



*Community of Harbor Bay Isle
Owners' Association
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January 24, 2020

TO: All Community of Harbor Bay Isle Homeowners

FROM: Community of Harbor Bay Isle Owners' Association Board of Directors

RE: Proposed Rule Change – Election Rules

California Civil Code 1357.130, which took effect January 1, 2004, governs the manner in which Homeowners Associations can adopt new rules. The law requires that notice of a proposed rule change be provided 30 days in advance of its adoption so that Association members have the opportunity to comment.

Accordingly, the Community of Harbor Bay Isle Community Board of Directors has voted to change/update its election rules to be in compliance with California State Law, SB 323. The Board of Directors will adopt the changes after 30 days of the distribution of this notice. The proposed Election Rules are attached for your review.

Please submit any comments you may have about the proposed rule change to Dawn Jaeger, Executive Director, at the Community of Harbor Bay Isle, as follows:

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Phone: 865-3363 ~ **Fax:** 522-1436

The Community of Harbor Bay Isle Owners Association, Inc.

Election Rules

These Election Rules apply to all Member votes undertaken by THE COMMUNITY OF HARBOR BAY ISLE OWNERS COMMUNITY, INC (the "Community"). These Election Rules shall be effective on the date of adoption, shall supersede any other rules of the Community affecting voting or elections, and shall remain in effect until modified by the Board of Directors (the "Board").

ARTICLE 1 MEMBER VOTING RIGHTS

1.1 Member Voting Rights. Notwithstanding anything to the contrary in the Community's governing documents, all Community Members shall be entitled to vote, and no Member shall be denied a ballot for any reason other than not being a Member. The Member's right to vote only applies to those issues on which voting by Community Members takes place and does not apply to the election of Community Directors which is governed by a different process. "Member" means a person who holds legal title to the separate interest (i.e., is named in the recorded deed for the separate interest property). The "separate interest" property means the lot owned by a Community Member.

1.1.1 Entity Owners. In the case of a Community Member that is not a natural person (such as a trust, corporation or other entity), the vote of such Member may be cast by any authorized representative of the Member designated by written notice to the Community.

1.1.2 General Power of Attorney. A person with general power of attorney for a Community Member, who has provided satisfactory evidence thereof, shall not be denied a ballot and said ballot shall be counted if returned by the deadline for voting.

1.2 Voter List. The Community shall maintain a "Voter List" which shall include for each separate interest: the Member's name; voting power; and, unless the Member has "opted out" of the public distribution of their address, the physical address of the Member's separate interest, or the parcel number, or both, and the mailing address of the Member if it is different than the physical address of the separate interest (or if the parcel number is used). Upon request, the Community shall permit Members to verify the accuracy of their individual information on the Voter List at least 30 days before the ballots are mailed. The Community Member may report any errors to the Inspector(s) of Election who shall make the correction within two business days. The Community may, at its discretion, report any known errors to the Inspector(s) of Election. The Voter List shall be retained as "association election materials" as required by law.

1.3 Voting Power of Each Membership. On each matter before the Community Members, only one vote shall be cast for each separate interest owned except that Class C Members shall have five (5) votes per acre of property owned in a commercial lot/parcel within the Community. Once a ballot is received by the Inspector(s) of Election, it may not be rescinded. Votes on behalf of a separate interest owned by more than one person or entity shall be treated as a single member for voting purposes. The vote for such separate interest shall be exercised as the owners among themselves shall determine, but in no event shall more than one (1) vote be cast with respect to any separate interest or five (5) votes per acre of property owned in the case of a Class C Member. If the joint owners of a separate interest are unable to agree among

themselves as to how their vote is to be cast, they shall lose their right to vote on the matter in question. If any joint owner of a separate interest casts a vote representing the separate interest, it will thereafter be conclusively presumed for all purposes that such owner was acting with the authority and consent of the other owners of that separate interest.

1.4 Proxies. Proxies may be used by Community Members at a membership meeting only as authorized in the Bylaws. In any election or vote of the Community Members conducted by the Community, only official ballots issued by the Community shall be counted as votes. Proxies are not ballots and are not valid as votes in any election or vote conducted by the Community.

1.5 General Power of Attorney. A Member may delegate their voting rights to a third party by use of a general power of attorney that conforms to the laws of the state in which the power is conveyed. The power of attorney must be returned to the Community at or before the casting of the ballot for which voting rights have been delegated.

ARTICLE 2 VOTING PROCEDURE

2.1 Election of Community Directors by Electors. Directors representing the seven (7) Villages, except Village 1C, are elected at the Community's annual meeting by the electors. The then-current members of the boards of directors of Projects within that Village shall be the electors authorized to vote for a Village's representative on the Community Board. Villages 1, 3A and 4 elect their Community Board directors in even-numbered years and Villages 1C, 2, 3B and 5 elect their Community Board directors in odd-numbered years.

2.2 Confidentiality of Ballots Cast by Class C Commercial Members. The Inspector(s) of Election shall take all reasonable steps to protect the confidentiality of ballots cast by Class C Members (i.e. commercial members). Such members cast ballots of varying voting weight, thus such ballots will necessarily indicate the voting weight of the person or entity casting them. The Inspector(s) of Election shall announce the tabulation of the total commercial member ballots cast by rounding up to the next whole number, unless doing so would cause the balloting to have a different result, in which case decimal tabulation is deemed unavoidable even though it could reveal the way in which a Class C Member voted on the measure or election. In any re-count of ballots cast by Class C Members in the election of the Village 1C representative or of ballots cast in a Community vote, the Inspector(s) of Election shall conduct the re-count in a manner that, under the circumstances at the time, reasonably preserves the confidentiality of ballots cast by the Class C commercial members.

2.3 Notice of Voting Information. At least thirty (30) days before the ballots are distributed, the Community shall provide general notice of all of the following to the Community Members when a Community vote is to take place: (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) of Election and (ii) the date, time, and location of the meeting at which ballots will be counted. In the case of an election of Community directors, the Community Members will be provided general notice of the following: (i) the date, time, and location of the meeting at which directors will be elected, and (ii) the "Candidate Registration List" as defined in Section 3.3.

2.4 Distribution of Ballots. All voting by the Community Members shall be conducted by secret ballot using a "double envelope system" as described in *Civil Code* section 5115(a). Ballots and two envelopes with instructions on how to return ballots shall be mailed by first-class mail or delivered to all Community Members in such vote or election. For a vote on any of the matters specified in *Civil Code* section 5100(a), except the election of Community directors, ballots shall be distributed a minimum of thirty (30) days prior to the deadline for voting. These matters are: (i) elections regarding assessments legally requiring a Member vote, (ii) amendments to the governing documents, and (iii) grants of exclusive use of common area

property pursuant to *Civil Code* section 4600. For Community votes on any other matter, ballots may be distributed a reasonable time (which may be less than thirty (30) days) prior to the deadline for voting.

2.5 **Election by Acclamation.** If, as of the published deadline for receiving nominations for Community directors, there is only one qualified Village candidate for election to that Village's seat on the Community Board, then the qualified candidate shall be declared elected. The elected director shall take office at the first Board meeting following the deadline for nominations or, if later and an annual meeting is held, then at the first Community Board meeting after the annual meeting. Written notice of the election shall be given to the Members.

2.6 **Frequency of Community Director Elections.** The Community shall hold an election for a seat on the Community Board at the expiration of the corresponding director's term, or sooner if required by the Bylaws.

2.7 **Extension of Voting.** In a vote where Community Members are casting ballots, the Board shall be entitled to extend the deadline for the return of ballots one or more times due to the lack of a quorum or for such other reason(s) as the Board deems reasonable and prudent.

2.8 **Tabulation and Observation.** The Inspector(s) of Election shall open all ballots and tabulate the votes at a properly noticed open meeting of the Board or Members in a manner that allows the Members to view the opening and tabulation. The Inspector(s) of Election may appoint additional persons to assist in the opening of ballots and tabulation of votes so long as those persons are independent third parties. Observers must remain at least five (5) feet from the area of opening and tabulation and not communicate, harass, or otherwise interfere with the Inspector(s) of Election and/or those assisting the Inspector(s) of Election in any manner whatsoever. The Inspector(s) of Election or the Board shall have the power and authority to cause the removal of any person who interferes with or disrupts the voting, opening or tabulating process. The Inspector(s) of Election may suspend the opening and tabulation process if anyone causes interference with or disrupts the process.

2.9 **Reporting Election Results.** The tabulated results of the election shall be promptly reported to the Community Board and shall be recorded in the minutes if reported at a meeting of the Board or recorded in the minutes of the next meeting of the Board if reported at a Member meeting. Within fifteen (15) days of the election, the Community Board shall give the Members general notice of the tabulated results of the election.

2.10 **Ties.** In the event of a tie, the candidates who tied may agree among themselves who the elected representative will be. If they are unable to agree, the Community shall promptly hold a subsequent runoff election for the seat by sending out new ballots to the electors and holding a special meeting to count the ballots following the closing of the polls at least thirty (30) days following the mailing of the ballots.

2.11 **Retention of Community Election Materials.** "Community election materials" shall mean the returned ballots, signed voter envelopes, the Voter List, proxies (if any), and the Candidate Registration List (if any). The Community election materials shall at all times be in the custody of the Inspector(s) of Election or at a location designated by the Inspector(s) of Election for a period of one (1) year after the Inspector(s) of Election notifies the Board and Members of the election results, at which time custody shall be transferred to the Community. The Community shall retain the Community election materials for the current fiscal year and prior two (2) fiscal years. At the expiration of the retention period all Community election materials may be discarded.

ARTICLE 3

CANDIDATES FOR THE COMMUNITY BOARD AND NOMINATION PROCEDURES

3.1 Qualification of Candidates. Candidates for the Community Board must be Community Members at the time of their nomination and (i) must meet any other qualifications or restrictions set forth in these Election Rules and (ii) must meet any other qualifications or restrictions set forth in the Bylaws so long as they do not conflict with these Election Rules. In the case of a Member that is not a natural person (such as a corporation or other entity), the entity Community Member shall have the power to appoint a natural person as the "Member" for purposes of director elections. The Community shall disqualify a nominee for the Community Board for any of the following reasons:

- 3.1.1 The nominee to the Community Board for any Village is not an owner of property within said Village.
- 3.1.2 If the nominee, if elected, would be serving on the Board at the same time as another owner of the same separate interest and the other person is either properly nominated for the current election or is an incumbent director.
- 3.1.3 If the nominee, at the time of nomination, is delinquent in the payment of regular and/or special assessments. A nominee shall not be considered "delinquent" if the delinquency relates to the payment of fines, fines renamed as assessments, collection charges, late charges, or costs levied by a third party and/or if the nominee: (a) has paid the regular or special assessment under protest; (b) has entered into a payment plan for repayment of the delinquent assessments and is not delinquent in payments due under the plan; or (c) the nominee has requested and has not been provided an opportunity to engage in internal dispute resolution.
- 3.1.4 If the nominee has been a member of the Community for less than one year.
- 3.1.5 If the nominee discloses, or if the Community is aware or becomes aware of, a past criminal conviction that would, if the Member was elected, either prevent the Community from purchasing the fidelity bond coverage required by Civil Code section 5806 or terminate the Community's existing fidelity bond coverage.

3.2 Nominations/Solicitations of Candidates for Election to the Community Board.

- 3.2.1 **Residential Village Nominations.** At least thirty (30) days before the deadline for submitting a nomination for an open seat on the Community Board, the Community shall provide general notice of the procedure and deadline for submitting a nomination for the Community Board to each Member in each Village which has a seat up for election. Any Village Member who satisfies the qualifications may place their name in nomination for the Community Board by submitting the nomination before the published deadline for receiving nominations. In addition, each Project board may recruit qualified candidates to represent their Village on the Community Board.
- 3.2.2 **Class C Nominations.** Class C (commercial) Members may submit names of qualified candidates to serve as the Village 1C representative director on the Community Board, if made at least forty (40) days prior to the date of the Community annual meeting. Thereafter, nominations for Village 1C representatives shall close.

3.3 Candidate Registration List. The "Candidate Registration List" shall mean the list of candidates who will appear on the ballot for that Village's election of a Community director. Upon request, the Community shall permit candidates to verify the accuracy of their individual information on the Candidate Registration List at least thirty (30) days before the ballots are mailed. The Member shall report any errors to the Inspector(s) of Election who shall make the correction within two business days. The Community Board may, at its discretion, report any known errors to the Inspector(s) of Election. The Candidate Registration List shall be retained as "association election materials" as required by law.

3.4 Notice of Known Candidates. The names of all persons on the Candidate Registration List shall be set forth on the ballot where a ballot election is taking place.

3.5 Candidacy Statements. Any candidate who wishes to submit a candidacy statement may only do so. The content of any candidate statement shall be limited to a statement of the candidate's qualifications to serve as a director and must be provided using the Community's authorized form (if any).

3.6 Declaration of Vacancy for Delinquency. Any Member serving on the Community Board shall be current in the payment of regular and special assessments or the delinquent director's seat may be declared vacant by the Community Board following notice to the director and an opportunity to meet with the Board in executive session to explain why the director should not be disqualified. A director shall not be considered "delinquent" in the payment of assessments if the delinquency relates to the payment of fines, fines renamed as assessments, collection charges, late charges, or costs levied by a third party and/or if the director: (a) has paid the regular or special assessment under protest; (b) has entered into a payment plan for repayment of the delinquent assessments and is not delinquent in payments due under the plan; or (c) has requested and has not been provided an opportunity to engage in internal dispute resolution.

ARTICLE 4 USE OF COMMUNITY MEDIA AND CAMPAIGNING

4.1 Access to Community Media – Candidates for the Board. The Community Board may, but is not required to, make Community media (e.g., newsletter, notice board, website, or other notices provided to the Members) available to qualified candidates running for election to the Community Board for purposes that are reasonably related to the election in which that candidate is running. If the Community Board allows any candidate access to Community media, then all qualified candidates shall be allowed equal access to the same media.

4.2 Access to Community Media – Other Matters. If the Community Board utilizes Community media to advocate a point of view on any matter (other than election of directors) that requires Community Member approval or allows any Member access to Community media for that purpose, then all Community Members advocating a different point of view shall be allowed equal access to the same media. The Community Board shall not be required to allow access to more than one Community Member advocating the same point of view.

4.3 "Equal Access." "Equal access" shall mean publication of written statements not to exceed a predetermined length as determined by the Community Board. The Community Board shall not edit or redact any statement but shall not be required to publish any statement that exceeds the predetermined length restrictions. Modifications to formatting may be made so as to allow for space and/or media restrictions. If any formatting modifications should become necessary, they shall be applied equally to all submissions and at no time shall any formatting be applied that may signify a preference or partiality.

4.4 Responsibility for Content. All statements published in Community media pursuant to the "equal access" rules must identify the author or proponent. No anonymous statements will be permitted. The author and/or proponent of any statement or point of view shall be solely

responsible and liable for the content of their statements. The Community shall not be responsible or liable for the content of any statement published pursuant to the "equal access" rules.

4.5 Campaigning. No Community funds shall be expended for the purposes of campaigning in connection with any vote or election other than those funds specifically required to distribute required correspondence, notices, or forms that may contain the names of candidates or necessary information on the issues being voted upon, or as is otherwise deemed by the Community Board to be necessary or appropriate for the fair and reasonable conduct of a vote or election, or to the extent necessary to comply with duties of the Community imposed by law. Specifically excluded is the expenditure of Community funds for the purposes of expressly advocating approval, election, or defeat of any candidate.

ARTICLE 5 USE OF COMMON AREA MEETING SPACE

5.1 Access to Common Area Meeting Space – Campaigning by Candidates for the Board. The Community Board shall ensure that during a campaign all qualified candidates for election to the Community Board are given access to common area meeting space (if any) upon request, at no cost, for purposes reasonably related to their campaigns.

5.2 Access to Common Area Meeting Space – Other Matters. Whenever the Community Board places a matter before the Members which requires Member approval, the Board shall ensure that Members advocating a point of view on the matter are given access to common area meeting space (if any) upon request, at no cost, for purposes reasonably related to advocating their point of view, whether or not they agree with the point of view advocated by the Community Board on the matter at issue.

5.3 All Access. Any use of the common area facilities for the purposes described above shall be regulated by any existing rules and regulations for such use. The Community Board, in its sole discretion, may reasonably limit a candidate's or Member's access to common area facilities in order to facilitate equal access for other candidates and Members, and so as not to unreasonably interfere with other Members' rights to use such facilities.

ARTICLE 6 INSPECTOR(S) OF ELECTION

6.1 Appointment of Inspector(s) of Election. Whenever there is a membership vote or election, the Community Board shall appoint one (1) or three (3) Inspectors of Election, hereinafter individually or collectively referred to as the "Inspector(s) of Election," whose powers and duties shall be as set forth in Civil Code section 5100 *et seq.* The Community Board shall have the power to remove an Inspector(s) of Election who ceases to meet the required qualifications, is unable or unwilling to perform their duties, or for other good reason, and to appoint one or more new Inspector(s) of Election in their place.

6.2 Qualification of Inspector(s) of Election. The Inspector(s) of Election may be any persons the Board reasonably believes to be independent with respect to the matter or matters being voted on and may include Members of the Community, but may not be: (i) a member of the Community Board or a Project Board; (ii) a candidate for election to the Community Board or a Project board; (iii) or be related to a current member of the Community Board or Project board or; (iv) be related to a candidate for election to the Community Board or a Project board; and/or (v) the Community's manager, accountant, legal counsel, or any other person, business entity, or subdivision of a business entity that is employed by or under contract with the Community to provide compensable services to it at and/or after commencement of the election process other than serving as Inspector(s) of Election.

6.3 Payment to Inspector(s) of Election. The Board may authorize payment of Community funds to any third party appointed to serve as Inspector(s) of Election; however, no payment may be authorized for any Community Member appointed to serve as the Inspector(s) of Election.

6.4 Duties of the Inspector(s) of Election. The Inspector(s) of Election shall be responsible to perform their duties as follows:

6.4.1 Perform those tasks enumerated in Civil Code section 5110(c); and

6.4.2 Perform all duties impartially, in good faith, to the best of the Inspector of Election's ability, as expeditiously as is practical, and in a manner that protects the interest of all Members of the Community; and

6.4.3 Make any necessary corrections to the Candidate Registration List or the Voter List within two business days of being informed of an error by a Member or by the Community; and

6.4.4 Deliver (or cause to be delivered) the following documents to the members at least thirty (30) days before an election: (a) the ballot(s) by first-class mail and (b) a copy of these Election Rules by (i) individual delivery or (ii) by posting the internet website address where these Election Rules may be accessed on the ballot together with the phrase in at least 12-point font, "The rules governing this election may be found here: [insert internet website address]"; and

6.4.5 Retain the Community election materials as provided herein.

6.5 Indemnification of Inspector(s) of Election; Liability Insurance. The Community may, at the Board's sole discretion, indemnify the Inspector(s) of Election to the fullest extent provided by law. The Community shall have the power to purchase and maintain insurance to protect it and/or the Inspector(s) of Election against any liability asserted against the Community and/or against the Inspector(s) of Election arising out of the Inspector(s) of Election's acts and/or omissions relating to any Community vote or election.

ARTICLE 7 AMENDMENTS

The Board may amend these Election Rules from time to time except that these Election Rules may not be amended less than ninety (90) days prior to an election unless that amendment is merely to conform to non-discretionary changes in the law.

I, _____, am the Secretary of THE COMMUNITY AT HARBOR BAY ISLE OWNERS COMMUNITY, INC., and certify that these Election Rules were duly adopted by the Board of Directors of the Community and came into effect on the ____ day of _____, 20__.

Secretary

_____, 20__
Date