

April 1,2021

Dear Owners,

As a result of the enactment of SB 323 there have been several changes to the election process beginning in 2020. Among the changes include provisions that must now be included in an association's election rules. Attached is a draft set of new election rules with the required provisions included. The membership has 28 days to review and comment on these new set of rules to management and the board. Please submit all your comments to Ashley Coleman at [ashley.coleman@associa.us](mailto:ashley.coleman@associa.us) by April 29,2021, no later than 3PM.

Among the new changes are the following:

1. That the only reason a member can be denied a ballot is for not being a member at the time ballots are distributed. This means that associations are likely no longer able to suspend a member's voting rights, regardless of any authority in the Governing Documents to do so.
2. That the rules must include that the Inspector of Elections shall be prohibited from denying a ballot to a member for any reason other than not being a member at the time ballots are distributed. In addition, the Inspector of Elections shall be prohibited from denying a ballot to a person with a general power of attorney for a member. The ballot of a person with a general power of attorney for a member shall be counted if returned timely.
3. That the inspector of elections cannot be otherwise under contract or perform services for the association. This means that ***management or counsel can no longer serve as the inspector of elections for the association.***
4. That the grounds on which a candidate can be disqualified for running for the board is now limited. Candidates must now be members at the time of nomination, or they are disqualified from running for the board.
5. The law also allows for some optional grounds for disqualification of candidates. ***We have included the possible grounds of disqualification at section 3 of the enclosed rules. If the board would like to remove any one or all of these as grounds for disqualification of a candidate, please let us know and we will revise the draft rules accordingly.*** These optional provisions are set out in section 3 of the attached draft election rules and can include that a candidate may be disqualified for the following reasons:

a) Have been a member of the Association for at least one year as of the time

nominations are due.

b) Subject to the requirements of the law or the governing documents, be either

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current in the payment of regular and special assessments, have paid all currently-due regular and special assessments under protest, or be in a payment plan to

bring all regular and special assessments current.

- c) Be the only member of his/her separate interest running for election to the Board of Directors and/or serving on the Board of Directors.
- d) Not have 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.

6. The law also requires that the election rules be mailed out with the ballots or posted on a web site and the following language in 12 pt font included on the ballot: "phrase in 12-point font "The rules governing this election may be found here: \_\_\_\_\_."

7. In addition, the law now requires that two additional notices be provided to members. The requirement to provide these additional notices will extend the election process by several months. For ease of reference we have attached a post SB 323 election timeline to this memo. These new notice requirements are the following:

- General notice of the procedure and deadline for submitting a nomination as a candidate at least 30 days before any deadline for submitting a nomination. **Based on the next notice, this must happen at least 90 days before the election.**
- **At least 30 days before the ballots go out**, the Association must provide general notice of the Candidate list, Date, time and location for ballots to be returned and the Date, time and location for meeting where ballots will be opened

8. The association must maintain two new lists. A voter list and a candidate registration list. While the law does not define the contents of the candidate registration list, we

interpret the list as the list of qualified candidates. The law states that the voter list shall include:

- a. Name
- b. Voting power
- c. Either the physical address of the voter's separate interest or the parcel number or both
- d. The mailing address for the ballot shall be listed if it differs from the physical address of the voter's separate interest or if only the parcel number is used

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9. The Association shall also permit members to verify the accuracy of their individual information on both the voter list and candidate registration list at least 30 days before the ballots are distributed. The association or a member shall report any errors or omissions to either list to the inspector of elections who shall make the corrections within 2 business days. It is unclear what is required to permit members to verify the accuracy of their individual information. It is our recommendation that a statement be made on the first notice described above where the members are provided notice of the nomination process that the member can verify their information on the candidate registration or voter lists by contacting management and asking to verify their information and then requiring a written response for requested changes.

10. Lastly, an association may not amend its election rules within 90 days of an election.

While not technically required to amend the bylaws to comply with these requirements, the Board may want to amend the bylaws to avoid confusion in the future between the provisions set forth in the bylaws and the new legal requirements imposed by SB 323.

There are several questions that the new law raises and much of it is subject to interpretation. Please let us know if there are any questions regarding these new election rules or the new process in general.

Thank you,

On behalf of Tomahawk Board of Directors  
Ashley Coleman, HOA Manager

# TOMAHAWK BUILDING LOFTS HOMEOWNERS' ASSOCIATION

## Election Rules

Adopted in Accordance with Civil Code § 5100, et seq.

Adoption Date: \_\_\_\_\_

1. Access to Association media: If any candidate or member advocating a point of view is provided access to Association media, newsletters, or internet web sites 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 of Directors, 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. Access to common area meeting space: Any common area meeting space, if such space exists, may be accessed during a campaign, at no cost, by all candidates, including those who are not incumbents, and by all members advocating a point of view, including those not endorsed by the Board of Directors, for purposes reasonably related to the election.
3. Qualifications of candidates for the Board of Directors: In order to run for the Board of Directors, the individual must be a member of the Association. Additionally, in order to run for the Board of Directors, the individual must satisfy all of the following:
  - a) Have been a member of the Association for at least one year as of the time nominations are due.
  - b) Subject to the requirements of the law or the governing documents, be either current in the payment of regular and special assessments, have paid all currently-due regular and special assessments under protest, or be in a payment plan to bring all regular and special assessments current.
  - c) Be the only member of his/her separate interest running for election to the Board of Directors and/or serving on the Board of Directors.
  - d) Not have 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.
4. Procedures for nomination of candidates for the Board of Directors: Any member may nominate himself or herself as a candidate for the Board of Directors if that member is otherwise qualified by submitting a written statement to the Association nominating himself or herself at least thirty days prior to when the election materials are prepared for distribution to the members. The Association or the inspector of elections must provide notice to the members of the opportunity to self-nominate at least thirty days before the deadline for the receipt of the written statement containing the self-nomination. Nominations may also be made from the floor of a members' meeting. Candidates may also be nominated through writing-in the candidate's name on ballots.

5. Voting rights: All members as of the record date of the election are qualified to vote. A member may not be denied a ballot for any reason other than not being a member at the time when ballots are distributed. A person with a general power of attorney for a member may not be denied a ballot on behalf of that member, and the ballot of a person with a general power of attorney for a member must be counted on behalf of that member if returned in a timely manner.

6. Voting power: Each membership (defined as a single separate interest within the Association, regardless of the number of co-owners) is entitled to one vote. In the event more than one ballot is cast for a particular separate interest, the inspector(s) of election may count only one ballot, and the inspector(s) shall have the discretion to determine which ballot to count. Cumulative voting is permitted.

7. Voting period: The voting period for member elections shall commence when the ballot and any other election materials are distributed to the members of the Association and shall close at the election's member meeting at the time determined by the inspector(s) of elections. At least thirty days before an election, the inspector(s) of elections must deliver, or cause to be delivered, to each member the ballot or ballots and a copy of these Election Rules. These Election Rules may be delivered by either posting them to an internet website and including the corresponding internet website address on the ballot together with the phrase, in at least 12-point font: "The rules governing this election may be found here," or by individual delivery.

8. Candidate registration list and voter list: The Association or the inspector(s) of elections must retain, as association election materials (as defined in Civil Code section 5200), 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. 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 thirty (30) days before the ballots are distributed. The Association or member shall report any errors or omissions to either list to the inspector(s) of elections who shall make the corrections within two business days.

9. Validity of proxies: Proxies may be used only to the extent permitted by the Association's Bylaws and only in compliance with the requirements of the Bylaws. A proxy is only valid, and may only be counted, if it complies with the Bylaws and if: 1) it identifies a proxyholder authorized to exercise the proxy who physically attends the meeting for which the proxy is being utilized; 2) it contains voting instructions; 3) it is signed by the member giving the proxy; 4) to the extent it contains an instruction for an election that directs the manner in which the proxyholder is to cast the vote, the instruction must be set forth on a separate page of the proxy that can be detached and given to the proxyholder to retain; and 5) it has not been revoked by the member prior to the receipt of the proxy by the Association. A proxyholder must cast the member's vote by secret ballot. To the extent a member casts a vote by a ballot and delivers that ballot to the Association's inspector(s) of elections, the act of delivering the ballot shall automatically revoke any proxy granted by that member for any subject on that ballot, and only the ballot's selections shall be counted for that member, with the ballot prevailing over the proxy's directions and the proxyholder's selections.

10. Irrevocability of a ballot: Once a ballot has been received by the inspector(s) of elections (or received at the location designated by the inspector(s)), it shall be irrevocable.

11. Inspector(s) of elections: The Board of Directors shall appoint one or three independent third party inspector(s) of elections. Inspector(s) of elections may not be a member of the Board of Directors, a candidate for the Board of Directors, related to a member of the Board of Directors and/or related to a candidate for the Board of Directors. If there are three inspectors of elections, the decision or act of the majority shall be effective in all respects as the decision or act of all. The inspector(s) may appoint and oversee additional persons to verify signatures and to count and tabulate votes as the inspector(s) deem appropriate, provided that the persons so appointed are independent third parties.

12. Authority and duties of the inspector(s) of elections: The inspector(s) of elections shall perform all obligations of the inspector(s) of elections set forth in the Davis-Stirling Act, the Corporations Code, and the Association's Governing Documents.

13. Election Procedures & Timeline Exhibit: Subject to modification and control by the inspector(s) of elections, and subject to compliance with the law and other governing documents, elections shall proceed in accordance with the Election Procedures & Timeline attached hereto as Exhibit A.

14. Document authority: Upon these Election Rules being adopted by the Board of Directors, these Election Rules shall be the sole Election Rules for the Association. Any prior versions of the Association's election rules are repealed in their entirety.

## **Election Rules – Exhibit A: Election Procedures & Timeline**

1. At an open Board Meeting, the Board selects an annual meeting date. This date should be at least 105 days from the Board Meeting. At that meeting, the Board should also select an inspector of elections. The inspector cannot be under contract for any other purpose with the Association (such as the attorney or management company).
2. At least 90 days before the election, the Election Rules must be in place.
3. At least 90 days before the election, the Association or inspector shall provide general notice of the procedure and deadline for submitting a nomination. This must be done at least 30 days before any deadline for submitting a nomination. Individual notice shall be used for delivery if individual notice is requested by a member. The deadline for receipt of nominations must be at least 60 days before the annual meeting.
4. At least 60 days before the election (and 30 days before the ballots are sent out), the Association or inspector shall provide general notice (unless individual notice is requested) of all of the following:
  - (1) The date and time by which, and the physical address where, ballots are to be returned by mail or handed to the inspector of elections.
  - (2) The date, time, and location of the meeting at which ballots will be counted.
  - (3) The list of all candidates' names that will appear on the ballot.This provides an opportunity for candidates and members to correct any errors in their mailing addresses or other pertinent information, and it also to provide an opportunity for IDR to take place before a candidate is disqualified, if necessary.
5. In addition, the inspector of elections shall keep a voter list and candidate list. The voter list shall include name, voting power, and either the physical address of the voter's separate interest, the parcel number, or both. The mailing address for the ballot shall be listed on the voter list if it differs from the physical address of the voter's separate interest or if only the parcel number is used. 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 who shall make the corrections within two business days. Note that, during this time period, members are only permitted to review their own contact information. They do not get to inspect the contact information for other members or otherwise see the complete voter list.
6. The inspector of elections shall deliver the ballots and the Election Rules to each member at least 30 days before the ballots must be returned. The Election Rules can either be delivered by individual deliver or by 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 12-point font: "The rules governing this election may be found here:"
7. Every member must be given a ballot so long as he or she was a member on the date the ballots are initially distributed.

8. The inspector of elections must close the polls consistent with the voting instructions. Ballots for the annual meeting are to be tabulated at the annual meeting.

9. The tabulated results of the annual meeting shall be promptly reported to the Board, shall be recorded in the minutes of the next meeting of the Board, and shall be available for review by members of the association. Within 15 days of the election, the Association shall give general notice of the tabulated results of the election.

10. The inspector of elections shall maintain the Association election materials (the returned ballots, signed voter envelopes, the voter list of names and parcel numbers only, proxies, and the candidate registration statement) for at least one year. The Association election materials are subject to inspection and copying by members, except that: a) signed voter envelopes may be inspected only, and may not be copied; and b) the voter list subject to inspection and copying by members contains the names and parcel numbers only, and not the mailing address nor any additional contact information.

11. One year after the election, the inspector shall transfer all Association election materials to the Association.