

THE 2120 STOCKTON STREET HOMEOWNERS' ASSOCIATION

ELECTION RULES

[Adopted: 11/11/2021]

The following Election Rules for The 2120 Stockton Street Homeowners' Association are adopted pursuant to the Davis-Stirling Common Interest Development Act (Civ. Code, § 4000 *et seq.*) and in accordance with the Association's authority under its Governing Documents. Unless otherwise indicated, all capitalized terms are as defined in the Act. These Election Rules shall apply to any vote regarding assessments legally requiring a vote, election and removal of Directors, amendments to the Governing Documents and the grant of exclusive use of any portion of the Common Area to a Member. These Election Rules supersede and replace all prior versions.

ARTICLE I: DIRECTOR NOMINEE AND DIRECTOR QUALIFICATIONS

1.1. Director Nominee Disqualification.

a. Disqualification of Non-Members. A nominee must be disqualified for nomination to the Board if the nominee is not a Member of the Association at the time of their nomination, except if such nominee is:

i. Developer. A nonmember candidate appointed and designated by a developer consistent with the voting power of the developer as set forth in the regulations of the Department of Real Estate and the Association's Governing Documents; or

ii. Legal Entity. Appointed by a legal entity that is not a natural person to be a member for purposes of nomination to the Board. A legal entity that is not a natural person may designate one (1) Person to stand for election to the Board on its behalf. If elected, the directorship shall be specific to the Person designated and elected to the Board and cannot be transferred to another Person.

b. Disqualification after Internal Dispute Resolution. No Person shall be disqualified from nomination to the Board unless such Person has been provided with opportunity to engage in internal dispute resolution pursuant to Civil Code §5900, *et seq.* Thereafter, the Association may disqualify a nominee when:

i. Co-Owners Eligible for Only One Position. The Person, if elected, would be serving on the Board with the co-owner of his/her a Separate Interest.

ii. Current on Assessments. The Person is delinquent in the payment of any regular or special assessment and has not paid the assessment under protest pursuant to Civil Code §5658 or entered into a payment plan pursuant to Civil Code §5665.

iii. Convictions Impacting Fidelity Bond. The Person has been convicted of a crime that would, if elected, either prevent the Association from purchasing fidelity bond coverage or would cause the termination of the Association's existing fidelity bond coverage.

iv. Member for at Least One Year. The Person has not been a Member for at least one (1) year at the time of nomination.

v. Failure to Comply with Governing Documents. The Person fails to comply with the Association's Governing Documents, except as specified herein or by law.

1.2. Director Qualifications. Directors must meet the qualifications set forth above and in the bylaws and must not be delinquent in the payment of any assessment, except where the Person has paid the assessment under protest pursuant to Civil Code §5658, or where the Person has entered into a payment plan pursuant to Civil Code Section §5665. For purposes of this section, the term “assessment” does not include fines, fines renamed as assessments, collection charges, late charges or costs levied by a third party.

ARTICLE II: NOMINATIONS

2.1. Nominations. The Association may utilize any permissible means authorized by the bylaws to obtain nominations for Directors.

2.2. Nominating Committee. If required by the bylaws, the Board shall timely appoint a Nominating Committee to make as many nominations for election to the Board as the Nominating Committee shall in its discretion determine, but not less than the number of vacancies to be filled. If no separate nominating committee is appointed, the Board shall serve as the nominating committee.

2.3. Self-Nomination. Any Member meeting the qualifications set forth in these Rules may nominate himself/herself by fully completing and executing the application contained in the request for nominations. All such Members who return an application on or before the deadline stated in the request for nominations shall be included on the ballot for election of Directors. (Civ. Code, § 5105(b).)

2.4. Write-Ins/Floor Nominations. The ballot form may, but is not required to, provide a space where a Member can designate a vote for a nominee not listed on the ballot (i.e. write-in candidate). In the absence of such a space in the ballot form, write-in/floor nominations are not allowed.

2.5. Candidate Registration List. The Association shall maintain a candidate registration list specifying all candidates’ names that will appear on the ballot. The Association shall permit members to verify the accuracy of their individual information on the candidate registration list at least thirty (30) days before the ballots are distributed. The Association or Member shall report any errors or omissions to candidate registration list to the inspector or inspectors of election who shall make the corrections within two (2) business days. Unless otherwise specified by the inspector of elections, the Association’s manager shall be authorized to make corrections to the candidate registration list on behalf of the inspector of elections and shall provide such updated candidate registration list to the inspector of elections at his/her request, or at the time the ballots are counted and tabulated.

2.6 Elections by Acclamation. When, as of the deadline for submitting nominations provided for above, the number of qualified candidates is not more than the number of vacancies to be elected, as determined by the inspector or inspectors of the elections, the Association may, but is not required to, consider the qualified candidates elected by acclamation if all of the following conditions have been met:

- a. The Association has held a regular election for the directors in the last three years. The three-year time period shall be calculated from the date ballots were due in the last full election to the start of voting for the proposed election.
- b. The Association provided individual notice of the election and the procedure for nominating candidates as follows:

- i. Initial notice at least 90 days before the deadline for submitting nominations provided for above and in Civil Code §5115. The initial notice shall include all of the following:
 - a) The number of board positions that will be filled at the election.
 - b) The deadline for submitting nominations.
 - c) The manner in which nominations can be submitted.
 - d) A statement informing members that if, at the close of the time period for making nominations, there are the same number or fewer qualified candidates as there are board positions to be filled, then the Board of Directors may, after voting to do so, seat the qualified candidates by acclamation without balloting.
 - ii. A reminder notice between 7 and 30 days before the deadline for submitting nominations provided for in subdivision (a) of Section 5115. The reminder notice shall include all of the following:
 - a) The number of Board positions that will be filled at the election.
 - b) The deadline for submitting nominations.
 - c) The manner in which nominations can be submitted.
 - d) A list of the names of all of the qualified candidates to fill the Board positions as of the date of the reminder notice.
 - e) A statement reminding members that if, at the close of the time period for making nominations, there are the same number or fewer qualified candidates as there are board positions to be filled, then the Board of Directors may, after voting to do so, seat the qualified candidates by acclamation without balloting. This statement is not required if, at the time the reminder notice will be delivered, the number of qualified candidates already exceeds the number of Board positions to be filled.
- c.
- i. The association provides, within seven business days of receiving a nomination, a written or electronic communication acknowledging the nomination to the member who submitted the nomination.
 - ii. The association provides, within seven business days of receiving a nomination, a written or electronic communication to the nominee, indicating either of the following:
 - a) The nominee is a qualified candidate for the Board of Directors.
 - b) The nominee is not a qualified candidate for the Board of Directors, the basis for the disqualification, and the procedure, which shall comply with Civil Code §5900, by which the nominee may appeal the disqualification.

- iii. The Association may combine the written or electronic communication described in paragraphs (i) and (ii), above, into a single written or electronic communication if the nominee and the nominator are the same person.
- d.
 - i. The Association permits all candidates to run if nominated, except for nominees disqualified.
 - ii. Notwithstanding paragraph (i), the Association may disqualify a nominee if the person has served the maximum number of terms or sequential terms allowed by the Association.
 - iii. All directors must comply with the same nominee requirements.
- e. The Association Board votes to consider the qualified candidates elected by acclamation at an open meeting for which the agenda item reflects the name of each qualified candidate that will be seated by acclamation if the item is approved.

(Civ. Code, §§ 5103, 5105(b), 5115(a).)

2.7. Notice of Nomination Procedures and Deadlines.

a. Content and Timing of Notice. At least thirty (30) days before the deadline set for submitting nominations, the Association shall provide notice to the Members of the procedures and deadlines for submitting nominations. Individual notice shall be delivered pursuant to Civil Code section 4040 only if individual notice is requested by the Member. For the content and timing of notices required for director elections by acclamation, as permitted under Civil Code §5103, see Article III, Section 2.6 herein.

b. Delivery. Notice of nomination procedures and deadlines shall be given either by General Notice pursuant to Civil Code §4045 for Members who have not requested Individual Notice, or by Individual Notice pursuant to Civil Code §4040 for any Member that has requested to receive notices from the Association by individual delivery.

ARTICLE III: INSPECTOR OF ELECTIONS

3.1. Selection.

a. Process. Prior to the date ballots are first sent out, the Board shall select either one (1) or three (3) independent third parties to serve as the inspector of election.

b. Eligible Inspector. The inspector of election must be an independent third party who is not a person, business entity or subdivision of a business entity who is currently employed or under contract with the Association for any compensable services other than serving as an inspector of election, and may include any of the following:

- i. **Poll Worker.** A volunteer poll worker with the county registrar of voters;
- ii. **Accountant.** A licensee of the California Board of Accountancy;
- iii. **Notary Public.** A notary public;

iv. 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;

v. Independent Third-Party Inspector of Election. An independent third party Person.

3.2. Duties. Duties of inspector of election shall include the following:

a. Voter List. The Association shall maintain a voter list as specified in these rules. The Association's Members are permitted to report errors or omissions to such list. In the event an error or omission is discovered, the Association or Member shall report such errors or omissions to the inspector of elections who shall make the corrections within two (2) business days. Unless otherwise specified by the inspector of elections, the Association's manager shall be authorized to make corrections to the voter list and provide such updated voter list to the inspector of elections when requested by the inspector of elections, or at the time the ballots are counted and tabulated.

b. Deliver Ballots and Rules. Deliver, or cause to be delivered, at least thirty (30) days before an election, to each Member: (i) the ballot(s) by either prepaid first class mail or personal delivery, and (ii) a copy of these Election Rules by either prepaid first class mail, personal delivery or posting them to an internet website and including the internet website address on the ballot together with "The rules governing this election may be found here: [website address]" in at least 12-point font.

Unless otherwise specified by the inspector of election, the Association's manager shall be deemed authorized to deliver the ballots and a copy of these election rules to each Member.

c. Membership. Determine the number of memberships entitled to vote and the voting power of each.

d. Receive Ballots. Receive all ballots. Once received by an inspector of election, ballots are irrevocable. A ballot shall be considered received by the inspector of election when sent, placed in the ballot box, or given directly to the Inspector of Election.

Unless the inspector of election designates otherwise, the Association's manager is authorized to receive ballots on behalf of the inspector of elections and the location for the Members to mail and deliver ballots shall be the Association's manager's office. The unopened Ballots shall be addressed to the inspector of election, kept inside their sealed envelopes in a safe and secure location, and delivered to the inspector of elections at his/her request, or at the time the ballots are scheduled to be opened and tabulated by the inspector of election(s).

e. Count Ballots. Count and tabulate all votes. All votes shall be counted and tabulated by an inspector of election or his/her designee at a properly noticed open meeting of the Board or Members. Members may witness, but not interfere with, the counting and tabulation of the votes from at least five (5) feet away from the inspector and his or her assistants. The inspector of election may appoint and oversee additional Persons to count and tabulate votes, as the inspector of election deems appropriate, provided that such Persons are independent third parties.

f. Appoint Assistants. Appoint and oversee additional Persons to verify signatures, or perform tasks as deemed necessary by the inspector of elections.

g. Results. Determine the tabulated results of the election and report such results to the Board.

h. Custody. 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.

If the meeting to count and tabulate the ballots has a minimum quorum requirement and unless the inspector(s) of election designated otherwise, the Association's manager may verify Member information on the outer envelope prior to the meeting where the ballots will be counted for purposes of informing the Board and inspector of elections whether a sufficient number of ballots have been received for establishing a quorum only. Unless otherwise permitted by law, the Association's manager is not authorized to determine the validity or authenticity of any ballot received.

Following the election, the inspector of election shall maintain custody of the ballots, signed outer envelopes, voter list, proxies and candidate registration list at all times. The ballots, signed outer envelopes, voter list, proxies and candidate registration list shall be in the custody of the inspector of election or at a location designated by the inspector until after the tabulation of the vote and until the time allowed by Civil Code section 5145 for challenging the election has expired, at which time custody shall be transferred to the Association. Unless otherwise specified by the inspector of elections, the Association's manager's office shall be the place designated for storing the election materials.

i. 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 make the ballots available for inspection and review upon written request. A Member may authorize a representative to review the ballots on his or her behalf. Any recount shall be conducted in a manner that preserves the confidentiality of the vote.

j. Impartiality. Perform his/her duties impartially, in good faith, to the best of his or her ability, and as expeditiously as is practical in a manner that protects the interest of all Members of the Association.

k. Miscellaneous. Perform any acts as may be proper to conduct the election with fairness to all Members in accordance with the Civil Code, the Corporations Code and the Governing Documents. If there are three (3) inspectors, a majority will decide any issues not agreed upon by all. Any report made by the inspector is prima facie evidence of the facts stated therein.

3.3. Removal. The Board has the power to remove any inspector who ceases to meet the required qualifications, is unable or unwilling to perform his or her duties, or for other good reason, and to appoint a new inspector in his or her place.

ARTICLE IV: BALLOTS; PROXIES

4.1. Record Date for Ballot Distribution. The Board may fix a record date for distribution of ballots no more than sixty (60) days prior to the distribution of ballots. If the Board does not set a record date, record date shall be the day the first written ballot is mailed. (Corp. Code, § 7611)

4.2. Secret Ballots. All secret ballots mailed or otherwise delivered to the membership will include a double-envelope system and voting instructions for returning the ballots and be delivered to every Member entitled to vote at least thirty (30) day before the initial voting deadline for those elections that require such voting methods.

a. Content of Ballots.

i. For Director elections, the ballot shall contain the list of candidates, and the number of Directors to be elected.

ii. For the amendment or restatement of Governing Documents, the ballot shall contain the text of the proposed amendment.

iii. For all elections, the ballot shall contain the date and time that the initial balloting period will close, the quorum requirement, and a statement that the balloting period may be extended at the discretion of the Board.

b. Signature on Ballots. The ballots do not require a signature; however, ballots signed by Members remain valid.

c. Inner Envelope. The Association will provide two (2) envelopes. To preserve secrecy, the ballot is placed within an inner envelope. There shall be no identifying information on the inner envelope. The inner envelope containing the ballot is to be placed into a second outer envelope containing identifying information.

d. Outer Envelope. In the upper left-hand corner of the outer envelope, the voting Member must sign his/her name and indicate (print, type, etc.) his/her name and onsite property address. The outer envelope must be addressed to the inspector of election. Failure to include this information on the outer envelope may render the ballot invalid.

e. Delivery. The outer envelope may be mailed to the address on the envelope or delivered to a location specified by the inspector of election. The Member may request a receipt for delivery.

4.3. Deadline for Return of Ballots. The deadline for return of the ballots shall be at least thirty (30) days after distribution of the ballots to the Members, but the Board may authorize a longer time period for Ballot return.

4.4. Proxies. Proxies are only permitted as specified in the Association's Bylaws. Any instruction given in a proxy issued for an election that directs the manner in which the proxy holder is to cast the vote shall be set forth on a separate page of the proxy so that it can be detached and given to the proxy holder to retain. The proxy holder shall exchange the proxy for a secret ballot and cast the Member's vote by secret ballot, unless the proxy is revoked by the Member prior to the receipt of the Ballot by the Inspector of Elections. Proxies must not be used in lieu of Ballots.

ARTICLE V: VOTING PROCEDURE & VOTING

5.1. Notice of Voting Procedure. At least thirty (30) days before ballots for the election of directors or recall of directors are distributed, the Association shall provide notice to the Members as follows:

a. Contents. (i) The date and time by which ballots are to be returned by mail or handed to the inspector of elections; (ii) the physical address where ballots are to be returned by mail or handed to the inspector; (iii) the date, time, and location of the meeting at which ballots will be counted; and (iv) the names of all candidates that will appear on the ballot.

b. **Delivery.** Notice of voting procedures and deadlines shall be given either by General Notice pursuant to Civil Code §4045 for Members who have not requested Individual Notice, or by Individual Notice pursuant to Civil Code §4040 for any Member that has requested to receive notices from the Association by individual delivery.

5.2. Voter List. The Association shall maintain a voter list which 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.

The Association shall permit members to verify the accuracy of their individual information on such lists at least thirty (30) days before the ballots are distributed. The Association or Member shall report any errors or omissions to the list to the inspector or inspectors who shall make the corrections within two (2) business days. Unless otherwise specified by the inspector of elections, the Association's manager shall be authorized to make corrections to the voter list on behalf of the inspector of elections and provide such updated voter list to the inspector of elections when requested by the inspector of elections or at the time the ballots are counted and tabulated.

5.3. Voting Rights.

a. **Number of Votes.** Each Member shall be entitled to one (1) vote per Unit owned on all matters presented for a membership vote.

b. **Proof of Membership.** Except as provided in this subsection, no Person shall vote in any Association election if they are not a Member of the Association. Proof of membership will be a recorded deed, or if the property was transferred within the past thirty (30) days and a copy of the newly recorded deed is unavailable, a completed escrow closing statement.

c. **Denial of Ballot.** No Member shall be denied a ballot for any reason other than not being a Member at the time when ballots are distributed.

d. **General Power of Attorney.** The holder of a general power of attorney for a Member shall not be denied a ballot and may exercise that Member's right to vote consistent with the terms of these rules.

e. **Co-Owners.** Where there is more than one (1) owner of a Separate Interest, all such co-owners are Members and may attend any meeting of the Association, but only one (1) co-owner shall be entitled to exercise the vote of the Separate Interest.

5.4. Cumulative Voting. Cumulative voting in Director elections is not permitted.

5.5. Quorum.

a. **Director Elections.** There is no quorum requirement for Director elections.

b. **Assessment Increases Requiring Membership Approval.** Civil Code Section 5605 provides that assessment increases that require Member approval of a majority of a quorum of Members. The quorum for assessment increases is more than fifty percent (50%) of the members.

c. **Ballots Received Used to Establish Quorum.** Each ballot received by the inspector of election shall be treated as if the Member is present at the meeting for purposes of establishing a quorum.

5.6. Election At Least Every Four Years. The Association shall conduct an election for the board of directors at the end of each Director's expiring term and at minimum once every four (4) years. However, if the Association opts to hold an election by acclamation, all requirements under Civil Code §5103 or superseding statute and Article III, Section 2.6 herein must be met. Such requirements include that the Association has held a regular election for the directors in the last three (3) years. Civ. Code §§ 5100(a)(2), 5103.

ARTICLE VI: CAMPAIGNING; CANVASSING & PETITIONING

6.1. Access to Media.

a. Access to All Candidates and Members. All candidates for the position of director and any Member advocating a point of view relating to a particular election shall have equal access to Association media, newsletters and Internet websites during a campaign for purposes that are reasonably related to the campaign. If one (1) candidate or Member is offered use of public media available to the Association (i.e. email, mailings, website, etc.) then all candidates or Members will be offered use of the public media for the purpose of campaigning or expressing their opinion on an item that requires membership approval (barring duplicate information), as long as the candidate or Member uses appropriate language. Appropriate Language shall be defined as not slanderous, not offensive and no use of profanity.

b. Party Responsible for Content. All publicly published statements require the identity of the author. Anonymous statements will not be permitted. 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. Limitation on Length of Statements. The Board shall not be required to publish any statement over 200 words.

6.2. Common Area Meeting Space.

a. Purpose. Each Member shall be allowed to use, if any exists, the Association's Common Area meeting space at no cost for purposes relating to an election, including to advocate a point of view reasonably related to the election, as well as for other peaceful assemblies or meetings.

b. Reservation. Each Member who wants to use the Common Area for the above purposes must make a reservation in advance of the date and time requested. Reservations will be granted on a first-come, first-served basis. To assure fairness, each Member may not reserve or use the Common Area meeting space for more than two (2) hours on any particular date.

c. Procedural Rules. The Board may adopt additional rules to assure the orderly use of any Common Area meeting space.

d. Limited to Meeting Space Only. Unless specifically required by law, a Member's right to common area meeting facilities does not include the right to post information about the election on a Common Area bulletin board or kiosk.

6.3. No Use of Association Funds for Campaign Purposes. Association funds shall not be used for campaign purposes in connection with any Association election except to the extent necessary to comply with duties of the Association imposed by law. As used in this section, "campaign purposes" includes, but is not limited to, the following: (a) expressly advocating the election or defeat of any

candidate that is on the Ballot; (b) including the photograph or prominently featuring the name of any candidate on a communication from the association or its board.

6.4. Canvassing and Petitioning. Canvassing and petitioning Members and residents for any election or purposes permitted in Civil Code section 4515 (i.e., peaceful assembly to discuss social, political, or educational matters related to the community or matters of public interest) by telephone and/or personal visits to private residences in the development is limited to the hours of 9:00 a.m. until 6:00 p.m. However, any Member or resident who declines to be contacted must not be contacted by telephone or personal visits thereafter.

6.5 Impermissible Conduct. Nothing in this section shall be deemed to permit a Member or resident to contact another Member or resident in a manner that constitutes a breach of the Members' or residents' quiet enjoyment, a nuisance or both.

ARTICLE VII: ELECTION RESULTS

7.1. 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 the election.

7.2. Breaking a Tie. In the event of a tie leaving the outcome of the election unresolved, the election will be decided by luck (i.e. coin flip or drawing names) as determined by the inspector of elections.

7.3. Results of an Election. The tabulated results of the election will be announced immediately after all the ballots have been counted and reported to the Board. The Board shall record the results of the election in the minutes of the next Board meeting. Within fifteen (15) days of the election, the Board will publicize the tabulated results by General Notice.

7.4. Status of the Ballots after Election. The sealed ballots will be in the custody of the inspector of election or at a location designated by the inspector until after the tabulation of the vote and until one (1) year for challenging the election has expired, at which time custody will be transferred to the Association. Unless otherwise designated by the inspector of elections, the Association's manager shall retain custody of the ballots and election materials in a safe and secure location.

7.5. Election Recount. In the event of a recount or other challenge to the election process, the Association shall, upon written request, make the ballots available for inspection and review by Members or their authorized representatives. Any recount shall be conducted in a manner that shall preserve the confidentiality of the vote.

ARTICLE VIII: CONFLICT WITH GOVERNING DOCUMENTS

8.1. Unless otherwise specified herein, the provisions of these Election Rules shall control over provisions in the Association's Governing Documents to the extent that these were adopted to comply with the requirements of applicable law.