

# MERIT PARK HOME OWNERS ASSOCIATION ELECTION RULES

## Adopted December 21, 2020

The procedure set forth herein is pursuant to California Civil Code sections 5100-5135 for use by **Merit Park Home Owners Association** ("Association") at any time the Members of the Association are called upon to vote for the election of Directors, or on any other issue on which Civil Code 5100(a) requires the secret ballot process.

### 1. Election Campaigns

- a. The Association shall ensure that, 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 the election. The Association shall not edit or redact any content from these communications, but it may include a statement specifying that the Candidate or Member, and not the Association, is responsible for that content.
- b. If the Association provides any access, there shall be equal access afforded to common area meeting spaces during a campaign, at no cost, to all Candidates and to all Members advocating a point of view for purposes reasonably related to the election.
- c. A meet-the-Candidates event may be held where candidates will have equal opportunity to introduce themselves to the Members. The Board shall determine whether such an event will be held.
- d. Association funds may not be used for campaign purposes in connection with any Board election.
- e. Association funds will 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. Campaign purposes include, but are not limited to, the following:
  - i. Expressly advocating the election or defeat of any Candidate that is on the election ballot.
  - ii. Including the photograph or prominently featuring the name of any Candidate on a communication from the Association or its Board, excepting the ballot and ballot materials, within thirty (30) days of an election, provided that this is not a campaign purpose if the communication is one requiring that equal access be provided to another Candidate or advocate.

### 2. Candidate Qualifications

- a. Candidates must be a Member of the Association.

- b. Candidate must be a natural person, not a corporation or a trust. A corporation or trust may be represented by the appointment of a natural person.
- c. Candidates for election to the Board of Directors shall be disqualified for any of the following:
  - i. If the Candidate has been a Member for less than 1 year at the time of nomination.
  - ii. If the Candidate discloses or the Association becomes aware of a past criminal conviction that either prevents the purchase of fidelity bond coverage or terminates the existing fidelity bond coverage should the person be elected.
  - iii. If the Candidate would be serving on the Board at the same time as someone else on title for their separate interest and the other person is properly nominated or an incumbent director.
  - iv. If the Candidate fails to pay regular and special assessments. For the purposes of this ground of possible disqualification, regular and special assessments do not include fines, fines renamed as assessments, collection charges, late charges or costs levied by a 3rd party. A Candidate may not be disqualified for failing to pay assessments if they have either paid any disputed regular or special assessment under protest or have entered into a payment plan. In addition, a Candidate may not be disqualified for failing to pay assessments if person has not been provided opportunity to engage in the Association's Internal Dispute Resolution process.
- d. Only votes for nominated eligible Candidates who have accepted the nomination prior to the tabulation of votes shall be counted.

### **3. Nomination Procedures**

- a. At least ninety (90) days before the date set for the Annual Meeting when director elections are to be held, Candidate nomination forms will be available. Nominations must be submitted and received by the Inspector of Elections no later than the 30th day following the opening of nominations.
- b. Completed Candidate nomination forms shall be returned and received by the due date, as directed, in order for the Candidate to be included on the ballot. Any nomination form not timely received by the designated recipient will not be included on the ballot.
- c. 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. Statements received must be no more 500 words. Any statement longer than 500 words may be truncated following the 500th word. Completed statements received by the deadline

will be forwarded to the Inspector of Elections for review at which time the Inspector of Elections will determine whether the Candidate meets the qualifications for candidacy.

- d. Completed Candidate statements that are received by the deadline may be re-typed and included with the ballot that is mailed to the membership. Incumbents may be identified by an asterisk on the ballot mailed to the membership.
- e. Any Candidate nominated by another person will be contacted to confirm Candidate's consent to run for election to the Board. Candidates may nominate themselves.
- f. The Association shall at least thirty (30) days prior to distributing the ballots provide general notice of the date, time, and location of the meeting at which ballots will be counted, the deadline for returning ballots and the address where ballots are to be returned to the Inspector(s), and the list of all candidates that will appear on the ballot.
- g. No candidates shall be listed on the ballot after the foregoing notice of the election and candidates is sent to the members.

#### **4. Election Process**

- a. The number of directors who are scheduled to be elected and their respective terms shall be determined in accordance with the Association's governing documents and stated in the solicitation materials for the meeting.
- b. If more than one party is listed on title to a separate interest, only one Owner may submit Owner's signed envelope to vote, if multiple ballots are submitted for the same Membership, the first one received will be counted.
- c. The record date for voting eligibility is the day before the date ballots are mailed to the membership.
- d. The election of Directors shall be conducted annually on the second Monday of January of each year at 7:30 p.m. of said day, or at such other reasonable time (but not more than 60 days before or after such date) as may be designated by written notice of the Board of Governors. (Bylaws, Article VI Section 2).
- e. In any election other than for Board of Directors Members may cast one vote per item to be voted on.
- f. Cumulative voting is permitted Bylaws Article VI, Section 6.

#### **5. Member Obligation to Verify Voter & Candidate Registration List, Corrections**

- a. The Association shall maintain 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 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.

- b. The Association shall permit Members to verify the accuracy of their individual information on both the Candidate registration and voter list at least thirty (30) days before the ballots are distributed.
- c. The Members shall report any errors or omissions on the voter list, in writing, to the inspector(s) of elections, who shall make any corrections within two (2) business days of the date reported.

## **6. Inspector(s) of Election**

- a. Inspector(s) of election will be appointed annually by the Board at an open Board meeting held prior to the distribution of election materials and shall serve as the Inspector of Elections for all elections until a new Inspector of Elections is Appointed by the Board.
- b. If there is an election or vote between annual elections of the Board, the Board may retain the Inspector(s) from the last meeting, or the Board has the authority to appoint different Inspector(s) at the Board's discretion.
- c. The Board may remove and replace any Inspector prior to the tabulation of votes for any reason.
- d. There shall be one (1) or three (3) Inspector(s) for any election. If there are three (3) Inspectors, the decision or act of a majority shall be effective in all respects as the decision or act of all.
- e. Inspector(s) may designate others, who are not Candidates or the relatives of a Candidate, as assistants to facilitate the ballot counting process. Assistants will work under the direction of the Inspector(s).
- f. An elections Inspector(s) may be a Member of the Association or may be an independent third party non-member, including but not limited to the following: volunteer poll worker with the county registrar of voters; a licensee of the California Board of Accountancy; a notary public; or a company specializing in Association elections inspection and ballot counting. The Association Manager or legal counsel may not serve as Inspector(s) but may assist the Inspector(s).
- g. The Inspector(s) may not be a director, a Candidate, or related by blood or marriage to any Candidate.
- h. The Inspector(s) determines the number of Members entitled to vote and the voting power of each.
- i. The Inspector(s) determine the authenticity, validity, and effect of proxies, if any.
- j. The Inspector of Elections shall deliver or cause to be delivered within thirty (30) days of an election the ballots and the current version of the Association's election

Rules. The current Association Election Rules shall be delivered either via Individual Delivery via Civil Code Section 4040 or by posting the election rules to a website and including the web site address on the ballot with the phrase in 12-point font “The rules governing this election may be found here: \_\_\_\_\_.”

- k. Unless the Inspector(s) designate a different location to receive ballots, the location to receive ballots will be the Association’s management company’s business office address.
- l. Inspector(s) hear and determine all challenges and questions in any way arising out of or in connection with the right to vote and the Inspectors’ decision.
- m. All accounting and tabulations will be done in an open setting to allow Members to watch and listen. Members who are not Inspectors cannot participate in such discussions.
- n. The Inspector(s) count and tabulate all votes. All votes shall be counted and tabulated by the inspector(s) in public at a duly noticed Board or Member meeting.
- o. The Inspector(s) determine when the polls shall open and close.
- p. The Inspector(s) determine and announce the results of the election.
- q. Inspector(s) shall report the results of the election promptly to the Board, and the results are to be recorded in the next regular session Board meeting minutes.
- r. Inspector(s) perform any acts as may be proper to conduct the election with fairness to all Members in accordance with the Governing Documents.
- s. Inspector(s) perform all duties impartially, in good faith, to the best of the Inspector(s)’ ability, and as expeditiously as is practical.

## **7. Ballot Rules**

- a. Ballots shall be delivered via Individual Delivery pursuant to Civil Code section 4040.
- b. Each ballot shall contain the following:
  - i. In an election of directors, each Candidate ’s name listed alphabetically or as drawn by lot.
  - ii. The identification of any other matter that is the subject of a pending Member vote.
  - iii. A statement of the required quorum.
  - iv. A statement that ballots must be received by mail no later than 5:00 p.m. on the business day prior to the day of the scheduled election. Notwithstanding the foregoing, Inspector(s), in their discretion, may accept ballots up to the time that counting of the ballots begins.

Failure to include any of the above shall not invalidate the ballot.

- c. Once a ballot is received, it is deemed irrevocable, even if it is still in an unopened envelope.
- d. If a Member loses his or her ballot, a new one can be obtained from the inspector(s) or from the Association's management company prior to the meeting. However, if a ballot is already on file and shown as received from that Separate Interest, then no new ballot will be given.
- e. A Member, who signs or otherwise marks his or her ballot with an identifying mark, waives Member's rights to secrecy. The Association is not responsible for redacting personal information that is added to the ballots by a Member.
- f. Unmarked ballots (i.e., ballots showing no votes) will be counted for quorum only.
- g. The Inspector of Elections may not deny a ballot to a Member for any reason other than not being a Member at the time ballots are distributed. In addition, the Inspector of Elections shall be prohibited from denying a ballot to a person with a general power of attorney for a Member. The ballot of a person with a general power of attorney for a Member shall be counted if returned timely.

## **8. Tabulation Rules**

- a. Once received by the Association, the sealed ballots shall at all times be in the custody of the Inspector(s) or at the location designated by the Inspector(s).
- b. Any Candidate or other Member of the Association may witness the counting and tabulation of the votes. Members, who are not inspectors, must remain at least five (5) feet away from the counting area.
- c. Inspector(s) can cause the removal of any observer who interferes with or disrupts the counting or tabulation process.
- d. Any election that results in a tie shall be determined by the flipping of a coin or drawing of straws.

## **9. Post-Election Rules**

- a. The Association shall keep membership meeting minutes recording the result of the election, in addition to the announcement in the Board meeting minutes.
- b. The Association shall announce the tabulated results of the election in a communication directed to all Members within fifteen (15) days of an election.
- c. After the tabulation of the votes, the Inspector of Elections may direct the Association's managing agent to maintain all election materials until the time for challenge has expired. The Association shall retain all election materials for a period of three (3) years following the election.

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