Directional signs will be placed at all intersections by the event management company no earlier than late afternoon one day immediately before the event. These signs will guide attendees to and from the event. The event management company will remove the signs before leaving on the last day of the event after closing. In addition, the Association will provide traffic safety cones, if available, and the Owner will place them on each off-route side road to minimize lost or roaming attendees. After the event closes on the last day, the Owner will retrieve the cones and return them to the Board Representative.
- 7.11. There will be no form of advertising or solicitation of any kind on Highway 87 that would tend to attract the public. The event management company may advertise through their email list, in the paper, on their website, and any other way except as noted above.
- 7.12. Parking at or near the event site is unique to each property therefore this policy will not attempt to define a specific requirement for parking, personnel, or equipment. The general requirement is to provide proper levels of area, staff, and equipment for event operation considering the circumstances at hand and as stated in the agreement. Parking staff must be on parking duty as the first car is admitted and must remain on duty for parking purposes for the duration of the event.
 - 7.12.1. Parking area priority is as follows considering safety first:
 - 7.12.1.1. On the Owner's property;
 - 7.12.1.2. On a neighbor's property with written permission to be included with the proposed agreement;

- 7.12.1.3. On one side of the road given adequate visibility and road edge topography for safe vehicle operation and pedestrian movement; parking on the sides of the road in such a way that causes one-way traffic or creates any other unsafe condition is not permitted;
- 7.12.1.4. On a near-by side road or on other private property with appropriate written permission and shuttle service, as necessary. Written permission is to be included with the agreement. The Association will not provide the shuttle service.
- 7.12.2. There will be no parking allowed in tall grass on alongside the road or on anyone's private property. The Owner will mow tall grass in the parking area before the event so vehicles can safely park on it during the event. This is for fire prevention and safety. The Board Representative will evaluate the parking area within 24 hours before the event for fire safety. If the Board Representative determines a fire safety issue is present, the Owner must mow the parking area before parking will be allowed. The parking personnel will monitor and police this issue during the event.
- 7.13. The monetary deposits required above for road fees, law enforcement personnel and any other agreed financial commitment by the Board Representative at the expense of the Owner must be paid at the time of signing the agreement. If there is a difference between the deposit and the actual cost, the Association will refund or invoice the Owner accordingly. If there is a balance due the Association after the event, immediate payment is expected. If the balance due remains after invoicing the Owner, the Owner grants the right for the Association to immediately file an assessment lien against the property of the Owner to collect such funds. The Owner is responsible for all attorney fees and expenses in collecting such expenses. If the event is cancelled for any reason, the deposits will be refunded to the extent the Association receives a refund from the entity with whom a commitment was made.

8. Failure to abide by the Public Access Policy

- 8.1. An infraction of the agreement during the event will be brought to the attention of the Owner by the Board Representative as quickly as possible. Immediate action by the Owner to correct the infraction is expected.
- 8.2. Failure or refusal of the Owner to correct the problem within a reasonable time will result in Board action to enforce all safety and security controls deemed necessary by the Board, including termination of Public Access to the event, assessment of a fee up to \$1,000, or both.
- 8.3. If an Owner conducts an event allowing Public Access without following the process and policy set forth in this document the Board may enforce all safety and security controls deemed necessary by the Board, including termination of Public Access to the event, assessment of a fee up to \$1,000, or both.
- 8.4. The Owner is responsible for all attorney and other legal fees and expenses billed to the Association for collection and execution of these consequences. The Owner is responsible for any liability or damages and all related attorney fees and expenses brought against the Association because of a Public Access Activity, authorized or unauthorized.

Note to reader: THIS IS NOT AN OFFICIAL COPY. The official copy of the signed document is on file in Kendall County under Document Number 00306866, Volume 1551 Page 693 and in Kerr County under Document Number 16-07424. The original document is on file with the Secretary of Kerr and Kendall Counties Falling Water Property Owners' Association, Inc.

KERR AND KENDALL COUNTIES FALLING
WATER PROPERTY OWNERS' ASSOCIATION, INC.

By: _____

Name: JOHN M. HIGBIE, President

THE STATE OF TEXAS

COUNTY OF KENDALL

This instrument was acknowledged before me on this the _____ day of _____, Year by John M. Higbie, President of the KERR AND KENDALL COUNTIES FALLING WATER PROPERTY OWNERS' ASSOCIATION, INC., a Texas corporation, on behalf of said corporation.

Notary Public, State of Texas

AFTER RECORDING, RETURN TO:

John Higbie, President

P.O. Box 582

Comfort, Texas 78013