

**GUIDE TO NEIGHBORHOOD COVENANTS,  
SELECTED LOCAL, STATE AND FEDERAL LAWS  
FOR MALLARD TRACE RESIDENTS**



**MALLARD TRACE HOME OWNERS ASSOCIATION**

**Revised 4/2010**

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## **INTRODUCTION**

The Mallard Trace Home Owners Board of Directors has created this guide to help homeowners understand their obligations and rights under the neighborhood covenants, conditions and restrictions, and local, state, and federal laws as they relate to the management of the Mallard Trace Planned Community. The complete documents to which this guide refers are all available online free of charge either through the Mallard Trace website ([www.mallardtrace.org](http://www.mallardtrace.org)) or through various local, state or federal websites.

## **COVENANTS, CONDITIONS, RESTRICTIONS, BYLAWS, AND ARTICLES OF INCORPORATION**

The Declaration of Covenants, Conditions and Restrictions (CCRs) for Mallard Trace was filed in 1986, and supplemented in 1986 and 1987 as new property was added in the subdivision. There was one amendment made to the supplementary declaration in 1990 regarding fence requirements. Other relevant documents include the Articles of Incorporation for Mallard Trace in 1986, our ByLaws updated in 2007, a Policy regarding temporary signs at the front entrance and a 2010 Board Resolution on home and lot maintenance.

These CCRs run with the property in Mallard Trace and are binding upon all home owners. It is important that they be understood clearly. Unfortunately, they are spread out among three documents that are organized differently and not necessarily by like subject matter. Some of the provisions are also no longer relevant and/or are not enforceable under current state or federal law.

The guide organizes all currently relevant provisions under subject headings, summarizes those provisions in plain English, and references the official documents. It also refers to current law when appropriate when the original provisions have been rendered unenforceable. This guide does not constitute an amendment to the CCRs and imposes no new restrictions or obligations.

### Key to Guide References

The reference column in the guide contains a one, two or three letter acronym for the document followed by relevant article in a roman numeral and section number. The supplementary declaration and amendment to the supplementary declaration are organized only by item number (1-25) so no article roman numeral is cited in the references to those documents. These documents can be found in their entirety by going to [www.mallardtrace.org](http://www.mallardtrace.org) and clicking on the Documents section. Following is a key to those documents:

- AIC- Articles of Incorporation of Mallard Trace Home Owners Association 5/18/86
- BL- ByLaws of Mallard Trace Homeowners Association, amended 1/18/07
- D- Declaration of Covenants, Conditions and Restrictions for Mallard Trace 5/12/86
- SD- Supplementary Declaration of Covenants, Conditions and Restrictions for Mallard Trace 5/13/86, and 7/2/87 (identical to '86 provisions adopted for property added to complete the subdivision.)
- ASD- Amendment to the Supplementary Declaration of Covenants, Conditions and Restrictions for Mallard Trace 6/12/90 (modification of fence requirements)

HLM- Resolution on home and lot maintenance adopted by the Board of Directos

SIGN- Policy regarding temporary signs at front entrance adopted be the Board of Directors

	Reference
<b>Mallard Trace Home Owners Association</b>	
<b>Incorporation</b> The Mallard Trace Homeowners Association was formed as a non profit corporation in 1986 to maintain the sub division entrance, landscape island, and maintenance easement areas, and to promote the health, safety, and welfare of Mallard Trace Residents.	AIC
<b>Membership</b> Everyone who owns a home in Mallard Trace is a member of the Association.	D/III-1
<b>Voting Rights</b> There is one vote allocated to each lot.	D/III-2
<b>Board of Directors</b> There are five directors elected from within the membership for staggered 3 year terms. They are responsible for managing the Association. They are volunteers, receiving no compensation for their duties.	BL/IV-1,3
<b>Meetings</b> There is at least one membership meeting each year usually held in January where the annual budget is ratified, and director(s) are elected. The Board holds meetings at least once per quarter to which the membership is invited.	BL/III-1 BL/V-1
<b>Maintenance Easements/Park Property</b> The Association is responsible for maintaining and enhancing the front entrance to the sub-division as well as the land approximately 40 feet into the subdivision adjacent to Mallard Creek Road as indicated on the recorded maps of Mallard Trace, as well as the landscaped island in the Silver Birch Lane right of way.	D/IV

## **Assessments**

- Purpose D/V-2  
Annual assessments (dues) are levied to promote the health, safety, and welfare of the residents, enforcement of the covenants, and maintenance/improvement of the property for which the Association is responsible.
- Maximum Annual Assessment D/V-3  
The current maximum assessment as of 2007 is \$130 per year for each lot. It is invoiced in December and due by end of January, with a \$5 discount if paid by end of December. The Board can increase the assessment by up to 12% with out a vote of the membership.
- Special Assessments for Capital Improvement D/V-4  
In addition to annual assessments, the Association may levy special assessments with approval of the membership to defray costs of repair, replacement of or improvements to capital improvements upon any maintenance easement area.
- Remedies of Association for non payment of dues D/V-8,9  
The Association has the authority to file a notice of lien on any delinquent property, foreclose on the lien, and sell the property for the unpaid assessment after proper notice and a hearing. The delinquent homeowner is liable for interest on the unpaid assessments and all attorney fees. This lien is subordinate to any first mortgage or first deed of trust.

## **Architectural Control**

- Building and Height Restrictions SD-1  
There is to be only one single family dwelling per lot not to exceed two and one half stories above ground with a garage or carport for not more than four cars.
- Construction Costs SD-3  
Construction of the minimum sized house must be the equivalent in today's construction costs of at least \$40,000 in 1986 costs
- Driveway SD-19  
Driveways shall have either an asphaltic concrete, cement concrete or brick paver surface.
- Dwelling Orientation SD-12  
All dwellings must face the street on which the lot abuts, except for those on corner lots, which have the option of facing the intersection of the two streets.

<p>Encroachments/Setbacks</p> <p>No building can be closer than 6 feet on one side and 8 feet on the other from lot lines except for garages/ carports which can be no closer than 5 feet from the lot lines. The Association can wave up to 10% of these requirements. No fence, wall, hedge, mass plantings, etc. over 2 1/2 feet will be permitted within the building set back lines.</p>	<p>SD-5</p>
<p>Fences and Walls</p> <p>No fence or wall can be erected any closer to the street than building setback lines. No chain link fences are allowed, although split rail fencing with metal mesh is allowed to contain animals. Perimeter fencing over four feet must be 50% open, and such fencing four feet and under must be 33% open. Gates of such fencing are exempt from this requirement, and solid privacy fencing is allowed around pools, patios and decks. Brick or stone masonry used in lieu of fencing are exempt from the openness requirements.</p>	<p>ASD-2</p>
<p>Fire or Other Casualty</p> <p>If any home is destroyed or partially destroyed, the damage must be repaired and the improvement reconstructed within 18 months.</p>	<p>SD-20</p>
<p>Metal Structures</p> <p>No metal buildings or accessory structures shall be erected on any lot or attached to any building. A non-commercial greenhouse of no more than 150 square feet attached to the back of a house is the one exception to this restriction.</p>	<p>SD-15</p>
<p>Size of Houses</p> <p>Houses in Mallard Trace must have at least 1700 sq ft of heated floor space.</p>	<p>SD-4</p>
<p><b>Use Restrictions</b></p> <p>Animals</p> <p>No animals, livestock or poultry are to be kept on any lot or in any dwelling except for household pets as long as they are not maintained for commercial purposes. A household is limited to three outdoor pets except for offspring of such pets that are under nine months old.</p>	<p>SD-11</p>

Antennas and Satellite Dishes	SD-18
<p>No radio or television transmission or reception towers, antennas, dishes or discs are allowed, except those covered by Federal Communication Commission laws (example: satellite dishes one meter or less in diameter, antenna designed to receive local television broadcasts, etc.)</p>	
Garbage Cans	SD-17
<p>Garbage cans must be kept outside the front or side yard setback from the public street. For curbside trash pick up, the cans may be moved to the curb the night before pickup and returned to their storage area the night of the pickup.</p>	
Junk vehicles	SD-9
<p>No abandoned or inoperable vehicles are to be kept on any lot outside an enclosed structure. No automobile or other mechanical equipment may be dismantled or allowed to accumulate on any lot.</p>	
Land Use	SD-1
<p>The subdivision is zoned residential for only single family homes.</p>	
Noxious or Offensive Activity	SD-11,14
<p>No noxious, offensive, or illegal trade can be carried on upon any lot, or any activity that is an annoyance or nuisance to the neighborhood.</p>	
Parking	SD-9
<p>Residents may not park on the street on a regular basis, and are restricted to parking in areas of a lot improved for that purpose, such as driveways, garages, carports or parking pads. There is no parking on dirt or grass. Occasional overflow parking within the street right of way is allowed provided that neighbors are not inconvenienced.</p>	
Septic Tanks and Wells	SD-10
<p>Septic tanks or wells are not to be installed or used.</p>	
Signs	SD-13
<p>No sign boards are to displayed on any lot except “for sale” or “for rent” signs no bigger than two feet by three feet and political signs under the provisions of NC Planned Community Act 47F-3-121.</p>	
Signs, Temporary	SIGN
<p>Real estate signs advertising property in Mallard Trace can only be placed at the subdivision entrance on holidays or weekends. No other signs can be placed at the entrance without written permission of the Mallard Trace HOA Board of Directors.</p>	



Subdivision of Lots SD-7  
No lot as shown on the recorded map can be subdivided by sale or otherwise except by written consent of the Board.

Temporary Structures SD-8  
No temporary residence shall be allowed to remain on any lot, and no trailer, basement, shack, tent, garage, barn, etc. shall be used as a residence either temporarily or permanently.

**Maintenance** SD-21  
Each homeowner is to keep his lot in an orderly condition and the improvements in a suitable state of repair. Clothlines are only allowed directly behind a residence. No trash, rubbish, or stored materials are to remain on a lot outside an enclosed structure, except for temporary deposits of such items for trash or garbage pickup.

The following rules and regulations were adopted by the Board of Directors: HLM

- Lawns must be mowed and trimmed as often as necessary to maintain a neat and uniform appearance. Grass must be cut before it reaches 8" high.
- Grass clippings, leaves, and other debris from a homeowner's property must be kept out of the street, street gutters, and storm drains.
- Landscaping elements such as bushes, hedges, planting beds, trees must be properly trimmed and dead plantings removed to maintain a neat appearance from the street or greenway.
- Bare ground and ruts caused by vehicles on grass areas next to driveways must be restored to grass area or paved as part of driveway widening.
- Fencing that has collapsed or has missing members must be repaired, replaced or removed.
- Deteriorating conditions visible on the exterior of a home such as wood rot, rust along a substantial length of gutters, sagging gutters, cracked or collapsing garage door must be corrected.
- Roofs(on homes and/or garages) with missing or broken shingles must be repaired. A roof that has exceeded its useful life must be replaced.

- All painted surfaces must be maintained in a presentable manner with no peeling, chipping or bare wood surfaces.
- Broken or missing doors, windows, siding, exterior trim must be replaced.

**General Provisions**

Enforcement

D/VIII-1

The Board of Directors or any Mallard Trace homeowner has the right to enforce the covenants, conditions, and restrictions by any proceeding at law or in equity. NC State law and the Mallard Trace Violations Policy allows fines for up to \$100 per day and a judicial process for enforcement of the covenants after proper notification and a hearing.

Severability

D/VIII-2

Invalidation of one of the covenants or restrictions by judgment or court order does not affect the enforcement of any other provisions.

Amendment

D/VIII-3

The Declaration of Covenants, Conditions, and Restrictions can only be significantly changed by a positive vote of 90% of the existing homeowners up to 2011(25 years from the initial Declaration). At that point, such changes can be made with 75% approval.

## **SUMMARY OF COVENANT ENFORCEMENT PRACTICES AND PROCEDURES**

Any home owner can report an observed covenant violation to the Board. A Board member can also report a violation to the rest of the Board.

The Board determines if in fact there is a covenant violation, or if the issue is covered by City Ordinance but not the neighborhood covenants.

If there is a covenant violation, one or more Board members are assigned to talk with the home owner in violation to explain the violation and work out a solution within a reasonable time frame. There will be at least three attempts to contact the homeowner by phone, in person, or email. Board members will also talk with the homeowner about any City Ordinance violations.

If the above is not successful, the formal Mallard Trace HOA Violation Policy, which includes all the relevant provisions of State Law, will be implemented:

STEP 1 – The Board will send a formal letter to the home owner detailing the specific covenant provision being violated with a specified period to correct the violation. The home owner can then either cure the violation within the specified time period, or respond in writing within that time period to either work out a solution or request a hearing. If no solution can be worked out, the Board will proceed to Step 2.

STEP 2 - The Board will either appoint an adjudicatory panel of non-Board home owners or serve as the panel itself. The panel will set a hearing date with not less than 10 days notice, where the charged homeowner will be given a chance to be heard and present evidence. The panel will then determine whether or not the homeowner should be fined and the amount of the fine (up to \$100 per day). The panel will then give written notice of its decision to the homeowner within 10 days after the hearing. There will be a five day grace period after notice of the decision is mailed before fines are imposed. If an adjudicatory panel of non Board members is used, the charged home owner may appeal the decision of the panel to the Board within 15 days of the notice of decision.

STEP 3 – If no solution has been reached and fines have been imposed for 30 days, the Board will turn the case over to the Association's attorney to resolve or begin legal proceedings such as filing of a lien on the homeowners property and foreclosure proceedings.

## CITY AND COUNTY ORDINANCES

In addition to the neighborhood CCR's , numerous city and county ordinances govern activities and uses in the neighborhood. Although the Mallard Trace HOA Board of Directors has no authority to enforce these laws, residents are encouraged to **call 311** to report any suspected violations.

All City ordinances have been codified in a Code of Ordinances for the City of Charlotte. The code is available free online and is easily searchable through a detailed table of contents or by keyword. County ordinances have not been codified but are also available free online through the appropriate county department website. To learn about these laws and all relevant city and county services you should start with city/county website [www.charmeck.org](http://www.charmeck.org) . Below is some information about these ordinances under topics that we get inquiries about with some frequency from home owners. This is by no means a complete list of all relevant information.

### **Animals**

Chapter III of the City code deals with the care, control and prohibited or restricted acts regarding animals. It deals with such topics as abandoned animals, abuse of animals, injuring animals, restraint of animals, and animals that cause a public nuisance or nuisance to neighbors. For example, **it is unlawful for an owner to allow or permit “an animal to bark, whine, howl, crow, cackle or cause noise in an excessive, continuous or untimely fashion so as to interfere with the reasonable use and enjoyment of neighboring premises;”(Chapter III Section 3-69 (a)(5))**

### **Garbage Rollout Containers**

Chapter 10 of the City Code deals with Solid Waste including collection services, fees, containers. Section 10-99 deals with the proper placement of containers, the securing of garbage in plastic bags within the containers, etc. **Any customer who places solid waste at curbside prior to the day before the scheduled collection date or fails to remove solid waste and /or containers from curbside by midnight on the day of collection may be issued a civil penalty in the amount of \$50.00. Any person who fails to properly prepare or containerize solid waste for curbside collection may be issued a civil penalty in the amount of \$50.00**

### **Grass, Weeds, Leaves etc.**

Chapter 10 also deals with neglect of property, dilapidated conditions, abandoned vehicles, junk cars, graffiti, weeds, grass, leaves. For example, **“it shall be unlawful for the owner and/or occupant of a property to fail to cut grass, weeds, and other overgrowth vegetation on property when the grass, weeds, and other overgrowth vegetation is of greater height than one foot on the average.” ( Chapter 10 Section 10-241)**

Also, **“it shall be unlawful for any person to blow, place or allow to be placed or to permit to continue the accumulation of leaves, grass clippings, or any other debris from his premises on a public street, sidewalk, grass strip between a paved sidewalk and public street, or on an area that pedestrians would be expected to use to walk upon parallel to a public street, or a median strip within the public right of way.”** (Chapter 10 Section 10-242)

## **Mosquito Control**

There is a Mecklenburg County health ordinance to control and reduce the mosquito population of the County. **“Where there is evidence of mosquito breeding, effective methods of eliminating and treating mosquito breeding sources shall be instigated by the person occupying the premises, or in the absence of an occupant, by the owner, within 48 hours after discovering or being informed of the evidence of mosquito breeding on the premises.”** Evidence of mosquito breeding is defined in the ordinance as **“natural presence of mosquito larva, pupa, or their remains”**. Mosquito complaints can be reported by calling 704-336-5101.

## **Noise**

Chapter 15 Article III of the City Code deals with noise. **It is unlawful in any residential zone to carry on the following activities between 9pm and 7am: (1) operation of a front-end loader for refuse collection; (2) operation of construction machinery; (3) operation of garage machinery; (4) operation of lawn mowers and other domestic tools out of doors.** (Chapter 15 Section 15-63)

Article III also deals with amplified sound, noise from animals, and unreasonably loud noise from vehicles. **Amplified sound registering 55 db(A) between 9am and 9pm or 50 db(A) between 9pm and 9am as measured by the closest occupied property is unlawful, except in accordance with a permit obtained from the Charlotte Mecklenburg Police Department.** (Chapter 15 Section 15-64)

## **Parking**

Chapter 14 of the City Code deals with many different aspects of motor vehicles and traffic. Article V of this chapter deals with parking. The Mallard Trace CCRs prohibit residents from parking on the street on a regular basis. This ordinance also makes **it unlawful for anyone to park a vehicle on the street for the purpose of: (1) Advertising; (2) Displaying a vehicle for sale; (3) Washing, greasing or repairing such vehicle except repairs necessary by emergency; or (4) Storage of such vehicle. A vehicle is deemed to have been left on the street for storage if it has been standing in one place for a continuous period of more than 72 hours.** (Chapter 14 Section 14-217)

## **Swimming Pools**

There is a Mecklenburg County ordinance governing residential swimming pools designed to protect the health and safety of citizens residing near such pools. The ordinance applies to pools fitted with a filter for clarifying water or are designed to be fitted with a filter whether or not it is installed. Approval from the Health Department is required for the siting and construction of such pools. There are also ongoing operation and maintenance requirements to prevent the development of unsanitary conditions.

## **Trees**

The Charlotte Tree Ordinance (Chapter 21 Of the City Code) deals predominantly with the proper planting, maintenance, and removal of trees located on roadways, parks and public areas controlled by the City, as well as new developments. It also deals with trees on private property to the extent that they affect the public right of way or are in a tree protection zone. The parts that effect Mallard Trace home owners include:

**Section 21-62 (a) Any person owning or occupying real property bordering on any street where trees have branches, limbs, trunks, or other parts projecting into the public street or property shall prune such trees or keep them trimmed in such a manner that they will not obstruct or shade the streetlights, obstruct or interfere with the passage of pedestrians on sidewalks, obstruct vision of traffic signs, or obstruct views of any street or alley intersection.**

**Section 21-62 (b) Any person owning or occupying real property bordering on any street, park or other public property, on which there may be trees that are diseased or insect infested, shall remove, spray or treat any such trees in a manner that will not infect or damage nearby vegetation or cause harm to the community or citizens therein.**

## **PLAT MAPS**

The recorded plat maps show lot dimensions, set back lines, public right of way dimensions, maintenance easement lines, Duke Power right of way, etc. for the entire neighborhood. They are available from the Register of Deeds Office for a minimal copying fee. The neighborhood is platted in three separate maps as follows:

Book 21 page 325 ( Silver Birch, Banwell, Fairmead North from Silver Birch, Peregrine)

Book 21 page 817 (Devon Croft and Barson)

Book 21 page 836 (South on Fairmead from Silver Birch, Alwyn. Kenninghall)

The public right of way for the streets within the subdivision vary by location but range from 75 feet entering Silver Birch where the planting median is located, then narrows to 50 feet for main corridors through the neighborhood, and then 40 ft for the Courts (Alwyn, Kenninghall, Barson, Peregrine) most parts of Banwell and Devon Croft, and Fairmead north from Peregrine and south from Kenninghall. Since the actual width of the street is less than the total width of the right of way, the right of way comes into home owners lots to some degree, 10 feet in many cases.

The building set back lines measured from the end of the right way toward the front of each house is 35 feet. For houses on corner lots, the setback is 17.5 feet from street right of way to the side of the house and 35 feet for the front of the house.

The maintenance easement areas along Mallard Creek Road running the entire length of the subdivision for which the Mallard Trace HOA is responsible is 40 feet from the street right of way into the subdivision. There is some variation to that for the signs and landscaping at the front entrance.

## **STATE AND FEDERAL LAWS**

### **North Carolina Nonprofit Corporation Act –NC General Statutes – Chapter 55A North Carolina Planned Community Act – NC General Statutes – Chapter 47F**

Both of these acts apply to home owners associations in the state of North Carolina. Chapter 55A deals with the filing requirements, regulation, organization, powers, membership, directors and officers of non profit corporations. Mallard Trace Home Owners Association is a non profit corporation. Chapter 47B deals more specifically with home owners associations including: the creation, management, alteration and termination of planned communities; powers of home owners associations including assessment for common expenses, filing a lean on property for unpaid assessments, and foreclosure of that lean with proper notification. Both of these Acts are available on line free of charge.

### **Over the Air Reception Devices Rule (Federal Communications Commission)-**

Federal law prohibits restrictions on the following types of antennas:

- (1) A “dish” antenna that is one meter (39.37”) or less in diameter and is designed to receive direct broadcast satellite service, including direct to home satellite service, or to receive or transmit fixed wireless signals via satellite.
- (2) An antenna that is one meter or less in diameter or diagonal measurement and is designed to receive video programming services via broadband radio service (wireless cable) or to receive or transmit fixed wireless signals other than via satellite.
- (3) An antenna that is designed to receive local television broadcast signals. Masts higher than 12 feet above the roofline may be subject to local laws.

Item #18 of the Mallard Trace Supplementary Declaration of Covenants Conditions and Restrictions prohibiting any antennas, dishes or discs is unenforceable and illegal for the above devices. Full information about this rule is available free online via the FCC Information Sheet on Over the Air Reception Devices Rule.