

## **THE BARRON SQUARE HOMEOWNERS ASSOCIATION**

### **Secret Ballot Election and Voting Rules (Adopted on February 16, 2020)**

These Secret Ballot Election and Voting Rules (these “**Election Rules**”) have been prepared for The Barron Square Homeowners Association (the “**Association**”) pursuant to California *Civil Code* section 5105.

#### **Defined Terms**

When used in these Election Rules, the following capitalized terms shall have the meanings given to them below.

“**Ballot**” shall mean a secret ballot used in an Association election conducted in accordance with the procedures set forth in these Election Rules.

“**Board**” shall mean the board of directors of the Association.

“**Bylaws**” shall mean *Restated Bylaws of The Barron Square Homeowners Association* adopted on February 16, 2005, as may be amended from time to time.

“**Candidate**” shall mean a candidate nominated for election to the Board.

“**Declaration**” shall mean the *Restated Declaration of Covenants, Conditions and Restrictions of The Barron Square Homeowners Association* recorded on May 17, 2005 as document number 18374181 in the official records of Santa Clara County, California, as may be amended from time to time.

“**Director**” shall mean a natural person who serves on the Board.

“**Governing Documents**” shall mean the Declaration and any other documents, such as the Bylaws, operating rules of the Association, and the Association’s articles of incorporation, which govern the operation of the Property or the Association.

“**Inspector of Elections**” shall mean a person who acts as an inspector of elections in an Association election conducted in accordance with the procedures set forth in these Election Rules.

“**Member**” shall mean a member of the Association.

“**Property**” shall mean the “Barron Square” condominium project managed by the Association.

## **Introduction**

California *Civil Code* section 5100 requires that certain types of Member votes be held by a secret ballot procedure, including elections relating to the following topics: (1) regular assessment increases legally requiring a vote and the levy of special assessments legally requiring a vote; (2) the election and removal of Directors; (3) amendments to the Governing Documents; and (4) the grant of exclusive use of a portion of the common area of the Property to a Member. Additionally, California *Civil Code* section 5105 requires that the Association adopt operating rules that include specific provisions relating to that secret ballot voting procedure. These Election Rules were drafted to reflect and comply with those statutory requirements.

## **Equal Access to Association Media**

If any Candidate or Member advocating a point of view is provided access to Association media, newsletters, or internet websites during a campaign, for purposes that are reasonably related to that election, equal access shall be provided to all Candidates and Members advocating a point of view (including those not endorsed by the Board) for purposes that are reasonably related to that election. 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 foregoing requirements shall not be interpreted as obligating the Association to automatically provide Candidates or Members with access to Association media, newsletters, or internet websites during a campaign, and whether to do so will be decided by the Board in its sole discretion with respect to each individual election.

## **Equal Access to Common Area Meeting Space**

The Association shall ensure access to 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 that election. The foregoing requirement shall not be interpreted as obligating the Association to provide access to any common area meeting space at times when the space is normally and customarily utilized for other Association or community purposes. The use of any common area meeting space relating to an election shall be subject to provisions of the Governing Documents regarding the use of such space; provided, however, a Candidate or Member shall not be required to pay a fee, make a deposit, obtain liability insurance, or pay the premium or deductible on the Association's insurance policy in order to use the common area meeting space.

## **Qualifications for Candidates for the Board**

*Candidate Qualifications.* The Association shall hold an election for a seat on the Board at the expiration of the corresponding Director's term. The following qualifications apply for a person to be nominated as a Candidate for the Board:

1. The person must be a Member at the time of nomination; if title to a unit 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 the foregoing.
2. The person must be current in the payment of regular and special assessments.
3. The Candidate, if elected, would not be serving on the Board at the same time as another person who holds a joint ownership interest in the same unit as the Candidate and the other person is either properly nominated for the then current election or is an incumbent Director.
4. The person must not have a past criminal conviction that would, if the person is elected, either prevent the Association from purchasing the fidelity bond coverage required by California *Civil Code* section 5806 or terminate the Association's then existing fidelity bond coverage.

Any other Candidate qualifications set forth in the Bylaws or other Governing Documents are not applicable or enforceable, except to the extent provided by law.

*Conditions to Candidate Disqualification.* The Association shall disqualify a person from nomination as a Candidate if he or she does not meet the foregoing qualifications, subject to the following conditions:

- While the Association may disqualify a person from nomination to the Board for nonpayment of regular and special assessments, the Association may not disqualify a nominee for nonpayment of fines, fines renamed as assessments, collection charges, late charges, or costs levied by a third party. Further, a person shall not be disqualified from nomination to the Board for failure to be current in the payment of regular and special assessments if either of the following circumstances is true: (i) the person has paid the regular or special assessment under protest pursuant to California *Civil Code* section 5658; or (ii) the person has entered into a payment plan with the Association for the regular or special assessment pursuant to California *Civil Code* section 5665.
- The Association shall not disqualify a person from nomination to the Board if the person has not first been provided the opportunity to engage in internal dispute resolution with the Association pursuant to California *Civil Code* section 5900 et seq.

### **Procedures for the Nomination of Candidates**

*Election Cycle.* The Board is comprised of five Directors who serve two-year staggered terms. Three Directors are elected in even-numbered calendar years, and two Directors are elected in odd-numbered calendar years.

*Notice of the Procedure and Deadline for Nominations.* The Association shall provide the Members general notice of the procedure and deadline for submitting a nomination at least 30 days before any deadline for submitting a nomination. Individual notice of that procedure and deadline shall be delivered to a Member if individual notice is requested by the Member.

*Member Self-Nomination.* Any Member may “self-nominate” himself or herself for election to the Board. A Member desiring to nominate himself or herself as a Candidate must: (1) satisfy the qualifications for Candidates in effect at the time the Member’s candidacy is proposed; and (2) present written notice to the Board of his or her desire to self-nominate for a Board election on or before the nomination deadline established by the Association for that election and in accordance with such procedures that the Association may have adopted for the election.

*Nominations from the Floor.* Nominations from the floor shall be permitted at each annual/Board election meeting, as provided in Section 4.2 of the Bylaws. A Candidate nominated from the floor must satisfy the qualifications for Candidates in effect at the time the Member’s candidacy is proposed in order to serve on the Board.

*Write-In Candidates.* Write-in Candidates shall be permitted in any Director election; a write-in Candidate is a Candidate in an election whose name does not appear on the Ballot, but for whom voters may vote nonetheless by writing in the person’s name. A Candidate nominated by write-in must satisfy the qualifications for Candidates in effect at the time the Member’s candidacy is proposed in order to serve on the Board.

*Candidate Communication.* For each Director election, the Board shall provide a reasonable opportunity for Candidates to communicate their qualifications to the Members and to solicit votes.

### **Voting Power of Each Membership**

Each Member is entitled to cast one vote for each unit in the Property that the Member owns.

### **Authenticity, Validity, and Effect of Proxies**

*Definitions.* For purposes of this section, the following definitions shall apply: (1) “**proxy**” means a written authorization signed by a Member or the authorized representative of the Member that gives another Member or Members the power to vote on behalf of that Member; and (2) “**signed**” means the placing of the authorizing Member's name on the proxy (whether by manual signature, typewriting, telegraphic transmission, or otherwise) by that Member or the authorized representative of that Member.

*Use of Proxies.* The use of proxies is permitted under Section 3.5 of the Bylaws. Proxies shall not be construed or used in lieu of a Ballot. Members may use proxies if those proxies meet the

requirements of applicable law and the Governing Documents, but the Association shall not be required to prepare or distribute proxies.

*Casting of Votes by Proxy.* Any instruction given in a proxy issued for an election that directs the manner in which the proxyholder is to cast the vote shall be set forth on a separate page of the proxy that can be detached and given to the proxyholder to retain. The proxyholder shall cast the Member's vote by secret Ballot. The proxy may be revoked by the Member prior to the receipt of the Ballot by the Inspector of Elections, as described in California *Corporations Code* section 7613.

### **Voting Period for Elections**

Ballots shall be distributed to all Members not less than 30 days prior to the deadline for voting. The times at which polls will open and close will be noted on the Ballots and/or on materials enclosed with the Ballots.

### **Inspector(s) of Elections**

*Appointment.* The Board shall select and appoint one or three independent third parties as an Inspector(s) of Elections.

- An Inspector of Elections may be, for example only, a volunteer poll worker with the county registrar of voters, a licensee of the California Board of Accountancy, or a notary public.
- An Inspector of Elections may also be a Member, but may not be a Director or a Candidate or be related to a Director or to a Candidate.
- An Inspector of Elections may not be 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.

*Duties.* The Inspector(s) of Elections shall do all of the following: (1) determine the number of memberships entitled to vote and the voting power of each; (2) receive Ballots; (3) hear and determine all challenges and questions in any way arising out of or in connection with the right to vote; (4) count and tabulate all votes; (5) determine when the polls shall close, consistent with the Governing Documents; (6) determine the tabulated results of the election; and (7) perform any acts as may be proper to conduct the election with fairness to all Members in accordance with California *Civil Code* section 5100 et seq., the California *Corporations Code*, and these Election Rules. In addition, the Inspector(s) of Elections shall determine the authenticity, validity, and effect of proxies, if any.

*Performance of Duties.* An Inspector of Elections shall perform all of his or her duties impartially, in good faith, to the best of his or her ability, as expeditiously as is practical, and in a manner that protects the interest of all Members. If there are three Inspectors of Elections, the decision or act of a majority of the Inspectors of Elections shall be effective in all respects as the decision or act of all. Any report made by Inspector(s) of Elections is *prima facie* evidence of the facts stated in the report; in other words, the determinations made by the Inspector(s) of Elections are accepted as correct until proved otherwise.

*Assistants.* The Inspector(s) of Elections may appoint and oversee additional persons to verify signatures and to count and tabulate votes as he or she (or they) deem appropriate, provided that such additional persons are independent third parties.

### **Candidate Registration List and Voter List**

The Association shall require retention of, as Association election materials, both a Candidate registration list and a voter list. The voter list shall include name, voting power, and either the physical address of the voter's unit, 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 unit 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 30 days before the Ballots are distributed. The Association or Member shall report any errors or omissions to either list to the Inspector(s) of Elections who shall make the corrections within two business days.

### **Ballot Requirements**

*Notice of Ballot Information.* The Association shall provide general notice of all of the following at least 30 days before Ballots are distributed for an election: (1) the date and time by which, and the physical address where, Ballots are to be returned by mail or handed to the Inspector(s) of elections; (2) the date, time, and location of the meeting at which the Ballots will be counted; and (3) the list of all Candidates' names that will appear on the Ballot. Individual notice of the foregoing information shall be delivered to a Member if individual notice is requested by the Member.

*Listing of Candidate Names on Ballot.* Candidates' names shall be listed on the Ballot alphabetically by last name, and note if the Candidate is an incumbent.

*Denial of a Ballot.* A ballot shall not be denied to a Member for any reason other than not being a Member at the time when Ballots are distributed.

*Power of Attorney for a Member.* A ballot shall not be denied to a person with general power of attorney for a Member. The ballot of a person with general power of attorney for a Member shall be counted if returned in a timely manner.

*Delivery of Ballot and Election Rules.* The Inspector(s) of Elections shall deliver, or cause to be delivered, at least 30 days before an election to each Member both of the following documents: (1) the Ballot or Ballots; and (2) 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 following phrase, in at least 12-point font: "The rules governing this election may be found here:"; or by (ii) individual delivery.

### **Secret Ballot Procedures**

*Voting Procedures.* Following are the procedures to be used for secret ballot voting conducted pursuant to these Election Rules:

1. Ballots and two pre-addressed 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 30 days before the deadline for voting.
2. In order to preserve confidentiality, a voter may not be identified by name, address, or lot, parcel, or unit number on the Ballot.
3. The Association will use as a model those procedures used by California counties for ensuring confidentiality of vote by mail ballots, including all of the following:
  - a. The Ballot itself is not signed by the voter, but is inserted into an envelope (the "**Ballot Envelope**") that is sealed. The Ballot Envelope is inserted into a second envelope (the "**Outer Envelope**") that is sealed. In the upper left-hand corner of the Outer Envelope, the voter shall sign his or her name, write his or her name, and write the address or unit identifier within the Property that entitles the voter to vote; the Association may, in its sole discretion, provide an Outer Envelope to a Member that includes the voter's name and address, or name and unit identifier, typewritten or otherwise placed on the Outer Envelope, requiring the Member to only sign the Outer Envelope in the correct area.
  - b. The Outer Envelope will be addressed to the Inspector(s) of Elections, who will be tallying the votes. The Outer Envelope (containing the Ballot and the Ballot Envelope) may be mailed or delivered by hand to the location specified by the Inspector(s) of Elections for the return of Ballots, and a Member may request a receipt for delivery of his or her Ballot.

*Quorum.* A quorum shall be required only if so stated in the Governing Documents or provisions of law. If a quorum is required by the Governing Documents, each Ballot received by the Inspector(s) of Elections shall be treated as a Member present at a meeting for purposes of establishing a quorum.

*Cumulative Voting.* Pursuant to Section 4.3 of the Bylaws, cumulative voting is not permitted in any Director election.

*Conduct of Election by Mail.* Except for the meeting to count the votes, an election may be conducted entirely by mail unless otherwise specified in the Governing Documents.

*Governing Document Amendments.* In an election to approve an amendment of the Governing Documents, the text of the proposed amendment shall be delivered to the Members with the Ballot.

### **Counting of Ballots**

*Vote Count and Tabulation.* All votes shall be counted and tabulated by the Inspector(s) of Elections, or the designee of the Inspector(s) 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 or an employee of the Association's management company, shall open or otherwise review any Ballot prior to the time and place at which the Ballots are counted and tabulated; however, the Inspector(s) of Elections, or the designee of the Inspector(s) of Elections, may verify a Member's information and signature on the Outer Envelope prior to the meeting at which Ballots are tabulated. Once a Ballot is received by the Inspector(s) of Elections, it shall be irrevocable.

*Announcement of Results.* 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 the Members. Within 15 days of the election, the Board shall give the Members general notice of the tabulated results of the election.

### **Determination of Director Election Results; Succession to Office**

*Elected Candidates.* The Candidates receiving the highest number of votes, up to the number of vacancies to be filled in a Director election, shall be elected as Directors and shall take office immediately following their election.

*Tied Votes.* Except to the extent applicable law or the Governing Documents requires that a run-off election be conducted in the event there is a tie vote between Candidates, the tie shall be broken by an immediate random drawing of lots/straws or coin toss conducted by the Inspector(s) of Elections and the winner(s) shall be elected as a Directors and take office immediately following the occurrence of the tie-breaker.

*Withdrawal of Candidates.* If a Candidate withdraws his or her candidacy from an election after Ballots have been distributed to the Members for an election, such withdrawal shall not be cause for cancellation of the election, even though one or more Members may have already mailed



their completed Ballot to the Inspector(s) of Elections. If such a former Candidate receives enough votes such that he or she would have been elected to the Board, that former Candidate shall not be elected to the Board and the Candidate receiving the next highest number of votes shall be elected to the Board instead.

*Election by Acclamation.* Except to the extent permitted by California *Civil Code* section 5100 et seq., election by acclamation is not permitted in any Director election. For purposes of the foregoing, “election by acclamation” is when, as of the close of nominations for Directors on the Board, the number of Director nominees is not more than the number of vacancies to be elected, as determined by the Inspector(s) of Elections, and the Director nominees are considered elected to the Board without an election by Ballot.

### **Custody of Ballots**

The sealed Ballots, signed voter envelopes, voter list, proxies (if any), and Candidate registration list shall at all times be in the custody of the Inspector(s) of Elections or at a location designated by the Inspector(s) of Elections until after the tabulation of the vote, and until the time allowed by California *Civil Code* section 5145 for challenging the election has expired, at which time custody shall be transferred to the Association. If there is a recount or other challenge to the election process, the Inspector(s) of Elections shall, upon written request, make the Ballots available for inspection and review by a Member or the Member's authorized representative. Any recount shall be conducted in a manner that preserves the confidentiality of the vote.

### **Prohibition of Association Funds for Campaign Purposes**

Association funds shall not be used for campaign purposes in connection with any Board election. In addition, 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.

### **Conflicts with Bylaws**

These Election Rules are intended to conform to and comply with California *Civil Code* section 5100 et seq. To the extent of any conflict between the provisions of these Election Rules and the provisions set forth in the Bylaws or other Governing Documents, the provisions of these Election Rules shall control to the extent the provisions of these Election Rules were adopted to comply with requirements under the law.

### **Effective Date of these Election Rules**

These Election Rules become effective on January 1, 2020 or on the date of adoption, whichever is later, and shall supersede all previously adopted election rules of the Association.

### **Amendment of these Election Rules**

Commencing as of January 1, 2020, these Election Rules shall not be amended less than 90 days prior to an election.

[End]