

# **ELECTION RULES MAGNOLIA PLACE HOMEOWNERS ASSOCIATION**

The following Election Rules for the Magnolia Place Homeowners Association (“Association”) are adopted pursuant to the Davis-Stirling Act, the Association’s Articles of Incorporation, Bylaws, and CC&Rs. These rules are intended to provide for fair elections and to comply and supplement with the aforementioned authorities. Unless otherwise stated, all capitalized terms shall be the same as provided for the CC&Rs. These Rules shall prevail over any inconsistent or contrary terms within the Association’s other governing documents.

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## I. VOTING RIGHTS

- A. Membership Voting Rights.** Ownership of a Unit shall give rise to a single membership vote on all matters presented to the members for voting. If more than one person owns a Unit, all owners shall be deemed to be one Member for voting purposes and shall cast one vote per Unit. Unless the Inspector of Elections receives a written objection prior to the close of balloting from a co-owner, it shall be conclusively presumed that the voting Member is acting with the consent of his or her co-owners. Cumulative voting is not allowed.
- B. Eligibility.** Only Members in good standing shall be entitled to vote at any membership meeting. Good standing shall mean a member is current in payment of all assessments and fees and is not in violation of any provisions of the Association's governing documents and subject to any suspension of privileges as a result of any disciplinary proceedings.
- C. Record Date.** Unless the Board sets a "Record Date" for an election, the Record Date shall be the date that ballots are mailed to the Membership. Only those Owners on title as of the Record Date shall be entitled to vote. Persons acquiring title to a Unit after the Record Date shall only be entitled to attend the election meeting.
- D. Proof of Membership.** No person or entity may exercise the rights of membership without an ownership interest in property subject to the Association's CC&Rs. If the board should request proof of ownership, such proof shall be in the form of a recorded deed or, if the property was transferred within the past thirty (30) days and a copy of the newly recorded deed is not available, a completed escrow closing statement.

## II. BALLOTS AND PROXIES

### A. Ballots

1. *Official Ballots/Non Revocable.* Only those ballots printed by the Association or the Inspector of Elections shall be considered official secret ballots. Official secret ballots shall be delivered by the Association to every Member. Voters cannot substitute their own ballots for official ballots. Once an official secret ballot has been received by an Inspector of Elections, it shall be irrevocable.
2. *Secret Ballot.* A vote of the membership shall be held by secret ballot for elections regarding assessments legally requiring a vote, election and removal of Directors, amendments to the governing documents, the grant of exclusive use of common area pursuant to Civil Code §4600, any other election required by the governing documents or determined by the chairman of a membership meeting, or when requested by 10% of the voting power present at a membership meeting. Secret ballot voting procedures are as follows:
  - a) Signature. The ballot should be filled out, but not signed by the voter.

- b) Inner Envelope. After the unsigned ballot is filled out, it must be inserted into an inner envelope which is then sealed. This sealed inner envelope must be inserted into a second envelope, which is also sealed.
  - c) Second Envelope. In the upper left hand corner of this second envelope, the voter must sign his or her name, indicate his or her name, and indicate the address or separate interest identifier that entitles him or her to vote. The second envelope must be addressed to the Inspector of Elections who will be tallying the votes.
  - d) Delivery. The envelope may be mailed to the address on the envelope or delivered by hand to a location specified by the Inspector of Elections. The member may request a receipt for delivery.
  - e) Ballot Delivery to Members. 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 deadline for voting. In order to preserve voter confidentiality, a voter may not be identified by name, address, or lot, parcel or unit number on the ballot
3. *Non-Secret Ballots*. Voting on other matters submitted to the Members for approval, written ballots will be distributed to all eligible members at least 30 days prior to the date set for voting and tabulation. All written ballots shall provide a reasonable time to return the ballots to the Association and shall state the date the ballots must be returned in order to be counted.
4. *Quorum by Ballot*. Each ballot received by an Inspector of Elections shall be treated as a member present at a meeting for purposes of establishing a quorum.
5. *Ballot Markings*. A ballot which contains any of the following symbols shall be counted and tabulated as if said symbol was the number "1": an "x", a checkmark, or any non-numerical symbolic designation indicating the voter's intent to vote for any particular candidate, issue or ballot measure. A ballot shall not be invalidated solely due to the inclusion of a signature thereon.

## **B. Proxies**

1. *Proxies*. Proxy voting is not allowed.

## **C. Approval Requirements**

1. Membership approval by written ballot shall be valid only if:
- a) The number of votes cast by ballot within the time established for return of the ballots equals or exceeds the quorum that would be required to be present at a membership meeting if such meeting had been convened to vote on the proposal;  
AND

- b) The number of affirmative votes equals or exceeds that number of affirmative votes that would have been required to approve the action at such a meeting.

### III. ELECTION OF DIRECTORS

- A. Qualifications.** The authorized number of Directors shall be five (5) elected by all members of the Association as whole and shall be Owners of Unit whose membership are in good standing. Good standing shall mean all assessments and fees are current and the individual is not subject to suspension of membership privileges for violation of any provisions of the Association's governing documents. Only one Owner per Unit may be eligible to serve on the board at any time.
- B. Term.** Board members shall serve two-year terms. Board members shall hold office until their respective successors are elected and qualified.
- C. Nominations.** Individuals can become candidates for election to the Board in accordance with the following procedures.
  - 1. *Nomination Committee.* The Board may, but is not required to, form a nomination committee tasked with nominating candidates to the Board of Directors.
  - 2. *Self-Nominations.* Per the timeline herein, the Association will send written notice to all Members to solicit nominations of candidates for election to the Board of Directors. The notice shall include the qualifications for election to the Board of Directors and a cutoff date for close of nominations, consistent with the Bylaws. Qualified candidates may nominate themselves, provided they submit their nomination prior to the date set for close of nominations.
  - 3. *Write-In Candidacy.* Any Member may place names in nomination by writing in names on the written ballot provided. Members may nominate themselves in the same fashion.
  - 4. *No Floor Nominations.* Nominations from the floor will not be received.
- D. Voting.** Members may vote for those candidates who have been properly nominated prior to close of nominations and any write-in candidate as provided herein. The candidates receiving the highest number of votes, up to the number of directors to be elected, shall be directors and take office immediately following their election. In the event there is a tie between the candidates with the lowest votes necessary to qualify, the tie shall be broken by drawing of lots.
- E. Timeline for Election of Directors.** Election of Directors will generally culminate with the close of business day before the Annual Meeting. At the Annual Meeting, ballots will be tabulated and results announced. These general timeline may govern the election of directors.
  - 1. *Mail Nomination Forms.* At least 60 days prior to the scheduled election, candidate nomination forms are distributed to the membership.

2. *Deadline to Return Forms.* Qualified candidates must return their nomination forms no later than 45 days prior to the scheduled meeting. Any forms received after this deadline will preclude the candidate from the election.
3. *Mailing Annual Election Packages.* At least 30 days prior to the scheduled election date, the official voting package is distributed to the membership.
4. *Notice of Election Results.* Within 15 days after the meeting, the results of the election are published to the membership.

#### **IV. CAMPAIGNING**

##### **A. Access to Media**

1. *No Use of Association Resources.* The Association's newsletter, website, bulletin board, or other Association media may not be used for campaign purposes.
2. *Exception.* If any candidate or member is provided access to Association newsletters, website, bulletin board or other Association media during an election, for purposes that are reasonably related to that election, equal access shall be provided to all candidates and members. The access shall be limited to information relating to that election, and shall include those candidates and members not endorsed by the board. The Association shall not edit or redact any content from these communications, but may include a statement specifying that the candidate or member, and not the Association, is responsible for that content. The Association and its directors, officers, and agents, shall be immune from liability for the content of those communications to the fullest extent provided by law.

##### **B. Use of Common Area**

1. *No Cost for Use.* The Association shall ensure access to the common area meeting space, if any exists, during a campaign, 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.
2. *Reservation.* Each candidate or member who wants to use the common area pursuant to this rule must make a reservation in advance of the date and time requested. Candidates' and members' requests to use the common area shall be granted on a first-come, first-served basis, provided that the area is not already reserved. In order to assure fairness, each candidate may not reserve or use the common area for more than two (2) hours on any particular date. In addition, each candidate and each member shall only be allowed to make one (1) reservation per day to use the common area.

- C. No Use of Association Funds for Campaign Purposes.** Association funds shall not be used for campaign purposes in connection with any Association board election. Funds of the Association shall not be used for campaign purposes in connection with any other Association election except to the extent necessary to comply with duties of the

Association imposed by law. For the purposes of this section, “campaign purposes” includes, but is not limited to, the following:

1. Expressly advocating the election or defeat of any candidate that is on the Association election ballot.
2. Including the photograph or prominently featuring the name of any candidate on a communication from the Association or its Board, excepting the ballot, ballot materials, or a communication that is legally required, within 30 days of an election. This is not a campaign purpose if the communication is one for which the Association must provide equal access to another candidate or advocate.
3. (The restrictions of this Section do not preclude Directors, in their capacity as a Member, from advocating the election or defeat of any issue or candidate on the ballot. However, they may not use Association funds to do so.)

## V. MEMBERSHIP MEETINGS FOR VOTING

- A. **Chair of Meeting.** The President of the Board shall call the membership or Board meeting to order and shall chair the meeting unless a majority of the Board selects another person to chair the meeting.
- B. **Quorum.** Quorum shall be fifty percent (50%) of the Voting Power of the Association. Quorum is required for all Membership meetings, except there shall be no Quorum requirement (i) for the election of Directors as provided for in the provision of these. Bylaws entitled “No Quorum for Electing Directors ” and (ii) for the approval of an IRS Resolution that any excess income for the current year shall be applied to the next fiscal year, as provided by IRS Revenue Ruling 70-604, and (iii) for the approval by the Members of any restatement or amendment of the Association’s CC&Rs or Bylaws which require the approval of at least a majority of all the voting power of the Association. The approval requirement for all matters shall be a majority of those Members represented and voting at a duly held election at which a Quorum is present, unless specified otherwise in a specific provision.
- C. **Loss of Quorum.** The Members represent at a duly called election at which a quorum is present may continue to transact business until adjournment, notwithstanding the loss of a quorum, so long as the business is approved by enough Members to constitute at least a majority of a quorum, had a quorum been present.
- D. **Lack of Quorum.** In the absence of a quorum at a membership meeting, no business may be transacted except to adjourn the meeting to another date and time. A majority of the Members present and entitled to vote may adjourn the meeting, if at any meeting of the Association a quorum is not present.
- E. **Adjournment.** Any membership meeting, whether or not a Quorum is present, may be adjourned from time to time by the vote of the majority of the Members represented at the meeting; provided, however, an adjournment for lack of a Quorum shall be to a date

not more than thirty (30) days from the date the original meeting was called. In the absence of a Quorum, no business may be transacted, except to adjourn the meeting to another date and time. If a new date for the adjourned meeting is announced prior to adjournment, no further notice need be given to the membership. If, however, a new date is not announced prior to adjournment, the Board President (or the remaining Directors, in the President's absence or failure to act) may set the date for a subsequent meeting and shall cause written notice of the date, time, and place of such meeting to be given to the Members at least four (4) days in advance of the meeting. Quorum for adjourned meetings shall not be less than twenty-five percent (25%) of the Voting Power (except for recall elections which shall not have reduced Quorum).

- F. Counting Ballots.** All votes shall be counted and tabulated by the Inspector of Elections, or the designee of the Inspector of Elections, in public at a properly noticed open meeting of the Board or Members. Any candidate or other Member of the Association may witness the counting and tabulation of the votes. No person, including a member of the Association 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.

## **VI. INSPECTOR OF ELECTIONS**

### **A. Selection**

1. *Process.* The Board of Directors shall select either one (1) or three (3) persons as Inspector of Elections.
2. *Eligible Inspectors.* The following may serve as Inspector of Elections:
  - a) Poll Worker. A volunteer poll worker with the County Registrar of Voters;
  - b) Accountant. A licensee of the California Board of Accountancy, including any such licensee under contract to the Association;
  - c) Notary. A notary public;
  - d) Recording Secretary. A recording secretary, including any such recording secretary under contract to the Association;
  - e) Association Members. Members of the Association, but not: (i) members of the Board, (ii) candidates for the Board, (iii) persons related to a member of the Board, or (iv) persons related to a candidate for the Board;
  - f) Person or Entity Under Contract to the Association. A person, business entity, or subdivision of a business entity who is currently employed or under contract to the Association for any compensable services;
  - g) Management Company Representative. Representatives of any management company under contract to the Association.

**B. Duties.** The duties of Inspector of Elections shall include the following

1. *Membership.* Determine the number of memberships entitled to vote and the voting power of each.
2. *Validity of Proxies.* Determine the authenticity, validity, and effect of proxies, if any.
3. *Receive Ballots.* Receive all ballots. Once a secret ballot has been received by an Inspector of Elections, it shall be irrevocable
4. *Closing and Reopening of Polls.* Determine when the polls shall close and determine whether to reopen the polls to allow members to cast a ballot after the polls have been closed, consistent with the governing documents.
5. *Custody.* The sealed ballots at all times shall be in the custody of the Inspector of Elections or at a location designated by the inspector until after the tabulation of the vote, and until the time allowed by Civil Code §5145 or as amended for challenging the election has expired, at which time custody shall be transferred to the Association.
6. *Challenges.* Hear and determine all challenges and questions in any way arising out of or in connection with the right to vote. If there is a recount or other challenge to the election process, the Inspector shall, upon written request, make the ballots available for inspection and review by an Association Member or the Member's authorized representative. Any recount shall be conducted in a manner that preserves the confidentiality of the vote.
7. *Verification of Signatures.* The Inspector of Elections, or his or her designee, may verify the Member's information and signature on the outer envelope prior to the meeting at which ballots are tabulated. However, no person, including a Member of the Association 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.
8. *Counting.* Count and tabulate all votes. All votes shall be counted and tabulated by an Inspector of Elections, or his or her designee, in public, at a properly noticed open meeting of the Board of Directors or Members. Any candidate or other member of the Association may witness the counting and tabulation of the votes.
9. *Appoint Assistants.* Appoint and oversee additional independent third parties to verify signatures, and to count and tabulate votes as the Inspector of Elections deem appropriate provided that such persons are independent third parties.
10. *Results.* Determine the tabulated results of the election.
11. *Majority Rule.* If there are three Inspector of Elections, the decision or act of a majority shall be effective in all respects as the decision or act of all.



**12. *Impartiality.*** Perform their duties impartially, in good faith, to the best of their ability, and as expeditiously as is practical. Any report made by the Inspector of Elections is prima facie evidence of the facts stated in the report.

**13. *Miscellaneous.*** Perform any acts as may be proper to conduct the election with fairness to all Members in accordance with the Davis-Stirling Act, the Corporations Code, the Association's governing documents, and all applicable rules of the Association regarding conduct of the election that are not in conflict with the Davis-Stirling Act.

**C. *Removal.*** The Board shall have the power to remove an inspector who ceases to meet the required qualifications as provided for in the Bylaws, is unable or unwilling to perform their duties, or for other good reason, and to appoint a new inspector in his/her place.

## **VII. POST-ELECTION RESULTS**

**A. *Results of the Election.*** The tabulated results of the election shall be promptly reported to the Board and shall be recorded in the minutes of the next meeting of the Board and shall be available for review by Members of the Association. Within 15 days of the election, the Board shall give general notice pursuant to Civil Code §4045 of the tabulated results of the election.

**B. *Status of the Ballots after Election.*** The sealed ballots at all times shall be in the custody of the Inspector of Elections or at a location designated by the Inspector until after the tabulation of the vote, and until the time allowed by Civil Code §5145 or amended for challenging the election has expired, at which time custody shall be transferred to the Association.

**C. *Election Recount.*** If there is a recount or other challenge to the election process, the Inspector of Elections shall, upon written request, make the ballots available for inspection and review by an Association member or the member's authorized representative. Any recount shall be conducted in a manner that preserves the confidentiality of the vote. The recount may be observed by Members of the Association. No election materials may be touched or handled by any person without the express consent of the Inspector of Elections and under the supervision of the Inspector. The results of the recount shall be reported to the Board of Directors and within 15 days of the election, the Board shall give general notice pursuant to Civil Code §4045 of the tabulated results of the recount.