

# **NEWPORT HILLS COMMUNITY ASSOCIATION**

## **ELECTION AND VOTING RULES AND REGULATIONS**

### **INTRODUCTION**

The Board of Directors (“Board”) of Newport Hills Community Association (“Association”) has adopted these Election and Voting Rules and Regulations (“Election Rules”), in accordance with Civil Code section 5105 et seq., to establish certain procedural rules for the successful management of meetings of the Association’s members (“Members”) and the implementation of the relevant provisions of the Association’s Bylaws concerning elections and voting. These Election Rules are not intended to replace or supersede the provisions of the Association’s Bylaws. Notwithstanding the foregoing, these Election Rules were revised and adopted by the Board to comply with the changes to California Civil Code sections 5100, 5105, 5110, 5115, 5125, and 5145 which took effect on January 1, 2020, pursuant to California Senate Bill 323, as well as new California Civil Code section 5103, which took effect January 1, 2022, and any subsequent amendments. As such, any inconsistency between these Election Rules and the Bylaws shall be governed in accordance with the Civil Code.

These Election Rules shall not be amended less than ninety (90) days prior to an election. All capitalized terms not defined herein shall have the same meaning as set forth in the Davis-Stirling Common Interest Development Act.

### **RULES AND REGULATIONS**

#### **1. Qualifications of Candidates and Directors/Elected Positions**

a. Candidates for election to the Board shall be Owners and Members of the Association, and the Board shall be composed of five (5) persons (“Directors”) who shall, at all times, be Members of the Association.

b. In order to be a candidate for election for Director or any other elected position, such Member, as of the date ballots are distributed: (a) must be current in the payment of regular and special assessments; (b) must not have a joint ownership interest, either directly or indirectly, in the same separate interest as another candidate or incumbent Director; (c) must have been a Member of the Association for not less than one (1) year; (d) must not have a past criminal conviction that, if elected, would either prevent the Association from purchasing the insurance coverage required by Civil Code section 5806, or terminate the Association’s existing insurance coverage required by Civil Code section 5806 as to that person should the person be elected. If title to a separate interest is held by a legal entity that is not a natural person, the governing authority of that legal entity shall have the power to appoint a natural person to be a Member

for purposes of running for and serving on the Board. Notwithstanding the foregoing, the candidate shall not be disqualified for election for Director for failure to be current in payment of regular and special assessments if either of the following circumstances is true:

- (i) The candidate has paid the regular or special assessment under protest pursuant to Civil Code section 5658;
- (ii) The candidate has entered into and is compliant with a payment plan pursuant to Civil Code section 5665.

Furthermore, the Association shall not disqualify the candidate pursuant to this Section 1(b) if he or she has not been provided the opportunity to engage in Internal Dispute Resolution pursuant to Civil Code sections 5900 through 5920.

c. In order to remain qualified to serve on the Board, at all times during such Member's term as a Director, the Member must: (a) remain current in the payment of regular and special assessments; (b) not enter into a joint ownership interest, either directly or indirectly, in the same separate interest as another Director; (c) must remain a Member of the Association; (d) must not be convicted of a crime that would either prevent the Association from purchasing the insurance coverage required by Civil Code section 5806 or terminate the Association's existing insurance coverage. Notwithstanding the foregoing, the Director shall not be disqualified for failure to be current in payment of regular and special assessments if either of the following circumstances is true:

- (i) The Director has paid the regular or special assessment under protest pursuant to Civil Code section 5658;
- (ii) The Director has entered into a payment plan pursuant to Civil Code section 5665.

Furthermore, the Association shall not disqualify the Director pursuant to this Section 1(c) if he or she has not been provided the opportunity to engage in Internal Dispute Resolution pursuant to Civil Code sections 5900 through 5920.

d. The Board may declare vacant the seat of any Director who ceases to meet the qualifications for a Director set forth in this Section upon the occurrence of the non-qualifying event, and the Director's seat shall then be deemed vacant in accordance with the Association's Bylaws and/or the Corporations Code.

## **2. Nomination Procedures**

- a. The Association shall provide to all Members by general delivery a request-for-

candidates form, seeking nominations for candidates for the Board and providing general notice of the procedure and deadline for submitting a nomination for election to the Board at least thirty (30) days before any deadline for submitting a nomination. Individual notice shall be delivered pursuant to Civil Code section 4040 if individual notice is requested by a Member. The requirements of this subsection shall only apply to elections of Directors and to recall elections.

b. Nominations will be valid so long as the nominee has either nominated himself or herself, or provides notice of acceptance of the nomination prior to the close of nominations.

c. If a person or entity nominated is not qualified to serve on the Board pursuant to Section 1(b) of these Election Rules, and the candidate has been provided the opportunity to engage in Internal Dispute Resolution pursuant to Civil Code sections 5900 through 5920, that candidate's name shall not appear on the ballot and that person or entity will not be permitted to serve if elected.

d. The Inspector shall retain, as Association election materials, both a candidate registration list and a voter list. The voter list shall include the name, voting power, and either the physical address of the Member'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 Member's separate interest or if only the parcel number is used. The Association shall permit Members to verify the accuracy of their individual information on both lists at least thirty (30) days before the ballots are distributed. The Association or Member shall report any errors or omissions to either list to the Inspector or Inspectors who shall make the corrections within two business days.

### **3. Voting Qualifications of Members**

a. All Members shall be entitled to vote in any membership vote.

b. These Election Rules expressly:

(i) Prohibit the denial of a ballot to a Member for any reason other than not being a Member at the time when ballots are distributed;

(ii) Prohibit the denial of a ballot to a person with general power of attorney for a Member;

(iii) Require the ballot of a person with general power of attorney for a Member to be counted if returned in a timely manner; and,

(iv) Require the Inspector or Inspectors of elections to deliver, or cause to be delivered, at least thirty (30) days before an election, to each Member both of the

following documents:

(A) The ballot or ballots;

(B) A copy of these Election Rules. Delivery of these Election Rules may be accomplished by either of the following methods:

(i) Posting these Election Rules to an internet website and including the corresponding internet website address on the ballot together with the phrase, in at least 12-point font: "The rules governing this election may be found here:"

(ii) Individual delivery.

c. Each Member shall be entitled to cast one (1) ballot per separate interest owned. In no event shall more than one (1) ballot be cast with respect to any separate interest. When more than one (1) person owns any separate interest, all such persons shall be deemed Members, provided however, that the vote for such separate interest shall be exercised as a separate interest, in accordance with the provisions of the Association's governing documents. If two or more ballots are received for any one separate interest, the first ballot received shall be counted and the additional ballot(s) discarded.

#### **4. Inspector of Election**

a. At an open meeting, the Board shall appoint one (1) or three (3) persons to serve as independent Inspector(s) of Election ("Inspector(s)").

b. The Inspector must be an independent third party who is not:

(i) Currently a member of the Board or a candidate for the Board;

(ii) Related to a member of the Board or a candidate for the Board; or

(iii) A person, business entity, or subdivision of a business entity who is currently employed or under contract to the Association for any compensable services other than serving as an Inspector of Elections.

c. The Board may select as the Inspector(s), Association Member(s), a volunteer poll worker with the County registrar of voters, a licensee of the California Board of Accountancy, a notary public, or any other independent third-party authorized to serve as Inspector(s) under these Election Rules.

d. The Board, in its discretion, may remove and replace the Inspector(s) at any time prior to the date of any election.

e. The Board may pay reasonable compensation to a non-Member third-party Inspector. If the Board determines that it will appoint and pay non-Member third-party Inspector, the following terms must be fulfilled:

- (i) A formal written contract for the Inspector, stating that the Inspector is an independent contractor;
- (ii) The Inspector will maintain insurance with at least \$1 million CGL coverage and \$1 million D&O/E&O (naming the Association and its management company as additional insureds on both policies); and
- (iii) The contract shall require the Inspector to indemnify the Association for gross negligence and willful and/or malicious misconduct.

f. If an Inspector is unwilling, unable, or does not perform his/her duties as stated in these rules or becomes ineligible to be an Inspector at any time after appointment, the Board may remove that Inspector without notice, and may appoint another Inspector in his or her place.

g. The Inspector shall perform his/her duties impartially, in good faith, to the best of his or her ability, and as expeditiously as is practical.

h. The Inspector shall have the duty to:

- (i) Determine the number of Members entitled to vote and the voting power of each;
- (ii) Determine the authenticity, validity, and effect of proxies, if required by statute;
- (iii) Receive ballots;
- (iv) Verify the Member's information and the presence of a signature on the outer envelope. For mailed ballots, the Inspector(s) may verify the Member's information and presence of a signature on the outer envelope prior to the election;
- (v) Determine the existence of a quorum, if required by statute or the governing documents. For the purposes of determining a quorum, each ballot received by the Inspector(s) shall be treated as a Member present,

except in the case of duplicate ballots or multiple ballots from the same separate interest;

- (vi) Hear and determine all challenges and questions in any way arising out of or in connection with the right to vote;
- (vii) Count and tabulate all votes;
- (viii) Determine when the polls shall close, consistent with the governing documents;
- (ix) Determine the tabulated results of the election;
- (x) Report the tabulated results of the election or balloting promptly to the Board of Directors to ensure that the Board can publicize the results to the homeowners within fifteen (15) days of the election; and
- (xi) Perform any acts as may be proper to conduct the election with fairness to all Members in accordance with Civil Code section 5110, the Corporations Code, and all applicable rules of the Association

i. The Inspector may meet and discuss election issues amongst themselves and/or with Association counsel.

j. If there are three (3) Inspectors, the decision or act of two (2) or more Inspectors shall be effective in all respects as the decision or act of all.

k. The Inspector may appoint and oversee additional persons to verify Members' information and signatures and to count and tabulate votes as the Inspector deems appropriate, provided that the persons are independent third parties who meet the requirements of Section 4(b) above.

l. The Inspector's report of the election, once signed to certify the election, is prima facie evidence of the facts stated in the report.

## **5. Access to Association Media**

a. No candidate or Member shall be provided access to Association media, newsletters, or internet web sites during the campaign except with the express consent of the Board, and solely for purposes that are reasonably related to that election. The Board's consent may be withheld at its sole discretion and for any reason.

b. In the event access to Association media, newsletter, or internet web sites is granted to any candidate or Member advocating a point of view, during any campaign for purposes that are reasonably related to that election, then all candidates and Members advocating a point of view, including those not endorsed by the Board, shall be provided equal access for purposes reasonably related to that election.

c. In the event access to Association media, newsletter, or internet websites is granted, the Association shall not censor, edit, or redact any content from the communications of the candidates and Members advocating a point of view, but may include a statement specifying that the candidate or Member, and not the Association, is responsible for the content of the message. The following statement may be published by the Association:

*“The views expressed are those of its author and do not reflect the view of the Association, its Directors, managers, employees, or agents. The author is solely responsible for its content. The Association was required by law to publish the communication as written, regardless of content.”*

## **6. Access to Common Area Meeting Space**

If any Common Area meeting space exists within the Association, access to such meeting space shall be made available at no cost to all candidates, including those who are not incumbents, and to all Members advocating a point of view, including those not endorsed by the Board, for purposes reasonably related to the election or vote, upon reasonable request.

## **7. Association Funds**

Association funds shall not be used for campaign purposes in connection with any election except to the extent necessary to comply with the duties of the Association imposed by law.

## **8. Proxies**

Voting by proxy shall be allowed. The Association shall not be required to prepare and distribute proxies. All proxies shall be in writing, dated, and filed with the Secretary before the appointed time of each meeting. Each proxy shall be revocable and shall automatically cease upon conveyance by the Member of his or her separate interest, or upon receipt of notice by the Secretary or the Board of the death or judicially declared incompetence of a Member, or upon the expiration of three (3) years from the date of the proxy. The authenticity, validity, and effect of proxies submitted by Members shall be determined by the Inspector(s), consistent with the Association’s governing documents and any statutory requirements. If a Member submits both a proxy and a ballot to the Inspector(s), the ballot shall supersede the proxy. Proxies may not be used in lieu of a ballot. Proxies may not be revoked once a proxyholder has submitted a ballot to the Inspector(s). Only a Member may serve as a proxyholder.

## **9. Voting Period**

a. The Board shall generally determine the dates upon which polls will open and close, consistent with the governing documents and applicable law.

b. For elections of Directors and for recall elections, the Association shall provide general notice of all of the following at least thirty (30) days before the ballots are distributed:

(i) The date and time by which, and the physical address where, the ballots are to be returned by mail or handed to the Inspector or Inspectors of Elections;

(ii) The date, time, and location of the meeting at which ballots will be counted;

(iii) The list of all candidates' names that will appear on the ballot;

(iv) Individual notice of the above shall be delivered pursuant to Civil Code section 4040 if individual notice is requested by a Member.

c. All candidates shall have a reasonable opportunity to communicate their qualifications to Members and to solicit votes.

## **10. Secret Balloting Procedures**

a. The Association shall utilize a secret ballot process pursuant to Civil Code section 5115 for the following matters:

(i) A vote of the membership regarding assessments per Civil Code section 5605;

(ii) Election of members of the Board;

(iii) Amendments to the governing documents;

(iv) Grant of Exclusive Use Common Area pursuant to Civil Code section 4600;

(v) Removal of Directors; and

(vi) Any other membership vote which the law requires to be conducted via the secret ballot process;



b. Notwithstanding Paragraph 10(a) herein, the Association may utilize a secret ballot process for any other membership vote, if allowed by law or the governing documents.

c. A ballot and two pre-addressed envelopes (Envelopes # 1 and # 2) with instructions on how to return the ballot shall be mailed by first-class mail or delivered by the Association to every Member at least thirty (30) days prior to the deadline for voting.

d. The ballot shall contain the names of any candidates known to the Association at the time the ballot is mailed. If no candidates are known or if there are fewer candidates than the number of Directors to be elected, the Association will send out a ballot which has the names of the known candidates.

e. Cumulative voting shall not be permitted.

f. Write-in candidates and nominations from the floor shall not be permitted.

g. A voter may not be identified by name, unit or lot number, or address on the ballot.

h. The ballot itself is not signed by the Member voting, but rather, is to be inserted into Envelope # 1 that is sealed by the Member. Envelope # 1 is then inserted into Envelope # 2, which is then sealed by the Member.

i. Envelope # 2 is addressed to the Inspector(s). In the upper left-hand corner of Envelope # 2, the voter shall sign his or her name, print his or her name, and indicate the address or separate interest identifier that entitles him or her to vote.

j. Envelope # 2 may be mailed or delivered by hand to a location specified by the Inspector(s). The Member may request a receipt for delivery.

k. Once a ballot has been cast, it cannot be revoked.

l. Only the Association's ballots and envelopes which are sent out to the membership by the Association or are provided by the Association at the membership meeting will be accepted by the Inspector(s).

## **11. Vote Tabulation**

a. All votes shall be counted and tabulated by the Inspector(s), or the duly authorized persons appointed by the Inspector(s), in public at a properly noticed membership meeting.

b. The ballots shall not be opened or otherwise reviewed prior to the time and place

which the ballots are counted and tabulated.

c. Any candidate or Member may witness the counting and tabulation of the votes. Members are prohibited from speaking to the Inspector(s) of Elections or their designee(s) during the tabulation process or from interrupting the tabulation process in any way.

d. The Inspector(s), or his or her designee, may verify the Member's information and signature on Envelope #2 prior to the meeting at which ballots are tabulated.

## **12. Failure to Meet Quorum**

Where the Association has failed to meet quorum for an election of directors as determined by the Inspector(s) of Elections, the Association may, but is not required to, adjourn to a subsequent meeting occurring at least twenty (20) days after the adjourned meeting. At the subsequent meeting, the required quorum shall be reduced to twenty percent (20%) of the voting members present in person, by proxy or by secret written ballot received as of the date of the adjourned meeting, provided the following notice requirements are met:

- a. The general notice of meeting, distributed at least thirty (30) days before the ballots are distributed, includes a statement that the board of directors may call a subsequent meeting at least twenty (20) days after a scheduled election if the required quorum is not reached, at which time the quorum of the membership to elect directors will be twenty percent (20%) of the association's members voting in person, by proxy, or by secret ballot; and
- b. The Association provides general notice of the membership meeting no less than fifteen (15) days prior to the subsequent meeting, which shall include:
  - i. The date, time and location of the meeting.
  - ii. The list of all candidates.
  - iii. A statement that 20 percent of the association present or voting by proxy or secret ballot will satisfy the quorum requirements for the election of directors and that the ballots will be counted if a quorum is reached, if the association's governing documents require a quorum.

## **13. Election Results**

a. The Inspector(s) shall promptly report the results of the election to the Board. The Board shall record the results of the election in the minutes of the next Board meeting and make them available to the Members for review.

b. Within fifteen (15) days of the election, the Board shall publicize the results of the election in a communication directed to all Members.

#### **14. Custody, Storage and Retention of Ballots**

a. The sealed ballots, signed voter envelopes, voter list, proxies, and candidate registration list (collectively referred to as “election materials”) shall, at all times be in the custody of the Inspector(s), or at a location designated by the Inspector(s), until after the tabulation of the vote, and until the time allowed by Civil Code section 5145 for challenging the election has expired, at which time the ballots shall be transferred to the Association. Pursuant to Civil Code section 5125 and Rule 10(j) herein above, the Association’s managing agent may be designated by the Inspector as the location which ballots are to be returned and where the election materials may be stored prior to the election and following the tabulation of the vote.

b. If there is a recount or other challenge to the election process, the Inspector(s) shall, upon written request, make the ballots available for inspection and review by an Association Member or his or her authorized representative. Any recount shall be conducted in a manner that preserves the confidentiality of the vote.

c. After the transfer of the ballots to the Association, the election materials shall be stored by the Association in a secure place for no less than three (3) years following the date of the election.

d. The Inspector shall retain, as Association election materials, both a candidate registration list and a voter list. The candidate list shall include the name and address of individuals nominated as candidates for election to the Board of Directors. The voter list shall include the 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.

#### **15. Uncontested Elections**

When, as of the deadline for submitting nominations, the number of qualified candidates is not more than the number of vacancies to be elected, as determined by the Inspector(s) of Elections, the Association may, but is not required to, consider the qualified candidates elected by acclamation if all of the following conditions have been met:

a. The Association has held a regular election for the Directors in the last three years. The three-year time period shall be calculated from the date ballots were due in the last full election to the start of voting for the proposed election.

b. The Association provided individual notice of the election and the procedure for nominating candidates as follows:

(i) An initial notice sent at least 90 days before the deadline for submitting nominations. The initial notice shall include all of the following:

(A) The number of Board positions that will be filled at the election.

(B) The deadline for submitting nominations.

(C) The manner in which nominations can be submitted.

(D) A statement informing Members that if, at the close of the time period for making nominations, there are the same number or fewer qualified candidates as there are Board positions to be filled, then the Board of Directors may, after voting to do so, seat the qualified candidates by acclamation without balloting.

(ii) A reminder notice sent between 7 and 30 days before the deadline for submitting nominations. The reminder notice shall include all of the following:

(A) The number of Board positions that will be filled at the election.

(B) The deadline for submitting nominations.

(C) The manner in which nominations can be submitted.

(D) A list of the names of all of the qualified candidates to fill the Board positions as of the date of the reminder notice.

(E) A statement reminding Members that if, at the close of the time period for making nominations, there are the same number or fewer qualified candidates as there are Board positions to be filled, then the Board may, after voting to do so, seat the qualified candidates by acclamation without balloting.

c. The Association provides, within seven business days of receiving a nomination, a written or electronic communication acknowledging the nomination to the Member who submitted the nomination.

d. The Association provides, within seven business days of receiving a nomination, a

written or electronic communication to the nominee, indicating either of the following:

(A) The nominee is a qualified candidate for the Board.

(B) The nominee is not a qualified candidate for the Board, the basis for the disqualification, and the procedure by which the nominee may appeal the disqualification.

(C) The Association may combine the written or electronic communication described above into a single written or electronic communication if the nominee and the nominator are the same person.

e. The Association must permit all candidates to run if nominated, except for nominees disqualified for running as provided for elsewhere in these Election Rules.

f. The Association may disqualify a nominee if the person has served the maximum number of terms or sequential terms allowed in the governing documents.

g. If the Association disqualifies a nominee, the Association shall also require all Directors to comply with the same requirements.

h. The Association's Board votes to consider the qualified candidates elected by acclamation at a meeting for which the agenda item reflects the name of each qualified candidate that will be seated by acclamation if the item is approved.

i. Whether to follow the above procedures and pursue an election by acclamation shall be within the sole discretion of the Board of Directors. Nothing herein shall obligate the Association to follow the election by acclamation procedures with respect to any Board election.