

**ALLEN AVENUE SQUARE NORTH
HOMEOWNERS ASSOCIATION**

Election Rules and Voting Procedures

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Election Rules and Voting Procedures

The following Association election rules and voting procedures (Rules) are adopted by the Board of Directors, pursuant to Civil Code Section 5105.

These Rules govern association elections and voting and are intended to bring the Association into compliance with Civil Code Sections 5100 through 5145. These Rules also are intended to preserve the fairness of the Association's Membership voting process.

1. INSPECTORS OF ELECTION

A. Selection

- i. **By Board at First Meeting.** Inspectors of Election may be selected by the Board at the first Board meeting following an Annual Meeting of the Association. The Board shall meet in open session to select one (1) or three (3) Inspectors of Election of the Association for any elections up through and including the next Annual Meeting.
- ii. **By Board Prior to Any Election.** If the Board has not previously designated Inspectors of Election, at least thirty (30) days before any Association vote or election for the categories set forth in these rules, the Board shall designate one (1) or three (3) persons to serve as Inspectors of Elections.
- iii. **By Board to Fill Vacancy.** In the event one or more of the Inspectors of Election are unable or unwilling to serve out their term, or are unable or unwilling to serve in a particular vote or election, alternatively, the Board may fill the vacancy.
- iv. **By Members in Attendance.** If the Board of Directors has not appointed Inspectors of Election, then Inspectors of Election may be selected by the Members in attendance at a Membership voting meeting. If Inspectors are selected by the Members in attendance, the Members shall move to appoint one (1) or three (3) Inspectors, who must meet the inspector qualifications of these rules. The selection by the Membership of Inspectors of Election shall be upon a majority of those present.

B. Inspector Qualifications

- i.** An elections inspector may be a Member of the Association or may be an independent third-party non-member including but not limited to the following:
 - a.** Volunteer poll worker with the county registrar of voters;
 - b.** A licensee of the California Board of Accountancy; or
 - c.** A notary public; or
 - d.** A company specializing in association elections inspection and ballot counting.
- ii.** An elections inspector must not be a director or a candidate for any election, nor related by blood or marriage to any candidate for election.
- iii.** Inspectors must agree to familiarize themselves with these rules and to be present at any Membership voting meetings or ballot counting during their term.
- iv.** Inspectors must avoid any favoritism or partiality to any candidate or point of view and must be committed to conducting a fair and honest election, in full compliance with these rules.

C. Decisions

- i.** In the case of three (3) inspectors, they shall act by majority vote, and the decision or act of a majority shall be effective in all respects as the decision or act of all.
- ii.** Inspectors may appoint and oversee additional persons to count and tabulate votes as the Inspectors deem necessary and appropriate.

D. Duties; Inspectors of Election Shall:

- i. Perform their duties impartially, in good faith, to the best of his or her ability, and as expeditiously as is practical.
- ii. Determine the number of Memberships and the voting power of each, if necessary.
- iii. Determine the validity, authenticity and effect of proxies, if proxies are used.
- iv. Receive and hold ballots or direct where ballots are to be returned and held until votes are tallied.
- v. Hear and determine any challenges and questions regarding voting issues.
- vi. Open all secret ballot envelopes received, and tabulate all votes cast.
- vii. Determine the times for beginning and end of voting at meetings where votes will be tallied for the particular vote or election; however, the date, time and place of the meeting shall be determined by the Board of Directors.
- viii. Issue a report certifying the results of the election. The Inspectors report is prima facie evidence of the facts stated in the report.
- ix. Maintain custody of all ballots for the particular vote or election until they are turned over to the Association.
- x. Perform such acts as may be proper to conduct the election with fairness.

2. REQUIRED NOTICE, TIMING

- A.** Director elections shall be held at the end of each director's expiring term and at least every four (4) years.
- B.** At least thirty (30) days advance written notice must be given to the Membership of any meeting at which a Membership vote is to be taken.
- C.** General notice of the procedure and deadline for submitting candidate nominations shall be provided at least thirty (30) days before the candidate nomination deadline.
- D.** General notice of the following shall be given to the Members at least thirty (30) days before the ballots are distributed:
 - i.** The date, time and address for ballots to be returned.
 - ii.** The date, time and meeting location for ballot count.
 - iii.** The list of candidates whose names will appear on the ballot for a director election.

3. **NOMINATION PROCEDURES (Applicable Only to Meetings Electing Directors)**

- A. **Nomination Forms.** Approximately ninety (90) days before the date set for the Annual Meeting when director elections are to be held, candidate nomination forms will be available.
- B. **Deadline.** Completed Candidate nomination forms shall be returned by the due date, as directed, in order for the candidate to be included on the ballot.
- C. **Late Forms.** Any nomination form not timely received by the designated recipient will not be included in the secret written ballot procedure mailed in accordance with these rules.
- D. **Forms Content.** Completed candidate nomination forms shall include a representation that the nominated Member is a Member in good standing, meets all qualifications for Membership, and has agreed to place his or her name in nomination.
- E. **Candidate's Statement.** Completed candidate nomination forms may also include a candidate's statement or indicate that the candidate has declined to submit a statement. The Association shall distribute candidate statements as submitted and is not responsible for the content of any candidate statement submitted. If photographs are to be included, then equally sized photographs should be used for each candidate.
- F. **Result of Failure to Comply.** The names of candidates/nominees that do not follow the aforementioned procedures will not appear on the ballot.
- G. **Self-nominations.** A Member may nominate himself/herself, so long as the Member meets the qualifications to serve as a director. Nominations may not be made from the floor of the Meeting. Write-in candidates will not be considered.
- H. **Nominating Committee.** In the event a nominating committee is formed pursuant to the Association's Governing Documents, the committee shall comply with these procedures in addition to those set forth in the Governing Documents.

4. CANDIDATE QUALIFICATIONS

- A.** The Board of Directors is comprised of five (5) directors. Directors are elected for a term of one (1) year.

- B.** The qualification(s) to be a candidate for the Board are as follows:
 - i. The Candidate must be a Member of the Association.

 - ii. The Candidate must not be delinquent in the payment of assessments unless the candidate 1) has paid assessments under protest; 2) has entered an assessment payment plan; or 3) has not been provided an opportunity to engage in IDR.

 - iii. The Candidate's election must not result in two owners of a single separate interest serving on the Board at the same time.

 - iv. The Candidate must not have a prior criminal conviction which would prevent the Association from acquiring a fidelity bond or would result in the termination of the Association's existing fidelity bond.

5. CAMPAIGNING, CANDIDATE STATEMENTS, COMMON AREA ACCESS AND USE OF ASSOCIATION FUNDS

- A.** Any candidate for the Board, or any Member advocating a point of view on an issue which is to be voted upon, shall have equal access to any Association media, newsletters, or Internet Web sites during the campaign, for purposes that are reasonably related to the election or other vote which is being taken.
- B.** Equal Access shall be provided to all candidates and for all points of view, including those not endorsed by the board, for purposes that are reasonably related to the election.
- C.** The Association shall not edit or redact any content from any statement or election communication received from an owner. Any content published shall include the following statement:

“These statements are from the candidates themselves, and not the Association. Neither the Association nor the Board of Directors is responsible for or necessarily endorses any of the views expressed in these statements.”
- D.** All Members shall have equal access to any Common Area meeting space, during a campaign, at no cost, for purposes reasonably related to the election.
- E.** Association funds shall not be used for campaign purposes, (as defined in Civil Code Section 5135) in connection with any Board election or any other Association election except to the extent necessary to comply with duties of the Association imposed by law.

6. QUORUM

- A. **Quorum** is the minimum number of Members which must be participating in order to enable the Association to conduct a Members meeting, including tabulate ballots.
- B. In order for a Member to count as participating, and therefore be included in the quorum, a Member must either:
 - i. Personally attend.
 - ii. Submit a ballot pursuant to these rules in advance of the meeting or ballot counting.
- C. For purposes of this Association as set forth in the Bylaws, quorum is fifty percent (50%) of the Membership represented and entitled to vote. Quorum for an adjourned meeting is twenty-five percent (25%) of the voting power present in person or by proxy; however, for purposes of Special Assessment votes, pursuant to Civil Code Section 5605, quorum means more than fifty percent (50%) of the owners of the Association, notwithstanding any provision of the Governing Documents.
- D. All ballots returned in accordance with the voting instructions shall count for purposes of determining if quorum has been achieved for any particular vote or election.
- E. The existence of quorum shall be determined by the total of all ballots received in advance of the meeting, plus the total Members represented in person at any annual or special meeting held for purposes of the vote or election who have not previously returned ballots.
- F. Envelopes containing ballots cast prior to the meeting for counting shall not be opened for any reason but shall be date stamped or logged, organized and/or counted for quorum purposes only, prior to the tabulation by the Inspectors of Election.
- G. If quorum is not achieved, the meeting may be adjourned by the vote of a majority of votes represented in person, to a date according to the procedure set forth in the Governing Documents. The secret ballots received prior to the meeting at which the votes were to be counted shall be maintained in a location designated by the Inspectors of Election, unopened, in a secure location until the adjourned meeting date.

7. VOTING QUALIFICATIONS

- A. **No Splitting of Votes.** Each Unit is entitled to one vote on any matter for which a vote is taken. Fractional votes shall not be allowed.
- B. **Determination of Membership.** In the event of a discrepancy over the current owner(s), the owner(s) shall be determined by the latest recorded deed as of the date the written secret ballots were mailed to the owner(s).
- C. **Multiple Owners of Same Membership.** Where more than one person is identified as the record title owner, the vote for that separate interest shall be determined by all the owners. Only one ballot may be submitted on behalf of a separate interest. Any votes cast, with respect to any such Unit in violation of this provision, shall be null and void. Where multiple record owners of the same separate interest are unable to agree as to how their vote shall be cast, and cast multiple ballots on behalf of a separate interest, no vote shall be counted for the matter in question; however, the ballot shall be counted for quorum purposes only. If any record owner exercises the voting rights of a particular separate interest, it will be conclusively presumed for all purposes that the Owner was acting with the authority and consent of all other Owners of the same separate interest.
- D. **Cumulative Voting.** Cumulative voting is not permitted.
- E. **Multiple Ballots Cast on Same Membership.** Where more than one ballot is received for a single unit, the ballot shall not be tabulated for purposes of the particular vote or election; however, the Unit will be counted as voting for quorum purposes only.

8. SECRET BALLOT PROCEDURE

- A. Notwithstanding any other law or provision of the Governing Documents, the following matters shall be decided by secret ballot, in accordance with the procedures set forth herein.
- i. Election or recall of Directors;
 - ii. Assessments requiring Member approval.
 - iii. Amendments to the Governing Documents requiring Membership approval; and,
 - iv. Grant of exclusive use common area pursuant to Civil Code Section 4600.
- B. **Two Methods of Membership Decisions**

The Association may conduct the Membership votes specified above by either of two methods. Decisions may be accomplished by either a meeting of the Membership, or by a Membership voting by written ballot without a meeting. Membership votes to elect the Board of Directors shall be conducted in conjunction with the Annual Meeting.

In voting by written ballot without a meeting, the Members vote with written secret ballots and the secret ballots shall be opened in an open board meeting.

When voting in conjunction with a Membership meeting, Members may vote by ballots cast in advance of the meeting or may attend and cast a ballot in person.

- C. In either type of Membership vote or election, the following procedure shall be followed:
- i. Ballots and two (2) preaddressed envelopes with instructions on how to return ballots shall be mailed by first-class mail or delivered by the Association to every Member not less than thirty (30) days prior to the meeting date or, if the Membership is conducting a vote without a meeting, not less than thirty (30) days prior to the deadline for voting. **In order to preserve confidentiality, a voter may not be identified by name, address or Unit number on the ballot. The ballot itself shall not be signed by the voter.**

- ii. The ballot shall be inserted into an envelope and sealed (ballot envelope). The ballot envelope is then inserted into a second outer envelope that is sealed (outer envelope). In the upper left-hand corner of the outer envelope, the voter prints and signs his or her name. In addition, the outer envelope shall state the Member's address and shall indicate the Unit number that entitles him or her to vote.
- iii. The outer envelope is addressed to the Inspector or Inspectors of Election, or other designated ballot recipient who will be tabulating the votes. Each Member is responsible for submitting his or her envelope to the Inspector(s). The Member may mail the envelope or deliver it by hand to a location specified by the Inspector(s) of Election. The Member may request a receipt for any hand delivered ballot.
- iv. The sealed ballots shall remain in the custody of the Inspectors of Election or maintained at the location designated by the Inspectors until after said ballots are tabulated and custody has been transferred to the Association.
- v. Secret ballots received as specified by the Inspectors are irrevocable.
- vi. In the case of election to the Board of Directors, the ballots shall list all candidates in a uniform fashion. No preference or endorsements may be indicated.

9. Receipt, Handling, Care and Custody of Ballots

- A.** Prior to the mailing of the secret ballots to the owners, the Inspectors of Election and/or Board of Directors shall determine the location where the secret ballots are to be returned. The Inspectors or Board may designate the Association manager's address as the location for return of ballots.
- B.** Members may return their secret ballot in the following manner:
 - i.** By mail (it is the responsibility of the voting Member to mail it with sufficient time so as to be received by the Inspectors prior to the meeting.)
 - ii.** By hand delivery to the specified location; or
 - iii.** By hand delivery to the meeting at which the votes will be tabulated. Only ballots returned prior to the closing of voting shall be counted.
- C.** Upon receipt, the secret ballot envelope shall not be opened. Ballots received may be date stamped or otherwise noted with the date of receipt on the outer unopened envelope.
- D.** The sealed ballots at all times shall be in the custody of the Inspector or Inspectors of Election, or at the location designated by the Inspector or Inspectors, until after the tabulation of the vote, and transferred to the Association.

10. PROXIES

- A. Members, as an alternative to voting by written secret ballot, may grant their right to vote to another Member by use of a proxy, unless prohibited by the bylaws.
- B. Any Member may designate another person as their "proxy," giving that person the authority to appear at a Membership meeting and to vote on the Member's behalf.
- C. A general proxy need not be in any particular form, but must be:
 - i. Written;
 - ii. Dated;
 - iii. Signed by the giver of the proxy;
 - iv. State the Member is granting to another the right to vote the Member's interest in an association meeting.
- D. Any instruction given in a proxy issued for an election that directs the manner in which the proxy holder is to vote shall be set forth on a separate page of the proxy that can be detached and given to the proxy holder to retain.
- E. A proxy may be revoked at any time by the Member.
- F. Proxies granted for a specific meeting shall expire upon the conclusion of the stated meeting (or any postponement or adjournment of that meeting). If the proxy does not refer to a specific meeting, and does not state a specific expiration date, it shall expire eleven (11) months after the date it is executed by the Member.
- G. Proxy Holder must be designated in the proxy, must be in attendance, and, must vote as designated. If no one is designated on the proxy, the proxy is void.
- H. If a Member who has given his or her proxy attends the meeting and registers to vote, the proxy is void.
- I. If a Member previously submitted a written secret ballot, any proxies issued by that owner for purposes of that election are void.
- J. Dated proxies supersede undated proxies; Proxies dated later in time supersede earlier dated proxies; multiple proxies with the same date will be treated for quorum purposes only.
- K. Unless stated otherwise on the proxy, a proxy expires automatically after eleven (11) months. The maximum term of any proxy is three (3) years from the date of execution.
- L. Proxies must be submitted to the Inspector of Elections prior to the start of the meeting where a vote is to be taken.

11. GENERAL MEMBERSHIP MEETING VOTING PROCEDURES

- A.** The Inspector(s) of Election shall check in all Members attending the meeting where a vote is to be taken. The Inspector(s) of Election shall determine when to close registration and determine quorum.
- B.** Upon closure of registration of Members, and establishment of quorum, the matter to be voted upon shall be announced as per the Agenda for the meeting. The eligibility of a nominee to serve as a director may be determined by the Inspectors of Election, with the assistance of the Association's managing agent (if any).
- C.** The Inspector(s) of Election shall collect the ballots cast at the Meeting by Members. These ballots need not be placed in sealed envelopes but shall not contain any information identifying the Member casting the ballot.
- D.** After collection of the ballots cast at the Meeting, the Inspector(s) of Election shall close the voting and begin the process of counting the ballots.

12. COUNTING VOTES – VOTING WITHOUT A MEETING

The following procedures apply if a Membership vote is taken by written ballot only without a meeting of the Members:

- A. All votes shall be counted by the Inspector(s) of Election in public, at a properly noticed open meeting of the Board of Directors or Association Members.
- B. The times for opening and closing of voting, for Member registration and for cut off of registration at any meeting at which the tabulation of votes is to take place shall be determined by the Inspector(s) of Election.
- C. Any candidate or other Member of the Association may witness the counting of the votes; however, to avoid interference with the Inspectors and to ensure accuracy of the tabulation, no such person may come within five (5) feet of any Inspector(s) of Election while the votes are being counted.
- D. No person, including an Association Member or an employee of the management company, shall open or otherwise review any ballot prior to the time and place at which the ballots are counted and tabulated.
- E. The unopened envelopes containing the secret ballots may be counted prior to the vote tabulation for purposes of determining the presence of a quorum.
- F. Any secret ballot envelope that is opened prior to the tabulation by the Inspectors of Election will not be counted for purposes of the vote or election but will be counted for quorum purposes only.
- G. Where the name of the Unit number on the upper left hand corner of a returned secret ballot envelope differs from the name of the owner of record on file with the Association as of the date of the meeting, the envelope will not be opened and the ballot will not be counted, but the ballot will be counted for quorum purposes only.
- H. As ballots are counted, votes shall be recorded or tabulated in a procedure to be decided by the Inspector(s) of Election.
- I. In the event of any ballots which are disputed or unclear, those ballots shall be set aside until the counting of all other ballots is complete.
- J. If the ballots set aside would not affect the outcome of the election, the Inspector(s) need not take any further action regarding those ballots, but shall keep them separate from the other votes, and note in the tally the number of ballots which were not counted.

- K.** If the ballots set aside as disputed or unclear would affect the outcome of the election, the Inspector(s) shall review each of the ballots in question and shall by majority vote determine if the ballot shall be counted. The Inspectors shall reasonably attempt to give meaning to every ballot.
- i.** A ballot casting too many votes may not be counted.
 - ii.** A ballot may not be counted if it cannot be determined as to what the Member voted.
 - iii.** A ballot which contains writing or markings identifying the maker of the ballot shall not be rejected, but the Inspectors shall obliterate the writing or marking so that the ballot is secret and does not identify the maker.
 - v.** An envelope containing more than one ballot shall result in all ballots contained therein being disregarded. Owners with multiple Units shall place the ballot for each Unit in its own ballot envelope.
- L.** After determining ballots which were rejected, those ballots shall be separated from the ballots which were counted. The tally sheet shall indicate how many ballots were not counted but need not state the reasons for each ballot not counted.

13. COUNTING VOTES – GENERAL MEMBERSHIP MEETING VOTING PROCEDURES

The following procedures shall be followed when the Membership vote is taken in conjunction with a Membership meeting where ballots will be counted.

- A.** The times for opening and closing of voting, for Member registration and for cut off of registration at any meeting at which the tabulation of votes is to take place shall be determined by the Inspector(s) of Election.
- B.** Any candidate or other Member of the Association may witness the counting of the votes; however, to avoid interference with the Inspectors and to ensure accuracy of the tabulation, no such person may come within five (5) feet of any Inspector(s) of Election while the votes are being counted.
- C.** No person, including an Association Member or an employee of the management company, shall open or otherwise review any ballot prior to the time and place at which the ballots are counted and tabulated.
- D.** The unopened envelopes containing the secret ballots may be counted prior to the vote tabulation for purposes of determining the presence of a quorum.
- E.** Any secret ballot envelope that is opened prior to the tabulation by the Inspector(s) of Election will not be counted for purposes of the vote or election but will be counted for quorum purposes only.
- F.** Where the name of the Unit number on the upper left hand corner of a returned secret ballot differs from the name of the owner of record on file with the Association as of the date the ballots were mailed, the Ballot will not be counted, but will be counted for quorum purposes only.
- G.** As ballots are counted, votes shall be recorded or tabulated in a procedure to be decided by the Inspector(s) of Election.
- H.** In the event of any ballots which are disputed or unclear, those ballots shall be set aside until the counting of all other ballots is complete.
- I.** If the ballots set aside would not affect the outcome of the election, the Inspector(s) need not take any further action regarding those ballots, but shall keep them separate from the other votes, and note in the tally the number of ballots which were not counted.

- J.** If the ballots set aside as disputed or unclear would affect the outcome of the election, the Inspector(s) shall review each of the ballots in question and shall by majority vote determine if the ballot shall be counted. The Inspectors shall reasonably attempt to give meaning to every ballot.
- i.** A ballot casting too many votes may not be counted.
 - ii.** A ballot may not be counted if it cannot be determined as to what the Member voted.
 - iii.** A ballot which contains writing or markings identifying the maker of the ballot shall not be rejected, but the Inspectors shall obliterate the writing or marking so that the ballot is secret and does not identify the maker.
 - iv.** A ballot casting votes for a candidate not nominated shall be counted as to any votes it contains that were cast for nominees.
 - v.** An envelope containing more than one ballot shall result in all ballots contained therein being disregarded.
- K.** After determining ballots which were rejected, those ballots shall be separated from the ballots which were counted. The tally sheet shall indicate how many ballots were not counted, but need not state the reasons for each ballot not counted.

14. ANNOUNCEMENT OF RESULTS/TIE BREAKER

- A.** The results of the vote or election shall be promptly reported to the Board of Directors of the Association, shall be recorded in the minutes of the next meeting of the Board of Directors and shall be available for review by Members of the Association.

- B.** In the event of a tie between two candidates for election to the Board, unless the bylaws provide another method for a tie breaker, the winner will be determined by a coin toss. The coin toss shall be administered by one of the appointed elections inspectors. In the event of a tie among more than two candidates, the winner will be determined by drawing numbers. The winning candidate will be the candidate drawing the highest number from 1-10.

- C.** Within fifteen (15) days of the vote or election, the Board shall publicize the results of the election in a communication directed to all Members. This may be done by posting of a notice in the same manner in which other notices are posted by the Association.

15. RETENTION OF ELECTION RECORDS; INSPECTION

- A.** Election materials which include 1) returned ballots, 2) signed voter envelopes, 3) the voter list of names, parcel numbers, and voters to whom ballots were to be sent, and 4) candidate registration list ("Election Materials") shall be retained by the inspectors of election or at a location designated by the inspector(s) until after the tabulation of the vote, and until the time allowed by Section 5145 for challenging the election has expired, at which time custody shall be transferred to the Association. Signed voter envelopes may be inspected but shall not be copied.
- B.** When received by the Association, Election Materials shall be stored by the Association at the office of the managing agent, or with the Association Secretary, in a secure place in accordance with the time periods for producing Association records set forth in Civil Code 5210, after which the Election Materials may be discarded.
- C.** Any Member may inspect the election materials, upon reasonable notice to the Association's Managing Agent, or Secretary (in the event the Association does not at the time have a Managing Agent).
- D.** Under no circumstances shall the Inspector(s) of Election, the Association's Managing Agent, or the Secretary keep the election materials in a fashion which identifies the vote cast by any particular Member or otherwise which destroys the secrecy of the balloting.
- E.** In the event of a recount or other challenge to the election process, the Association shall, upon written request, make the ballots available for inspection and review by Association Members or their authorized representatives. Any recount shall be conducted in a manner that shall preserve the confidentiality of the vote.
- F.** If there is any cost to the inspection, such as photocopying charges or charges by the managing agent for accommodating the inspection, such cost shall not be borne by the Association but shall be paid by the requesting Member.

16. MEMBER OBLIGATION TO VERIFY VOTER LIST; CORRECTIONS

- A.** Pursuant to Civil Code Section 5105, any Member has the right to inspect the accuracy of their information on the voter's list prior to a ballot being distributed. The voter list shall include name, voting power, and either the physical address of the voter's separate interest, the parcel number, or both. The mailing address for the ballot shall be listed on the voter list if it differs from the physical address of the voter's separate interest or if only the parcel number is used ("voter list information").
- B.** An Owner's voter list information shall be made available for this purpose at least thirty (30) days before the ballots are distributed.
- C.** The Members shall report any errors or omissions in their voter list information to the inspector(s) of elections.
- D.** The inspector(s) of elections shall correct any voter list information errors reported within two (2) business days of the date reported.

CERTIFICATE OF SECRETARY

The herein Election Rules and Voting Procedures were adopted on October 21, 2021
by a vote of the Board of Directors.

Charles Chlipak
Signature of Secretary

Dated: October 22, 2021