

# Proposed Rule Change "Election Rules"

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October 20, 2023

Dear Lake Lindero Mandatory Members,

Pursuant to California Civil Code §4360, the following shall serve as your notice and opportunity to comment on the attached election rules for the Lake Lindero community. The Board of Directors ("Board") will vote on the adoption of these rules at a meeting that will take place not less than 28 days from issuance of this Notice.

The Board of Directors is not amending the Bylaws to comply with this law since the law overrides the Bylaws. Please review the attached election rules. You are welcome to provide input on the qualifications, but all other changes to the election rules are mandatory and the Board does not have discretion to change them.

Thank you in advance for your consideration of the election rules and the Board's implementation of these new procedures.

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# LAKE LINDERO HOMEOWNERS ASSOCIATION

## ELECTION RULES

Under California law, most elections must be conducted by secret ballot according to regulations established by the legislature. The following Election Rules are adopted under Civil Code Section 5105(a) to describe the manner in which each such election must be conducted.

### 1. Elections Subject to these Rules

The following Election Rules must be followed in any election described in Civil Code Section 5100(a), including without limitation elections (a) regarding assessments which require a vote of the owners, (b) to select directors to serve on the Board, (c) to remove directors from the Board, (d) to amend or restate the Governing Documents, or (e) to grant exclusive use of all or a portion of the common areas as described in Civil Code Section 4600. At the direction of the Board of Directors ("Board"), any other type of election shall either follow these rules or any applicable provisions of the California Corporations Code.

### 2. Manner of Casting Votes

- (a) Except for the meeting to count votes which is described in Section 8 below, any membership vote conducted by the Lake Lindero Homeowners Association ("Association") may be done entirely by mail unless otherwise provided in the Declaration or Bylaws (collectively referred to as "Governing Documents"). Votes on elections to select Directors may be counted at the Annual Meeting or a Special Meeting of the Association Members ("Members") subject to these Election Rules. The Board shall determine the date, time, and place of said Annual Meeting of the Members and any Special Meeting of the Members in accordance with the Association's Bylaws.
- (b) All voting under these Election Rules shall be conducted by secret ballot only.

### 3. Secret Ballot and Voting Procedures

- (a) The Association shall create and maintain a "Voter List" which must contain the name, voting power, physical address or parcel number (or both), and the mailing address of each Member. Members have a right to verify their information on the Voter List at least 30 days before ballots are distributed. Any misinformation on the list shall be reported by the Member to the Association. Association or the Member shall notify the inspector(s) who shall make sure that the requisite corrections are made within two (2) business days.
- (b) At least thirty (30) days before ballots are distributed, the Association shall provide each Member with the following information:
  - (i) The date, time and physical address for the Member to return his or her ballot;

- (ii) The date, time and location of the meeting to count ballots; and
- (iii) The list of candidates' names that will appear on the ballot (if the election is to select directors)

Said information may be provided by "General Notice," as defined in Civil Code Section 4045, except for those Members who request that such information be delivered by "Individual Notice" as defined by Civil Code Section 4040.

- (c) A copy of these Election Rules must be delivered to the Members at least thirty (30) days prior to the election. Delivery of the Election Rules may be accomplished by either of the following methods:
  - (i) Posting the Election Rules to an internet website and including the corresponding internet website address on the ballot together with the phrase, in at least **twelve (12) point font**: "The rules governing this election may be found here:\_\_\_\_\_."
  - (ii) Individual Delivery as defined by Civil Code Section 4040.
- (d) At least thirty (30) days prior to the deadline for voting in any election subject to these Rules, a ballot, two pre-addressed envelopes, and instructions on how to complete and return the ballot shall be mailed by first-class mail or delivered to every Member.
- (e) The ballots circulated to the Members shall identify the proposed action and provide an opportunity to specify approval or disapproval. If the voting is conducted through the mail, the voting instructions accompanying the ballots shall designate a location to where the ballots must be returned and a date by which the ballots must be delivered. The Inspector(s) may designate the managing agent as the "Ballot Collector."
- (f) To ensure the confidentiality of the votes, the following procedures will be employed.
  - (i) A Member may not be identified by name, address, lot, parcel, or unit number on the ballot.
  - (ii) The ballot shall not be signed by the voter.
  - (iii) The executed ballot shall be inserted into an envelope that is sealed.
  - (iv) The sealed envelope containing the executed ballot shall be inserted into a second envelope that is then sealed. In the upper left-hand corner of the second envelope, the voting Member shall sign the voter's name, indicate the voter's name, and indicate the address or separate interest identifier that entitles the voter to vote.
  - (v) The second envelope is addressed to the inspector(s) of election, who will be tallying the votes. This envelope may be mailed or hand delivered to

the location specified by the inspector(s) of elections. The Member may request a receipt for delivery.

- (vi) Only those ballots which are delivered to the inspector(s) of election prior to the polls closing shall be counted.
- (g) The Board may extend the balloting period if by the original deadline fewer than all of the Membership interests have voted. Notice of the new due date shall be given in writing to all Members by General Notice as provided in Civil Code Section 4045.
- (h) The Association may not deny a ballot to a Member for any reason other than for not being a member at the time when ballots are distributed.
- (i) The governing authority of a Member who is a legal entity rather than a natural person may designate a natural person to receive and cast the Member's ballot.
- (j) Anyone with a general power of attorney for a Member may receive that Member's ballot and vote for that Member. The Association shall not deny a ballot to a person with a general power of attorney for a Member.
- (k) Once a ballot has been returned by a Member, the Member may not retrieve the ballot and/or change the Member's vote.

#### 4. Special Rules for Electing Directors

In addition to the secret ballot and voting procedures described in Section 3 above, the following additional rules will apply in elections to choose directors.

- (a) At least ninety-five (95) days before the candidate nomination deadline, the Association shall provide notice to the Members of the procedure and deadline for submitting a nomination to run for the Board. Association shall provide the Members with at least thirty (30) days to submit a nomination. **There shall be no nominations from the floor.**
- (b) The Candidate Nomination Form must be returned to the Association at the address provided on, and by the deadline stated on, such form.
- (c) Members may nominate themselves or another person. However, all candidates must meet the qualifications set forth in Section 5. Any candidate nominated by another person will be contacted to confirm that such candidate consents to having his or her name placed in nomination for election to the Board.
- (d) At least thirty (30) days prior to distribution of the ballots, Association shall provide notice of:
  - (i) The date, time and physical address for the owner to return his or her ballot;
  - (ii) The date time and location of the meeting to count ballots;

- (iii) A list of candidates' names that will appear on the ballot.

Said notice may be provided by "General Notice," as defined in Civil Code Section 4045, except for those Members who request that such information be delivered by "Individual Notice" as defined by Civil Code Section 4040.

- (e) Association shall create and maintain a "Candidate Registration List." Members have a right to verify their information on the Candidate Registration List at least thirty (30) days before ballots are distributed. Any misinformation on the list shall be reported by the Member to the Association. Association or the Member shall notify the inspector(s) who shall make sure that the requisite corrections are made within two (2) business days.
- (f) All nominees who meet the qualifications to serve on the Board, and if nominated by another person have confirmed his or her willingness to serve on the Board, shall be listed on the ballot.

## 5. **Uncontested Elections**

Notwithstanding the above described Secret Ballot and Voting Procedures set forth in Sections 3 and 4 of these Rules, when, as of the deadline for submitting nominations, the number of qualified candidates is not more than the number of vacancies to be elected, as determined by the inspector or inspectors of election, the Association may, but is not required to, consider the qualified candidates elected by acclamation if all of the following requirements have been met.

- (a) The Association has held a regular election for the directors in the last three years.
- (b) The Association has provided Individual Notice, as defined by Civil Code Section 4040, at least **90 days before the deadline for submitting nominations** of the following:
  - (i) The number of board positions to be filled;
  - (ii) The deadline for submitting nominations;
  - (iii) The manner in which nominations can be submitted; and
  - (iv) A Statement informing Members that if, at the close of the nomination deadline, the number of qualified candidates is the same number or fewer than number of seats to be filled, the Board can vote to seat the qualified candidates by acclamation without a membership vote.
- (c) A Reminder Notice must be sent to the Members by Individual Delivery, as defined by Civil Code Section 4040, between **7 and 30 days before the deadline for submitting nominations** including the following information:
  - (i) The number of board positions to be filled;
  - (ii) The deadline for submitting nominations;

- (iii) The manner in which nominations can be submitted;
- (iv) A list of the names of all qualified candidates to fill the Board positions as of the date of the reminder notice; and
- (iv) A Statement informing Members that if, at the close of the nomination deadline, the number of qualified candidates is the same number or fewer than number of seats to be filled, the Board can vote to seat the qualified candidates by acclamation without a membership vote.
- (d) A majority of a quorum of the Board votes in favor election by acclamation at a duly noticed Board meeting for which the agenda lists each qualified candidate that will be seated by acclamation if the item is approved.

6. **Qualifications For Directors**

- (a) Only persons who are Members of the Association at the time of nomination shall be permitted to run for or serve on the Board.
- (b) The governing authority of a Member who is a legal entity rather than a natural person may designate a natural person for nomination and service as a director.
- (c) A Member may be disqualified as a candidate for election to the Board under the following circumstances.
  - (i) The Member is not current in the payment of all Regular and Special Assessments owed to the Association at the time of his or her nomination and on the date of the election. If the Association requires a nominee to be current in payment of assessments, it shall require a Director to be current on Member assessments. However, the Association may not disqualify a candidate for failing to be current on assessment obligations if:
    - A. The Assessments have been paid under protest;
    - B. The Member has entered an agreed-upon payment plan;
    - C. The Member has not been provided the opportunity to engage in Internal Dispute Resolution regarding the debt.
  - (ii) A Member will be serving on the Board at the same time as another person who holds a joint ownership interest in the same separate interest as the nominee, and the other person is either properly nominated for the current election or an incumbent Director.
  - (iii) The nominee has a past criminal conviction that would, if elected, prevent the Association from purchasing fidelity coverage as required by Civil Code Section 5806, or would result in termination of fidelity coverage for the nominee if elected. Neither the Association nor the Inspector(s) are obligated to investigate the criminal background of any nominee. However, as a condition of qualification, the Association may request all

candidates to warrant that they do not have a past criminal conviction that would, if elected, prevent the Association from purchasing fidelity coverage, or would result in termination of fidelity coverage for the nominee if elected.

- (iv) The candidate has been a Member for less than one year on the date nominations are due.
- (d) An elected director that ceases or fails to meet the qualifications in these Rules may be disqualified, and the director's seat declared vacant, pursuant to Corporations Code Section 7221(b).

7. **Voting Rights and Record Date**

Each Member shall have those voting rights that are specified in the Bylaws and Declaration. The "Record Date" for Members entitled to receive notice of any Association meeting and to vote thereat shall be the date the Notice of Meeting is sent to the Members in connection with the election or, if balloting is to be done through the mail rather than at a meeting, the date the ballot is circulated to all Members.

8. **Inspector(s) of Election**

- (a) The Board shall appoint one or three inspector(s) of elections who each shall be an "Independent Third Party." The appointment shall be made at an open meeting of the Board. If it is for a Board of Directors election, the appointment shall be made before soliciting nominations. Otherwise, the appointment shall occur at least thirty (30) days prior to distributing the ballots.
- (b) An "Independent Third Party" includes, but is not limited to:
  - (i) a volunteer poll worker with the county registrar of voters;
  - (ii) a licensee of the California Board of Accountancy;
  - (iii) a notary public; and
  - (iv) a member of the Association provided that such member is not a member of the Board of Directors or a candidate for the Board of Directors or related to a member of the Board of Directors or a candidate for the Board of Directors.
- (c) No inspector(s) shall be employed by or under a contract with the Association for any compensable services other than acting as the inspector(s) of election.
- (d) The inspector(s) shall do all of the following:
  - (i) Receive ballots and determine to whom and/or where the secret ballots shall be returned; The managing agent may be appointed as the Ballot Collector;
  - (ii) Count and tabulate the votes;

- (iii) Determine the number of Members entitled to vote and the voting power of each;
  - (iv) Determine the authenticity, validity, and effect of ballots;
  - (v) Appoint and oversee independent third parties to verify signatures and to count and tabulate votes as appropriate;
  - (vi) Hear and determine all challenges and questions arising out of the right to vote;
  - (vii) Determine when the polls close consistent with the Governing Documents and these Election Rules;
  - (vii) Determine the tabulated results of the election; and
  - (ix) Perform any other acts in order to conduct the election with fairness and in a manner consistent with California law, the Governing Documents, and the Election Rules, including, but not limited to, consulting with Association's attorney regarding compliance with California law, the Governing Documents, and these Election Rules.
- (e) An inspector(s) shall perform his or her duties impartially, in good faith, to the best of his or her ability, and as expeditiously as is practical and in a manner that protects the interest of all members of the Association. The decision or act of a majority shall be effective in all respects as the decision or act of all.
  - (f) Any report made by the inspector(s) of election is prima facie evidence of the facts stated in the report.
  - (g) The Board may remove and replace any inspector(s) of election prior to the tabulation of ballots if an inspector(s) of election resigns or if the Board reasonably determines that an inspector(s) of election will not be able to perform his or her duties impartially and in good faith.

**9. Counting Votes and Reporting Election Results**

- (a) All votes shall be counted by the inspector(s) of elections, or by independent third parties appointed and supervised by the inspector(s), in public at a properly noticed open meeting of the Board or its Members at which a quorum is present. Ballots received by the inspector(s) may be used to achieve a quorum. Any Member, including the candidates, may witness the counting and tabulation of the votes. No person, including the inspector(s), shall open or otherwise review any ballot prior to the time and place at which the ballots are counted and tabulated.
- (b) If a quorum is not achieved, and a motion to adjourn is not approved by a majority of the votes represented either in person or proxy, the incumbent Directors' terms roll over until the next Director Election.

- (c) The results of any election shall be promptly reported to the Board and shall be recorded in the minutes of the next open Board meeting. Within fifteen (15) days of the election, the Board shall publicize the tabulated results of the election in a communication directed to all Members.
- (d) In a Directorial election, upon certification of the election results by the inspector(s) of election, the newly elected Board members shall be deemed to have taken office.

10. **Retention of Election Records**

- (a) The sealed ballots, signed voter envelopes, Voter List, proxies, and Candidate Registration List (collectively referred to as the "Election Materials") 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 tabulation of the vote. The Inspector(s) may appoint the managing agent as the custodian of the Election Materials pending tabulation of the vote. After tabulation of the vote, the Election Materials shall remain in the custody of the inspector(s) of elections, or at a location designated by the inspector(s), for a period of one (1) year after the date of the election, or for such longer period dictated by Civil Code Section 5145(a). After expiration of such period, custody of the Election Materials shall be transferred to the Association and maintained as "Association Records" pursuant, and subject, to Civil Code Section 5200.
- (b) If there is a recount or other challenge to the election, the inspector(s) shall, upon written request, make the Election Materials available for inspection and review by an Association member or that member's authorized representative. Notwithstanding the above, signed voter envelopes may not be copied. Any recount shall be conducted in a manner that preserves the confidentiality of the vote.

11. **Equal Access to Association Media**

If any candidate or Member advocating a point of view is provided access to Association media, newsletters, or internet website during a campaign, for purposes that are reasonably related to that election, equal access shall be provided to all Members and candidates advocating a point of view, 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 the candidate or Member, and not the Association, is responsible for that content.

12. **Access to Meeting Space and Use of Association Funds**

- (a) The Association shall ensure access to common area meeting space, at no cost, to all candidates and to all persons advocating a position for purposes reasonably related to an election.
- (b) Association funds shall not be used for campaign purposes in connection with any Association election, except to the extent necessary to comply with the duties of the Association imposed by law or the Governing Documents. The

foregoing is not intended to prevent the Association from providing relevant background information or a fair and balanced summary of election measures to provide context.

13. **Amendment of Election Rules**

These Election Rules may be amended from time to time in the manner prescribed in Civil Code Section 4340, et seq., but they may not be amended within 90 days of any election.