

## **THE GEMS NEIGHBORHOOD ASSOCIATION ELECTION RULES**

**1. Election Notice Requirements.** The Neighborhood Association shall provide general notice of the procedures and deadlines for submitting candidate nominations in compliance with California Civil Code Section 5115. Note that these election rules apply to the Neighborhood Association, and the rules applicable to the Master Association are found in the Master Association Documents.

**2. Equal Access.**

**2.1** If, in the course of an election campaign for a position on the Neighborhood Association Board, any candidate or Member of the Neighborhood Association advocating a point of view is provided access to a form of media (including, but not limited to, newsletters and Internet web sites) that is owned or entirely run by and for the Neighborhood Association, for a purpose that is reasonably related to that election, equal access shall be provided to all candidates and Members of the Neighborhood Association for the same purpose ("**Equal Access**").

**2.2** Equal Access, as described above in Section 2.1, shall also apply to Members of the Neighborhood Association and candidates not endorsed by the current Neighborhood Association Board, and shall be for the purpose of advocating a point of view reasonably related to the election.

**2.3** The Neighborhood Association shall not edit or redact any content from the presentation of the points of view described in this Section, to the extent that such content does not violate any provision in the Declaration of Covenants, Conditions and Restrictions and Establishment of Easements of the Neighborhood Association, Bylaws of the Neighborhood Association or Rules promulgated by the Neighborhood Association Board, or any applicable state, federal or local laws, but may include a statement specifying that the candidate or Member of the Neighborhood Association, and not the Neighborhood Association, is responsible for the content of such point of view.

**2.4** The Neighborhood Association shall give all candidates, including those candidates who are not incumbents, and those who are not endorsed by the Neighborhood Association Board, Equal Access to the common meeting area (i.e., time and space available for such candidate's use), if any, to present a point of view reasonably related to the upcoming election.

**2.5** The Neighborhood Association shall not charge candidates a fee for access to the common meeting area for the purposes described in this Section.

**3. Qualifications and Procedures for Nomination of Candidates.**

**3.1** A Member of the Neighborhood Association is eligible to be nominated or to nominate himself or herself for a position on the Neighborhood Association Board if all of the following conditions are satisfied by such Member (subject to the rights of Merchant Builder and the Owners who are legal entities who are not a natural person to nominate non-Member candidates, as set forth below):

- (a) as of the date of nomination, the Member is an owner of his or her Condominium.
- (b) as of the date of nomination, the Member is at least 18 years old.

(c) no other joint owners of a Condominium held in common with the Member is serving on the Neighborhood Association Board and would serve on the Neighborhood Association Board concurrently with the Member.

(d) the Neighborhood Association is not aware of any past criminal conviction that would, if the Member was elected, either prevent the Neighborhood Association from purchasing the fidelity bond coverage required by Section 5806 of the California Civil Code or terminate the Neighborhood Association's existing fidelity bond coverage.

(e) as of the date of nomination, the Member is current in the payment of all Assessments of the Neighborhood Association for the three (3) months immediately preceding such date of nomination; provided, however, that notwithstanding the foregoing, a Member nominated for a position on the Neighborhood Association Board shall not be disqualified to be nominated or elected to the Neighborhood Association Board for (x) the nonpayment of fines, fines renamed as "Assessments", collection charges, late charges, or costs levied by a third party, and (y) failure to pay Assessments if either of the following circumstances is true: (1) the Member has paid the Assessment under protest pursuant to California Civil Code Section 5658, or (2) the Member has entered into a payment plan pursuant to California Civil Code Section 5665.

Directors and officers of the Neighborhood Association must provide to the Neighborhood Association or its property manager or other entity making any required filings, and candidates for the Neighborhood Association Board must be willing to provide, upon any election to the Neighborhood Association Board, the information necessary to complete and submit all filings and other registrations required under applicable law, including without limitation any information required to be submitted under the Corporate Transparency Act, including any updates thereto. Such information may include, without limitation, such individual's (i) full legal name; (ii) date of birth; (iii) current, as of the date on which the report is delivered, residential or business street address; and (iv) unique identifying number from an acceptable identification document and a scanned image of such document.

Directors and candidates must be Members of the Neighborhood Association unless: (i) Merchant Builder has made a nomination of a non-Member candidate consistent with the voting power of the Merchant Builder as set forth in the regulations of the Department of Real Estate and the Neighborhood Association's governing documents, or (ii) the Owner of a Condominium Unit is a legal entity that is not a natural person, the governing authority of that legal entity shall have the power to appoint a natural person to be a Member for purposes of this section.

In addition, each director on the Neighborhood Association Board shall, during the term which such director is a member of the Neighborhood Association Board, comply with the qualifications and requirements of nominees set forth in this Section 3.1 and any failure to comply with such qualifications and requirements shall result in the removal of such director from the Neighborhood Association Board.

**3.2** All Members of the Neighborhood Association eligible to vote in the forthcoming election are eligible to nominate himself or herself as a candidate for the Neighborhood Association Board. In addition, representatives of Merchant Builder may be nominated as a candidate for the Neighborhood Association Board.

**3.3** Provided that a Member of the Neighborhood Association seeking candidacy for a position on the Neighborhood Association Board satisfies the eligibility requirements set forth in Section 3.1 above, such Member of the Neighborhood Association may be nominated or nominate himself or herself by the following procedures:

(a) Nominations for candidates to the Neighborhood Association Board may be submitted in writing to the current Neighborhood Association Board, the secretary of the Neighborhood Association or the management company of the Neighborhood Association not less than 30 days prior to the date designated for mailing or distribution of ballots for the election of new Neighborhood Association Board members or such other date as established by the Neighborhood Association Board. Members of the Neighborhood Association shall not be prohibited from nominating themselves for any Neighborhood Association Board position and any attempt to prevent a Member of the Neighborhood Association's self-nomination shall be invalidated.

(b) After collecting all properly-submitted nominations, the current Neighborhood Association Board shall: (1) confirm or cause to be confirmed each nominated person's eligibility under Section 3.1; (2) confirm or cause to be confirmed each individual's acceptance of nomination; (3) distribute or cause to be distributed to the Neighborhood Association's membership a list of the confirmed candidates, as detailed in Section 3.5 below; and (4) prepare or cause to be prepared a ballot for distribution to all Members of the Neighborhood Association for voting purposes. Each such ballot must satisfy the requirements set forth in Section 4 below.

**3.4** The Neighborhood Association shall provide general notice of the procedure and deadline for submitting a nomination at least 30 days before any deadline for submitting a nomination. Individual notice shall be delivered pursuant to California Civil Code Section 4040 if individual notice is requested by a Member.

**3.5** The Neighborhood Association shall provide general notice of all of the following at least 30 days before the ballots are distributed: (i) the date and time by which, and the physical address where, ballots are to be returned by mail or handed to the Inspector(s) (as defined below); (ii) the date, time, and location of the meeting at which ballots will be counted; and (iii) the list of all candidates' names that will appear on the ballot. Individual notice of the foregoing shall be delivered pursuant to California Civil Code Section 4040 if individual notice is requested by a Member.

#### **4. Secret Ballot.**

**4.1** Pursuant to California Civil Code Section 5100, elections and votes related to assessments, selection of members of the Neighborhood Association Board, amendments to the governing documents adopted by the Neighborhood Association, and the grant of certain exclusive use easements shall be by secret ballot. The secret ballot must satisfy the requirements set forth in the California Civil Code and this Section. The Neighborhood Association shall require the Inspector(s) (as defined below) to deliver, or cause to be delivered, at least 30 days prior to the voting deadline for the election, to each eligible Member of the Neighborhood Association the following documents:

- (a) a ballot or ballots and 2 pre-addressed envelopes; and
- (b) a copy of the election operating rules.

The delivery of the election operating rules under Section 4.1(b) may be accomplished by either of the following methods: (i) posting the election operating 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."; or (ii) individual delivery.

**4.2** Ballots may not identify the voter's name, address, or unit number.

**4.3** The ballot itself may not be signed by the voter. It must be inserted into a sealed envelope. That sealed envelope must then be sealed within a second outer envelope. The outer envelope shall have, in the upper left-hand corner, space for the voter to print and sign his or her name, and print his or her address.

**4.4** The outer envelope is pre-addressed to the Inspector(s), who will be counting the votes. The envelope containing the ballot shall then be hand delivered or mailed via first class mail to a location specified by the Inspector(s). The Member of the Neighborhood Association may request a receipt for delivery.

**5. Use of Electronic Secret Ballots.** Notwithstanding anything to the contrary in the Neighborhood Association Documents, the Neighborhood Association may utilize an inspector or inspectors of elections, as specified in California Civil Code Section 5110, to conduct an election by electronic secret ballot, except for an election regarding regular or special assessments, as provided for in Chapter 8

(commencing with Section 5600) of the California Civil Code. As used in these Election Rules, “electronic secret ballot” means a ballot conducted by an electronic voting system that ensures the secrecy and integrity of a ballot pursuant to the requirements of California Civil Code Section 5105. Such use of electronic secret ballots shall be subject to the following requirements:

**5.1** A Member may opt in to voting via electronic secret ballot by notifying the Neighborhood Association in writing of a Member’s initial election to vote via electronic secret ballot in writing, which notification must also provide a valid email address for such Member, no later than 90 days before a membership election. A Member shall be entitled to change their preferred method of voting from electronic secret ballot to written ballot or written ballot to electronic secret ballot no later than 90 days before an election. A Member who votes by electronic secret ballot must provide a valid email address to the Neighborhood Association.

**5.2** An electronic secret ballot and a written ballot shall contain the same list of items being voted on.

**5.3** The Neighborhood Association shall mail a written ballot only to a Member who has opted out of voting by electronic secret ballot, or for whom the Neighborhood Association does not have an email address required to vote by electronic secret ballot, or to a Member who has not opted into voting by electronic secret ballot as provided herein.

**5.4** The Neighborhood Association shall send an electronic secret ballot only to a Member who has opted into voting by electronic secret ballot.

**5.5** The Neighborhood Association shall maintain a voting list identifying which Members will vote by electronic secret ballot and which Members will vote by written ballot, and include information on the procedures to either opt out of or opt into voting by electronic secret ballot, as applicable, in the annual statement prepared pursuant to California Civil Code Section 5310.

**5.6** Notwithstanding any other provision of the Neighborhood Association Documents to the contrary, in a membership meeting in which voting is conducted, at least in part, by electronic secret ballot, nomination of candidates from the floor of the membership meeting shall be prohibited.

**5.7** An electronic secret ballot may be accompanied by or contained in an electronic individual notice in accordance with paragraph (2) of subdivision (a) of Section 4040 of the California Civil Code. The Neighborhood Association shall deliver individual notice of the electronic secret ballot to each Member 30 days before the election and shall contain instructions on both of the following: (i) how to obtain access to that internet-based voting system; and how to vote by electronic secret ballot. Delivery of the individual notice described in this section may be accomplished by electronic submission to an address, location, or system designated by the Member.

**5.8** The Neighborhood Association shall provide individual notice, delivered pursuant to California Civil Code Section 4040, at least 30 days before the deadline to opt out of voting by electronic secret ballot, as provided in Section 5.1, of all of the following:

(a) The Member’s current voting method.

(b) If the Member’s voting method is by electronic secret ballot and the Neighborhood Association has an email address for the Member, the email address of the Member that will be used for voting by electronic secret ballot.

(c) An explanation that the Member is required to opt out of voting by electronic secret ballot if the Member elects to vote by written secret ballot.

(d) An explanation of how a Member may opt out of voting by electronic secret ballot.

(e) The deadline by which the Member is required to opt out of voting by electronic secret ballot if the Member elects to exercise that right.

**5.9** A vote made by electronic secret ballot is effective when it is electronically transmitted to an address, location, or system designated by an inspector or inspectors of elections.

**5.10** A vote made by electronic secret ballot shall not be revoked.

**5.11** If the Neighborhood Association does not have a Member's email address required to vote by electronic secret ballot by the time at which ballots are to be distributed, the Neighborhood Association shall send the Member a written secret ballot.

**5.12** For purposes of determining a quorum for a meeting in which voting is conducted by electronic secret ballot, a Member voting electronically pursuant to these Election Rules shall be counted as a Member in attendance at the meeting. Once the quorum is established, a substantive vote of the Members shall not be taken on any issue other than the issues specifically identified in the electronic vote.

**5.13** If the Neighborhood Association conducts an election to approve an amendment of the Neighborhood Association Documents by electronic secret ballot, the Neighborhood Association may deliver, by electronic means, the text of the proposed amendment to those Members who vote by electronic secret ballot, pursuant to these Election Rules and California Civil Code Section 5105. The Neighborhood Association shall also deliver a written copy of the text of the proposed amendment to those Members upon request and without charge. If a Member votes by written secret ballot, pursuant to these Election Rules and California Civil Code Section 5105, the Neighborhood Association shall deliver a written copy of the text of the proposed amendment to the Member with the ballot.

## **6. Selection of Inspectors.**

**6.1** The current Neighborhood Association Board shall select either 1 or 3 independent third parties to serve as the inspector or inspectors of the election ("**Inspector(s)**"). A person or persons currently employed or under contract to the Neighborhood Association for any paid services may not be selected to be an Inspector. No Member currently running for an elected position on the Neighborhood Association Board may serve as an Inspector.

**6.2** The Inspector(s) shall have the responsibilities described in applicable law, including without limitation, California Civil Code Section 5110, and shall perform his or her duties impartially, in good faith, to the best of his or her ability, and as expeditiously as practical.

**6.3** If there are 3 Inspectors, the decision or act of a majority shall be effective in all respects as the decision or act of all Inspectors.

**6.4** The Inspector(s) shall have the right to appoint and oversee such additional persons as the Inspector(s) deems appropriate to verify signatures and to count and tabulate votes, provided that the persons are independent third parties.

**6.5** All election materials shall be in the custody of the Inspector or a location designated by the Inspector in compliance with California Civil Code Section 5125.

## **7. Voting.**

**7.1** Ballots and all related materials required for voting under these procedures shall be sent to eligible Members of the Neighborhood Association at least 30 days before the date set for tabulation of votes.

**7.2** Members may cast their ballots by any 1 of the following methods:

(a) Members may mail their ballots to the location designated by the Inspector(s) provided that any ballot so mailed is postmarked no later than the date that is 3 business days before the date set for tabulation of votes; or

(b) Members may deliver their ballots (or have their ballots delivered) to the location designated by the Inspector(s) no later than 2 business days before the date set for tabulation of votes; or

(c) Members may deposit their ballots with the Inspector(s) at the meeting in which votes are to be tabulated prior to the time set by the Inspector(s) for closing of the polls.

**7.3** Once a ballot is received by the Inspector(s), it is irrevocable.

**7.4** No ballots shall be accepted, by mail or otherwise, after the date and time set by the Inspector(s) for closing of the polls. Any ballots received after the polls have closed shall be disqualified and will not be counted by the Inspector(s). A Member of the Neighborhood Association whose ballot has been disqualified will not be entitled to notification of such action and shall not have the right to cast another vote in the present election. Such disqualified ballots shall not be counted in any subsequent recount or challenge to the election procedures.

**8. Eligibility and Vesting of Voting Rights.**

**8.1** A Member of the Neighborhood Association is eligible to vote if the Member owns his or her Condominium when ballots are distributed.

**8.2** Except where cumulative voting is authorized, Class A Members may cast only 1 vote per Condominium. If more than 1 party is record owner of a Condominium, the vote for that Condominium shall be cast as the owners among themselves determine or forfeited if the owners cannot agree, as provided in the Declaration of Covenants, Conditions and Restrictions and Establishment of Easements of the Neighborhood Association.

**8.3** Such voting rights attributed to any given Condominium in the Neighborhood shall vest as provided in the Declaration of Covenants, Conditions and Restrictions and Establishment of Easements of the Neighborhood Association.

**9. Proxies.**

**9.1** Any eligible Member of the Neighborhood Association may authorize another person to act by proxy, pursuant to the Bylaws of the Neighborhood Association.

**9.2** Any instruction given in a proxy that directs the manner in which the proxy is to cast the vote shall be set forth on a separate page of the proxy that can be detached and given to the proxy holder to retain. The proxy holder shall cast the vote by secret ballot, in the manner prescribed in these procedures. The Inspector(s) shall determine the authenticity, validity and effect of proxies. Proxies shall be presumed valid if executed in accordance with California Corporations Code Section 7613 and the Bylaws of the Neighborhood Association.

**10. Voting Procedures and Custody.**

**10.1** All votes shall be counted and tabulated by the Inspector(s) in public at a properly noticed open meeting of the Neighborhood Association Board and/or Members of the Neighborhood Association. Any candidate or Member of the Neighborhood Association may witness the counting and tabulation of the votes. No person, including, but not limited to, Members of the Neighborhood Association and employees of the management company, if one has been selected, shall open or otherwise review any ballot prior to the time the ballots are counted and tabulated by the Inspector.

**10.2** The results of the election, as tabulated by the Inspector(s), shall be promptly reported to the current Neighborhood Association Board and shall be recorded in the minutes of the next meeting of the Neighborhood Association Board, and shall be made available for review of Members of the Neighborhood Association. The Neighborhood Association Board shall publicize the results of the election in a communication directed to all Members of the Neighborhood Association, within 15 days of the date the final tabulation of votes has occurred.

**10.3** The sealed ballots, signed voter envelopes, voter list, proxies, and candidate registration list shall at all times be in the custody and control of the Inspector(s), or at such location designated by the Inspector(s), until after the final tabulation of votes and expiration of the time allowed by California Civil Code Section 5145 for challenging the election, after which time the custody and control of the ballots shall be turned over to the Neighborhood Association.

**10.4** After the final tabulation of the votes has been completed by the Inspector(s) and custody and control of the ballots has been turned over to the Neighborhood Association, the Neighborhood Association shall store the ballots or cause them to be stored, in a secure location for not less than 1 year from the date of final tabulation of votes.

**11. Election by Acclamation.** Notwithstanding the secret balloting requirement in California Civil Code Section 5100, or any contrary provision in the Neighborhood Association Documents, including without limitation these Election Rules, when, as of the deadline for submitting nominations for election to the Neighborhood Association Board, the number of qualified candidates is not more than the number of Neighborhood Association Board vacancies to be filled, as determined by the inspector of the elections, the Neighborhood Association Board may, but is not required to, declare the qualified candidates elected by acclamation if all of the conditions listed in California Civil Code Section 5103 have been met. The Neighborhood Association Board shall act by voting at a meeting for which the agenda item reflects the name of each qualified candidate that will be seated by acclamation if the item is approved.

**12. Retention of Election Materials.** The Neighborhood Association shall maintain election materials in compliance with California Civil Code Section 5105(a)(7).

**13. Amendment.** These Election Rules shall not be amended less than 90 days prior to an election.