

## REQUEST FOR ACTION

<b>To</b>	The Collection Board of Directors				
<b>Subject</b>	To Amend Association Rule 2.12				
<b>Preparer</b>	Steve Shaw				
<b>Date</b>	August 19, 2019	<b>For Board</b>	x	<b>Action</b>	<b>Info</b>

### EXECUTIVE SUMMARY

To amend the Collection Administrative Rules to add: **Plants and other uses on lanais may be permitted, on condition and subject to: (1) the absence of a complaint or complaints from resident(s) or owner(s) about offensive or improper uses, including without limit, insects, water, dirt, or odors, which may be affecting or appearing at neighboring unit lanais or appearing inside of neighboring units; and, (2) absence of potting soil, pots, containers, standing water, potting mix, mulch, manure, insecticide, fertilizers, and related materials on the plant-user's lanai. Upon one or more neighbors' complaint to management, or upon the Board or management's complaint, plants and related materials shall be removed within 24 hours from notice by management.**

### RECOMMENDATION

The proposed rule which can be changed is as follows (bold font):

2.12 Lanais shall not be used for storage in any manner, including without limitation, sports and play equipment, surplus cartons, boxes, or any other belongings. Any furniture, plants, or other articles which, in the opinion of the Board, are unsightly, shall be removed from and kept off of the Lanais upon request by the Board. Plants that protrude over the Lanai railing or block the railing and view shall be prohibited. **Plants and other uses on lanais may be permitted, on condition and subject to: (1) the absence of a complaint or complaints from resident(s) or owner(s) about offensive or improper uses, including without limit, insects, water, dirt, or odors, which may be affecting or appearing at neighboring unit lanais or appearing inside of neighboring units; and, (2) absence of potting soil, pots, containers, standing water, potting mix, mulch, manure, insecticide, and related materials on the plant-user's lanai. Upon one or more neighbors' complaint to management, or upon the Board or management's complaint, plants and related materials shall be removed within 24 hours from notice by management.**

**VOTING RECORD IS REQUESTED TO BE PLACED ON THIS RFA WHEN COMPLETE**

## RATIONALE

### Scientific Study:

See <https://scholarspace.manoa.hawaii.edu/handle/10125/42743>

This is an important scientific treatise entitled (shortened) "Movement of Packaged Soil Products as A Dispersal Pathway for Coconut Rhinoceros Beetle...And Other Invasive Species"

### Background:

A Tower unit owner's source of insects from potted plants has plagued neighboring owners for nearly a year. This is with knowledge of the offending unit owner. Despite repeated requests to the former resident manager "RM" to require removal of the plants, pots and potting soil, the former RM refused. Recent heroic efforts by the Office Manager (after the RM's resignation) to deal directly with the offending owner resulted in impasse. In aggravation, there were numerous notices to the former RM, including a documented report in December 2018 about this matter. The former RM abandoned his responsibilities, even after pictures of insects from the unit and articles warning about insects from potting soil were provided to him. Insects entered the duct systems in a unit with no screen attached to the louver. Others come in through lanai doors and windows. Large green flies were seen by two separate neighbors after fresh potting mix appeared on the offending lanai in December 2019. These flies are from manure. **On further inspection, it appeared that several other residents were using potting mix for lanai plants. Insects (gnats mainly) are well- recognized pests where potting soil or mix is used.** The former RM ignored this aspect of the louver problem as well. A simple investigation would have confirmed that: (1) louvers have no screens, but the ex- RM kept this information from the Board for over a year (2) **potting soil used on a few lanais attracts insects and also contains insect eggs--an issue the ex-RM studiously kept from the Board, (3) there are numerous alternatives- -presented to the former RM-- for condo/apartment residents (terrariums from MOMO, a local company, for one).** The former RM persisted in ignoring owners' complaints.

### Binding Case law applies:

Generally, the declaration and bylaws of a condominium serve as a contract between the condominium owners and the association, establishing the rules governing the condominium. [Harrison v. Casa De Emdeko, 142 Hawai'i 218, 226, 418 P.3d 559 \(2018\)](#)

**Our Declaration Provides:**

**ARTICLE 7.**

**7.6 Prohibition of Unauthorized Uses and Activities.** No Owner shall do or suffer or permit to be done anything to any Unit or appurtenant Limited Common Element or elsewhere on the Project which will: (i) jeopardize the safety or soundness of the Project, or (ii) create a nuisance or interfere with or unreasonably disturb the rights of other Owners and occupants, (iii) result in the cancellation of any Association insurance required for the Project by the Declaration or Bylaws, (iv) result in the increase in premiums of any Association insurance required for the Project by the Declaration or Bylaws without the prior written consent of the Board, or (v) violate the Master Community Charter.

...

**ARTICLE 8. COMPLIANCE WITH DECLARATION AND BYLAWS** All Owners, and their respective employees, tenants, families, agents, servants and guests, and any other persons who may in any manner use the Project, shall be bound by and comply strictly with the provisions of this Declaration, the conditions and restrictions set forth herein, with the Bylaws and with the Association Rules adopted pursuant thereto and all agreements, decisions and determinations of the Board as lawfully made or amended from time to time, and failure to comply with any of the same shall be grounds for an action to recover sums due, for damages or injunctive relief, or both, maintainable by the Board on behalf of the Association, or, in a proper case, by any aggrieved Unit Owner. Each Unit Owner shall have standing to maintain an action to enforce the terms and conditions of this Declaration, the Bylaws and the Association Rules; provided, however that: (i) no Owner may bring an action on behalf of the Association or on behalf of more than one (1) Owner, except in accordance with the provisions of Article 22 below and with the Act with respect to derivative actions and (ii) any judgment, award or other recovery on behalf of an Association shall be payable only to the Association as a realization of the Association.

**Our bylaws provide:**

**1.5 Binding Effect of Bylaws.** All present and future Owners, mortgagees, vendors and vendees under Agreements of Sale, tenants and occupants of Units and their employees, invitees and any other persons who may use any part of the Project in any manner are subject to these Bylaws, the Declaration and the Administrative Rules. The acceptance of a Unit Deed, or conveyance or mortgage or Agreement of Sale or the entering into of a lease or the act of occupancy of a Unit shall constitute an acceptance, ratification and agreement to comply with the provisions of these Bylaws, the Administrative Rules and the Declaration, as the same may be amended from time to time.

**Our Administrative Rules are binding and provide:**

2.6 **No Resident shall make** or suffer **any** strip or waste or unlawful, **improper, or offensive use of his/her Unit** or the Common Elements.

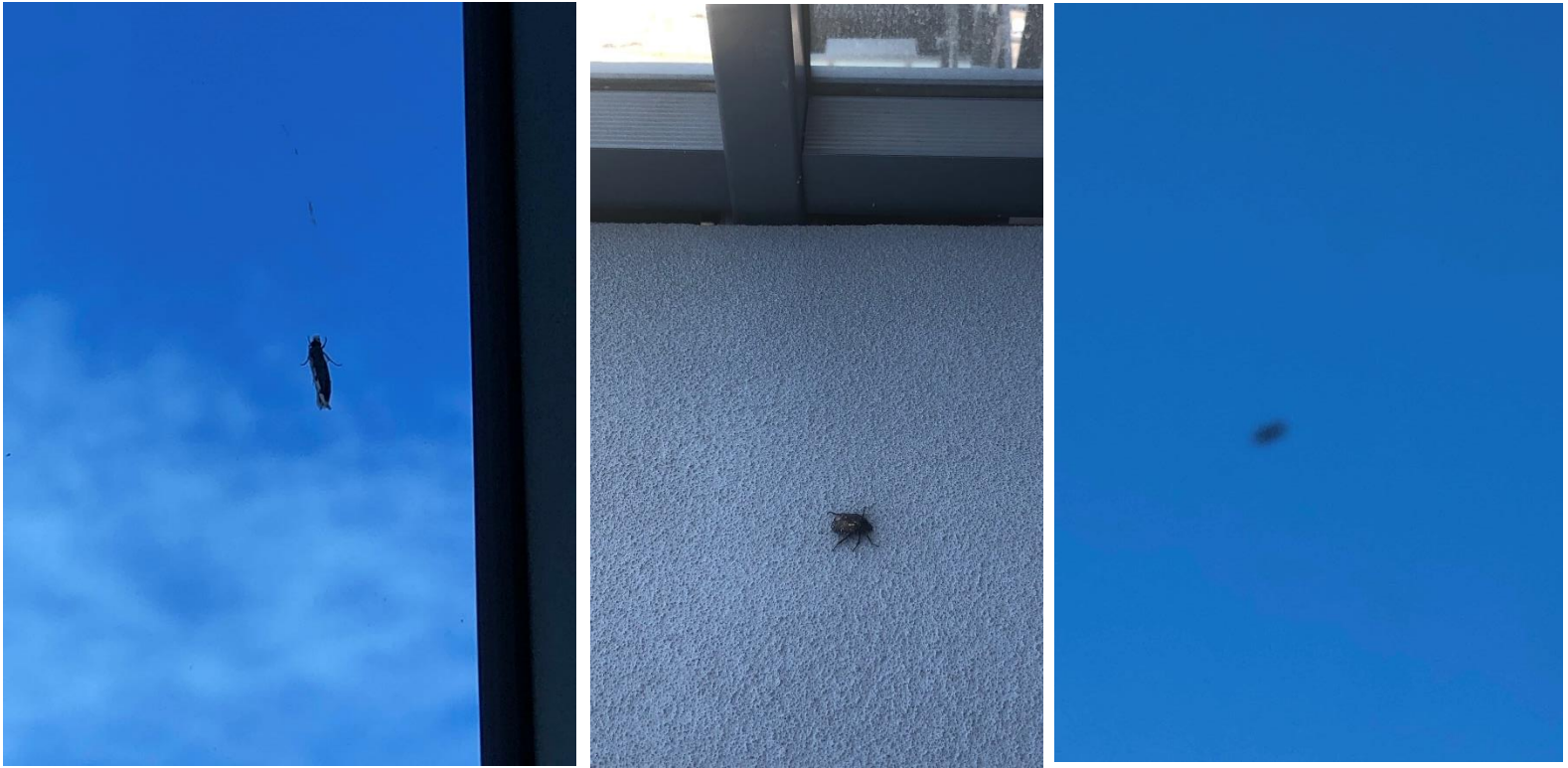
"10.2 Unit owners shall observe and adhere to these Association Rules and ensure that all Residents adhere to these Association Rules. **Unit owners are responsible at all times for the reasonable conduct and decorum of their** family members, lessees, **tenants**, guests, licensees, and invitees while at the Project. All guests must sign in at the front desk.

<b>Exhibits</b> (If applicable)	<b>Index</b>	<b>Title</b>
	A	See Page 5.
	B	See Page 5.
	C	See Page 6.
	D	See Page 7.

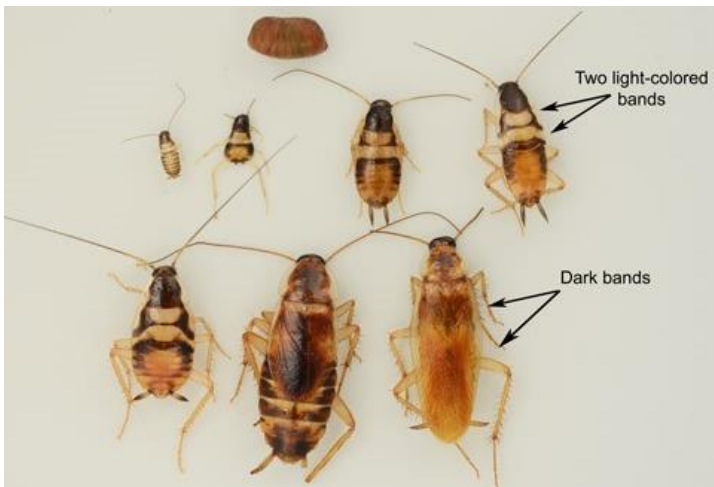
<b>FOR BOARD USE ONLY</b>					
<b>CERTIFICATE OF BOARD ACTION</b>					
<input type="checkbox"/>	Approved	<input checked="" type="checkbox"/>	Declined	<input type="checkbox"/>	Noted
<input type="checkbox"/>	Returned	<input type="checkbox"/>	Deferred	<input type="checkbox"/>	Withdrawn
<b>Stipulations</b>					
A motion was made by Vice President Wang and seconded by Director Kwan to deny the request and educate the residents. There were five votes in favor with Director Lew abstaining. The motion carried.					
<b>Coordinating Instructions</b>					
<b>Distribution Instructions</b>					
Recording Secretary	Desmond Oliveira		Action Date	10/29/19	RFA No. 23-2019

## EXHIBIT A

**08/20/19:** these 3 photos were shot recent days, on my lanai and outside of my windows. The 3rd photo was shot yesterday. Also, lots of other insects which not photoed and found inside my unit by the windows or near lanai door were: moth, larger black ant, gnats. Also, I found spider and spider net again on 2805 lanai yesterday. I found spider before, now is back.



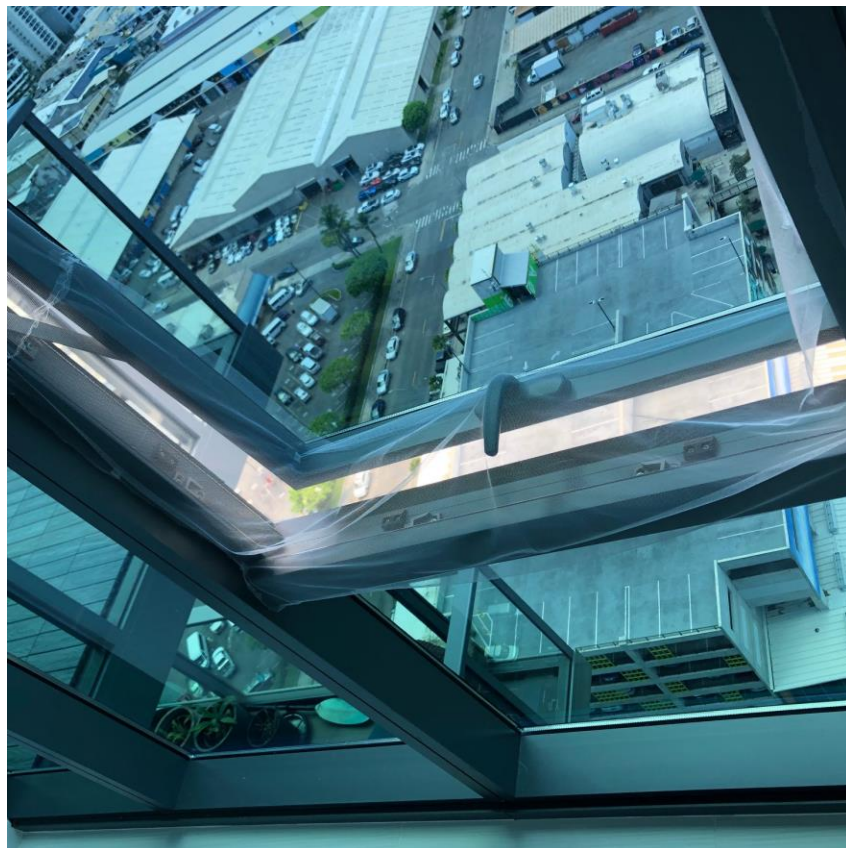
## EXHIBIT B



The German cockroach (*Blattella germanica*) is a small species of cockroach, typically about 1.1 to 1.6 cm (0.43 to 0.63 in) [1][2] long. In colour it varies from tan to almost black, and it has two dark, roughly parallel, streaks on the pronotum running anteroposteriorly from behind the head to the base of the wings. Although *B. germanica* has wings, it can barely fly, although it may glide when disturbed.[3] Of the few species of cockroach that are domestic pests, it probably is the most widely troublesome example.[4] It is very closely related to the Asian cockroach, and to the casual observer, the two appear nearly identical and may be mistaken for each other. However, the Asian cockroach is attracted to light and can fly like a moth, while the German cockroach cannot.

## EXHIBT C

No screen on lanai vents. I am forced to add those screens inside my units.



## EXHIBIT D

This photo was shot after my morning cleaning of those dead gnats' bodies. When I spoke to a director on the phone that day, he asked me to show him a photo, then I went to check again, there were more dead bodies by a window.

