

## WALKER FLANARY

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1368 Bubbling Brook Court  
Fort Collins, CO 80521

April 2, 2021

To: Poudre Overlook Homeowners Association Membership

Re: Proposed Anti-Harassment Policy

Dear Homeowners:

I have reviewed the proposed Anti-Harassment Policy that you have recently received in the mail and felt compelled to respond in kind as this is a surprise development that has had little or no input from the community at large. I am deeply troubled on many levels by the well-intentioned but naive attempt to, on the one hand, dictate human behavior, and on the other, free speech and religious rights, all of which are well protected under the United States Constitution. The proposed policy is not within the purview of our HOA, whose primary purpose is to regulate and protect the real property interests of its members. The cited authority (noted below) used to justify this regressive policy is woefully misconstrued for its intended purpose, and far exceeds the course and scope of the powers that our HOA possesses.

The reference to **Article X Section 20** "Nuisance" of our Covenants, Conditions and Restrictions (CCRs), refers to an activity or physical condition that degrades or injures the rights of adjoining property owners to use their property for its intended purpose. Activities such as excessive noise, vibration, odors, lighting, keeping of certain animals and commercial activities are examples that can be legally regulated. These examples, are the obnoxious or offensive activities regarding land use under real property law that are prohibited under Article X Section 20, they do not include the dictates and elements of the proposed Anti-Harassment Policy.

Additionally, the reference to **Article X Section 24**, "Disturbing the Peace", is intended to mean disorderly physical conduct that disrupts the public peace or language that incites violence or creates an imminent threat of injury to persons or property. Examples of such conduct are drunkenness, brawling, rioting, communicating threats of physical harm or the oft cited "yelling fire in a crowded theater". Indeed, this prohibition already protects our members and was never intended to encompass the vague and subjective categories of speech and behavior under the proposed Anti-Harassment policy.

To empower a quasi-governmental body such as our HOA to use as a foundation the above-referenced CCRs as authority to impose an Anti-Harassment Policy is unfounded and unlawful. Even more disturbing is *the power of the board to vary the policy in its sole discretion*. Such a policy may wrongfully chill a homeowner's constitutional right to freedom of speech and religion. In addition, the board's power to impose fines or institute legal action against a homeowner for a violation of the policy is well beyond the intent of our CCRs. Indeed, if a homeowner legitimately feels he or she has been harassed or "offended" by another homeowner, they are free to avail themselves of established law and to seek redress under the legal system. It

is not the province or duty of our HOA to interject itself into such matters. Moreover, I cannot conceive of any instance wherein a homeowner even remotely considered the possibility that they would be subject to such an onerous and subjective policy when purchasing a house in this neighborhood, or that our HOA would have the power to generate such a policy under the CCRs as written.

To be sure, the proposed policy is so broad, overreaching and vague that it may well invite retribution and vindictiveness among neighbors for any number of inconsequential disagreements or ill-perceived slights or insults: Perhaps an untoward bumper sticker mocking one's race, ethnicity or political party; a religious tract condemning the lifestyle or sexual orientation of the LGBTQ community; a Confederate flag or decal placed in a window; a suggestive Facebook post, photograph or an "offensive" blog entry. The scenarios are endless, as any of these examples might be viewed as offensive or harassing and be the basis of a complaint, thereby subjecting a homeowner to an investigation and public humiliation. This would also invite litigation, subjecting our HOA and its membership to liability for prosecuting such ill-conceived and frivolous claims. Or even, liability for dismissing a complaint that a misguided homeowner may have originated.

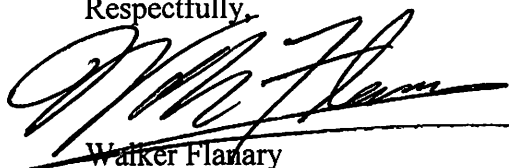
Furthermore, how would a violation of this policy be fairly prosecuted? The apparatus set forth in the proposed policy is fatally flawed, as surely, the board of directors or management company is not an impartial or independent trier of fact! The conflict of interest is inherent in this regard. What rights would the accused homeowner have in this situation? The right to an attorney, cross examination, discovery or subpoena power? To extract a fine or subject a homeowner to "appropriate legal action" under the policy without the safeguard of meaningful due process at the outset would be prejudicial at best and unlawful at worst.

No doubt, the ideals of the proposed policy are aspirational and we as individuals should strive to independently embrace them. However, for our HOA to embark on policing its members in this fashion is not only ill-advised but dangerous to the freedoms we all cherish.

In conclusion, I would urge every homeowner to vigorously oppose this draconian policy and to let your board members know that this oppressive measure is a cure for a problem, which even if it does exist, can and should be addressed elsewhere within the legal system. It is not one which we as a community wish to live under.

Please express your opinions to our board members and/or email to Theresa at [theresa@trademarkpmg.com](mailto:theresa@trademarkpmg.com) . Also, please attend the Zoom meeting of the board at 5:30pm on April 13, 2021.

Respectfully,



Walker Flanary