

# CHABOT PARK HIGHLANDS ASSOCIATION

## VOTING AND ELECTION PROCEDURES POLICY<sup>©</sup>

*Effective July 1, 2006*

Community Associations (whether incorporated or not) are governed by a variety of authorities including the Corporations Code, portions of the Civil Code called the Davis-Stirling Common Interest Development Act and the Association's Governing Documents. In 2005-2006 the legislature examined voting and election procedures and amended the Davis-Stirling Act (Civil Code §1363.03) to impose a variety of procedures that pre-empt any conflicting provisions in existing Governing Documents and/or the Corporations Code. The purpose of this policy is therefore to set forth the new (effective July 1, 2006) voting rules and supplement them in a single document.

### **I. MEMBER VOTING GENERALLY.**

**A. Number of Votes per Lot.** On each matter submitted to a vote of the Members, each Member shall be entitled to cast one vote for each Lot owned by such Member, plus one additional vote if there is a completed dwelling Residence on the Lot. When more than one (1) person owns an interest in a single Lot, any vote(s) cast by a single Member shall be deemed the authorized vote(s) for that Lot. If conflicting votes are cast for the Lot, no vote shall be counted except a single vote shall be counted for purposes of a quorum (when a quorum is necessary). [Amended Bylaws, Section 3.1(b)]

**B. No Cumulative Voting.** There shall be no cumulative voting. [Amended Bylaws, Section 3.4(a)(3)]

**C. Ballots and Meetings.** When any issue is put to a vote of the Members, direct ballots by mail will be used. The counting of the ballots will be conducted at the scheduled Board meeting or general membership meeting referenced in the balloting material. As to such issues not covered by law (or this policy), the Board may use these or other reasonable procedures that best fit the circumstances of that particular vote.

**D. Quorums.** The Governing Documents or other provisions of law may specify a quorum. If no quorum is so specified, the quorum shall be equal to the number of ballots received.

**E. Suspension.** If the Board has conducted a duly noticed hearing and made a determination of delinquency in the payment of any Assessment, it may suspend the voting rights of a Member. The Inspector(s) of Election may determine the delinquency has subsequently been paid in full and may opt to qualify and count any ballot received.

### **II. TYPICAL TYPES OF VOTES GOVERNED BY THIS POLICY.**

**A. Election (or Recall) of Directors.** The quorum requirement to elect Directors is the number of ballots received. Thereafter, the candidates receiving the largest number of votes will be elected.

**1. Nominations.** The Association is always looking for volunteers who are willing to serve on the Board. If you are interested in running, you may submit your name during the nomination period. The Board may use a Nominating Committee to recruit qualified candidates and/or to supplement the list of those who have already volunteered. Nominations may also be taken from the floor at the Annual Meeting. Nominations will close as announced by the Board. Shortly after the close of nominations, ballots with all qualified candidates' names included will be prepared and delivered to Members. There shall be no "write-in candidates." Members will be given at least 30 days to return their ballots.

**2. Candidate Qualifications.** A Director must be a Member of the Association. To be a Member, a person must be in the chain of title as an owner of record. Therefore, a candidate for Director must be an owner in the chain of title. (Also, see additional qualifications listed in the amended Bylaws at Section 4.2)

**3. Recall.** The recall of one or more Directors is addressed in the Corporations Code, Bylaws and/or Civil Code §1363.03. In addition to those standards, double-envelope balloting will be used.

**B. Assessment Decisions.** The approval of a majority of a quorum of Owners is required for the Board to raise regular Assessments or impose a Special Assessment above certain prescribed amounts, as set forth in Civil Code §1366(b). For purposes of this section, a quorum is specifically defined as more than fifty percent (50%+) of the voting power of the Association. (Based on 150 Lots, this would require participation by the voting power of at least 76 Lots and the approval by a majority of those participating in the vote.)

**C. Governing Document Amendments.** Should the Association desire to amend its Articles of Incorporation, Bylaws and/or CC&Rs, the approval of the Members is required as provided in the specific document.

**D. Grant of Common Area Exclusive Use Easements.** Our subdivision documents and Governing Documents identify areas of ownership and control. If approval of Owners is required for the Association to delegate control of an area that would otherwise be Common Area, then the voting process in this policy shall be used.

**E. Other Issues.** Any issue presented to the Members for a vote may be conducted using the double-envelope process described in this policy.

### **III. CAMPAIGNING.**

In the context of an election or other vote, candidates or Members advocating a point of view are to be treated equally with respect to opportunities to communicate with Members (such as by newsletter). The Association shall not edit or redact 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 Association is not required to offer communication opportunities to candidates or members advocating a point of view; however, if such a benefit is offered to one candidate or member, the same opportunity must then be offered to all.

If the Board offers to include candidate or other issue information with the Annual Meeting package (or any mailing associated with a Member vote), there may be reasonable restrictions on the size, weight and format of the information. For example, a standardized form may be required to set forth candidate information.

#### **IV. INSPECTORS OF ELECTION.**

To assist in the logistics of balloting and other voting matters, one or three individuals shall be appointed by the Board. These individuals are called “Inspectors of Election.” Their job is to process and count ballots, to assure confidentiality in the voting, as well as to make judgment calls if there is a problem in the paperwork. Because the most common practice is to use three Inspectors of Election, most references in this policy will be plural. This should not be construed to eliminate the option of using only one.

An Inspector of Election must be an independent third party. For example he or she can be a Member of the Association but may not be, or be related to, a member of the Board or a candidate. An Inspector can be a CPA or notary public. An Inspector may also be an employee of the management company. The Inspectors may appoint and oversee additional persons to assist with the count and tabulation of votes, provided they are neutral third parties.

The Inspectors of Election have the following responsibilities:

- Determine the number of memberships entitled to vote and the voting power of each.
- Determine the authenticity, validity, and effect of proxies, if any.
- Receive ballots.
- Disqualify any ballot that is not an Official Ballot prepared by the Association.
- Disqualify any ballot received from a Member whose voting rights have been suspended by the Board (for example, for being delinquent in payment of any Assessment).
- Hear and determine all challenges and questions in any way arising out of or in connection with the right to vote.
- Count and tabulate all votes.
- Determine when the voting (or polling) shall close.
- Determine the result of the election.

The Inspectors of Election may also take other actions to assure fairness in the election process and compliance with this policy and any other applicable rule or policy (which does not conflict with this policy).

Inspectors of Election shall perform their duties impartially, in good faith, to the best of their ability, and as expeditiously as is practical. If there are three Inspectors of Election, the decision or act of a majority shall be effective in all respects as the decision or act of all. Any report made by the Inspector(s) of Election (such as the tabulation of votes) is prima facie evidence of the facts stated in the report.

The Inspectors of Election are responsible for the processing of the sealed ballots as they are returned. Unless the Inspectors designate otherwise, the mail-in ballots shall be returned to the Inspectors of Election at the address of the management company. Once a ballot is received, it is irrevocable. The Inspectors or designee may verify the member information on the outer envelope prior to the meeting at which ballots are tabulated. The envelopes shall not be opened until the meeting at which the tabulation is to occur. After tabulation, the Inspectors direct and control the storage of the ballots for a period of nine months. Thereafter, custody shifts to the Association and the ballots shall be stored for a period of at least one year from the election.

## **V. BALLOTING PROCEDURES**

**A. Official Ballot.** Only the Official Ballot form generated by the Association will be counted.

**B. Timing by Mail.** Voting material, such as ballots, voting instructions, explanatory material, candidates statements, etc., shall be delivered by the Association to every Member not less than 30 days ahead of time. Prior to opening the received ballots, the Board may reasonably extend the voting period to achieve greater Member participation in reaching quorum requirements (if applicable) or amending CC&Rs (which require approval of a significant percent of all Members).

**C. Secret Ballot.** Voting shall be done by secret ballot. The Association shall use procedures (including those described below) to assure such confidentiality.

**D. No Proxies.** Proxies are not permitted. [Amended Bylaws, Section 3.4(d)]

**E. No Identification On Ballot.** In order to preserve confidentiality, a voter may not be identified by name, address, or Lot or parcel number on the ballot.

**F. Voting by Mail.** For this mail-in voting, the Association shall provide Members with ballots and two pre-printed envelopes along with instructions. The instructions shall specify how ballots are to be returned. The Association shall use as a model those procedures used by California counties for ensuring confidentiality of voter absentee ballots, including all of the following:

- The ballot itself is not signed by the voter. After marking the ballot, it is to be inserted into an envelope that is then sealed. This envelope is inserted into a second envelope that is also then sealed. In the upper left hand corner of the second envelope, the voter prints and signs his or her name, address, and Lot or parcel number that entitles him or her to vote.
- The second envelope is addressed to the Inspectors of Election, who will be tallying the votes. The envelope may be mailed or delivered by hand to a location specified by the Inspectors of Election. In the event no location is specified by the Inspectors of Election, it shall be the management company's address. The Member may request a receipt for delivery.

**G. Delivery of Ballots.** Typically, ballots will be returned by first class mail. However, ballots may also be hand-delivered.

**H. Irrevocable.** Once a ballot is received, it is irrevocable.

**I. Acclamation.** If at the close of nominations the number of candidates is equal to (or fewer than) the number of positions to be filled, there will be no balloting for the election of Directors. The Board can find that the positions have been filled. A communication to the Members announcing the results of the election/acclamation will be publicized by the Board within 15 days of the close of nominations.

**J. Live Voting at a Member Meeting.** If there is a quorum-qualified meeting of Members and the Board opts to conduct voting at the meeting (i.e., in addition to double-envelope balloting), the Board shall use procedures to assure the secrecy of ballots cast. The Inspectors of Election shall have authority over these and all other ballots received.

## **VI. VOTE TABULATIONS & ANNOUNCEMENT OF RESULTS**

An Inspector of Election or designee assistant may verify the Member information on the outer envelope prior to the election. No one is permitted to open the inner envelope containing the ballot prior to the time at which the ballots are to be counted and tabulated.

Inspectors of Election shall go about the business of counting and tabulating the votes in public at a properly noticed open meeting of the Board of Directors or Members. Any candidate or other Member of the Association may witness the counting and tabulation of the votes.

In the event of a tie between those candidates receiving the lowest number of votes necessary to qualify for election to the Board, the tie shall be broken by random drawing conducted by the Inspectors of Election.

The 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. Members have a right to review the results. Within 15 days of the election, the Board shall publicize the results of the election in a communication directed to all Members.

## **VII. RECORDS STORAGE**

After tabulation and for a period of nine months, election ballots shall be stored as directed by the Inspectors. Unless the Inspectors determine otherwise, the location for storage of the election materials will be the management company. After nine months, the custody of the ballots shifts to the Association and the ballots must be kept at least one year after the election. In the event of a recount or other challenge to the election process and upon written request, the Association will coordinate with the Inspectors of Election and make the ballots available for inspection and review by Members or their authorized representatives. Any recount shall be conducted in a manner that preserves the confidentiality of the vote.

This Policy Current As of May 27, 2009.  
and was adopted on \_\_\_\_\_.

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