

HERITAGE GROVE AT LOS GATOS HOMEOWNERS ASSOCIATION

Secret Ballot Election and Voting Rules (Adopted on June 16, 2020)

These Secret Ballot Election and Voting Rules (these "**Election Rules**") have been prepared for Heritage Grove at Los Gatos Homeowners Association (the "**Association**") pursuant to California *Civil Code* section 5105.

Defined Terms

When used in these Election Rules, the following capitalized terms shall have the meanings given to them below.

"Ballot" shall mean a secret ballot used in an Association election conducted in accordance with the procedures set forth in these Election Rules.

"Board" shall mean the board of directors of the Association.

"Bylaws" shall mean the *Bylaws of Heritage Grove at Los Gatos Homeowners* adopted and certified on October 5, 1999, as may be amended from time to time.

"Candidate" shall mean a candidate nominated for election to the Board.

"Declaration" shall mean the *Heritage Grove at Los Gatos Declaration of Restrictions (CC&Rs)* recorded on October 14, 1999 as document number 15017812 in the official records of Santa Clara County, California, as may be amended from time to time.

"Development" shall mean the planned development managed by the Association.

"Director" shall mean a natural person who serves on the Board.

"Governing Documents" shall mean the Declaration and any other documents, such as the Bylaws, operating rules of the Association, and the Association's articles of incorporation, which govern the operation of the Development or the Association.

"Inspector of Elections" shall mean a person who acts as an inspector of elections in an Association election conducted in accordance with the procedures set forth in these Election Rules. Unless the context otherwise clearly indicates in these Election Rules, the singular "Inspector of Elections" shall include the plural.

“Member” shall mean a member of the Association.

Introduction

California *Civil Code* section 5100(a)(1) requires that certain types of Member votes be held by a secret ballot procedure, including elections relating to the following topics: (1) regular assessment increases legally requiring a vote and the levy of special assessments legally requiring a vote; (2) the election and removal of Directors; (3) amendments to the Governing Documents; and (4) the grant of exclusive use of a portion of the common area of the Development to a Member. Additionally, California *Civil Code* section 4365(b) requires that a vote of the Members on whether to reverse a rule change adopted by the Board be conducted by that same secret ballot procedure.

California *Civil Code* section 5105 requires that the Association adopt operating rules which include specific provisions and information relating to the Association’s secret ballot voting procedure. These Election Rules were drafted to comply with that statutory requirement.

Equal Access to Association Media

If any Candidate or Member advocating a point of view is provided access to Association media, newsletters, or internet websites 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) for purposes that are reasonably related to that 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. The foregoing requirements shall not be interpreted as obligating the Association to automatically provide Candidates or Members with access to Association media, newsletters, or internet websites during a campaign, and whether to do so will be decided by the Board in its sole discretion with respect to each individual election.

Equal Access to Common Area Meeting Space

The Association shall ensure access to common area meeting space, if any exists, during a campaign, at no cost, to all Candidates (including those who are not incumbents) and to all Members advocating a point of view (including those not endorsed by the Board) for purposes reasonably related to that election. The foregoing requirement shall not be interpreted as obligating the Association to provide access to any common area meeting space at times when the space is normally and customarily utilized for other Association or community purposes. The use of any common area meeting space relating to an election shall be subject to provisions of the Governing Documents regarding the use of such space; provided, however, a Candidate or Member shall not be required to pay a fee, make a deposit, obtain liability insurance, or pay the

premium or deductible on the Association's insurance policy in order to use the common area meeting space.

Qualifications for Candidates for the Board

Candidate Qualifications. The Association shall hold an election for a seat on the Board at the expiration of the corresponding Director's term. The following qualifications apply for a person to be nominated as a Candidate for the Board:

1. The person must be a Member at the time of nomination; if title to a lot is held by 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 the foregoing.
2. The person must be current in the payment of regular and special assessments; this requirement shall also apply to each Director during their Board tenure.
3. The person must not have a past criminal conviction that would, if the person is elected, either prevent the Association from purchasing the fidelity bond coverage required by California *Civil Code* section 5806 or terminate the Association's then existing fidelity bond coverage.

Any other Candidate qualifications set forth in the Bylaws or other Governing Documents are not applicable or enforceable, except to the extent provided by law.

Conditions to Candidate Disqualification. The Association shall disqualify a person from nomination as a Candidate if they do not meet the foregoing qualifications, subject to the following conditions:

- While the Association may disqualify a person from nomination to the Board for nonpayment of regular and special assessments, the Association may not disqualify a nominee for nonpayment of fines, fines renamed as assessments, collection charges, late charges, or costs levied by a third party. Further, a person shall not be disqualified from nomination to the Board for failure to be current in the payment of regular and special assessments if either of the following circumstances is true: (i) the person has paid the regular or special assessment under protest pursuant to California *Civil Code* section 5658; or (ii) the person has entered into a payment plan with the Association for the regular or special assessment pursuant to California *Civil Code* section 5665.
- The Association shall not disqualify a person from nomination to the Board if the person has not first been provided the opportunity to engage in internal dispute resolution with the Association pursuant to California *Civil Code* section 5900 et seq.

Procedures for the Nomination of Candidates

Notice of the Procedure and Deadline for Nominations. The Association shall provide the Members general notice of the procedure and deadline for submitting a nomination at least 30 days before any deadline for submitting a nomination. Individual notice of that procedure and deadline shall be delivered to a Member if individual notice is requested by the Member. If, at the close of nominations, the number of qualified Candidates is equal to or less than the number of Directors to be elected, the Board may extend the nominations period to encourage greater participation in the electoral process.

Member Self-Nomination. Any Member may “self-nominate” themselves for election to the Board. A Member desiring to nominate themselves as a Candidate must: (1) satisfy the qualifications for Candidates in effect at the time the Member’s candidacy is proposed; and (2) present written notice to the Board of their desire to self-nominate for a Board election on or before the nomination deadline established by the Association for that election and in accordance with such procedures that the Association may have adopted for the election.

Nominations from the Floor. Nominations from the floor shall be permitted at each Director election meeting, as provided in Section 6.2 of the Bylaws. A Candidate nominated from the floor must satisfy the qualifications for Candidates in effect at the time the Member’s candidacy is proposed in order to serve on the Board.

Write-In Candidates Prohibited. Write-in Candidates are not permitted in any Director election except for those Candidates who are nominated from the floor (if any).

Nominating Committee. As all Members have a statutory right to “self-nominate” for election to the Board, there is no need for the Board to appoint the nominating committee described in Section 6.2 of the Bylaws for the nomination of Candidates for the Board.

Candidate Communication. For each Director election, the Board shall provide a reasonable opportunity for Candidates to communicate their qualifications and reasons for candidacy to the Members and to solicit votes.

Voting Power of Each Membership

On each matter submitted to a vote of the Members, each Member is entitled to cast one vote for each lot in the Development that the Member owns; when more than one person owns an interest in a single lot, only one vote may be cast for that lot. Notwithstanding the foregoing, with respect to Director elections, the Member(s) representing each lot shall have one vote to cast for each Director position to be filled.

Authenticity, Validity, and Effect of Proxies

Definitions. For purposes of this section, the following definitions shall apply: (1) “**proxy**” means a written authorization signed by a Member or the authorized representative of the Member that gives another Member or Members the power to vote on behalf of that Member; and (2) “**signed**” means the placing of the authorizing Member's name on the proxy (whether by manual signature, typewriting, telegraphic transmission, or otherwise) by that Member or the authorized representative of that Member.

Use of Proxies. The use of proxies is permitted as described under Section 5.9 of the Bylaws. Proxies shall not be construed or used in lieu of a Ballot. Members may use proxies if those proxies meet the requirements of applicable law and the Governing Documents, but the Association shall not be required to prepare or distribute proxies.

Casting of Votes by Proxy. Any instruction given in a proxy issued for an election that directs the manner in which the proxyholder is to cast the vote shall be set forth on a separate page of the proxy that can be detached and given to the proxyholder to retain. The proxyholder shall cast the Member’s vote by secret Ballot. The proxy may be revoked by the Member prior to the receipt of the Ballot by the Inspector of Elections, as described in California *Corporations Code* section 7613.

Voting Period for Elections

Ballots shall be distributed to all Members not less than 30 days prior to the deadline for voting. The times at which polls will open and close will be noted on the Ballots and/or on materials enclosed with the Ballots.

Inspector(s) of Elections

Appointment. The Board shall select and appoint one or three independent third parties as an Inspector(s) of Elections.

- An Inspector of Elections may be, for example only, a volunteer poll worker with the county registrar of voters, a licensee of the California Board of Accountancy, or a notary public.
- An Inspector of Elections may also be a Member, but may not be a Director or a Candidate or be related to a Director or to a Candidate.
- An Inspector of Elections may not be a person, business entity, or subdivision of a business entity who is currently employed or under contract to the Association for any compensable services other than serving as an Inspector of Elections.

Duties. The Inspector of Elections shall do all of the following: (1) determine the number of memberships entitled to vote and the voting power of each; (2) receive Ballots; (3) hear and determine all challenges and questions in any way arising out of or in connection with the right to vote; (4) count and tabulate all votes; (5) determine when the polls shall close, consistent with the Governing Documents; (6) determine the tabulated results of the election; and (7) perform any acts as may be proper to conduct the election with fairness to all Members in accordance with California *Civil Code* section 5100 et seq., the California *Corporations Code*, and these Election Rules. In addition, the Inspector of Elections shall determine the authenticity, validity, and effect of proxies, if any.

Performance of Duties. An Inspector of Elections shall perform all of their duties impartially, in good faith, to the best of their ability, as expeditiously as is practical, and in a manner that protects the interest of all Members. If there are three Inspectors of Elections, the decision or act of a majority of the Inspectors of Elections shall be effective in all respects as the decision or act of all. Any report made by an Inspector of Elections is *prima facie* evidence of the facts stated in the report; in other words, the determinations made by the Inspector of Elections are accepted as correct until proved otherwise.

Assistants. The Inspector of Elections may appoint and oversee additional persons to verify signatures and to count and tabulate votes as they deem appropriate, provided that such additional persons are independent third parties.

Candidate Registration List and Voter List

The Association shall require retention of, as Association election materials, 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 lot, 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 lot 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 of Elections who shall make the corrections within two business days.

Ballot Requirements

Notice of Ballot Information. The Association shall provide general notice of all of the following at least 30 days before Ballots are distributed for an election: (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 the Ballots will be counted; and (3) the list of all Candidates' names that will appear on the Ballot. Individual notice of the

foregoing information shall be delivered to a Member if individual notice is requested by the Member.

Listing of Candidate Names on Ballot. Candidates' names shall be listed on the Ballot alphabetically by last name, and note if the Candidate is an incumbent.

Denial of a Ballot. A ballot shall not be denied to a Member for any reason other than not being a Member at the time when Ballots are distributed.

Power of Attorney for a Member. A ballot shall not be denied to a person with general power of attorney for a Member. The ballot of a person with general power of attorney for a Member shall be counted if returned in a timely manner.

Delivery of Ballot and Election Rules. The Inspector of Elections shall deliver, or cause to be delivered, at least 30 days before an election to each Member both of the following documents: (1) the Ballot or Ballots; and (2) a copy of these Election Rules. Delivery of these Election Rules may be accomplished by either of the following methods: (i) posting these Election Rules to an internet website and including the corresponding internet website address on the Ballot together with the following phrase, in at least 12-point font: "The rules governing this election may be found here:."; or by (ii) individual delivery.

Secret Ballot Procedures

Voting Procedures. Following are the procedures to be used for secret ballot voting conducted pursuant to these Election Rules:

1. Ballots and two pre-addressed envelopes with instructions on how to return Ballots shall be mailed by first-class mail or delivered by the Association to every Member not less than 30 days before the deadline for voting.
2. In order to preserve confidentiality, a voter may not be identified by name, address, or lot, parcel, or unit number on the Ballot.
3. The Association will use as a model those procedures used by California counties for ensuring confidentiality of vote by mail ballots, including all of the following:
 - a. The Ballot itself is not signed by the voter, but is inserted into an envelope (the "**Ballot Envelope**") that is sealed. The Ballot Envelope is inserted into a second envelope (the "**Outer Envelope**") that is sealed. In the upper left-hand corner of the Outer Envelope, the voter shall sign their name, write their name, and write the address or lot identifier within the Development that entitles the voter to vote; the Association may, in its sole discretion, provide an Outer Envelope to a

Member that includes the voter's name and address, or name and lot identifier, typewritten or otherwise placed on the Outer Envelope, requiring the Member to only sign the Outer Envelope in the correct area.

- b. The Outer Envelope will be addressed to the Inspector of Elections, who will be tallying the votes. The Outer Envelope (containing the Ballot and the Ballot Envelope) may be mailed or delivered by hand to the location specified by the Inspector of Elections for the return of Ballots, and a Member may request a receipt for delivery of their Ballot.

Quorum. A quorum shall be required only if so stated in the Governing Documents or provisions of law. If a quorum is required, each Ballot received by the Inspector of Elections shall be treated as a Member present at a meeting for purposes of establishing a quorum.

Cumulative Voting. The Association shall allow for cumulative voting in the election of Directors as provided in Section 6.4 of the Bylaws, subject to the requirements of California *Corporations Code* section 7615. In cumulative voting, Members may cast as many votes as there are open Board seats, and are not limited to giving only one vote to a Candidate; instead, Members can cast multiple votes for one or more Candidates. For instance, when cumulative voting is used in an election for three Directors, each Member would have three votes, and the Member could choose to give one vote each to three Candidates, two votes to one Candidate and one vote to another Candidate, or all three votes to a single Candidate.

Conduct of Election by Mail. Except for the meeting to count the votes, an election may be conducted entirely by mail unless otherwise specified in the Governing Documents.

Governing Document Amendments. In an election to approve an amendment of the Governing Documents, the text of the proposed amendment shall be delivered to the Members with the Ballot.

Extension of Voting Period. The voting period and deadline for the return of Ballots for any election may be reasonably extended by the Board (or, to the extent required by law, the Inspector(s) of Elections) to achieve greater Member participation in reaching any applicable quorum and/or approval requirements for that election.

Counting of Ballots

Vote Count and Tabulation. All votes shall be counted and tabulated by the Inspector of Elections, or the designee of the Inspector of Elections, in public at a properly noticed open meeting of the Board or Members. Any Candidate or other Member of the Association may witness the counting and tabulation of the votes. No person, including a Member or an employee of the Association's management company, shall open or otherwise review any Ballot prior to the time and place at

which the Ballots are counted and tabulated; however, the Inspector of Elections, or the designee of the Inspector of Elections, may verify a Member's information and signature on the Outer Envelope prior to the meeting at which Ballots are tabulated. Once a Ballot is received by the Inspector of Elections, it shall be irrevocable.

Announcement of Results. The tabulated results of the election shall be promptly reported to the Board and shall be recorded in the minutes of the next meeting of the Board, and shall be available for review by the Members. Within 15 days of the election, the Board shall give the Members general notice of the tabulated results of the election.

Determination of Director Election Results; Succession to Office

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 their election.

Tied Votes. Except to the extent applicable law or the Governing Documents requires that a run-off election be conducted in the event there is a tie vote between Candidates, the tie shall be broken by an immediate random drawing of lots/straws or coin toss conducted by the Inspector of Elections and the winner(s) shall be elected as a Director and take office immediately following the occurrence of the tie-breaker.

Withdrawal of Candidates. If a Candidate withdraws their candidacy from an election after Ballots have been distributed to the Members for an election, such withdrawal shall not be cause for cancellation of the election, even though one or more Members may have already mailed their completed Ballot to the Inspector of Elections. If such a former Candidate receives enough votes such that they would have been elected to the Board, that former Candidate shall not be elected to the Board and the Candidate receiving the next highest number of votes shall be elected to the Board instead.

Election by Acclamation. Election by acclamation is when, as of the close of nominations for Directors on the Board, the number of Director nominees is not more than the number of vacancies to be elected, as determined by the Inspector of Elections, and the Director nominees are considered elected to the Board without an election by Ballot. Pursuant to California *Civil Code* section 5100(g), election by acclamation is permitted for common interest developments with 6,000 or more units, subject to certain requirements.

Custody of Ballots

The sealed Ballots, signed voter envelopes, voter list, proxies (if any), and Candidate registration list shall at all times be in the custody of the Inspector of Elections or at a location designated by the Inspector of Elections until after the tabulation of the vote, and until the time allowed by

California *Civil Code* section 5145 for challenging the election has expired, at which time custody shall be transferred to the Association. If there is a recount or other challenge to the election process, the Inspector of Elections shall, upon written request, make the Ballots available for inspection and review by a Member or the Member's authorized representative. Any recount shall be conducted in a manner that preserves the confidentiality of the vote.

Prohibition of Association Funds for Campaign Purposes

Association funds shall not be used for campaign purposes in connection with any Board election. In addition, funds of the Association shall not be used for campaign purposes in connection with any other Association election except to the extent necessary to comply with duties of the Association imposed by law.

Conflicts with Bylaws

These Election Rules are intended to conform to and comply with the provisions of California *Civil Code* section 5100 et seq. To the extent of any conflict between the provisions of these Election Rules and the provisions set forth in the Bylaws or other Governing Documents, the provisions of these Election Rules shall control to the extent the provisions of these Election Rules were adopted to comply with requirements under the law.

Superseding Effect

These Election Rules shall supersede all previously adopted election rules of the Association.

Amendment of these Election Rules

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

[End]