

Highland Orchards Homeowners Association
A California Nonprofit Mutual Benefit Corporation

**AMENDED AND RESTATED
VOTING AND ELECTION RULES AND PROCEDURES**
(Civil Code Section 5105)

Adopted: April 10, 2020

1. **Introduction.** The Association will utilize the secret ballot process described herein for election and removal of directors, assessments that require a membership vote, amendments to the governing documents that require membership approval, prior to granting exclusive use of the common area where required by Civil Code Section 4600, and any other matters where the secret ballot process is required by law.

2. **Opportunity for Internal Dispute Resolution ("IDR").** Any member disputing or challenging any aspect or application of these rules, including, without limitation, the member's qualifications to be nominated as a candidate for the Board, has the opportunity to engage in IDR with the Association pursuant the procedure provided at Civil Code Section 5915.

3. **Election of Directors and Membership Votes.** For election of directors, each lot/unit has one vote for each seat on the Board up for election. Cumulative voting is permitted. (Bylaws, Sec. 6.4; and Art. V, Sec. 2(e), of the CC&Rs.) For other membership vote matters, each lot/unit has one vote.

4. **Candidate Qualifications**
 - a. A candidate must be a member of the Association at the time of the nomination. If title to a separate-interest parcel 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, in writing, to be a member for purposes of being a candidate for election to the Board.

 - b. *Disqualification*
 - i. The Association shall disqualify a person from a nomination as a candidate for not being a member of the Association at the time of the nomination.

 - ii. The Association shall disqualify a nominee if that person discloses, or if the Association is aware or becomes aware of, a past criminal conviction that would either prevent the Association from purchasing the fidelity bond coverage required by Section 5806 should the person be elected or terminate the Association's existing fidelity bond coverage as to that person should the person be elected.

- iii. The Association shall disqualify a nominee for failure to be current in the payment of regular and special assessments which are consumer debts subject to validation. The Association also requires a director to be current in the payment 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. The Association shall not disqualify a nominee for failure to be current in payment of regular and special assessments if any of the following circumstances are true:
 - (1) The nominee has paid the regular assessment or special assessment under protest pursuant to Section 5658;
 - (2) The nominee has entered into a payment plan pursuant to Section 5665; or
 - (3) The nominee has not been provided the opportunity to engage in internal dispute resolution pursuant to Article 2 (commencing with Section 5900) of Chapter 10.
- iv. The Association shall disqualify a nominee if the person, if elected, would be serving on the Board at the same time as another person who holds a joint ownership interest in the same separate interest parcel as the person and the other person is either properly nominated for the current election or an incumbent director.
- v. The Association shall disqualify a nominee if that person has been a member of the Association for less than one year.

5. Nominations for Election to the Board

- a. The Association shall provide general notice of the procedure and deadline for submitting a nomination at least thirty (30) days before the deadline for submitting a nomination.
- b. Regardless of whether a candidacy form was received, a candidate may still be nominated by himself, herself or by someone else from the floor of the election meeting.

6. Membership Meetings

- a. The Association will send or cause to be sent a meeting notice which will advise the members of times when registration will begin and when the meeting will be called to order, as well as when the polls will open. The notice will also state the dates and times when the members and candidates may attend the meeting to witness the inspector(s)' registration, review, count and tabulation of ballots.
- b. The Board may determine not to hold a membership meeting for votes on matters, except for removal or election of directors, and conduct the vote by the secret ballot process and have the secret ballots counted and tabulated at a regular duly noticed open Board meeting.

- c. Directors must be elected by secret ballot and cannot be elected by voice vote, show of hands or other means.

7. Association Election Materials

- 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.
- b. *Candidate Registration List:* A candidate registration list shall be prepared with names of candidates that will appear on the secret ballot.
- c. The Association shall permit members to verify the accuracy of their individual information on the candidate registration list and voter list at least thirty (30) days before ballots are distributed. The Association or member shall report any error or omissions in either list to the inspector(s) of election who shall make any correction within two (2) business days.
- d. The returned ballots from the members and other Association election materials at all times shall be in the custody of the inspector(s) or at a location designated by the inspector(s) until after the tabulation of the votes and the statutory period for an election challenge under Civil Code Section 5145 has expired, at which time custody shall be transferred to the Association.

8. Inspector(s) of Election

- a. One (1) or three (3) independent third party inspector(s) of elections ["Inspector(s)"] will be selected and appointed by the Board of Directors.
- b. For purposes of this section, 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 also be an Association member, provided the member is not a director, a candidate for director or related to a director or a candidate. The Board may not select as an Inspector a person, business entity, or subdivision of a business entity currently employed or under contract to the Association for any compensable services, other than serving as an Inspector. The Inspector(s) can be volunteers or be hired by the Association.
- c. If an Inspector is unwilling or unable to perform his/her duties or becomes ineligible to be an Inspector, the Board may remove and replace that Inspector with another Inspector that meets the requirements set forth above.
- d. Inspector(s)' duties:
 - i. Correct errors on the voter list and candidate registration list.
 - ii. At least thirty (30) days before an election, deliver to each member (or cause to be delivered) a ballot or ballots and a copy of these rules.

Delivery of these rules maybe be accomplished by: posting these 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 via individual delivery as specified at California Civil Code Section 4040.

- iii. Determine number of memberships entitled to vote and the voting power of each.
 - iv. Determine the authenticity, validity, and effect of proxies, if any.
 - v. Receive secret ballots and proxies, if any.
 - vi. Hear and determine all challenges and questions in any way arising out of or in connection with the right to vote.
 - vii. Count and tabulate all votes.
 - viii. Determine when the polls shall close.
 - ix. Determine the tabulated results of the election or vote.
 - x. Perform any acts as may be proper to conduct the election with fairness to all members, in accordance with California law and these rules.
 - xi. All duties must be performed in good faith, to the best of the Inspector(s)' ability, as expeditiously as practical, and in a manner that protects the interest of all members.
 - xii. Prior to the mailing of the secret ballots, the Inspector(s) will determine the location where the sealed secret ballots will be mailed or delivered.
 - xiii. The Inspector(s) of Elections shall also determine where the Inspector(s) will maintain custody of the secret ballots, signed voter envelopes, voter list, proxies, and candidate registration list before and after the count and tabulation of the vote by the Inspector(s).
- e. The Inspector(s) may appoint and designate additional personnel to assist them in their duties, but the Inspector(s) will oversee and be responsible for all actions of such designees. Any additional persons appointed to assist the Inspector(s) must meet the Inspector qualifications stated above.
- f. If there are three (3) Inspectors, the decision to act or make a decision must be by a majority of the Inspectors and is effective, in all respects, as the decision of all.
- g. A report of the Inspector(s) of the election shall be prepared for all votes and, once signed, to certify the results of the vote, count or election is prima facie evidence of the facts stated in the report.

9. Secret Ballot Procedures

- a. At least thirty (30) days before the ballots are distributed, the Association shall provide general notice of the date and time by which, and the physical address where, ballots are to be returned by mail or handed to the Inspector(s); the date, time and location of the meeting where the ballots will be counted; and the list of candidates that will appear on the ballot.
- b. At least thirty (30) days prior to the deadline for voting, the ballots will be mailed by first-class mail or delivered to every member along with two preaddressed envelopes and instructions on and deadlines for return of ballots.
- c. The ballot itself will not identify voter by name, address, parcel number or unit number.
- d. The ballot itself is not signed by the voter but is inserted into an inner ballot envelope which is preaddressed to the Inspector(s) (Envelope #1).
- e. The voter then seals Envelope #1 and inserts Envelope #1 into a second outer mailing envelope (Envelope #2) preaddressed to the Inspector(s) which is then also sealed by the voter.
- f. In the upper left-hand corner of Envelope #2, the voter prints and signs his or her name and prints the address of the separate interest that entitles him/her to vote.
- g. An owner of multiple properties must submit a separate ballot in separate sealed envelopes (#1 and #2) for each property owned.
- h. Ballots shall be mailed to the selected address or delivered by hand to the location selected by the Inspector(s). Where a membership meeting is being held for purposes of conducting a vote pursuant to these rules, ballots may also be delivered to the Inspector(s) at the membership meeting prior to close of the polls.
- i. The member may request a receipt for hand delivery of the sealed Envelope #2 to the location selected by the Inspector(s). Any member desiring a receipt for mail delivery should send the ballot by certified mail, return receipt requested, to the location selected by the Inspector(s). A member shall not receive a receipt for hand delivery of a ballot brought to a meeting.
- j. Only the ballots and envelopes sent by the Association or Inspector or provided by the Association or Inspector will be accepted.
- k. No member shall be denied a ballot for any reason other than not being a member at the time when ballots are distributed. A person with general power of attorney for a member shall not be denied a ballot. The ballot of a person with general power of attorney for a member shall be counted if returned in a timely manner.

- l. Verification of information on the outside of Envelope #2 and registration of envelopes received may be performed by the Inspector(s) or the Inspector(s)' designees under the Inspector(s)' supervision prior to the meeting or deadline for voting.
- m. Registration will be conducted by the Inspector(s) or their designees and votes counted and tabulated by the Inspector(s) at a duly noticed membership or Board meeting in front of any members or candidates who may wish to witness the registration and opening and counting of the ballots or proxies.
- n. A member wishing to vote in person at the membership meeting must present himself/herself to the Inspector(s) with identification acceptable to the Inspector(s) to show that he/she is an Association member. The holder of a general power of attorney for a member must present the original, signed, notarized general power of attorney and identification to show that he/she is the attorney-in-fact.
- o. A member that already submitted a ballot may attend a membership meeting but will not be given a new ballot to vote at the meeting.
- p. If a ballot has not been previously received by the Inspector(s) for a particular property address, a member from that address in attendance at the membership meeting will be given a ballot along with two envelopes to mark and cast in secret at the membership meeting.

10. Proxies

- a. A proxy will be accepted if the Inspector(s) determines the proxy meets the requirements of the By-laws, the California Corporations Code and the California Civil Code.
- b. The proxy holder must be present in person at the membership meeting and shall cast the proxy giver's vote by ballot at the meeting unless the proxy is revoked by the proxy giver prior to the Inspector(s) receipt of the proxy giver's ballot.
- c. Any member who gives another member his or her proxy does so with the full understanding that the Association and Inspector(s) will not be responsible for ensuring that any proxy holder votes the proxy in accordance with the proxy giver's direction.
- d. If a member brings proxies to the membership meeting, the Inspector(s) will review and make all necessary determinations regarding those proxies, including the validity of those proxies.

11. Effect of Submitting Secret Ballot

- a. Once a ballot is received by the Inspector(s), that ballot cannot be changed, retrieved or revoked.
- b. Once a member submits a ballot with regard to the member's separate interest, no other ballot or proxy may be submitted for that property. Should more than

one ballot be submitted with regard to a particular separate interest, the ballot which was earliest received shall be counted for that property. If it cannot be determined which ballot was earliest received, no ballot will be counted for that property except one ballot for quorum purposes only at the discretion of the Inspector.

12. Determination of Quorum. The Inspector(s) will determine whether quorum has been obtained based upon the count of the number of members present in person, by proxy or by a returned ballot. Upon determination that a quorum has been obtained, the Inspector(s) may close registration at the polls.

13. Adjourned for Lack of Quorum/Recessed Meetings

a. Any membership meeting may be adjourned to a later date and/or time by the vote of the majority of members present in person or by proxy. Ballots received by the Inspector(s) in properly completed, sealed Envelopes #1 and #2 will be valid for adjourned membership meetings.

b. Ballots may only be counted during a duly noticed Board or membership meeting. The Inspector(s) may request that any meeting be recessed to allow the Inspector(s) to complete the counting and tabulation of the ballots at another time. Notice of the recessed meeting will be given as may be required by law. The Inspector(s) will continue to maintain custody of the ballots until the counting and tabulation are complete.

14. Observation of Ballots, Etc.

a. Any candidate or Association member may witness the counting and tabulation of the votes.

b. No person may open any envelopes or otherwise review any ballot prior to the time and place at which the envelopes are opened and the ballots are counted and tabulated by the Inspector(s).

15. Consultation With Association Counsel. The Inspector(s) will have the authority to confer with Association legal counsel in advance of or at the meeting. Legal counsel represents the Association and does not represent the members, candidates, Inspector(s), Board members, management or any other individual. By the adoption of these Election Rules, Association legal counsel has been authorized by the Board of Directors to provide advice to and to waive the attorney-client confidential communication privilege as determined necessary or prudent by the attorney to inform and advise the Inspector(s) regarding issues or matters related to the Inspector(s)' performance of their duties for the Association. The Inspector(s) may confer with Association legal counsel outside the presence of the members.

16. Tabulation, Counting, Inspectors' Conduct, Etc.

a. Once a quorum is determined present and the balloting has been closed by the Inspector(s), the Inspector(s) may open the sealed envelopes and begin the count and tabulation of the ballots at a duly noticed membership meeting or Board meeting.

- b. All votes shall be counted and tabulated by the Inspector(s) in public at a properly noticed open meeting of the Board or of the members.
- c. Members and candidates may witness the counting and tabulation from a distance of at least five (5) feet from any Inspector.
- d. The Inspector(s) are not required to provide members or candidates with information, answer questions, or engage in discussion. Inspector(s) will not provide any interim counts or tabulations.
- e. Any witness or observer may be ejected or removed by the Inspector(s) for disruptive, noisy or rude behavior.
- f. Inspectors shall make all determinations regarding ballots and vote counts, including deciding whether to count a ballot for quorum purposes only if the Inspector(s) find they cannot determine the voter's intent as to how votes should be cast.

17. After Tabulation

- a. Results of the election or vote shall be announced and be promptly reported to the Board of Directors and the tabulation recorded in the minutes of the next meeting of the Board. The Inspector(s) may also determine whether the tabulated results will be announced at the meeting.
- b. The tabulated results shall be available for review by all members after the certification of the membership meeting by the Inspector(s).
- c. *Tie Votes:* For election of directors, in the event of a tie vote among any number of the candidates, the Association will notice a special membership meeting and send out ballots to all members for a vote to break the tie. Said vote shall be conducted in accordance with the procedures herein, to the extent they are applicable to a run-off vote. No previously cast ballots will be used at the meeting to break the tie.
- d. Within fifteen (15) days of the conclusion of the election/vote, the Board shall publicize the tabulated results of the election/vote in a communication directed to all the members.
- e. If there is a recount or other challenge to the election process, the Inspector(s) 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 shall preserve the confidentiality of the vote. However, the Association will not be responsible for redacting or otherwise protecting any identification/other information which is written on a ballot by a member.
- f. The Inspector(s) may establish rules and procedures for the review and recount by members.

18. Access to Association Facilities and Communications/Use of Association Funds

- a. If any candidate or member advocating a point of view is provided access to any Association media, including newsletters, Internet websites, or other Association publications during any campaign, for purposes that are reasonably related to that election, then all candidates and members advocating a point of view shall be provided with equal access for purposes reasonably related to that election.
- b. The Association shall not edit or redact the content from the communications of candidates and members advocating a point of view but may provide a statement specifying that the candidate or member, not the Association, is responsible for that content.
- c. The Association has no common area meeting space.

THE FOREGOING AMENDED AND RESTATED VOTING AND ELECTION RULES AND PROCEDURES WERE ADOPTED April 10, 2020 by the Board of Directors in a duly noticed open Board meeting following the Board's compliance with Civil Code Section 4360.

ATTESTED TO:

DocuSigned by:

By:

Janice Stillwell

Secretary, Highland Orchards Homeowners Association

Notice of Association rules adoption was mailed to the membership within 15 days of the adoption date.

ATTESTED TO:

DocuSigned by:

By:

J Brooks

President, Board of Directors