

FOUNTAINGROVE II OPEN SPACE MAINTENANCE ASSOCIATION

ELECTION OPERATING RULES

California law requires homeowners associations to adopt and make available to their members written election operating rules compliant with California law. These Election Operating Rules as adopted by Fountaingrove II Open Space Maintenance Association (the “Association”) on April 15, 2020, set forth in one document the provisions of the Association’s governing documents pertaining to member elections and the provisions of California law pertaining to member elections applicable to the Association.

I. Access During Election Campaigns and Association Funding Restrictions.

1.1. Access to Association Media, Newsletters, and Website during Campaign.

If any candidate for the Board or member advocating a point of view is provided access to the Association’s media, newsletters, or website during a campaign, for purposes reasonably related to an election, equal access shall be provided to all candidates for the Board, including those who are not incumbent directors, and members advocating a point of view, including those not endorsed by the Board, for purposes 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.

1.2. Access to Association Common Area Meeting Space during Campaign. All candidates for the Board, including those who are not incumbent directors, and all members advocating a point of view, including those not endorsed by the Board, shall have during a campaign, at no cost, access to the Association’s common area meeting space for purposes reasonably related to the election.

1.3. Association Campaign Funding Restrictions. Association funds shall not be used for campaign purposes in connection with any Association Board election. 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. For the purposes of this Section 1.3, “campaign purposes” includes, but is not limited to, the following:

(a) Expressly advocating the election or defeat of any candidate that is on the Association election ballot; or

(b) Including the photograph or prominently featuring the name of any candidate on a communication from the Association or the Board, excepting the ballot, ballot materials, or a communication that is legally required, within 30 days of an election; provided, however, that the foregoing is not a campaign purpose if the communication is one which requires that equal access be provided to another candidate or advocate.

II. Election of Directors.

2.1. Number. The Board consists of five persons.

2.2. Term of Office. The term of office for all directors is two years. The terms are staggered so that three directors are elected in odd-numbered years and two directors are elected in even-numbered years. Each director, including a director appointed by the Board to fill a vacancy or elected by the members, shall hold office until the later of the expiration of the term for which appointed or elected or until a successor has been elected or appointed and qualified.

2.3. Qualifications for Candidates for the Board and Incumbent Directors. Candidates for the Board and incumbent directors must be a member of the Association at the time of nomination and at all times while a candidate for the Board and while serving as a director and not disqualified by one or more of the following conditions:

(a) He or she has been declared of unsound mind by a final order of court;

(b) He or she has a past criminal conviction that would, if the candidate was elected, either prevent the Association from purchasing the fidelity bond coverage required by Civil Code Section 5806 or terminate the Association's existing fidelity bond coverage; and/or

(c) He or she is more than 30 days delinquent in the payment of any Association regular or special assessment; provided, however, that he or she shall not be so disqualified for (i) nonpayment of fines, fines renamed as assessments, collection charges, late charges, or costs levied by a third party; or (ii) failure to be current in payment of regular and special assessments if either of the following circumstances is true: (1) he or she has paid the regular or special assessment under protest pursuant to Civil Code Section 5658; or (ii) he or she has entered into a payment plan pursuant to Civil Code Section 5665.

(d) He or she, if elected, would be serving on the Board at the same time as another person who holds joint ownership in the same Lot as him or her would be serving on the Board.

Notwithstanding the forgoing, a candidate for the Board or incumbent director shall not be so disqualified if he or she has not been provided the opportunity to engage in internal dispute resolution pursuant to Civil Code Section 5900 et seq. with respect to any such disqualification.

2.4. Procedures for the Nomination of Candidates for the Board. Any member of the Association not disqualified from nomination as a candidate may put his or her own name into nomination as a candidate for the Board by notifying the Board prior to the close of nominations specified by the Board. The Board may appoint a Nominating Committee to solicit members of the Association not disqualified from nomination as a candidate to become candidates for the Board and to put their names into nomination as candidates for the Board.

2.5. Legal Entities as Members. For purposes of this Article II, if title to a Lot is held by a legal entity that is not a natural person, the governing authority of that Lot shall have the power to appoint a natural person to be a candidate for the Board and to put such person's name into nomination as a candidate for the Board.

III. Voting Power of Membership; Proxies; and Election Voting Periods

3.1. Membership. Every owner of a Lot within the Fountaingrove II East, Fountaingrove II West and the Summit residential developments is a member of the Association.

3.2. Voting Power. 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. The total voting power of the Association is 591 members representing the 591 Lots within the Fountaingrove II East, Fountaingrove II West and the Summit residential developments. When more than one person owns an interest in a single Lot, any vote cast by a single member shall be deemed the authorized vote 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.

3.3. Quorum of Majority of Total Voting Power Required for Valid Action. Unless otherwise specified by the Association's governing documents or applicable law, twenty five percent (25%) of the total voting power of the Association (148 of the 591 members), represented in person or by proxy, shall constitute a quorum. Unless otherwise specified by the Association's governing documents or applicable law, if a meeting is adjourned because a quorum is not present, the quorum requirement for the rescheduled meeting shall be reduced to ten percent (10%) of the total voting power of the Association (60 of the 591 members). Each ballot received by the Inspectors of Election shall be treated as a member present at a meeting for purposes of establishing a quorum.

3.4. Affirmative Vote of Majority of Members Required for Valid Action. Unless otherwise specified by the Association's governing documents or applicable law, the affirmative vote of a majority of the members represented and voting at a meeting at which the required quorum is present or by written ballot in which the number of votes cast equals or exceeds the required quorum (which affirmative votes also constitute a majority of the required quorum) and voting on any matter other than the election of directors shall be the act of the members.

3.5. Candidates Receiving Highest Number of Votes Elected as Directors. In the case of director elections, the candidates receiving the highest number of votes, up to the number of directors to be elected, shall be elected to the vacant director positions. Cumulative voting shall be permitted. Election by acclamation shall not be permitted.

3.6. Authenticity, Validity, and Effect of Proxies. Any member may vote by one or more agents authorized by a written proxy meeting the requirements of applicable law and signed by the member and filed with the secretary of the Association. The Association is not required to prepare or distribute proxies to the members. Proxies shall not be construed or used in lieu of a ballot. 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 in elections requiring a secret ballot. The proxy may be revoked by the member prior to the receipt of the ballot by the Inspectors of Elections as described in Section 7613 of the Corporations Code.

3.7. Election Voting Periods. The voting period for elections by secret ballot shall commence upon the ballots being mailed to the members and shall continue through the date and time stated in the Association's notice to members regarding secret balloting procedures, which date shall not be less than 30 days after the mailing of the ballots to the members. The voting period for an election not by secret ballot occurring at a meeting of members, whether by voice or by ballot, shall be such time period during the meeting of members announced immediately prior to the election.

IV. Inspectors of Elections.

4.1. Board Appointment of Inspectors of Election. The Board shall select one or three independent third parties as Inspectors of Elections. Reference in these Election Operating Rules to Inspectors of Election shall be in the plural form notwithstanding that there may be only one Inspectors of Election appointed.

4.2. Appointments by Inspectors of Election. The Inspectors of Election may appoint and oversee additional persons to verify signatures and to count and tabulate votes as the Inspectors deem appropriate, provided that the persons are independent third parties.

4.3. Independent Third Party Qualifications. For purposes of Section 4.1 and 4.2, an independent third party includes, but is not limited to, a volunteer poll worker with the county registrar of voters, a licensee of the California Board of Accountancy, or a notary public. An independent third party may be a member, but may not be an incumbent director or a candidate for the Board or be related to an incumbent director or to a candidate for the Board. An independent third party 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.

4.4. Responsibilities of Inspectors of Election. The Inspectors of Elections shall do all of the following:

(a) Deliver, or cause to be delivered, at least 30 days before an election, to each member the ballot or ballots by first-class mail, and a copy of these Election Operating Rules either by first-class mail, or by posting to an internet website and including the corresponding internet website address on the ballot or ballots together with the phrase, in at least 12-point font: "The rules governing this election may be found here:"

(b) Determine the number of memberships entitled to vote and the voting power of each.

(c) Determine the authenticity, validity, and effect of proxies, if any.

(d) Receive ballots.

(e) Hear and determine all challenges and questions in any way arising out of or in connection with the right to vote.

(f) Count and tabulate all votes.

(g) Determine when the polls shall close, consistent with the governing documents.

(h) Determine the tabulated results of the election.

(i) Perform any acts as may be proper to conduct the election with fairness to all members in accordance with Sections 5100 through 5145 of the Civil Code, the Corporations Code, and all applicable rules of the Association regarding the conduct of the election that are not in conflict with Sections 5100 through 5145 of the Civil Code.

The Inspectors of Elections shall perform all duties impartially, in good faith, to the best of the Inspector of Elections' ability, as expeditiously as is practical, and in a manner that protects the interest of all members of the Association. The decision or act of a majority of the Inspectors of Election shall be effective in all respects as the decision or act of all. Any report made by the Inspectors of Elections is prima facie evidence of the facts stated in the report.

V. Balloting Procedures.

5.1. Secret Ballot. Elections regarding assessments legally requiring a vote of the members, election and removal of directors, amendments to the governing documents, the grant of exclusive use of common area legally requiring a vote of the members, or any other topic that is expressly identified in the Association's governing documents as requiring election by secret ballot shall be held by secret ballot in accordance with the following procedures:

(a) Ballots and two preaddressed 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 prior to the deadline for voting. In order to preserve confidentiality, a member may not be identified by name, address, or lot, parcel, or unit number on the ballot. In an election to approve an amendment of the Association's governing documents, the text of the proposed amendment shall be delivered to the members with the ballots. If a copy of these Election Operating Rules are posted to an internet website rather than delivered to the members with the ballots, the corresponding internet website address shall be included on the ballots together with the phrase, in at least 12-point font: "The rules governing this election may be found here:"

(b) The ballot itself is not signed by the member, but is inserted into an envelope that is sealed. This envelope is inserted into a second envelope that is sealed. In the upper left-hand corner of the second envelope, the member shall sign the voter's name, indicate the voter's name, and indicate the address or separate interest identifier that entitles the member to vote.

(c) The second envelope is addressed to the Inspectors of Elections, who will be tallying the votes. The envelope may be mailed or delivered by hand to a location specified by the Inspectors of Elections. The member may request a receipt for delivery.

5.2. Irrevocability of Votes. Once a secret ballot is received by the Inspectors of elections, it shall be irrevocable.

5.3. Tabulation of Votes. All votes shall be counted and tabulated by the Inspectors of Elections, or the designee of the Inspector of Elections, in public at a properly noticed open meeting of the Board or meeting of the members. Except for the meeting to count the votes, an election may be conducted entirely by mail. Any candidate or other member of the Association may witness the counting and tabulation of the votes. No person, including a member of the Association or an employee of the management company, shall open or otherwise review any ballot prior to the time and place at which the ballots are counted and tabulated. The Inspectors of elections, or the designee of the Inspectors of Elections, may verify the member's information and signature on the outer envelope prior to the meeting at which ballots are tabulated.

5.4. Reporting of Results of Election. 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 members of the Association.

5.5. Custody of Election Materials by Inspectors of Election. The sealed ballots, signed voter envelopes, voter list, proxies, and candidate registration list shall at all times be in the custody of the Inspectors of Elections or at a location designated by the Inspectors of Elections until after the tabulation of the vote, and until the time allowed by Section 5145 of the Civil Code 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 or inspectors of elections shall, upon written request, make the ballots available for inspection and review by an Association member or the member's authorized representative. Any recount shall be conducted in a manner that preserves the confidentiality of the vote.

5.6. Balloting Prohibitions. Denial of a ballot to a member for any reason other than not being a member at the time when ballots are distributed, denial of a ballot to a person with general power of attorney for a member, and requiring the ballot of a person with general power of attorney for a member to be counted if returned in a timely manner are each prohibited.

VI. Association Retention of Candidate Registration List and Voter List. The Association shall retain, 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 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 or inspectors who shall make the corrections within two business days.

VII. Association Election Notice Requirements

7.1. Notice Regarding Director Nominations. The Association shall provide general notice of the procedure and deadline for submitting a nomination for director at least 30 days before any deadline for submitting a nomination. Individual notice shall be delivered pursuant to Section 4040 of the Civil Code if individual notice is requested by a member.

7.2. Notice Regarding Secret Balloting Procedures. The Association shall provide general notice of all of the following at least 30 days before secret ballots are distributed:

(a) The date and time by which, and the physical address where, ballots are to be returned by mail or handed to the inspector or inspectors of elections.

(b) The date, time, and location of the meeting at which ballots will be counted.

(c) The list of all candidates' names that will appear on the ballot.

(d) Individual notice of the above paragraphs shall be delivered pursuant to Section 4040 of the Civil Code if individual notice is requested by a member.

7.3. Notice Regarding Results of Election by Secret Ballot. Within 15 days of an election by secret ballot, the Board shall give general notice pursuant to Section 4045 of the Civil Code of the tabulated results of the election.

VIII. Amendment. These Election Operating Rules may be amended in whole or in part including the adoption of further rules by the Board from time to time in accordance with provisions applicable to association operating rules set forth in Civil Code Sections 4340-4370. These Election Operating Rules shall not be amended less than 90 days prior to an election.

IX. Construction. These Election Operating Rules are intended to comply with the provisions of California law pertaining to member elections applicable to the Association on the date that these Election Operating Rules were adopted and therefore any inconsistency of these Election Operating Rules with California law shall be construed in a manner so as to be consistent with California law.

X. References to Statutes. Any references in this declaration to California statutes shall be to the referenced statute as in effect on the date that these Election Operating Rules were adopted. In the event that any referenced statute is subsequently amended or superseded, all such references shall thereupon mean and refer to the referenced statute as so amended, modified or superseded, so long as the amended statute continues to regulate or pertain to the same subject matter.

[END OF ELECTION OPERATING RULES]