Gmail Andy Mowery <pohoaandy@gmail.com>

March 22, 2023 Policy Revisions

Andy Mowery <pohoaandy@gmail.com> Tue, Mar 21, 2023 at 4:07 PM
To: Poudre Overlook at FtC <atftcpoudreoverlook@gmail.com>
Cc: Lora Ballweber <lrb2jab34@msn.com>, Clay Jones <joneswv66@gmail.com>, "Walker G. Flanary" <wgflanary@gmail.com>, John Tunna <pohoajohn@gmail.com>, naquetta@ricks4co.com, Brianna.Titone.House@state.co.us

To the Board:

I have reviewed your proposed policy revisions which I understand are necessary updates in order to enforce any of the Association's CCRs, Rules and Regulations, Guidelines, or Policies. I also understand that this is necessary for compliance with HB2201137, which went into effect August 9, 2022.

In general, I believe that these policies will generally meet the requirements of compliance with HB22-1137. There are elements I believe needs amending or clarification to ensure full compliance, but otherwise, these tend to follow the changes dictated by the new changes to CCIOA regarding notice, hearings, voting, fines, collections, and legal action protocols.

I am concerned, however, that regardless of whether other elements are inclusive to the template from Moeller Graf, or whether they are additions made by the Board (we don't know which, because the first draft has not been disclosed), that the Board is attempting to once again assign itself new or enhanced powers - which has been attempted through creation of an Anti-Harassment Policy (2021) and Document Revision (2021-22) which have both failed to proceed in the past. In both instances, the lack of full transparency and open participation by all homeowners has created an atmosphere of distrust about the purpose of such revisions - whether intended or unintended. I must therefore recommend amending the policies prior to approval in order to support them. I think this should be done in two steps, where the meeting on 3/22/23 gathers the input, and a second meeting incorporates the input and a final draft is voted upon.

My review, below, will make references by page and Article/Section so that you may follow easily. I'm available to discuss by phone, Zoom, or in person prior to the meeting.

My summary is as follows:

- The policies do not go far enough to protect the rights of protected classes
- All complaints should be written (no "Director knowledge loophole")
- The policies do not protect whistleblowers who file complaints (Anti-Retaliation clauses)
- ALL Notices are not required by HB22-1137 to be sent via USPS Certified Mail as an absolute (and will be clarified in current Session)
- The time for the Board to perform duties should always be defined, even if a range or with exclusions for circumstances
- Impartial fact-finding should always be before Notice, not postponed to hearing
- Committees should not have power to fine or impose penalties (Director vote only) given penalties against Association that are possible
- Violations that do not Threaten Health and Safety should not have "interval" or multiple fines. If the fine is insufficient for compliance, court orders are available (and more effective and possibly less expensive via Small Claims).
- Directors as Complainants should both follow requirements to submit them in writing and recuse themselves from all proceedings and due process
- Penalties such as taking away voting rights or taking possession of lots should not circumvent 1137 due process protections

- Late Fees are excessive (even if "up to" is included) at $100/mo. This appears to circumvent 1137 reduction in interest rates.
- The 21st Due Date is confusing combined with a clause about delinquency.
- Meetings should be recorded by POHOA, the recordings kept permanently, and be open to on-demand review by any homeowner.
- There should be no policy to call police for "disruption" as there is no enforceable law, and false reporting of a crime is itself a crime. The purpose is intimidation and open to misuse and abuse. It serves no purpose that Robert's Rules or the Governing Documents (which includes the threat of fines, loss of privileges, and loss of Lot as penalties) cannot serve on their own.

Thank you for your time and consideration.

Sincerely,

Andy

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PAGE 1 - LETTER
No comments

PAGE 2 - COVENANT ENFORCEMENT POLICY

No comments (future pages with no comments will be skipped)

PAGE 3 - COVENANT ENFORCEMENT POLICY

Section 3 Purpose

Comment: regarding neighbor to neighbor disputes, I welcome the fact that POHOA now recognizes that there is no absolute immunity from intervention in neighbor to neighbor disputes. This is a departure from the policy announced on 1/15/20 and confirmed on 8/11/20 that gave rise to litigation and a CCRD complaint. There is a need, however, for clarification as the statement implies that a neighbor who is a protected class has no right to demand intervention (or accommodation) unless there is a violation of the Governing Documents. Since the Governing Documents do not mention FHA/HUD (Federal Statutes and Rules) nor CADA (Colorado Anti-Discrimination statutes), an owner whose civil rights may be violated may be continue to have their rights violated unless the Board recognizes a relationship to vague sections of the Governing Documents such as CCR Article X Section 22:

> Section 24: Disturbing the Peace. No person shall disturb, tend to disturb, or aid in disturbing the peace of others by violent, tumultuous, offensive, disorderly, or obstreperous conduct, and no Owner shall knowingly permit such conduct upon any Lot owned by such Owner.

While this Section may qualify to meet the policy requirements, it is vague enough for a Board to deny a homeowner due process in consideration, resulting in dismissal of their concerns - which has led to litigation in the past. Since amending the CCR is not on the table at this meeting, adding to this statement to make clear that someone who is, for instance, subjected to explicit examples of discrimination (racism, bigotry, anti-semitism, xenophobia, etc) due to signs, verbal expressions, or implied threats (putting a noose in a tree, for instance), having a Board using the excuse that they can't find a violation of the governing documents leaves the affected homeowner to endure the condition without recourse (short of litigation or civil rights complaint) - which is not the intention of the law.

Given an opportunity for a sitting Board member to distance himself from a source who advocates against diversity, and a growing political movement against the LGBTQ community by one major political party in the USA, and an absolute position that "we don't ever get involved in neighbor to neighbor disputes" held throughout recent litigation (which this policy reverses), it is a valid and foreseeable concern that members of certain protected classes will not be protected by a Board that cannot find justification for intervention in the governing documents. This should be fixed in some manner. We should not be an anti-diversity community, or have those who openly advocate against diversity
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serving on our Board of Directors. Therefore, at the very least, a resolution demonstrating support for protection of the rights of all protected classes (including those with disability), should be on the record to ensure that this is not merely a token gesture with no intent for enforcement or actual intervention or accommodation.

Article II INITIAL COMPLAINT

Section 1 Complaint of Alleged Violation

A. Comment: This section does not mention how a homeowner who notices a violation by the Board or Board Members (Directors) or Committee Members should be reported or if the process applies to such violations. If there is no process for review of Board/Director/Committee Member violations, disputes can easily escalate and become litigation.

I am aware that HB22-1137 will likely be updated in the current session to ensure that Small Claims Court access includes this type of dispute. It likely already did, but clarifying language is going to be submitted imminently in a new bill.

A homeowner who notes the Board or a Committee is not following the Governing Documents should have a defined path for submitting a complaint so that they are not accused of bullying, harassment, or any other infraction. Clear boundaries on length of report and even what actions may be taken if such persons are found to have violated the rules should be explicit so that those serving as volunteers understand they are not immune from review or enforcement.

B. Comment: The section defining a path for no written complaint if a Board Member or Manager has personal knowlege should be stricken. This creates an obvious loophole that we can expect homeowners that have personal friendships with Board members to use to remain anonymous and leave no paper trail. They simply have to whisper the complaint to their friend and get action, where someone without that personal relationship must expose themselves to retaliation.

If retaliation is the concern, then we should have rules (actually, statutes like Nevada) to protect whistleblowers, and have a universal requirement for all complaints to be written - whether by a Board member or homeowner.

Furthermore, if the Board member is the sole party who is the Complainant, then the Board member cannot act as either an impartial fact-finder, nor can they participate in enforcement in an unbiased manner as this is a clear personal conflict of interest. If a Board member chooses to be the Complainant, for the remainder of the course of that complaint, those Directors who are the Complainants should be fully recused through out all steps, including fines, delinquency collections, hearings, and legal actions. The Director, in effect, becomes a regular homeowner if they are the sole source of the complaint.

Section 2 Initial Determination After Receipt of Complaint

The Board should have a defined boundary for response. I believe 30-60 days is reasonable. The issue is that indefinite postponement can have the effect of ignoring the complaint.

PAGE 4 - COVENANT ENFORCEMENT POLICY

ARTICLE III VIOLATIONS THAT THREATEN THE PUBLIC SAFETY OR HEALTH

Comment: There should be standards for determining when public safety or health is truly threatened. For instance, while a dandelion may cause an allergy, it's not the intent of the legislature to escalate petty matters with far-reaching interpretations (this was discussed ad infinitum in the stakeholding/testimony process).

Section 1 Notice of Violation

Comment: This section states "The Association will promptly provide written Notice . . .". I think this is proper. However, in non-Health & Safety, the parallel phrase is "The Board shall send a notice" - "written" is excluded in all subsequent phrasing,even though it is explicitly required by HB22-1137. Why?

Section 3 Sending the Notice of Violation:

Comment: The second sentence states "All notices shall be delivered by certified United States Mail, return receipt requested, postage prepaid."

While I think this is not a requirement of HB22-1137 (and will soon be clarified) and ***can be*** "Courtesy Notice", it is not a bad idea. I support it. The problem is in real-world functionality. If it is truly a situation that requires 72-hour response (because of Health & Safety), it is quite likely that the USPS will NOT deliver in 72-hours, particularly when a weekend is involved, or if the party is not home (they only leave a post-it notice that doesn't tell the owner what has happened).

Therefore, since this is under this subsection of Health and Safety, the FIRST notice should not be constrained with a "shall be delivered by USPS Certified Mail" as it may work AGAINST the interests of the association (gas leak, flooding, etc). The Board should consider amending to say that USPS Certified will be sent, BUT that phone, email, text contact may be necessary due to the issues that are creating the health and safety hazard to begin with.

Section 5

Comment: No doubt., entering the lot in these situations may be necessary. However, given the history of certain ACC members entering backyards without notice or permission in the past (and the likelihood of same individuals being back on the committees), there's likely going to be strong pushback on this issue. It would be better to strike "Association" and say "Director". Deputized committee members should not be the persons involved in these sensitive situations. And, frankly, if it is truly dangerous, you are likely either using a contractor or emergency services or law enforcement for the action - so it had better be a Director making those decisions.

Meanwhile, you have readily available (and affordable) options such as drones that can accomplish the same as walking onto someone's property. Given the potential issues, why not create a policy that is 2023 and not 1983 in approach?

Meanwhile, if curing the violation is so important and you can't see it from outside the property or with a drone, you always have the option of getting a court order from Small Claims court which is something that ensures actual compliance. So many of these approaches to compliance avoid the action that is probably the most effective. It's also the least expensive because the Board can file without an attorney in what are usually pretty straightforward enforcement actions that a Court will almost always be deferential towards the Association.

IV. VIOLATIONS THAT DO NOT THREATEN THE PUBLIC SAFETY OR HEALTH

Section 1
Comment: The board should send a WRITTEN notice (twice in paragraph stated without using "written"). You have the option of Courtesy Notice as a catch-all when you want to phone, text, or inform in person. The policy, however, should have Directors or Managers make actual notice per policy in writing.

Section 2 Paragraph C.
Comment: "interval" is questionable. Since there are really only every-other-day fines for Health and Safety, what "interval" are we anticipating. If there is an incident, then there is a single fine - unless there's some other scenario you are imagining. HB22-1137 stakeholding did not anticipate that multiple fines for a single incident would occur, and the act is, I believe, silent on this. This is a curious inclusion.

PAGE 6

Section 2 Paragraph F.

Comment: Similar to Paragraph C, the concept of multiple fines is curious. If you determine a fine, I don't believe escalations or repetition are intended by HB22-1137. Your next step is collection on delinquency and/or legal action. If it is so important to enforce and fines don't work, then you need to get a court order, which has always been obtainable via Small Claims for petty matters. It would be better to strike implications of multiple fines, and/or to restate the maximum of $500 per violation to ensure no Director thinks they can somehow sidestep the limit with

multiple fines to exceed $500 in their discretion or interpretation.

Section 3 Means of Sending Notice of Violation

Comment: The last sentence should be reconsidered. First of all, Courtesy Notices, which you already acknowledge, CAN be sent - so ALL notices need not be sent via Certified Mail. That is only a requirement situationally. This will be clarified in the current session (I can provide contact/drafts if necessary). You can also contact Rep. Ricks if you doubt this will be the case.

The net effect will be unnecessary costs, and it will also cost more to revisit a policy revision in the future. That said, it is NOT an absolute requirement - and therefore an inclusion that is recommended by some attorneys (and their lobbying groups) as a political effort to undo HB22-1137. Talk this over with MG, and I'm sure there's middle ground to keep our expenses lower.

Section 4 Uncured Violation after Initial Thirty (30) Days

Comment: In the second sentence, "fines" is once again plural. Same issue as described above.

V. FAIR AND IMPARTIAL FACT-FINDING HEARING AND DETERMINATION

Section 2. Fair and Impartial Fact-Finding Process
Comments:

A. Impartial Fact-Finding should occur BEFORE a notice is sent. Otherwise, individuals have the right to make complaints that are unfounded that may cause loss of time and expense for persons who have done no wrong. I believe this is CCIOA requirement prior to HB22-1137.

B. Impartial Fact-Finding ***should <u>not</u> be dependent*** on whether a hearing is held. The timing is off here. If a homeowner demands a hearing, the fact-finding may continue with new facts submitted by the homeowner that may counter or challenge the facts given by the complainant that give rise to the notice.

PAGE 7

Section 3 Decision Makers

Commnent: Included in personal conflict of interest should be the potential for Political benefits. We have a history of targeting individuals, and we literally have seen cheering at meetings when Directors have made the wrong decision (most recently regarding whether to accept a resignation), which was not supported by the black-and-white rule in the bylaws. Instead of stopping to look up the bylaws, one Director made an off-the-cuff advocacy to give his friends in the audience what they wanted. That is just as much a personal conflict of interest as he received the personal benefit of being perceived as the hero who gave them an undeserved outcome had had bothered to look up and follow the actual Bylaws.

Similarly, if a Director IS the complainant (and there is no written complaint from any owner), that should be an inherent conflict of interest as they have a stake in the outcome in all decisions from notice to legal action. Directors should become homeowners if they are the sole complainant, or if they are shown to gain political support by an enforcement action (or vice versa for standing up for the Bylaws and taking no action).

Section 4 No Request for Hearing

Comments:

A. "Board or Committee will make its determination based on the facts available"

If the Board is not doing impartial fact-finding UNTIL there is a hearing, and the owner does not request a hearing, the "facts available" may be nothing more than hearsay or rumor. This is particularly important for Use Restrictions where there is behavior at issue (loud party, for instance).

B. Furthermore, since the Committee is not held to any standard regarding impartial-fact finding (by this policy, and is not explicitly named in CCIOA as the actor in impartial fact-finding, this creates a potential loophole for a Committee to simply make a determination without basis in fact at all!

C. Most importantly, a Committee should NOT impose fines or penalties at all - this should be the sole domain of Directors, particularly when you are now describing penalties including taking away voting rights, or taking over lots! We have had a BAD history with Committees, who do not have open meetings that are open to members (or any records of such meetings) making such important and even life-changing decisions. ***Strong objection*** to this being ADDED to our governing documents.

Section 5 Hearing Procedure

Comments:

A. Paragraph (a) does not specify how long it will take after hearing to make a determination. In the case of attempted enforcement on Ducks in 2018, the family was put through over 90 days of waiting, which was emotionally traumatic on children awaiting the fate of their pets. This was terrible, and there should be a maximum of 30 days to make a determination without extenuating circumstances. Past history tells us discretion is not an acceptable boundary, as the family affected did nothing actually wrong, yet had to endure long delays for no good reason whatsoever. This also happened with the roof shingle incident (which cause a significant financial loss related to solar electricity), and those homeowners were denied a hearing on the basis of directors claiming that getting an attorney denied them the right to a hearing (they "lawyered up").

B. Paragraph (b) proposes that a homeowner who speaks beyond an allotted time is then automatically determined to be disruptive, and is therefore subjected to potential CRIMINAL action. What crime, exactly, would be committed? What law would law enforcement be enforcing? If you cannot state exactly the law (disorderly conduct?), you are using law enforcement resources in place of a sergeant at arms - which should be an expense for a private corporation, not a service the public pays for - unless this is truly a government/public meeting. The history at past meetings should be a consideration.

VI. FINE INTERVAL SCHEDULE

Section 1 Violations that Threaten the Public Health and Safety:

Comments:

A. No Committee should be involved in these decisions. Given the potential for penalties against the Association, all decisions should be made by Directors.

B. In imposing fines every other day, it should be clarified that the sum of these fines cannot exceed $500. This should not be left to interpretation by Directors or Committee members who may choose, on short notice, to apply their own interpretation. The maximum is clear in the statute, and further clarification is coming this session.

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Section 3 Damages

Comment: This clause appears to be an attempt to sidestep the restrictions of 1137 on assigning amounts to foreclosure actions that are not actually assessments. This is done by claiming "costs" are "individual assessments". The draft from VF-Law was explicit on this point, and this appears to attempt to do the same, in effect. If the HOA deems a violation uncured, then they are allowed to go to court to collect actual "damages" that are then verified by the court. Having volunteers make this decision invites further disputes and opens the door to potential abuse of this clause to assign ANY imaginable costs to an individual homeowner - with no due process guaranteed. This should be left to the court process, not a clause in a policy.

Section 4 Enforcement Action Other Than Fines

Comments:

A. This creates a loophole that bypasses protections guaranteed by 1137 whereby an owner is not afforded guaranteed impartial fact-finding or a hearing, but can have severe consequences (loss of voting privileges or taking possession of a Lot). I have a strong objection to this section as written.

B. "The Association shall have the right" indicates, per other usages in these new policies, to be inclusive of Committees. By absolutely no means should a Committee have the right to take away someone's voting privileges with no due process, and the concept of taking possession of a Lot by a Committee is absurd on its face. It is acknowledged that the same section that "Board deems appropriate", but the fact remains that actions without the protections in 1137 should not be limited to fines. This was not the intent of legislators, and we can conference with them if that is the belief.

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ARTICLE VII GENERAL PROVISIONS

Section 3. No Waiver
Comments: This appears to set us on a path for revisiting the RV parking in driveways issue perpetually. We've already been through the cycle 4 times, and this clause seems to be inviting persistent complainers the right to raise issues repeatedly ad infinitum. Meanwhile, we are aware that if a Board fails to approve an ACC request in 30 days it is automatically approved, and a failure to enforce a rule after 1 year also, in effect, grants waivers. So, are we including something that gives rise to expensive disputes that can only be settled with litigation in a court?

Please think this through a bit more.

Section 4. Enforcement Costs
Comments: Enforcement costs that include "attorney's fees" are only applicable AFTER the delinquency process, which requires a Board vote. This clause seems to imply that for a simple violation, the Board can choose to turn the whole thing over to an attorney, who can then ramp up costs for the simple sending of notices, notice of fines, and notice of delinquency. With a detailed policy, the Board should be able to cure most violations without legal fees whatsoever. Inclusion in this section, if absolutely necessary, should point out that only once the Board has approved "legal action" can legal fees be applied. This was a very important aspect leading to 1137 protections.

PAGE 12

I. Alternative Dispute Resolution Policy

Section 2:
Comments: The phrase "other similar charges" should not be fines or interest or legal fees. If the HOA attempts to transform fines, interest, legal fees, interest into "individual assessments", then these should not be excluded from ADR. Leaving this open to interpretation invites disputes and expense. Please make this abundantly clear.

The purpose of 1137 was to allow homeowners to be guaranteed that an HOA would not use fines as a means to punish, nor to make them how an HOA balances their budget. Therefore, since the HOA can be subjected to penalties for violating the elements of 1137 affording such protections, it makes sense that ADR be available to avoid litigation in pursuit of such claims.

PAGE 14

II NOTICE TO OWNERS
Section 1: Type - "propsed" should be changed to "proposed"

PAGE 15
I. DUE DATE, LATE FEES, INTEREST, ITEMIZED LIST, DESIGNATED CONTACT, LANGUAGE PREFERENCE
Section 1 Due Date:

Comments: This appears to change our current due dates. This may cause confusion going forward. The 21st has never been used as a due date prior, so it appears either we are creating a new lag, or pushing a new date forward. We currently get an invoice on the 1st of the month - is the intention here to make it due on the 21st, which then a 21-day "grace period"? If so, perhaps that should be defined as such.

Also, the second deadline (15 days for past due to become delinquent) should perhaps be a numbered section of its own. It creates potential confusion whereby some may think that it's due on the 21st, but then they have another 15 day grace period (which it does not, but we should try to anticipate and avoid this confusion). Either an A. and B. paragraph for Section 1, or a new numbered section would be helpful.

Section 2: Late fees
Comments:

A. Our current documents contemplate an annual assessment paid by January 31 with a $100 one-time late fee. We have never considered a $100/mo late fee, and it is aggressive, punitive, predatory, and possibly considered an 1137 end run on the reduction in Interest an HOA can collect. Since the HOA is already allowed to collect ACTUAL costs (both CCIOA and other policies), an extreme late fee amount appears to be a profit-center. The HOA should not be generating profits in this manner, nor should we encourage no-bid contractors to create the justification with fees - particularly if they are not already in the contract as it exists.

B. The fee exceeds the monthly assessment. I can think of no good faith example where the penalty for untimely payment exceeds the original amount due.

C. It is recognized that the phrase "up to" is used, but even in a discretionary situation, if it is an actual cost, other elements already make clear that pass-through costs may be assigned by both CCIOA and other governing documents. This seems to give license to pile on additional costs - and we have a history of having attempted to do so to some homeowners, while others get a pass. There should be a simple consistent late fee of $5-10.

D. The excessive late fees may also accelerate timelines for reaching the 6-month threshold to begin lien and foreclosure processes. Again, this runs against the intent of 1137, and defies logic when persons who are financially strapped may be asking for payment plans. There's just no good use for "up to $100" when so many unreasonable and unfair outcomes are possible with inconsistent discretion.

PAGE 20
V. FORECLOSURE OF THE ASSOCIATION LIEN
Section 1(a):
Comments: As previously mentioned, the "assessments and charges" could then include this $100/mo late fee proposed on Page 15. That could be reached in 3 months vs. 6 months when adding the actual late assessments and 3 months of $100 late fees. In many cases giving rise to 1137, it was the rush to foreclosure that put homeowners in dire straights when they may be experiencing issues with their health (and unable to respond), be away from their home (and even abroad), or are not receiving notices. If "charges" includes "late fees", the key here is that no action should occur in less than 6 months. Creating extra amounts by discretion to accelerate the timeline should not be an option due to its potential for abuse.

PAGE 26
CONDUCT OF MEETINGS POLICY
ARTICLE I MEETINGS OF THE MEMBERS/MEETINGS OF THE BOARD

Section 2.
Comments: The President is an Officer, not a ranked Director. All Directors are equal. While the phrase may be interpreted to say "The Board, through the President", in practice, we have had several Presidents who presume absolute authority, and will not include agenda items of other Board members. Case in point: I urged compliance with HB22-1137 beginning in June of 2022. It took several meetings to make the agenda, and was then tabled until you could not find an attorney to allow enforcement of dog rules. The absolute control of the agenda by the President caused a significant delay in enforcement which may have significant consequences down the road.

A better approach would be to handle agenda in a similar manner to how Legislators are allowed to affect the

legislative agenda - an allotment, either by meeting or perhaps annually. The use of delay tactics to push another Board member off the board to avoid the agenda entirely shouldn't be a political game that is possible. No Director should be shut out from the process of adding to the agenda in an absolute manner. In Nevada, for instance, simply writing a complaint automatically adds the item to the next meeting's agenda. This policy is draconian and authoritarian.

ARTICLE II VOTING
Section 1:
Comments: This appears to change a consistent local quorum of 10% to 20%. If we are revisiting quorum requirements, we should consider other quorum requirements all at once.

PAGE 27
ARTICLE III LEGAL MATTERS
Section 2:
Comments:
A. Audio and Video Recordings are necessary to avoid factual disputes over what has been said, and benefit the Association in forming accurate meeting minutes. But, the meeting minutes should not be the only records of what happens at meetings. We have had a consistent problem with accuracy of meeting minutes (6/13/19 being the most egregious example), but sometimes we have Boards and Board members that claim certain things were "done" or "dealt with" which are not factual. This is not to mention reviews of correct application of Robert's Rules, with the most recent example being allowing a vote after a resignation - a clear violation of our Bylaws.

B. If the Association wishes to create CRIMINAL CHARGES by calling police on members at meetings, they most certainly have a right to record their own actions in defense of such charges, not to mention a right to record law enforcement should such calls be made. This policy takes away the right of homeowners, who are now under threat due to these policies of having voting privileges taken away or their Lots taken by a court (without due process - notice, fact-finding, hearing, etc)m, put at a significant disadvantage of not having an objective record that would be the basis of such extreme actions. This is literally the process of a proverbial kangaroo court, when there has been evidence of coordinated falsehoods related to the occurrences at meetings where the meeting minutes do not record any of this.

C. There is no evidence of any prior recording being manipulated to distort the truth of what occurred at a meeting.

D. There is no right to anonymity at meetings, either in the Non-Profit Act nor CCIOA. Comments from homeowners have regularly been attributed by name within the Meeting Minutes as a regular practice of POHOA.

E. The best approach to this would be for POHOA to adopt the following:

- The Secretary is responsible for creating, at a minimum, an audio recording of all meetings
- The recordings would be part of the permanent record of the association
- The recordings are made available to all members on demand for their review or use (hearings, mediation, litigation) without undo costs or burdens
- Homeowners would still have a right to RECORD THEMSELVES and perhaps any other meeting (outside of Executive Session) on their own devices, and any concerns about accuracy of recordings due to editing are resolved by the Association retaining permanently a master copy.

It has been the perennial position of HOA Industry Lobbyists to claim that no guarantee of a right to record meetings is necessary in statute because the right already exists in Colorado. This attempt to ban recordings is a demonstration that without such guarantees in statutes, HOAs will continue to attempt to infringe upon such rights.

ARTICLE V ETIQUETTE/REMEDYING DISRUPTIVE BEHAVIOR
Section 1:
Comments:
According to the Larimer County Sheriff's office about contacting law enforcement over "disruption". There's really only two applicable statutes outside of things like assault/battery, which is not contemplated in the policy:

- Disorderly Conduct

- Harassment

Both areas of law have specific requirements necessary for citation and prosecution. For disorderly conduct, there are two criteria that would be unlikely to be met, if ever:

A. First, the person must be taking actions "intentionally, knowingly, or recklessly". It is difficult to understand how an officer is called and determines any of these elements - particularly when you are simultaneously forbidding recordings by homeowners, and are uncommitted to making them yourself. Even with recordings, intention is a very difficult thing to prove, and, frankly, I don't think we have people who have ever intended to disrupt any meetings. Whatever disruption has occurred due to perceptions of injustice combined with emotion - elements that are unlikely to be quashed by any rule.

B. Secondly, all paragraphs include the phrase "in a public place". While meetings may be held at the City of Fort Collins Senior Center or Aztlan Center (public entity ownership), the meetings themselves are private meetings of a non-profit corporation acting with quasi-governmental powers. But, by no means are meetings open to the public. In fact, the policy states in Article I Section 1 that it's only open to Members or their Representatives. It is therefore not a "public place" at the time of the meeting.

For Harassment, a similar problem exists in proving intent - a necessary element of a criminal citation or prosecution. Same problems exist with banning recordings for the same enforcement.

While Public Nuisance is some potential offense, it's a far reach. Therefore, for all intents and purposes, calling law enforcement when there aren't really any imaginable laws to actually enforce is nothing more than intimidation of those who may simply be in a minority within their community (and perhaps a protected class as a result), For those who have not lived their entire lives with White Privilege, this type of intimidation is real (and often triggers PTSD responses) because, protected classes are far more likely to be treated in manner resulting in their harm (or death) as a result of incidental police contact. This is not to mention being put on watch lists or other surveillance as a result of the contact.

The temptation to use this power for political purposes (HOA politics - "we HAD to call police on him, so he can't be on the board") is too great. If there is an ACTUAL crime being committed, every citizen has the right to call police. There is absolutely no need to codify this in HOA documents.

And, it appears to intentionally use Law Enforcement Resources to report a crime that you KNOW is not a crime (or has very little chance of being determined to be a crime) is a crime itself. We don't have the right to "shoot first and ask questions later" or "let them sort it out". If you know that no criminal code is actually being violated, then the police should not be called!

Creating a policy by which Directors, who are volunteers, and neither lawyers nor law enforcement officers, are obliged to follow an ill-conceived policy that could create criminal liability for themselves is unwise. If you are already granting yourself to issue FINES, to take away voting rights (without due process), or to take possession of their lot (!), you have more than enough leverage to bring a meeting to order. The police have no reason to be involved because someone spoke over their allotted 2 minutes, or challenged the chair with a Point of Order that the Chair doesn't appreciate.

Title 18 - Criminal Code
Article 9 - Offenses Against Public Peace, Order, and Decency

Part 1 - Public Peace and Order
§ 18-9-106. Disorderly conduct

Universal Citation: CO Rev Stat § 18-9-106 (2016)

(1) A person commits disorderly conduct if he or she ***intentionally, knowingly, or recklessly***:

(a) Makes a coarse and obviously offensive utterance, gesture, or display ***in a public place*** and the utterance, gesture, or display tends to incite an immediate breach of the peace; or

(b) (Deleted by amendment, L. 2000, p. 708, § 39, effective July 1, 2000.)

(c) Makes unreasonable noise ***in a public place*** or near a private residence that he has no right to occupy; or

(d) Fights with another ***in a public place*** except in an amateur or professional contest of athletic skill; or

(e) Not being a peace officer, discharges a firearm ***in a public place*** except when engaged in lawful target practice or hunting or the ritual discharge of blank ammunition cartridges as an attendee at a funeral for a deceased person who was a veteran of the armed forces of the United States; or

(f) Not being a peace officer, displays a deadly weapon, displays any article used or fashioned in a manner to cause a person to reasonably believe that the article is a deadly weapon, or represents verbally or otherwise that he or she is armed with a deadly weapon ***in a public place*** in a manner calculated to alarm.

(2) Repealed.

(3) (a) An offense under paragraph (a) or (c) of subsection (1) of this section is a class 1 petty offense; except that, if the offense is committed ***with intent to disrupt, impair, or interfere with a funeral***, or with intent to cause severe emotional distress to a person attending a funeral, it is a class 2 misdemeanor.

(b) An offense under paragraph (d) of subsection (1) of this section is a class 3 misdemeanor.

(c) An offense under paragraph (e) or (f) of subsection (1) of this section is a class 2 misdemeanor.

Title 18 - Criminal Code
Article 9. Offenses Against Public Peace,

Order, and Decency
Section 18-9-111. Harassment - Kiana Arellano's law.

Universal Citation: CO Rev Stat § 18-9-111 (2020)

(1) A person commits harassment if, ***with intent*** to harass, annoy, or alarm another person, he or she:

a. Strikes, shoves, kicks, or otherwise touches a person or subjects him to physicalcontact; or

b. ***In a public place*** directs obscene language or makes an obscene gesture to or atanother person; or

c. Follows a person ***in or about a public place***; or

d. Repealed.

e. Directly or indirectly initiates communication with a person or directs language toward another person, anonymously or otherwise, by telephone, telephone network, data network, text message, instant message, computer, computer network, computer system, or other interactive electronic medium ***in a manner intended to harass or threaten bodily injury or property damage***, or makes any comment, request, suggestion, or proposal by telephone, computer, computer network, computer system, or other interactive electronic medium that is obscene; or

f. Makes a telephone call or causes a telephone to ring repeatedly, whether or not aconversation ensues, with no purpose of legitimate conversation; or

g. Makes repeated communications at inconvenient hours that invade the privacy ofanother and interfere in the use and enjoyment of another's home or private residence or other private property; or

h. Repeatedly insults, taunts, challenges, or makes communications in offensively coarse language to, another in a manner likely to provoke a violent or disorderly response.

(1.5) As used in this section, unless the context otherwise requires, "obscene" means a patently offensive description of ultimate sexual acts or solicitation to commit ultimate sexual acts, whether or not said ultimate sexual acts are normal or perverted, actual or simulated, including masturbation, cunnilingus, fellatio, anilingus, or excretory functions.

2. Harassment pursuant to subsection (1) of this section is a class 3 misdemeanor; except that harassment is a class 1 misdemeanor if the offender commits harassment pursuant to

subsection (1) of this section with the intent to intimidate or harass another person because of that person's actual or perceived race; color; religion; ancestry; national origin; physical or mental disability, as defined in section 18-9-121 (5)(a); or sexual orientation, as defined in section 18-9-121 (5)(b).

3. Any act prohibited by paragraph (e) of subsection (1) of this section may be deemedto have occurred or to have been committed at the place at which the telephone call, electronic mail, or other electronic communication was either made or received.

4. to (6) Repealed.

7. Paragraph (e) of subsection (1) of this section shall be known and may be cited as"Kiana Arellano's Law".

8. This section is not intended to infringe upon any right guaranteed to any person bythe first amendment to the United States constitution or to prevent the expression of any religious, political, or philosophical views.

Title 18 - Criminal Code
Article 8 - Offenses - Governmental Operations
Part 1 - Obstruction of Public Justice
§ 18-8-111. False reporting to authorities

Universal Citation: CO Rev Stat § 18-8-111 (2016)

(1) A person commits false reporting to authorities, if:

(a) He or she knowingly:

(I) Causes by any means, including but not limited to activation, a false alarm of fire or other emergency or a false emergency exit alarm to sound or to be transmitted to or within an official or volunteer fire department, ambulance service, law enforcement agency, or any other government agency which deals with emergencies involving danger to life or property; or

(II) Prevents by any means, including but not limited to deactivation, a legitimate fire alarm, emergency exit alarm, or other emergency alarm from sounding or from being transmitted to or within an official or volunteer fire department, ambulance service, law enforcement agency, or any other government agency that deals with emergencies involving danger to life or property; or

(b) ***He makes a report or knowingly causes the transmission of a report to law enforcement authorities of a crime or other incident within their official concern when he knows that it did not occur;*** or

(c) He or she makes a report or knowingly causes the transmission of a report to law enforcement authorities pretending to furnish information relating to an offense or other incident within their official concern when ***he or she knows that he or she has no such information or knows that the information is false***; or

(d) He or she knowingly provides false identifying information to law enforcement authorities.

(2) False reporting to authorities is a class 3 misdemeanor; except that if it is committed in violation of paragraph (a) of subsection (1) of this section and committed during the commission of another criminal offense, it is a class 2 misdemeanor.

(3) For purposes of this section, "identifying information" means a person's name, address, birth date, social security number, or driver's license or Colorado identification number.

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