

OAK PARK CIVIC ASSOCIATION, INC.
RESOLUTION NO. 2018-01

Resolution Regarding Procedures to Ensure Due Process in Enforcement

WHEREAS, Article III, Section 3.5(ix) of the Bylaws of Old Park Civic Association, Inc. (“Bylaws”) provides that the Board of Directors has the power to “enforce by legal means the processing of the Project Documents and rules and regulations promulgated thereto....[and]... [w]ithout limiting the foregoing, the Board of Directors may assess charges against Owners for any violations of the Project Documents or rules and regulations, subject to the limitations provided in Section 55-513B of the Virginia Code;” and,

WHEREAS, Article III, Section 3.3 of the Declaration of Covenants, Restrictions, Rights, Affirmative Obligations and Conditions (“Declaration”) and Article III, Section 3.5(vi) of the Bylaws provide that the Board of Directors has the authority to establish and amend rules and regulations as may be necessary to govern the use of the Common Area; and,

WHEREAS, Article IV, Section 4.3 of the Declaration provides, in part, that the Association shall have all the rights, powers and duties of the Association provided in the Virginia Property Owners’ Association Act (“Act”), including without limitation the right (subject to Section 55-513B of the Virginia Code) to assess charges against Owners in violation of the Project Documents or the rules and regulations of the Association.

WHEREAS, Article V, Section 5.6 of the Declaration provides, in part, that individual assessments shall include violation charges assessed pursuant to Section 4.3 of the Declaration and Section 55-513B of the Virginia Code; and

WHEREAS, Article IX, Section 9.1 further establishes the Association’s rights to pursue enforcement actions for violations of the Project Documents.

WHEREAS, the Act authorizes the Board of Directors to exercise for the Association all powers, duties and authority vested in or delegated to the Association; and

WHEREAS, Section 55-513 of the Act empowers the Board to assess charges against Owners for violations of the Association’s Declaration and rules and regulations for which the Owner or the Owner’s household members, tenants, guests or other invitees are responsible; and

WHEREAS, Section 55-513B of the Virginia Code affords all Owners of the Association basic due process rights before charges may be imposed or privileges suspended; and

WHEREAS, for the benefit and protection of all of the Association’s Owners, the Board deems it desirable to amend and restate its procedures for enforcement of the Association’s Project Documents and the Virginia Code consistent with the principles of due process and Virginia law.

NOW THEREFORE, BE IT RESOLVED that the following due process in enforcement procedures be adopted:

I. ENFORCEMENT PROCEDURES

A. Notice of Citation.

Except when an emergency requires immediate action, the Board of Directors or its designee shall issue a notice to any Owner whose behavior or use of the Property does not conform to the Association's Project Documents or rules and regulations. The Notice of Citation shall be in writing and delivered by hand or certified mail, return receipt requested, to the Owner at his/her address listed in the Association's records. If no such address is listed in the Association's records, the Notice of Citation shall be delivered to the Owner's Lot address within the Association. The Notice of Citation shall advise the Owner of the nature of the offense and the provision of the Association's Project Documents which has allegedly been violated, specify the remedy required, and state that the Owner must complete corrective action (if corrective action is so required) within fifteen (15) days of the issuance of the notice or such other period as determined by the Board of Directors. The Notice of Citation shall also include a notice to the Owner regarding his or her right to explain or deny the allegations in writing within the same period. Notification will be deemed effective even if any Owner fails or refuses to sign for any certified mailing from the Association.

B. Hearing.

(1) If the Owner does not cease and desist as requested and/or fails to remedy the offense for at least ten (10) days after the Notice of Citation is provided to the Owner, the Board of Directors shall set the time, date and place of a hearing regarding the violation, at its discretion, with reasonable consideration given to the scheduling needs of the Owner. A Hearing Notice shall then be delivered by hand or certified mail, return receipt requested, to the Owner at his/her address listed in the Association's records. If no such address is listed in the Association's records, the Hearing Notice shall be sent to the Owner's Lot address within the Association. The Hearing Notice shall be delivered or mailed at least fourteen (14) days in advance of the hearing date. The Hearing Notice shall advise the Owner of the date, time, and place of the hearing, the purpose of the hearing, the right of the Owner to be represented by counsel at the hearing, and the penalties that may be imposed after the hearing if the Board finds the existence of any violations. The Hearing Notice shall also inform the Owner of his/her right to be represented at the time by counsel, at the Owner's own expense. Notification will be deemed effective even if any Owner fails or refuses to sign for any certified mailing from the Association.

(2) At the hearing, the Owner shall be given a reasonable amount of time to present any and all defenses to the citation. The Owner may be represented by counsel at the hearing, at the Owner's own expense. The Board may determine the manner in which the hearing is conducted, provided the rights set forth in this Resolution are protected. The hearing need not be conducted according to any court rules relating to evidence and witnesses. Any

relevant evidence may be admitted and considered by the Board of Directors at the Board's discretion. The hearing may proceed in the Owner's absence should the Owner fail to appear for the hearing after due notice has been issued.

(3) Following the hearing, the Board of Directors shall meet in executive session to determine whether satisfactory proof of the alleged violation was presented, and if so, whether monetary charges should be imposed and/or privileges should be suspended. Monetary charges may not exceed \$50.00 for a single offense or \$10.00 per day for any offense of a continuing nature, provided, however, that the Board reserves the power to increase these maximum charges if the Virginia General Assembly enacts legislation in the future that permits the Board to do so. The Association shall treat monetary charges as an assessment against the Owner's Lot. In accordance with the Declaration, the Board of Directors may suspend the voting rights of Owner and/or the rights of the Owner and the right of such Owner's household, guests, employees, customers, agents, invitees, and tenants to use any Common Area Facilities for any period during which any violation of the Association's Project Documents or the rules promulgated by the Association remains uncorrected after the last day of a period established for corrective action by the Association pursuant to paragraph I.A. and for not more than sixty (60) days after such correction or for any period during which assessments are delinquent.

(4) The Association, through the Board's designee, shall advise the Owner of the hearing results in writing. The Hearing Results Notice shall be delivered by hand or by certified mail, return receipt requested, to the Owner at his/her address listed in the Association's records. If no such address is listed in the Association's records, the Hearing Results Notice shall be delivered to the Owner's Lot address within the Association. The Hearing Results Notice shall be delivered or mailed within seven (7) days of the date of the hearing.

II. MISCELLANEOUS

A. The Board of Directors reserves the power to hold Owners legally responsible for ensuring that the Owner's family members and their guests, agents, invitees and tenants comply with the Association's Project Documents and rules and regulations. Any violations by such persons will be treated as a violation by the Owner, and the procedures set forth in this Resolution shall be followed against the Owner in the same manner as if the Owner him/herself had committed the violation.

B. The procedures outlined in this Resolution may be applied to all violations of the Project Documents but do not preclude the Association from exercising other enforcement procedures and remedies authorized by the Association's Project Documents, including, but not limited to, the initiation of suit or self-help remedies. The Board of Directors reserves the power to assign all of its powers and responsibilities herein to a standing or special committee of its choice or to its manager or managing agent. Nothing contained herein shall limit the Association's powers or authority as set forth in the Project Documents and the procedures and remedies set forth herein shall not be deemed exclusive or mandatory.