Via Email:
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Commission for Common-Interest Communities
c/o Nevada Real Estate Division
Nevada State Business Center
3300 W. Sahara Avenue, Suite 350
Las Vegas, NV 89102

March 9, 2026

Re: **Opposition to "Workshop" Agency Draft Proposal, Section 2 & 3-HSW definition, March 10, 2026, CIC Commission Agneda.**

Chair and Members of the Commission:

I submit these comments regarding Section 2 & 3 of the proposed regulation (LCB File No. R091-25), which seeks to define violations posing a threat to health, safety, or welfare ("HSW") under NRS 116.31031.

Before addressing the individual subsections of the proposed regulation, two threshold considerations should be acknowledged. First, regulatory frameworks that authorize significant financial penalties should not rely solely on assumptions that enforcement authority will always be exercised in good faith. Regulatory design must account for the possibility that enforcement authority may be exercised poorly, inconsistently, or in retaliation. Where severe penalties may be imposed under broad or uncertain standards, ordinary governance disagreements can be escalated through enforcement authority, creating a chilling effect on owner participation. Clear limiting criteria are therefore necessary, not because most boards act improperly, but because in HOA enforcement the same body that alleges the violation also adjudicates it. Meaningful recourse through independent review is limited and costly. In that institutional setting, deterrence alone cannot justify expanding punitive HOA enforcement authority.[1]

Second, HSW-type violations certainly arise within common-interest communities. The violation category has existed in Nevada law since 2005. Importantly, despite the absence of workable regulatory definition, the record does not appear to demonstrate existing enforcement mechanisms have been unable to address such situations. For more than two decades, conditions affecting HSW have been managed through existing covenant enforcement tools, ordinary fine limits, and public agency avenues. If that framework is now considered inadequate, the basis for expanding HOA disciplinary authority should be clearly demonstrated. Legislation introduced by the Division with the backing of industry sixteen years later—S.B. 72 (2021)—directs the

[1] Deterrence is a legitimate objective of enforcement systems generally. However, significant deterrent penalties typically operate within regulatory frameworks that include independent investigation, evidentiary standards, and neutral adjudication. HOA enforcement proceedings lack many of these structural safeguards. Expanding punitive authority on deterrence grounds alone therefore risks granting broad discretionary sanctioning power within a system designed primarily for covenant compliance rather than public-law enforcement.

Commission to adopt specific criteria defining such violations. Five years later, the continued difficulty in producing a workable definition suggests that the challenge may lie first in determining the appropriate role of HOA enforcement in addressing them. At this point, the Commission's task should be to ensure any regulatory response is proportionate to the demonstrated need. The broad enforcement framework reflected in the proposed regulation risks extending beyond that limit.

HOA enforcement, given the limits inherent in its design, should not be employed simply because it may be more convenient or responsive. It should be employed only where it is uniquely appropriate within the context of private association governance. The difficulty may not be definitional—it may be institutional.

This institutional mismatch becomes clear when considering how genuine threats to health or safety are actually addressed. Conduct that genuinely threatens the health, safety, or welfare of residents is traditionally addressed through criminal statutes, municipal safety codes, and civil nuisance law[2]. Notably, these are precisely the legal frameworks the proposed regulation seeks to incorporate by reference into the HOA disciplinary process. Yet the regulation ultimately places the responsibility for interpreting and enforcing those standards in the hands of HOA boards.

Public enforcement systems operate under highly scrutinized investigative procedures, evidentiary standards, and independent adjudication—safeguards that are not incidental but necessary when determining whether conduct implicates public safety. Associations may, of course, act to address hazardous conditions within their communities, including taking reasonable steps to mitigate risks, seeking assistance from appropriate public agencies, or contacting law enforcement when necessary. However, if an HSW threat is genuinely *imminent*, the HOA fine process is unlikely to be the mechanism through which the risk is actually addressed; immediate intervention must come from public authorities.

HOA enforcement through fines therefore functions primarily as an after-the-fact sanction—rather than a means of resolving the threat itself. The Commission should take that institutional reality into account when defining the HSW category and ensure that the regulation does not assume a public-safety enforcement role that private association boards are not designed to perform.

If the HSW framework is to function within HOA governance, the regulation must provide clear, limited, and workable criteria. The criteria mandated by the statute must address not only *what* constitutes an actionable HSW violation, but also *when* such a violation poses an "imminent threat"—a rare and urgent circumstance presenting real danger, not routine covenant enforcement. As written, the proposed regulation does neither.

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[2] The phrase "health, safety, and welfare" is commonly used in public law as a term of art associated with the police power of government. In that context, it generally refers to protection from tangible risks to persons or property rather than to generalized notions of comfort, aesthetics, or community preference. Interpreting the phrase word-by-word—particularly by giving independent scope to "welfare"—can expand the concept beyond the types of harms the phrase traditionally describes.

The statutory structure suggests two distinct ideas operating at once creating tension. On the one hand, the HSW designation appears intended as a limit within the HOA fine system—a justification for stronger or accelerated fines when a violation creates a meaningful risk to residents. That function is consistent with the association's ordinary governance role. Associations can reasonably address hazardous property conditions within the community—such as blocked emergency access on private streets, unsafe maintenance conditions, neglected pools, or similar risks—where the violation can be corrected through the covenant-enforcement process.

On the other hand, the statute also introduces the concept of an "imminent" threat. That concept reflects the logic of emergency public-safety response rather than private covenant enforcement. Once a risk is genuinely imminent, the HOA fine process—requiring notice, hearings, and escalating penalties—cannot realistically function as the mechanism addressing the danger. The tension between these two concepts suggests that the HSW category was intended to operate only where hazardous conditions within the association's governance sphere can realistically be corrected through the covenant-enforcement process — while genuinely imminent threats necessarily require intervention through public safety authorities.

The task assigned by NRS 116.31031 therefore is not to define the full universe of conduct that could implicate HSW. Rather, the Legislature directed the Commission to establish criteria appropriate for HOA enforcement through fines. In carrying out that task, the Commission must avoid duplicating areas of public-law enforcement, even where private association enforcement may be viewed as a more convenient alternative to existing public systems. The regulation should therefore focus on the narrower question the statute places before the Commission: identifying the circumstances appropriate for HOA engagement, rather than simply categorizing risks already addressed through public law.

For these reasons, the central question before the Commission is not whether conduct affecting HSW may occur within common-interest communities. Such conditions unquestionably arise. The regulatory task instead is to establish clear *criteria* identifying the *limited* circumstances in which violations of governing documents create an imminent and substantial threat appropriate for enforcement through the HOA disciplinary process. The proposed regulation does not perform that function. Rather than establishing criteria for determining when an imminent HSW threat exists, Section 2 broadly incorporates categories of conduct drawn from other bodies of law, effectively substituting external legal references for the statutory criteria the Commission was directed to establish.

A comparative for consideration

Before action is taken on the proposed amendment, the Commission may wish to consider how other jurisdictions address violations implicating health or safety concerns within common-interest communities. California's statute governing HOA enforcement under the Davis–Stirling Common Interest Development Act provides a useful point of comparison.

California does not attempt to define a broad class of "health, safety, or welfare" violations. Instead, the statute allows a board to impose a penalty greater than the standard amount only

where a violation "may result in an adverse health or safety impact on the common area or another association member's property." (Cal. Civ. Code § 5850(d)) This formulation confines the concept to identifiable property-related impacts rather than extending it to broader notions of community welfare.

The statute also includes procedural safeguards before such a penalty may be imposed. The board must make a written finding identifying the specific health or safety impact, and that determination must occur in a board meeting open to the members. These requirements ensure that the basis for the health or safety determination is articulated and subject to member visibility. Nevada's NRS 116.31031 requires notice and a hearing before fines are imposed, but it does not require a board finding in open session explaining why a violation constitutes a threat to health, safety, or welfare.

Equally notable is what the California statute does not do. It does not incorporate criminal statutes, nuisance law, or housing and health codes by reference, and it does not rely on the broader concept of "welfare." By limiting the trigger to demonstrable health or safety impacts affecting property, the statute avoids expanding the category to encompass a much wider range of potential violations.

The California framework therefore illustrates a more confined approach to health and safety enforcement within common-interest communities—one that ties the determination to identifiable property-related impacts and requires transparent board findings before enhanced penalties may be imposed. Before addressing the proposed amendment, the Commission may wish to consider whether a similarly focused standard would better align with the statutory directive that threats to health, safety, or welfare be defined using specific criteria.

Section 2(1) – Fails to provide criteria for "imminent"

The proposed regulation does not establish criteria for determining when a violation poses an "imminent" threat, as directed by the statute. Instead, it treats certain categories of conduct as inherently imminent. By defining an imminent threat as a violation that "involves conduct that includes" specified categories—such as criminal offenses, public nuisance, or violations of housing and health codes—the proposal substitutes categorical conduct definitions for criteria assessing imminence. The statutory directive, however, requires the Commission to establish criteria for determining when conduct affecting health, safety, or welfare rises to the level of immediacy contemplated by the statute. Absent such criteria, as currently proposed, the term "imminent" does not operate as an independent threshold but instead becomes merely a label applied to broad categories of conduct. The concept of imminence necessarily involves temporal considerations—specifically when a threat is sufficiently immediate to justify enhanced enforcement—yet the proposed regulation provides no criteria addressing that element.

Section 2(1) – Fails to provide a necessary "criteria" to define HSW

The statute requires the Commission define threats to HSW using specific "criteria." The proposed regulation does not do so. Criteria identify the objective conditions under which a rule applies—such as measurable thresholds, defined risk conditions, or specific factors that— must

be present. For example, criteria might specify that a violation occurs when an action or inaction creates an immediate risk of physical injury, when a condition has been cited by a public health authority, or when a dwelling is rendered unsafe for human occupancy. Instead, the proposal defines an HSW violation as a violation of the governing documents that involves conduct, "without limitation," drawn from an array of other bodies of law, including public nuisance, the State penal code, and housing or health codes. Rather than establishing objective criteria identifying the conditions that constitute an HSW threat, the regulation relies on broad references to external legal systems.

Section 2(1)(a) introduces language suggesting that a violation poses an HSW when it arises from a "failure to exercise reasonable care." The Legislature clearly intended to create a category based on risk to residents, not fault of the actor.

Section 2(1) also leaves the meaning of "substantial adverse effect" undefined. That term does not appear in NRS 116.31031 and is not defined elsewhere in Chapter 116. The phrase is a context-dependent factual determination, not a term with a fixed legal definition or standard. Substantial adverse effect describes a different and potentially broader concept than HSW.

Similarly, Section 2(1)(b) introduces the concept of "intentional misconduct," requiring a determination of the actor's state of mind, while Section 2(1)(a) simultaneously relies on a failure to exercise reasonable care. The regulation therefore mixes intent-based and negligence-based standards without explaining how those concepts relate to the statutory requirement of an imminent threat.

Section 2(1)(c) incorporates the entire definition of "public nuisance" without qualification. As written, this could sweep in conduct far removed from an imminent safety threat. For example, the referenced statute includes any "omission to perform a duty" that merely "annoys" another person. Under this formulation, virtually any annoyance could be argued to constitute an HSW violation.

Section 2(1)(d) raises a structural concern. By defining HSW violations to include misconduct under the State penal code, the regulation effectively requires HOA boards to determine whether conduct constitutes a criminal offense under Nevada law—determinations ordinarily reserved to law enforcement authorities, prosecutors, and courts. Similarly, references to "actionable misconduct under State penal codes" cover a wide range of conduct, much of which bears little relationship to an imminent threat to resident safety within a common-interest community. Section 2(1)(d) also illustrates the broader drafting problem. Criminal statutes define specific offenses and their elements; the regulation does not identify which elements must be present or how a board is to determine that a criminal violation has occurred. As written, the provision effectively incorporates the penal code by reference rather than establishing the criteria the statute requires.

Taken together, the regulation attempts to define HSW through multiple unrelated legal frameworks—imminent harm, negligence, intent, nuisance law, criminal law, and the undefined concept of a "substantial adverse effect"—yet never actually defines HSW itself.

Section 2(2) – Speech Carve-Out Demonstrates Overbreadth

Section 2(2) states that certain conduct does not constitute an HSW violation if the sole basis for the violation involves foul language, expressions of opinion, nuisance conduct under governing documents, or otherwise lawful conduct. This raises an obvious question. If Section 2(1) already defines conduct posing an HSW, why is this carve-out necessary?

The answer in my assessment is the definition in Section 2(1) is so broad that the drafters felt compelled to reassure readers that ordinary speech would not trigger the HSW designation. The carve-out does not clarify the rule—it demonstrates that the scope of Section 2(1) is uncertain. By selectively excluding certain speech while leaving other forms of ordinary interpersonal conflict unaddressed, the regulation suggests that routine disputes between neighbors or criticism of association leadership could otherwise fall within the HSW framework unless specifically carved out.

The regulation also creates internal inconsistency. Several examples listed in Section 2(1)(d), such as harassment or threatening behavior, often involve verbal communication. Yet Section 2(2) simultaneously excludes certain forms of speech, including profanity and expressions of opinion. The result is an ambiguous standard in which the same conduct may be interpreted as protected speech or as harassment depending on how the rule is applied by the enforcing board.

Section 3 – Max fine and misstatement of appeal rights

Section 3 establishes a maximum fine of $10,000 for HSW violations but does not appear to link that maximum to any defined severity classifications or categories of violations. As written, the regulation would allow very different forms of conduct to be treated similarly for purposes of financial penalties. Providing clearer guidance regarding the relationship between severity and fine levels would improve consistency and reduce the risk of disproportionate enforcement.

Section 3 also states that any fine imposed pursuant to this section is subject to the "fine appeal provisions of NRS 116.31031." NRS 116.31031 contains no appeal provisions. The statute establishes procedural requirements governing notice, hearing, and the imposition of fines, but it does not create any statutory mechanism for appealing a fine once imposed. Referring to "fine appeal provisions" in NRS 116.31031 is therefore inaccurate and may create confusion regarding the procedural rights available to unit owners. If the intent is to reference the notice and hearing requirements contained in that statute, the regulation should state so directly. Otherwise, the regulation appears to reference an appeal process that does not exist in the statute.

Finally, NRS 116.31031(7) provides if a violation is not cured within 14 days it may be deemed a continuing violation, and additional fines may be imposed for each subsequent seven-day period. This is applicable to HSW violations. These additional fines may be imposed without further notice, opportunity to cure, or hearing, and are not subject to the normal statutory fine limitations.

Conclusion

Legislative history should inform the Commission's approach. In recent sessions, policymakers have rejected proposals that would have expanded association authority to address "bullying".[3] Administrative regulations should implement legislative policy, not expand it. If the HSW category is defined too broadly, the regulation risks creating an enforcement pathway that lawmakers have declined to authorize. With this as an example and others provide here, any regulatory definition should ensure that HSW remains confined to objectively identifiable safety hazards rather than conduct arising from interpersonal disputes between residents.

Unlike municipalities, homeowners associations are neither designed nor equipped to administer penalties of a public-law character. Any regulation implementing the HSW provision must therefore be carefully limited to ensure that the concept remains confined to clearly identifiable safety hazards within the scope of private association governance. Each proposed subsection should be revised to conform to legislative intent and to provide clear, objective criteria that prevent the category from evolving into a general enforcement mechanism. If the difficulty is structural rather than definitional, the appropriate solution lies with the Legislature, not regulatory expansion.

Thank you for your consideration.

/signed/

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atch: Dec 7, 2025 letter, Subj: Opposition to "Workshop" Agency Draft Proposal, Dec 9, 2025 CIC Commission Agneda #3.

[3] See SB 417(2023) & SB 433(2025)