



Memorandum

To: All Homeowners
Niguel Vista Homeowners Association

From: Betty Carmain

Date: June 26, 2006

Re: Niguel Vista Homeowners Association
Election and Voting Rules

In accordance with the adoption of Senate Bill 61, please find enclosed the approved Election and Voting Rules for Niguel Vista Homeowners Association.

Please review and retain these Rules with your important documents for future reference.

ELECTION AND VOTING RULES

I. PURPOSE

The purpose of these rules is to ensure that any candidate or Member advocating a point of view is provided a fair and equal opportunity to participate or be elected to the Association's Board of Directors. These rules have been adopted to provide rules and procedures for conducting a fair and impartial election for all Members of the community. These rules shall apply to all elections regarding assessments, selection of members of the Association Board of Directors, amendments to the governing documents, or the grant of exclusive use of common area property pursuant to California law.

II. NOMINATION AND CAMPAIGNING RULES

- A. Any Member may nominate himself/herself for election to the Board of Directors provided they meet the qualifications for a director defined in the Association's By-Laws. Candidates are required to make their nominations in writing to the Association at the Association's designated mailing address. Candidate nominations received seven (7) days prior to, but not more than ninety (90) days prior to, the mailing of the Annual Meeting notice will be included in the notice mailed to the membership. If a candidate's nomination is not received by the deadline for inclusion in the annual meeting notice, then a candidate may be nominated from the floor at the Annual Meeting once a quorum has been reached provided the Association By-Laws do not state otherwise. Nominations at the meeting will be accepted so long as the nominee has either nominated himself/herself, or the nominated candidate has provided the Inspector of Election notice of acceptance of the nomination prior to the close of nominations at the Annual Meeting.
- B. All candidates and Members advocating a point of view shall be granted equal access to common area meeting space and Association media, such as newsletters and Association website, at no cost, for purposes 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.
- C. 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.
- D. The Association shall not expressly advocate the election or defeat of any candidate that is on the Association ballot.
- E. The Association shall not include the photograph or prominently feature 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,

unless it is for the purpose of providing equal access to another candidate or advocate in compliance with State law.

III. QUALIFICATIONS FOR VOTING

- A. All voting rights shall be subject to the restrictions and limitation provided in the Association's governing documents. Each member shall be entitled to one (1) vote for each Unit/Lot for which they hold the interest required for membership.
- B. When more than one person owns a portion of the interest in a Unit/Lot required for membership, each such person shall be a Member and the vote for such Unit/Lot shall be exercised as the co-owners among themselves determine, but in no event shall the voting rights exceed more than one (1) vote with respect to any Unit/Lot. Should the co-owners not be able to agree as to how to cast their vote, the Association may, but shall not be obliged to, refuse to recognize the vote or written assent of any such co-owner, except the vote or written assent of the co-owner designated in a writing executed by all of such co-owners and delivered to the Association.

IV. INSPECTORS OF ELECTION

- A. Inspector(s) of Election shall be appointed by the Board of Directors. The board shall appoint one (1) or three (3) independent third parties to act as Inspectors of the Election. Inspectors of Election may be, but are not limited to, a volunteer poll worker with the County Register of Votes, a licensee of the California Board of Accountancy, or a notary public. An Inspector may be a Member of the Association, but may not be a member of the Board of Directors or a candidate for the Board of Directors or anyone related to a member of the Board of Directors or a candidate for the Board of Directors. An inspector may not be a person who is currently employed or under contract to the Association for any compensable services. An Inspector of Election shall perform his or her duties impartially, in good faith, to the best of his or her ability, and as expeditiously as is practical. If there are three Inspectors of Election, 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 Election is prima facie evidence of the facts stated in the report. Inspectors shall perform the duties set forth below and shall sign the Oath of Inspectors of Election:
 - 1. Determine the number of memberships entitled to vote and the voting power of each.
 - 2. Determine the number of memberships represented at the meeting.
 - 3. Determine when a quorum has been obtained.
 - 4. Receive ballots.

5. Determine the authenticity, validity, and effect of proxies and ballots.
 6. Hear and determine all challenges and questions in any way arising out of, or in connection with, the right to vote.
 7. Count and tabulate all votes.
 8. Determine when the polls shall close.
 9. Determine the result of the voting.
 10. Perform any acts as may be proper to conduct the balloting or election with fairness to all members.
- B. The decision of a majority of the Inspectors shall control in all matters noted above.
- C. The Board of Directors shall appoint one Inspector to act as Chief Inspector of Election whose duties shall include:
1. Oversee the Inspectors.
 2. Answer questions regarding the voting process.
 3. Keep all people a reasonable distance away from the registration area except those actually registering.
 4. Coordinate the counting process.
 5. Keep all people a reasonable distance away from the area where votes are being counted and tabulated so there is no interference with the counting process. However, any candidate or other Member of the Association may witness the counting and tabulation of the votes.

V. RESOLUTION OF QUESTIONS

- A. All questions regarding voting procedures shall be referred to the Chief Inspector of Election.
- B. Questions regarding proxy and ballot validity, votes cast, etc., shall be resolved by the Inspectors. Those questions not covered in the Election & Voting Rules shall be resolved by the Inspector(s) with the assistance of the Association's legal counsel.

VI. MEMBER VOTING RIGHTS

- A. A voter has the right to register and cast a ballot if they are present and in line at the polling place prior to the close of the polls.

- B. A voter has the right to cast a secret ballot free from intimidation.
- C. If at any time before a voter casts their ballot, they feel they have made a mistake, the voter has the right to exchange the spoiled ballot for a new ballot.
- D. Voters have the right to receive assistance in casting their ballot, if they are unable to vote without assistance.
- E. In those polling places that are inaccessible under the guidelines promulgated by the Secretary of State for accessibility by the physically handicapped, a physically handicapped person may appear outside the polling place and vote a regular ballot. The person may vote the ballot in a place that is as near as possible to the polling place and that is accessible to the physically handicapped. An Inspector of Election shall take a regular ballot to that person, qualify that person to vote, and return the voted ballot to the ballot box.
- F. Any Member has the right to ask questions of the Chief Inspector of Election regarding election and voting procedures and to receive an answer or be directed to the appropriate official or association representative for an answer. However, if persistent questioning disrupts the execution of their duties, the Chief Inspector or Inspectors of Election may discontinue responding to questions.
- G. All Members have the right and duty to report any illegal or fraudulent activity to an Inspector of Election.

VII. REGISTRATION - GENERAL

- A. A membership roster will be maintained at each registration station of each person registered, whether in person or by proxy or by ballot. An actual count will be taken of those registered prior to the start of the meeting to determine quorum.
- B. When the Chief Inspector of Election announces that the polls are closed, no further members may be registered, except for those who are in line and recognized by the Chief Inspector of Election at the moment the announcement is made.
- C. Memberships under suspension shall be noted on the membership roster prior to the meeting.

VIII. MAILED BALLOTS

- A. Ballots and two (2) 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 thirty (30) days prior to the deadline for voting.

- B. In order to preserve confidentiality, a voter may not be identified by name, address, or lot, parcel, or unit number on the ballot.
- C. The ballot itself is not to be signed by the voter, but is to be inserted into a return ballot envelope that is sealed. This envelope is inserted into a second addressed envelope that is then sealed. The voter shall print their name, address, and lot, or parcel, or unit number that entitles them to vote, in the upper left hand corner of the second addressed envelope.
- D. The second envelope shall be addressed to the Inspector of Election or Inspectors of Election, who will be tallying the votes. The envelope may be mailed or delivered by hand to a location specified by the Inspector or Inspectors of Election. The Member may request a receipt for delivery. All ballots are non-revocable after receipt by an Inspector of Election or their designee.
- E. If a ballot is received by mail in an envelope not marked as containing a ballot, an Inspector or the Inspector's designee shall immediately place the ballot in an appropriate envelope marked "**Envelope Contains Ballot - Do Not Open Until Tabulation.**" The Inspector or Inspector's designee shall take extraordinary care not to view the ballot markings while inserting the ballot into the envelope. The envelope containing the ballot shall be sealed. The envelope containing the ballot shall then be placed in a second envelope and sealed. The Inspector or Inspector's designee shall print the circumstance as to how the ballot was received (e.g. ballot mailed with assessment payment, ballot hand delivered, etc.) on the outside of the second envelope, date received, Member's name, address, and lot or parcel number that entitles them to vote. The outer envelope shall be retained for one year after the date of the vote. In the event of a recount or other challenge to the election and/or voting process, the Association shall, upon written request make envelopes, marked as noted above, available for inspection and review by Association Members or their authorized representatives.

IX. MEMBER REGISTRATION - ISSUANCE OF BALLOTS

- A. Members appearing in person to vote shall go directly to the registration table(s) and sign membership roster to register. During registration, the Inspectors shall determine whether a ballot has already been received for the membership. If no ballot has been received, then a ballot may be issued to an eligible registering Member. If a ballot has been received, then no second ballot may be issued. If two co-owners appear at the meeting and no ballots have been received for the membership, then the first co-owner to register shall be issued a ballot. Once a ballot has been cast (i.e. delivered to an Inspector of Election or Inspector's designee) it is non-revocable.
- B. Ballots issued at the meeting shall be two sided and of a different color than mailed ballots. The front side of meeting ballots shall identify the meeting and

list all duly nominated candidates declared prior to the meeting. In addition, a minimum of one (1) blank line shall be provided for write-in candidates. The ballot is not to be signed by the voter. Instructions directing the voter to **"Fold ballot in half to conceal cast votes prior to presenting to the Inspector of Election"** shall be clearly printed on the front of the ballot. The backside of the meeting ballot shall be marked to help facilitate expeditious identification by the Inspector(s) of Election of an official ballot. Only official ballots may be used for any election or vote.

- C. Ballots cast at the meeting shall be presented to an Inspector of Election. The Inspector shall immediately deposit ballot in ballot box. Inspectors may examine the backside of the meeting ballot to verify authenticity, but under no circumstance, shall the Inspector view the front side or votes cast.
- D. Each membership is entitled to only one (1) registration. Memberships under suspension shall be referred to the Chief Inspector of Election and no ballot shall be issued without approval by the Board of Directors.

X. PROXIES

- A. In instances where proxies are used, for the proxy to be valid, (a) the proxyholder must be in attendance at the meeting for which the proxy was given, (b) the proxy must contain voting instructions, (c) the proxy shall set forth voting instructions on a separate page/section of the proxy that can be detached and given to the proxyholder to retain, (d) the proxy holder shall cast the Member's vote by secret ballot as directed by the voting instructions, (e) the proxy must be signed and dated by the Member.
- B. Proxyholders who present a valid proxy shall be issued a ballot provided none has already been received or issued to the Member. The procedure for issuing ballots to proxyholders shall be the same as those for issuing ballots to Members.
- C. Proxyholders who present a valid proxy for more than one (1) Member shall be issued a ballot for each valid proxy. In addition, the proxyholder shall be issued a receipt confirming the number of ballots issued. The proxyholder shall present the receipt to the Inspector of Election when depositing ballots at the ballot box. The Inspector of Election shall verify the number of ballots cast does not exceed the number of ballots confirmed on the receipt before depositing ballots in the ballot box.
- D. If a Member attends the meeting and attempts to register after a ballot has been issued to a valid proxyholder, no ballot shall be issued to the Member.
- E. Proxies marked for **"Quorum Purposes Only"** or **"Abstain From Voting"** shall be held by the Inspectors for verification of quorum and no ballot shall be issued.
- F. If two (2) proxies are registered for the same Unit/Lot, and one is dated and one is undated, the dated proxy prevails.

- G. If two (2) dated proxies are registered for the same Unit/Lot, the most current dated proxy prevails.
- H. If two (2) proxies registered for the same Unit/Lot and carry the same date, the proxies are invalid.
- I. If the property is co-owned, i.e., husband and wife, partnership, etc. and two (2) or more co-owners submit separate proxies, the most current dated proxy prevails. If they have the same date, a certificate of appointment of voting representative will be required or both proxies will be invalid but may be used for quorum purposes only.
- J. Any changes to the proxy must be initialed by the owner or proxy will be invalid and no ballot shall be issued.
- K. When membership privileges have been suspended, proxies are invalid and no ballot shall be issued.
- L. If a proxy is submitted on behalf of a renter or other non-property owner resident, it is invalid and no ballot is issued. However, a renter or other non-property owner may be named as proxyholder for a Member.
- M. If the Member has registered and a proxyholder presents a proxy on the Member's behalf, the proxy is invalid and no ballot is issued.
- N. All voided/invalidated proxies are to have "VOID" written across them, the reason for voiding noted and then initialed by the Inspector.
- O. All questionable proxies or proxies with conflicting instructions shall be invalid.
- P. Proxies naming a proxyholder not in attendance shall not be counted for voting or quorum purposes. No ballot shall be issued.
- Q. All unsigned proxies shall be invalid and shall not be used for voting or quorum purposes. No ballot shall be issued.

XI. PROXIES RECEIVED BY MAIL

All proxies received by the Association by mail prior to the election are to be held and brought to the election meeting for validation and registration by the duly appointed Inspectors of Election or their designee.

XII. ADJOURNED MEETING - SECURING AND ISSUANCE OF BALLOTS

- A. If the meeting is adjourned to another date because of a lack of quorum, the ballot box shall be sealed by the Chief Inspector of Election and held by the Chief Inspector or their designee until the date of the adjourned meeting.

- B. To prevent duplicate voting, ballots issued at any adjourned meeting shall be a different color than all preceding meeting ballots, but shall follow the same format for all meeting ballots.

XIII. DETERMINATION OF QUORUM

At the close of registration, the Inspectors of Election shall count the memberships verified as being in attendance in person, represented by their mailed ballot or by proxy, as indicated on the official membership roster and shall inform the Chair that a quorum is or is not in attendance.

XIV. BALLOTING

- A. The sealed ballots at all times shall be in the custody of the Inspector or Inspectors of Election or at a location designated by the Inspector or Inspectors until after the tabulation of the vote, at which time custody shall be transferred to the Association.
- B. Before depositing any ballot, the Inspectors of Election, in the presence of any Member assembled at the polling place, shall open and exhibit and close the ballot box or boxes. Thereafter, the ballot box or boxes shall not be removed from the polling place or presence of bystanders unless the ballot box or boxes are securely sealed or until the polls are officially closed and the Inspector or Inspectors are ready to commence counting. Should a quorum of the membership not be reached requiring the ballot box or boxes to be removed from the polling place, the ballot box or boxes shall be sealed and remain in the custody of the Chief Inspector of Election or their designee until the meeting is reconvened. At the reconvened meeting the Chief Inspector shall present the sealed ballot box or boxes to all Members assembled at the reconvened polling place for inspection prior to breaking the seal to re-open the polls.
- C. Before the Inspectors of Election receive any ballots, the Inspectors shall proclaim aloud at the place of the election that the polls are open.
- D. Any person desiring to vote shall report to the registration area, announce his or her name and address in an audible tone of voice, and when one of the Inspectors of Election finds the name in the membership roster, the Inspector shall in a like manner repeat the name shown on the membership roster. The voter shall then sign their name alongside the printed name and address in the membership roster.
- E. A voter shall not receive a ballot from any person other than an Inspector of Election or their authorized designee.
- F. Members or their duly appointed proxyholders attending the meeting may cast their ballots and have them deposited in the ballot box any time during which the Inspectors have designated the polls to be open.

- G. After his or her ballot is marked, a voter shall not show it to any person in such a way as to reveal its contents.
- H. No person assisting a voter shall divulge any information regarding the marking of the ballot.
- I. Ballots cast at the meeting shall be first folded so that the ballot markings of the voter will not be exposed and then handed to an Inspector of Election for deposit in the ballot box approved and monitored by the Inspector or Inspectors of Election. The ballot box shall be placed in a location available to all Members and monitored by an Inspector of Election.
- J. Only voters engaged in depositing their ballots and persons authorized by the Chief Inspector of Election may be permitted to approach the ballot box or boxes.
- K. Balloting shall remain open until a quorum of the membership has been reached.

XV. MARKING OF BALLOTS

- A. Where two (2) or more candidates for the same position are to be elected, and the voter desires to vote for candidates for that position, the voter shall write the number of votes to be cast for the intended candidate on the line or other specific voting space following the name(s) of the candidate(s) not exceeding, however, the number of candidates to be elected.
- B. When a measure or proposal is submitted to the Membership for a vote, the voter shall place a mark on the ballot in the appropriate space opposite the answer the voter desires to give as to that measure or proposal.
- C. No voter shall place any mark upon a ballot that will make the ballot indentifiable.
- D. If a voter spoils or defaces a ballot, the voter shall at once return it to the Inspector of Election and receive another ballot. A voter shall not receive more than a total of three (3) ballots, including his or her original, in this manner.
- E. No voter shall deliver to any Inspector or Inspector designee any ballot other than the one received from an Inspector or their designee.
- F. Any voter who does not vote the ballot he or she has received, shall, before leaving the polling place, return it to an Inspector of Election having charge of the ballots, who shall immediately mark it as void.
- G. Any name written upon a ballot for a qualified write-in candidate, including a reasonable facsimile of the spelling of a name, shall be counted for the position, if it is written in the blank space provided and voted as specified below:

(1) No write-in vote shall be counted unless the voting space next to the write-in space is marked appropriately.

(2) Neither a vote cast for a candidate whose name appears on the ballot nor a vote cast for a write-in candidate shall be counted if the voter has indicated, by a combination of marking and writing, a choice of more names than there are candidates to be nominated or elected to the position.

XVI. COUNTING OF BALLOTS

- A. After registration is closed, a quorum announced and balloting closed, the Chief Inspector shall direct that the ballots be counted and tabulated.
- B. All votes shall be counted and tabulated by the Inspector or Inspectors of Election or their designees in public at a properly noticed open meeting of the Board of Directors or members.
- C. Any candidate or other Member of the Association may witness the counting and tabulation of the votes.
- D. 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.
- E. All questionable ballots are to be separated out (e.g. incorrect number of votes cast on ballot). The Inspector(s) will then determine validity. All voided ballots/proxies are to have "VOID" written across them, the reason for voiding and shall be initialed by the Chief Inspector.
- F. If the number of votes cast on a ballot exceeds the number of positions to be elected, the ballot is invalid and shall not be counted for voting purposes. However it may be used to establish a quorum.
- G. When a box is checked for a candidate, **and it is the only box checked**, all of the member's votes shall be counted for that candidate. When fewer boxes are checked on the ballot than the number of Directors to be elected, the count shall be one vote per check not to exceed the number of authorized votes.
- H. Votes cast on anything other than the official ballot shall be invalid and not counted.
- I. When counting the valid ballots, one Inspector will call the vote, one Inspector will keep the tally and one Inspector will oversee the count.
- J. At the discretion of the observing Inspector, the votes may be recounted by rotating Inspectors, i.e., the person that counted will then tally and the person that tallied will count.

- K. If votes do not match between counts, recounts should be done until the counts match.
- L. The same procedure shall be followed to tally "yes" and "no" votes on other matters before the members.

XVII. ANNOUNCEMENT OF RESULTS

When total votes cast have been verified by agreement or recount, the results shall be documented on the Inspector of Election Certification form and promptly reported by the Chief Inspector to the Board of Directors of the Association. The vote count 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. Within fifteen (15) days of the election, the board shall publicize the results of the election in a communication directed to all Members.

XVIII. Tie Votes

In the event of a tie vote among any number of the candidates, another run-off election of only the candidates involved in the tie shall be held immediately following the announcement of the results, or at a time determined by the Board of Directors of which proper notice is provided to the Members. In this case, all Members and proxyholders in attendance shall re-register and upon which issued a new ballot marked with the words "RUN-OFF" and showing only the names of the candidates involved in the tie vote. Those in attendance will then cast their ballots. All Election and Voting Rules shall apply in the run-off election and shall be enforced to the same degree as in any other election.

XIX. Record Retention

After tabulation, ballots shall be stored by the Association in a secure place for no less than one (1) year after the date of the vote. In the event of a recount or other challenge to the election and/or voting process, the Association 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.