

BOYNTON AVENUE HOMEOWNERS ASSOCIATION

Election and Operating Rules

Adopted to comply with Civil Code Sections 5100 et.seq. effective January 1, 2020

Whereas, California Civil Code Section 5100, 5105, 5110, 5115, 5120, 5125, 5130 and 5135, with an effective date of January 1, 2020, require the adoption of rules further regarding election procedures; appointment of election inspectors; voting by secret ballot; proxy and ballot instructions; publication of election results; and retention of ballots.

Whereas, California Civil Code Section 4355 states that Sections 4360 (Proposed rule change by Board action; notice; meeting) and 4365 (Special meeting of members to reverse rule change; notice; voting requirements; effect of approved reversal) do not apply to a rule change that is required by law, if the Board has no discretion as to the substantive effect of the rule change.

Now, therefore, be it resolved that Boynton Avenue Homeowners Association does hereby adopt the following rules:

These rules shall become effective upon adoption at a noticed Board meeting; said act having occurred on April 1, 2020.

Vote by Secret Ballot for Specified Matters

1. The following matters require a vote by secret ballot in accordance with the procedures set forth herein:

- a. Assessments where a vote is required by law;
- b. Election and Removal of Members of the Board of Directors;
- c. Amendments to the governing documents; or
- d. The grant of exclusive use of common area property pursuant to California Civil Code Section 4600.

The association shall hold an election for a seat on the Board of Directors in accordance with the procedures set forth in Section 5100 (a) of California Civil Code, at the expiration of the corresponding director's term and at least once every four years.

Time for Elections

Prior to the proposed date for an election requiring the use of secret ballots, as noted above, the Board shall:

1. Solicit proposals for an independent, third party inspector (one person) or inspectors (three persons) of elections or call for volunteers to act as said inspector(s) of

elections. The Board may appoint one person or three persons as inspector or inspectors of elections. Said person(s) may be someone such as a volunteer poll worker with the County Registrar of Voters, a licensee of the California Board of Accountancy, or a notary public. A member of the association may be an inspector of elections but may not be a director or a candidate for director, or be related to a director or to a candidate for director. An independent third-party may not be a person, business entity or subdivision of a business entity that is currently employed or under contract to the association for any compensable services other than serving as an inspector of elections.

Duties of Inspector(s) of Elections

1. Determine the number of memberships entitled to vote and the voting power of each;
2. Determine the authenticity, validity, and effect of proxies, if any;
3. Receive ballots;
4. Hear and determine all challenges and questions in any way arising out of or in connection with the right to vote
5. Count and tabulate all votes;
6. Determine when the polls shall close, consistent with the governing documents;
7. Determine the tabulated results of the election;
8. Perform any acts as may be proper to conduct the election with fairness to all members in accordance with this article, the Corporations Code, and all applicable rules of the association regarding the conduct of the election that are not in conflict with this article (Civil Code 5100 et.seq.).
9. An inspector(s) of elections shall perform all duties impartially, in good faith, to the best of the inspector(s) of elections ability, as expeditiously as is practical, and in a manner that protects the interest of all members of the association. If there are three inspectors of elections, the decision or act of a majority shall be effective in all respects as the decision or act of all. Any report made by the inspector or inspectors of elections is prima facie evidence of the facts stated in the report.

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 or inspectors of elections or at a location designated by the inspector or inspectors until after the tabulation of the vote and until the time allowed by Civil Code section 5145 for challenging the election has expired, which is one year from the certification of the election by the inspector(s), at which time custody shall be transferred to the association. If there is a recount or other challenge to the election process, the inspector or inspectors of elections shall, upon written, request, make the ballots available for the

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 Board, once identifying and appointing the inspector(s) of elections, shall set forth a timetable, to comply with California Civil Code generally noted as:

1. Cause a call for candidates or nominations to be issued at least 90 days prior to a proposed election;
2. Set the date for the election or vote to occur at least 60 days after the close of nominations;
3. Determine the date and time by which, and the physical address where ballots are to be returned by mail or handed to the inspector or inspectors of elections (at least 60 days prior to the election date);
4. The date, time and location of the meeting at which the ballots will be counted, which must be at least 60 days prior to the election date;
5. Cause the information in items 1 through 4 above to be issued with a notice via personal delivery to all Owners advising them of the deadline to submit a nomination, and allowing at least 30 days before the distribution of ballots.

Candidate Requirements for the Board

The association shall permit all candidates to run if nominated (nomination includes self-nomination), except as follows (per California Civil Code 5100 as amended January 1, 2020):

1. The Board shall disqualify a person from nomination as a candidate if the person is not a member of the association at the time of the nomination. "Member" is defined as being an Owner of legal title to an interest within the association.
2. The Board may disqualify a nominee if that person discloses, or if the association is aware or becomes aware of, a past criminal conviction that would either prevent the association from purchasing the fidelity bond coverage required by Civil Code Section 5806 should the person be elected or terminate the association's existing fidelity bond coverage as to that person should the person be elected.
3. The Board may disqualify a nominee who is not current in the payment of regular and/or special assessments, which are consumer debts subject to validation. All Directors elected and/or holding office on the Board of Directors shall remain in good standing with their assessments at all times of their service. The Board may not disqualify a nominee for nonpayment of fines, fines renamed as assessments, collection charges, late charges, or costs levied by a third party. An association shall not disqualify a nominee for failure to be current in payment of regular and special assessments if any of the following circumstances are true:

a. The nominee has paid the regular assessment or special assessment under protest pursuant to Section 5658 of California Civil Code;

b. The nominee has entered into a payment plan pursuant to Section 5665 of California Civil Code;

c. The nominee has not been provided the opportunity to engage in internal dispute resolution pursuant to Article 2 (commencing with Section 5900) of Chapter 10.

4. The Board may disqualify a nominee who, if elected, would be serving on the board at the same time as another person who holds a joint ownership interest in the same separate interest parcel as the person and the other person is either properly nominated for the current election or an incumbent director.

5. The Board may disqualify a nominee who has been a member of the association for less than one year.

Election Operating Rules

Per the amendment to Civil Code 5105 effective January 1, 2020:

The association shall, through its Board of Directors:

1. 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 may include a statement specifying that the candidate or member, and not the association, is responsible for that content.

2. 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.

3. Specify the qualifications for candidates for the Board on any other elected position, subject to subdivision (b) (California Civil Code 5105), and procedures for nomination of candidates consistent with the governing documents. A nomination of election procedure shall not be deemed reasonable if it disallows any member from nominating themselves for election to the Board.

4. Specify the voting power of each membership, the authenticity, validity, and effect of proxies if any, and the voting period for elections, including the times at which poles will open and close, consistent with the governing documents. For purposes of these rules, as the

secret written ballot has the same effect as a member present in a meeting, the association shall acknowledge an attorney-in-fact of the owner and issue said person a ballot, thereby replacing the need for a proxy. Said attorney-in-fact statement, and/or power or attorney form duly notarized, must be on file with the association before any notice of an election or vote is issued.

5. Specify a method of selecting one or three independent third parties as inspector(s) of elections utilizing one of the following methods:

- a. Appointment of the inspector or inspectors by the Board.
- b. Election of the inspector or inspectors by the members of the association.
- c. Any other method for selecting the inspector or inspectors.

6. Allow the inspector(s) to appoint and oversee additional persons to verify signatures and to count and tabulate votes as the inspector or inspectors deem appropriate, provided that the persons are independent third parties. The inspector(s) of elections may cause the managing agent to issue the initial ballot with double envelopes and to produce the voter and candidate lists. Said document once issued shall be taken in to the custody of the inspector(s) of elections and any ballots issued by the Management Company shall be addressed to be returned to the inspector(s) of elections at their independent third-party address and only into their custody.

7. 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 separate interest, the parcel number, or both.

8. 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. 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 or inspectors who shall make the corrections within two business days.

9. Determine that 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 be a member for purposes of this article.

10. Cause to be delivered to the owners

- a. a ballot or ballots at least 30 days prior to an election;
- b. a copy of the election operating rules. Said delivery may be accomplished either by posting of the rules to an Internet website, said address to be posted on the ballot with the phrase, in 12-point font: "The rules governing this election may be found here..." The ballot, or both of the noted documents, may be made by individual delivery.

11. These rules may not be amended less than ninety (90) days prior to an election.
12. A quorum shall be required only if so stated in the governing documents or other provisions of law. If a quorum is required 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. Ballots may provide a space for abstentions from voting. Ballots including one or more abstentions shall nevertheless be treated as a member present at a meeting for purposes of establishing a quorum. Ballots shall denote that no write-in candidates or votes will be accepted.
13. Except for the meeting to count the votes required in subdivision (a) of Civil Code Section 5120, an election may be conducted entirely by mail unless otherwise specified in the governing documents.
14. The association shall allow for cumulative voting using the secret ballot procedures provided in these rules, if cumulative voting is provided for in the governing documents.
15. Once mailed, delivered, or otherwise transmitted to the association, the ballot shall be irrevocable and may not be withdrawn or changed.
16. The inspector(s) of elections shall have sole discretion in verifying or invalidating a ballot.

Use of Association Funds for Campaign Purpose

1. Association funds shall not be used for campaign purposes in connection with any association board election. Association funds 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.
2. For the purposes of this section, the term “campaign purposes” includes, but is not limited to, the following:
 - a. Expressly advocating the election or defeat of any candidate. That is on the association election ballot.
 - b. Including the photograph or prominently featuring the name of any candidate on a communication from the association or the 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 for which subdivision (a) of section 5105 requires that equal access be provided to another candidate or advocate.
 - c. The inspector(s) of elections may set a limit on the length of the statements of candidates for the Board of Directors. If a limit is not set, the Board dictates that the default shall be one page, single-spaced, single sided in 12-point font.

Secret Voting Procedure

Ballots and two preaddressed envelopes with instructions of how to return ballots shall be mailed by first-class mail or delivered by the association, via its agent (management) or inspector(s) of elections to every member not less than thirty days prior to the deadline for voting. In order to preserve confidentiality, a voter may not be identified by name, address, or lot number on the ballot. The association shall use as a model those procedures used by California counties for ensuring confidentiality of voter absentee ballots, including all of the following.

The ballot itself is not signed by the voter but is inserted into an envelope that is sealed. This envelope is inserted into a second envelope that is sealed. In the upper left-hand corner of the second envelope, the voter prints and signs his or her name and indicates the address of the separate interest owned by said person within the association.

The second envelope is addressed to the inspector(s) of election, who will be tallying the votes. The envelope may be mailed or delivered by hand to a location specified by the inspector(s) of elections.

Only official election materials may be used in the election process. These include the Official Ballot, the "Ballot Enclosed" envelope, and the pre-addressed return envelope. The election inspector(s) may reject any unofficial election material.

Determining the Vote

1. All ballots must be received by the inspector(s) no later than the commencement of the meeting at which the votes will be tabulated, or the time announced by said inspector(s) as the closing of the polls.
2. All votes shall be counted and tabulated by the inspector(s) of elections in public at a properly noticed time and place. Any member, or member's attorney-in-fact, may witness the counting and tabulation of the votes. No person other than an inspector(s) of elections or duly authorized subsidiary of said inspector(s) 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 his or her designee, may verify the member's information and signature on the outer envelope prior to date/time at which the ballots are tabulated.
3. The tabulated results of the election shall be promptly reported to the Board of Directors of the association and 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.
4. Within fifteen (15) days of the election, the Board shall publicize the results of the election in a communication directed to all members.

Custody of Election Materials

1. The sealed ballots at all times shall be in the custody of the inspector(s) of elections or at a location designated by the inspector(s) until after the tabulation of the vote for one year after the election at which time custody shall be transferred to the association. In the event of 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 association members or their authorized representatives. Any recount shall be conducted in a manner that shall preserve the confidentiality of the vote. Said members may view, but may not copy, any election materials in the custody of the inspector(s).

2. After transfer of the election ballots to the association, election ballots shall be stored by the association in a secure place for no less than one year after the date of the transfer of the materials from the inspector(s) of election.