

**Avenel Community Association**  
**Amended Document Enforcement Procedures**

**WHEREAS**, the Board of Directors of Avenel Community Association (“**Association**”) has the authority to enforce the Declaration of Covenants, Conditions and Restrictions (“**Declaration**”), Declaration of Protective Land Use Standards (“**Land Use Standards**”), Bylaws, Architectural Guidelines, Maintenance Standards and other duly adopted Rules and Regulations (“**Rules**”) of the Avenel Community Association (all, as may be amended from time to time, collectively referred to herein as the “**Governing Documents**”). Also, pursuant to the Declaration and Bylaws, the Board has the authority to adopt Rules and Regulations governing the enforcement process and imposing remedies, including fines, as may be determine appropriate in accordance with the enforcement procedures established; and

**WHEREAS**, on November 21, 1995, the Board of Directors of the Association adopted a Document Enforcement Process, which outlined enforcement procedures applicable to enforcing the Governing Documents and the Board, by and through the Standards Committee, has followed these enforcement procedures since its adoption; and

**WHEREAS**, the Board of Directors has determined that amendments to the existing Document Enforcement Procedures are necessary to streamline the enforcement process and better explain the process to the members of the community.

**NOW THEREFORE**, the following outlines the amended process for enforcement of the Governing Documents.

**I.        Identification of Potential Violation of the Governing Documents.**

- A.        The Board of Directors, the Standards Committee and/or the management staff of the Association are responsible for determining whether there is reason to believe that an Avenel owner, resident, tenant or guest has violated or is violating the Governing Documents. The methods by which violations of the Governing Documents may be identified include, without limitation, the following: (i) a visual inspection of the Avenel Community by the Standards Committee or the management staff; (ii) a report by the Modifications Committee or a member of the Association staff; or (iii) a complaint submitted by any resident of the Association.
- B.        If, based upon investigation, there is reason to believe that a violation of the Governing Documents occurred or is ongoing, then the Association, by and through the Board of Directors, the Standards Committee or the Association management staff shall proceed with the enforcement procedures outlined herein.

## **II      Enforcement Procedures**

- A.    Notice of Alleged Violation. Where, after preliminary investigation, there is reason to believe that a violation of the Governing Documents has occurred or is occurring, the Association shall send a Notice of Violation to the alleged violator (“**Respondent**”). If the Respondent is a family member, tenant or guest of an Owner, the Notice of Violation shall be sent to the Owner of the Residential Unit in which the Respondent resides as the Owner shall remain responsible for any violations of such Owner’s tenants, family members and guests. The Owner shall also be responsible for any violating conduct by his/her guests. If the Respondent is not the Owner and is known to the Association, the Notice of Violation shall also be sent to such Respondent. The Notice of Violation shall contain the following information.
1.    If the alleged violation is of a continuing nature, the Notice of Violation shall identify: (i) the violation alleged; (ii) the provision of the Governing Documents violated; (iii) the time period within which the violation must be corrected, said time period being not less than ten (10) days, unless due to safety concerns or other reasons for immediate correction as may be dictated by the circumstances of the alleged violation; (iv) the penalties or sanctions, including, but not limited to, assessment of charges, fines or the suspension of rights to use the Community Areas, that may be imposed if the violation is not corrected in the time period allowed; and (v) the Respondent’s rights to request a hearing as provided in sub-section A.3 below.
  2.    If the alleged violation is of a non-continuing nature (the alleged violation was a one-time occurrence and while it may recur it does not continue uninterrupted), the Notice of Violation must identify: (i) the violation alleged; (ii) the date, time and place of the alleged violation, to the extent available or known; (iii) the provision of the Governing Documents violated; (iv) the penalties or sanctions, including, but not limited to, assessment of charges, fines or the suspension of rights to use the Community Areas, that may be imposed as a result of the violation or any further violations of the same nature; and (v) the Owner’s rights to request a hearing as provided in sub-section A.3 below.
  3.    Within fifteen (15) days of issuance of the Notice of Violation, the Owner may either: (i) submit a written request for a hearing before the Standards Committee (“**Hearing**”) notwithstanding receipt of such request, if a written response consistent with (ii) of this paragraph 3 is not received and the violation cured, a Hearing will be scheduled by the Standards Committee; or (ii) submit a written response

acknowledging the violation occurred and confirming that the violation will immediately cease and will not recur (“**Notice of Compliance**”). If the alleged violator is a family member, tenant or guest of an Owner, such Respondent shall also be afforded the right to attend the Hearing or may submit a Notice of Compliance. The Association, shall determine whether the Notice of Compliance and performance pursuant thereto are sufficient to terminate the enforcement procedure. In making this determination, the Association may consider other Notices of Alleged Violations that may have been issued to the Owner and/or the Respondent.

- B. Notice of Hearing. If the Notice of Compliance or performance therewith is deemed insufficient, or if a request for a Hearing has been submitted, the Association shall determine if sufficient evidence of a violation exists, and if so, shall issue a Notice of Hearing identifying the date, time and place of the Hearing, which shall be scheduled no less than ten (10) days from the date of issuance of the Notice of Hearing. The Notice of Hearing shall include the following information: (a) the nature of the alleged violation; (b) the provisions of the Governing Documents alleged to have been violated; (c) the date, time and place of the Hearing; (d) the possible sanctions that may be imposed including for repeated violations of the same nature; (e) the Owner’s and the Respondent’s right to appear at the Hearing, present evidence and witnesses on his/her behalf and to be represented by counsel. If the Owner or Respondent wishes to be represented by counsel, prior notice must be given to the Association at least five (5) business days prior to the Hearing so that the Association can determine whether it also wishes to have counsel present.
- C. Form of Notices. All notices described in these procedures shall be delivered to the Owner, and if known, the Respondent via (1) hand-delivery, overnight delivery service or certified mail, return receipt requested at the addresses appearing on the books of the Association, and (2) regular mail, at the addresses appearing on the books of the Association. Failure by the Respondent, or the Owner of the Residential Unit in which the Respondent resides, to pick up mail or notify the Association of a change in address shall be no excuse or defense.
- D. Discretion of the Association. Nothing herein precludes the Association from sending warning notices before issuing a Notice of Violation, when the Association deems this course of action appropriate under the circumstances. Additionally, nothing herein precludes the Association from providing additional time for compliance or from sending additional Notices of Violation prior to proceeding with a Hearing, should the Association deem that appropriate under the circumstances. However, warning notices shall not be required.

- E. Hearing Procedure. The Hearing shall be held before the Standards Committee. The Committee Chairperson shall preside over the Hearing and with the exception of the presence of necessary witnesses, the Hearing will be held in closed session. The Hearing will be informal in nature and the rules of evidence shall not be applicable. The procedures shall included the following:
1. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, irrespective of any rules of evidence under applicable law.
  2. Each party to the hearing may: (i) retain counsel to serve as their representative; (ii) present oral or written statements; (ii) introduce evidence, including the testimony of relevant witnesses; (iii) cross-examine witnesses and rebut evidence presented; and (iv) make a closing argument. The Standards Committee members at the Hearing shall also be allowed to ask questions of any party or witness presented to the extent necessary and appropriate for their consideration of the facts and arguments involved in the case. The Committee shall receive evidence presented by the Association regarding the alleged violation.
  3. Upon completion of the Hearing, the Standards Committee shall deliberate and issue a decision within fifteen (15) days of the Hearing or such later time as may be determined during the Hearing. If the Committee finds that a violation occurred or is continuing, the Committee, in its discretion, shall determine the appropriate disciplinary actions (penalties or sanctions) to be imposed and shall issue a decision (“**Hearing Decision**”) notifying the Respondent of such determination. Additionally, the Hearing Decision may provide that penalties or sanctions may be imposed without holding another Hearing, in the event of subsequent violations of similar nature. The Hearing Decision shall be delivered consistent with the notice provisions set forth in Section II.C. above.
  4. Penalties and sanctions may include, but are not limited to:
    - (i) Suspension or conditioning of the use of Community Areas, as permitted by the Governing Documents, including but not limited to Articles II, Sections 1(b), (c) and (e) and IX of the Declaration and Article VII, Sections (a), (b) and (g) of the Bylaws; and
    - (ii) Imposition of reasonable fines. The Standards Committee shall determine the reasonable amount of the fine

commensurate with the violation. The fine for a first offense shall typically be between \$50.00 and \$150.00, as determined by the Standards Committee taking into consideration the nature of the offense. Such amount may be increased by the Standards Committee for subsequent offenses or if deemed appropriate for the offense. Each day a violation continues without correction shall be considered a separate offense and the Standards Committee may impose a daily fine for such continuing violation. The Standards Committee may take into consideration the costs to the Association associated with the violation in determining the appropriate fine.

- (iv) Imposition of charges incurred or to be incurred by the Association to repair, replace or correct conditions caused by the violation, as permitted by the Governing Documents, including, but not limited to Articles IV, V and X, Section 9 of the Declaration and Article VII, Section 1(a) and (g) of the Bylaws.
- (v) All charges imposed shall be considered an assessment against the Residential Unit owned or resided in by Respondent, which shall be collectible against the Owner of such Residential Unit to the same extent as any other Assessment of the Association, as permitted by Article X, Section 9 of the Declaration.
- (vi) The Standards Committee, in its discretion, may defer imposition of penalties and sanctions, may provide additional time for compliance or may take other such actions as may be considered reasonable and appropriate under the circumstances.

- F. Safety Considerations. Notwithstanding anything contained herein, the Association may suspend the use of the Community Areas immediately and without notice or hearing for violations that may present a safety hazard or other bona fide emergency if not immediately addressed. The Association will follow up with the above-described procedures as soon thereafter as reasonably possible.

### III. Appeals

#### A. Appeals to the Board of Directors.

- 1. Any Hearing Decision may be appealed to the Board of Directors. Any such petition for appeal must be in writing and submitted to the

Board of Directors within fifteen (15) days of issuance of the Hearing Decision.

2. Procedures and Appeal Hearing. The Board of Directors may consider the appeal based upon the record provided from the Hearing and issue an appeal decision (“**Appeal Decision**”) or may schedule the matter for an appeal Hearing. If a Hearing is scheduled, it will be held at the next regularly scheduled Board of Directors meeting or, if deemed appropriate, the Board may schedule a special meeting to hear the appeal. Reasonable written notice via hand delivery or regular mail shall be provided to the Respondent at the addresses on record with the Association, or via email if the Respondent has provided an email address to the Association, at least ten (10) days prior to the meeting at which the appeal will be hearing. All of the rights and procedures applicable to a Hearing shall also apply equally to all appeals. The Board of Directors shall issue an Appeal Decision within fifteen (15) days of the completion of the appeal Hearing or such other time as may be determined during the appeal Hearing.
3. Effect of Decision. The Board of Directors may modify, reverse or uphold the Hearing Decision in whole or in part.

- B. Further Action. Respondents must exhaust all available remedies of the Association prescribed herein before resorting to further legal action. Respondents have a right to file a dispute with the Montgomery County Commission on Common Ownership Communities pursuant to the Montgomery County Code upon the exhaustion of these procedures. This exhaustion requirement shall not apply to the Association, which may at any time seek legal relief with respect to alleged violations of the Governing Documents in lieu of instituting an enforcement action.

#### IV. Interpretation

These procedures are general in nature and intended provide Respondents with reasonable due process (notice and reasonable opportunity for hearing before imposition of penalties and sanctions) with respect to enforcement actions of the Association. Any inadvertent omission or failure to conduct proceedings in exact conformity with these procedures shall not invalidate the results of such proceedings, so long as a prudent and reasonable attempt has been made to provide due process according to the general steps set forth herein.

**Board Approval on Following Page**

Approved and adopted by the Board of Directors at a meeting held on 9/26/16,  
2016.

M Z Kh  
Secretary