



April 10, 2024

RE: Parking Legal Opinion Letter

Hello Stroh Ranch Homeowners,

Due to a growing number of people questioning whether Stroh Ranch parking restrictions are enforceable under the new state law, the HOA Board of Directors asked the Association's law firm to put together an explainer on this matter to be shared with all homeowners.

This letter clearly explains why the restrictions are still in place and to help those in doubt. This legal opinion letter will also be available on the community website located at: [www.StrohRanchHOA.com](http://www.StrohRanchHOA.com).

Regards,

**Board Of Directors**  
**Stroh Ranch Community Association**



April 4, 2024

Via Electronic Mail

Board of Directors  
Stroh Ranch Community Association, Inc.  
c/o PCMS  
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COMMUNICATION  
ATTORNEY CLIENT PRIVILEGED

Re: Stroh Ranch Community Association, Inc. ("Association")/Enforcement of Association Parking Restrictions on Public Streets after HB22-1139/C.R.S. Section 38-33.3-106.5(d.5) Our File No. 8833.0397

Dear Members of the Board:

Altitude Community Law P.C. has been retained to provide an opinion regarding whether the Association's ability to enforce its parking restrictions on public streets in the community survived the enactment of HB22-1139 [which was codified as C.R.S. Section 38-33.3-106.5(d.5)]. This letter is in response to that inquiry.

#### QUESTIONS and RESPONSES

Can the Association enforce the parking restrictions found in its governing documents on public streets in the community after the enactment of HB22-1139, which was codified into Colorado statutory law at C.R.S. Section 38-33.3-106.5(d.5)?

Yes, as a result of the wording of C.R.S. Section 38-33.3-106.5(d.5) allowing the use of any public right-of-way "in accordance with local governments ordinance," the Association may continue to enforce its parking restrictions on public streets within the Stroh Ranch community.

#### RECOMMENDATION

It is our recommendation that the Association continue to reasonably enforce its parking restrictions on the public streets within the community unless and until directed by a court of law to cease doing so.

#### FACTS

HB22-1139 was passed by the Colorado legislature in 2022 in an effort to curtail a homeowner association's ability to regulate parking on public streets within their community. The text of

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HB22-1139 was codified into Colorado statutory law as C.R.S. Section 38-33.3-106.5(d.5) [hereinafter referred to in this letter as "CCIOA Section 106.5(d.5)"]. CCIOA Section 106.5(d.5) states in pertinent part as follows:

(1) Notwithstanding any provision in the declaration, bylaws, or rules and regulations of the association to the contrary, an association shall not prohibit any of the following:

(d.5) (I) The use of a public right-of-way in accordance with a local government's ordinance, resolution, rule, franchise, license, or charter provision regarding use of the public right-of-way. Additionally, the association shall not require that a public right of way be used in a certain manner.

The Association's governing documents, including its Declaration of Covenants, contain provisions prohibiting parking on the public streets within the Stroh Ranch community.

The Town of Parker's municipal code contains the following provision:

**10.01.070 Parking of vehicles on public streets within subdivisions.**

- (a) No developer, homeowners' association, architectural control committee or other similar individual or organization shall be authorized to enact regulations or restrictive covenants which purport to prohibit the parking of vehicles on any street within a subdivision which has been dedicated to and accepted by the Town as a public street. As with other public streets within the Town, the Town shall have the exclusive authority to regulate parking on public streets within a subdivision.
- (b) This Section shall not apply to previously enacted regulations or restrictive covenants which prohibit the parking of vehicles on any public street within a subdivision, as those regulations or restrictive covenants exist on the effective date of the ordinance codified in this Section. No existing regulation or restrictive covenant may be amended to prohibit the parking of vehicles on any public street within a subdivision after the effective date of the ordinance codified in this Section.

According to the Town's website, the ordinance providing the above was codified into the municipal code in 2001.

**DISCUSSION**

The original Master Declaration of Covenants, Conditions and Restrictions for Stroh Ranch which was recorded in 1988 (the "Declaration"), contains a provision that states no vehicle shall be parked on any street or roadway shown on any map of dedication, subdivision plat or similar recorded instrument unless otherwise expressly provided for in or on such recorded

map of dedication, subdivision plat or similar instrument showing the street or roadway or in a separate recorded instrument executed by the Architectural Committee.

The original Master Declaration was amended several times, most recently by the Amended and Restated Master Declaration of Covenants, Conditions and Restrictions for Stroh Ranch recorded on January 24, 2011 (A&R Declaration). Article 5, Section 5.12 of the A&R Declaration contains substantially similar language to the original 1988 Declaration when it comes to the prohibition of parking on the streets, stating:

Section 5.12 Vehicular Parking, Storage, and Repairs.

(a) Restrictions on Street/Roadway Parking. No vehicle shall be parked on any street or roadway shown on any map of dedication, subdivision plat or similar recorded instrument.

(b) Exceptions to Restrictions on Street/Roadway Parking. Street or roadway parking may be expressly provided for in or on a recorded map of dedication, in or on a subdivision plat or similar instrument. Additionally, street or roadway parking may be expressly provided for in a separate recorded document executed by the Association designating a street or roadway as having permissible parking areas.

Pursuant to the Town of Parker's municipal code Section 10.01.070, no developer, homeowners' association, architectural control committee or other similar individual or organization shall be authorized to enact regulations or restrictive covenants which purport to prohibit parking on any street within the subdivision that has been dedicated to the Town of Parker.

However, subsection (b) of Section 10.01.070 states as follows:

(b) This Section shall not apply to previously enacted regulations or restrictive covenants which prohibit the parking of vehicles on any public street within a subdivision, as those regulations or restrictive covenants exist on the effective date of the ordinance codified in this Section. No existing regulation or restrictive covenant may be amended to prohibit the parking of vehicles on any public street within a subdivision after the effective date of the ordinance codified in this Section.

The forgoing Town ordinance was enacted in 2001.

The provision in the Association's original Master Declaration regarding parking on public streets was obviously in place when the ordinance was enacted in 2001. Accordingly, the provision as it existed in 2001 would be grandfathered and enforceable. Even though the Association amended its parking restrictions several times, and finally in 2011, it is our opinion that the 2011 Declaration provisions are also enforceable since the restriction related to parking on public streets is essentially the same as it existed in 2001 when the ordinance was enacted.

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In 2006, our firm discussed this issue with the Town of Parker attorney. At that time, the Town attorney indicated that it was his belief as well that because the original Declaration prohibited parking on public streets, similar amendments would be enforceable if there was not really any substantive change to the original provision. The Town attorney would not express that in writing, however.

Based on the language of the municipal code discussed above and the prior indication from the Town attorney, it is our opinion that the 2011 A&R Declaration provisions prohibiting parking are enforceable as written since they are substantially the same as existed in 2001 when the Town's ordinance was enacted. The only remaining question, then, is whether the Declaration provisions in question survive the adoption of HB22-1139 and its codification found in CCIOA Section 106.5(d.5).

As a refresher, the HB22-1139/CCIOA language states that an association shall not prohibit:

(d.5) (I) The use of a public right-of-way in accordance with a local government's ordinance, resolution, rule, franchise, license, or charter provision regarding use of the public right-of-way. Additionally, the association shall not require that a public right of way be used in a certain manner.

In other words, an association must allow the public streets in its community to be used in accordance with any applicable local government ordinances. The association must obey the local ordinance. If a local government ordinance addresses regulating parking on those public streets, and it happens to carve out an exception that allows pre-existing association parking prohibitions to remain in place, then the association IS obeying the local government ordinance when it enforces those pre-existing prohibitions. It is not a violation of CCIOA Section 106.5(d.5) to prohibit parking on the community's public streets in such case.

Taking all of the above together, and given the specific facts in regard to Stroh Ranch Community Association, CCIOA Section 106.5(d.5) can reasonably be read to say that the only Association parking restrictions or prohibitions allowed on the public right-of-way (i.e. public roads) within the community are those that exist and are enforced in accordance with any applicable local government ordinance. If the applicable local government has said that absolutely no community association restrictions or prohibitions are allowed, then the Association may enforce none.

CONCLUSION:

Because the Town of Parker's municipal code carves out an exception that applies to the parking prohibition found in the Association's Declaration, the Association taking action to enforce its parking prohibition on public streets in the Stroh Ranch community IS in accordance with current CCIOA Section 106.5(d.5).

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Our recommendations and opinions are based on the facts stated or assumed and known to us as of the date of this letter, but are not a guarantee of results or a specific outcome. The documents relied upon in preparing this letter are set forth on Schedule A.

We hope this letter satisfactorily addresses the question presented to us. Should you have any further questions or comments or desire further clarification, please do not hesitate to contact us.

Sincerely,

A handwritten signature in black ink, appearing to read 'Eric R. McLennan', with a long horizontal line extending to the right.

Eric R. McLennan

**Altitude Community Law P.C.**

ERM/jl

Enc.

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## SCHEDULE A

### Documents Reviewed:

1. Amended and Restated Master Declaration of Covenants, Conditions and Restrictions for Stroh Ranch recorded on January 24, 2011.
2. Town of Parker Ordinance Section 10.01.070
3. Colorado Revised Statutes Section 38-33.3-106.5(d.5)