

Toy Warehouse Lofts Roof Use Policy

Draft version – Current as of 19 July 2012

Part I: HOA Board Resolution:

Existing Regulations and Existing Conditions

The Toy Warehouse Lofts CC&Rs specify the rooftop as an common financial responsibility for the owners of the entire building (designating a rooftop repair reserve fund explicitly where other obvious common areas of responsibility such as the brickwork and mortar, foundations, etc. remain implicit).

The HOA and its Board, as the steward of this financial responsibility, has always retained the right to control access and use of that rooftop space, with a primary and paramount goal being to protect the integrity of the physical membrane as a means of exercising prudent fiduciary responsibility over that rooftop reserve fund (i.e., to take all reasonable measures to minimize the necessity of drawing upon that shared rooftop reserve fund).

In practice, this has been interpreted as a responsibility to take measures to prevent the rooftop from leaking or being damaged in any way that might increase the possibility of leaking in the future.

Existing Access Easements

That said, the rooftop has never been the exclusive province of the HOA. The membrane itself is HOA/common property, but the CC&Rs have always specified explicit easements to individual unit owners for access to repair *private facilities* located on the rooftop.

Types of Existing Private Facilities (Property Easements) on the Rooftop

The builders of Toy Warehouse Lofts located a range of facilities on the rooftop which are not, themselves, the property nor responsibility of the HOA. Instead, these *private facilities* are the property of individual unit owners. In effect, then, we have always dedicated portions of our common rooftop space to continuing, exclusive, private use (i.e., belonging to private unit owners and not the property of nor maintenance responsibility of the HOA itself).

We can therefore consider these to be implicit property easements, dedicating common rooftop space to continuing private use.

Permanent Private Facilities

Most significant of these existing facilities are those of a permanent nature; i.e., these penetrate the surface of the common rooftop and are directly physically attached to the rafters of the third floor ceilings below.

One way to think about these *permanent private facilities* is that the HOA's

rooftop effectively flows around these private islands. These permanent private facilities include:

- Skylights for individual third-floor units
- A/C & Furnace package units for every third floor unit
- Air Conditioning units for every second floor unit
- Vents and other plumbing facilities for all second and third floor units (and possibly for the commercial space as well)

Temporary Private Facilities

There are also several more temporary emplacements belonging to individual unit owners on the rooftop. The HOA Board has granted (provisional and, in theory, revokable) permission for these facilities to be located on the roof. These *temporary private facilities* do not penetrate the HOA's rooftop membrane, but rather rest on that surface. They include:

- Individual units' temporarily placed TV satellite dishes
- SCI-Arc's temporarily placed internet linkage

Part II: HOA Board Resolution:

Principles and Priorities upon which to Establish the Policy

#1: Protect the Financial Value of the Toy Warehouse Lofts Property, with particular emphasis on the Roof Membrane.

The HOA's financial responsibility over the waterproof rooftop membrane must, above all, be safeguarded.

No one should linger on the bare rooftop surface without reasonable cause.

The common rooftop membrane cannot be considered a recreational area of any kind.

Easements have been granted to the common surface of the rooftop membrane only for explicitly authorized private facility emplacements and for access by unit owners and their agents to those private facilities. Any other use is strictly forbidden and may constitute trespass of HOA property. The HOA Board reserves the right to summon the LAPD in cases of unauthorized or recreational trespass upon the rooftop membrane.

#2: Provide Access for Necessary Maintenance of Private Facilities.

The HOA has committed to preserving use of those permanent private facilities listed above on an ongoing basis.

Consequently, unit owners must have (as mandated by the CC&Rs) access to their permanent private facilities (such as heating/cooling apparatus) both for regular maintenance and for more significant repairs and replacement.

Access to temporary private facilities, such as satellite dishes, should also be provided while the facilities themselves are permitted.

#3: Protect Private Unit Owners' Ability to Safely Enjoy their Property.

Unit owners' peace and calm should not be disrupted by any noise that is not strictly necessary to the effective implementation of the goals listed above.

People accessing the roof should minimize time spent on the common rooftop surface directly above third floor residents' units, taking care to step as softly and swiftly as possible to get to their own private facilities. Unless in case of emergency, access across the common rooftop should generally only be carried out during the daytime.

Private facilities on the roof should not produce undue operating noise that might disturb other residents.

Private facilities on the roof should not interfere with the light or views from the skylights of third floor residents nor threaten the reasonable expectation of privacy of third floor residents.

Private facilities on the roof should not interfere with the ordinary operation of other residents' private facilities on the roof.

#4: Minimize the Dangers of Unauthorized or Irresponsible Rooftop Access.

The HOA itself does not have any means to reasonably police routine access to the rooftop. It is necessarily the responsibility of residents to themselves act in a responsible and safe manner while climbing the access ladder and walking around on the rooftop.

As much as possible, residents should endeavor to monitor others' behavior on the rooftop as well. Specifically, residents should not assist anyone unauthorized to gain access to the rooftop, particularly if they are not fully responsible or might pose an imminent risk to themselves, others, the HOA's property (the rooftop membrane), or private unit owners' property (i.e., private facilities).

If residents observe an unsafe condition on the rooftop, they should alert HOA Board members, other neighbors, and/or the LAPD about the situation.

#5: Preserve Residents' Ability to Use and Access the Rooftop.

Without jeopardizing or compromising the foregoing (higher) priorities, the HOA would ideally wish to provide maximum rooftop access and use value for residents.

Part III: Toy Warehouse Roof Policy:

Procedure for Authorizing New Private Facilities on the Rooftop

Permission for all new or significantly modified private rooftop facilities, temporary or permanent, must be explicitly granted in writing by the HOA Board. Without this permission, the unit owner will not be granted any easement to locate their property on the common rooftop.

Written Proposal submitted to the HOA Board

Unit owners wishing to add any new private facilities to the rooftop must submit a proposal in writing (preferably via e-mail) to the HOA Board.

This proposal should specify, at a minimum, what would be added, whether it would be permanent or temporary, how it would potentially affect the rooftop membrane, and how those effects would be mitigated by the unit owner.

Conditions for Approval

Permission will not be granted unless the proposed private facility meets all of the relevant following conditions:

(1) Protect the Financial Value of the Toy Warehouse Lofts Property

- The proposed private facility must not diminish the financial value of the Toy Warehouse Lofts as a whole, with particular emphasis on the HOA's common roof membrane. It may not increase the HOA's potential liabilities nor ongoing or exceptional expenses.
- Potential owners of proposed permanent private facilities must enter into a binding contract with the HOA that provides for the full and complete financial indemnification of the HOA and other unit owners for all modifications that penetrate or compromise the physical integrity of the rooftop membrane. The owner of the proposed private facility must take full financial responsibility for all leaks, water damage, structural harm, or other damage arising in the future that are determined by the HOA Board to have been substantially caused or exacerbated by the addition or modification of the private facility. They must also assume financial responsibility for any additional substantial expenses in future roof maintenance or replacement arising from their modifications.
- Potential owners of proposed new private facilities will also contractually agree not to expose the HOA itself to any legal liability arising from their proposed private facility. They agree to resolve all disagreements with the HOA and its Board through mediation or, if necessary, binding arbitration. Further, potential owners of proposed private facilities agree to settle any disputes with other unit owners through means of mediation or, if necessary, binding arbitration. The agreement to arbitrate and mediate must be specified in the contract.
- The proposed private facility must be stable and safe. It must be professionally engineered if either the HOA Board or any governmental entity deems it necessary.
- The proposed private facility must conform to city codes and regulations.
- The proposed private facility must not draw any power or other utilities from the HOA or other units, but must provide its own utility connections according to DWP and city codes and policies.

- Any wires or pipes connected to the proposed private facility should be placed in HOA-approved conduits down the north or west sides of the building and should not be visible from Third Street or Santa Fe Avenue.
- Any structures comprising the proposed private facility should not be visible from Third Street or Santa Fe Avenue.

(2) Provide Access for Necessary Maintenance of Private Facilities

- The proposed private facility must not hinder access to any other existing private facility.
- Access paths must be provided and kept clear through or around the proposed private facility to allow other residents or their agents to cross safely to adjoining rooftop common areas.

(3) Protect Private Unit Owners' Ability to Safely Enjoy their Property

- Explicit, informed, written permission must be provided by the unit owner underneath any proposed permanent private facility (and is strongly encouraged for temporary private facilities). Without this permission from affected unit owners, the HOA Board will not approve the proposed private facility.
- Proposers of new private facilities should be aware that the HOA Board will generally refuse to permit the addition of any proposed private facility located over the HOA's own common areas (including, specifically but not exclusively, the third floor corridors, the trash chute, the stairwells, and the elevator). These areas instead shall be reserved for future use by the HOA itself for the common good.
- The proposed private facility must not interfere with the views or privacy of any other unit, particularly through existing skylights.
- Permanent private facilities must be located at a reasonable set-back from the roof space above other third-floor units to preserve the calm enjoyment of neighboring units (preferably at least three feet from any shared or common wall).
- If any new private facility is determined (entirely at the discretion of the HOA Board or its expert agents) to interfere with the peaceful and safe enjoyment of any unit owner's property or to jeopardize any of the principles and priorities listed above, the HOA Board may in the future impose additional use or access restrictions on the new permanent private facility (i.e., regarding times of use, duration of use, permitted activities, etc.). The owner of the proposed private facility agrees to abide by these restrictions. In rare instances, the HOA Board may demand physical modifications to the new private facility to mitigate harm to other property owners; the owner of the proposed private facility agrees to implement these changes or remove the new private facility entirely from the rooftop.