

TRACY HILLS PHASE 1 COMMUNITY ASSOCIATION

**ELECTION PROCEDURES**

Adopted by the BOD on \_\_/\_\_/\_\_

**Rules for Elections by Secret Written Ballot**

1. Actions Requiring Approval by Secret Ballot:

The following actions must be approved by secret written ballot:

- a. Increases in regular assessments of greater than 20% or special assessments greater than 5%;
- b. Amendments to the Articles of Incorporation, Bylaws or CC&Rs;
- c. Grant of exclusive use of common area to an Owner;
- d. Selling property of the Association with a value exceeding five percent (5%) of the budgeted gross expenses of the Association for that fiscal year;
- e. Approval to file a Title 7 Claim;
- f. Elections and removal of Directors unless not required by law; and
- g. Any other matter which the Board of Directors, in its discretion, determines must be approved by secret written ballot.

2. Voter Eligibility and Record Date:

- a. The Board shall establish the record date for determining a Member's eligibility to vote ("Record Date"), which shall not be more than sixty (60) days before the date on which the first written ballot is mailed to Members. As used herein, Member is as defined in the CC&Rs. If a Record Date is not specified, the Record Date shall be thirty (30) days before the ballots are mailed.
- b. A Member on the Record Date is eligible to vote.
- c. Proof of membership may consist of either a duly-executed and acknowledged grant deed or title insurance policy showing the person has an ownership interest in a Residence that would entitle the person to membership in the Association.
- d. Any qualified Member other than Declarant may cast one (1) vote per Lot.
- e. Declarant is not permitted to cast any vote with respect to a Title 7 Decision for an election where a Title 7 Decision is a Ballot Measure. A "Title 7 Decision" is defined as any decision whether to file a claim against the Declarant under Title 7, Part 2 of Division 2 of the California Civil Code (Sections 895 et seq.) or any decision relating to the prosecution or resolution of such a claim once it is filed. Declarant may vote with respect to all other types of Ballot Measures.

3. Voting by Proxy:

Voting by proxy is authorized pursuant to the requirements in the Bylaws.

4. Special Election Requirements:

The first membership election of Directors shall be held in accordance with Article 7.2 of the Bylaws.

5. Board of Directors Nominee Qualifications and Nomination Procedures:

- a. Directors and candidates must be Members of the Association, except a Declarant is permitted to make a nomination of a nonmember candidate consistent with the voting power of the Declarant, as set forth in the regulations of the Department of Real Estate and the Association's governing documents, or if an Owner of a Lot is a legal entity that is not a natural person, the governing authority of that legal entity has the power to appoint a natural person to be a Member of the Association.

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- b. A person may be disqualified from nomination as a candidate if any of the following apply:
    - i. 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 Lot as the person and the other person is either properly nominated for the current election or an incumbent director;
    - ii. The person has been a member of the Association for less than one year;
    - iii. The person discloses, or the Association is aware or becomes aware of, a past criminal conviction that would, if the person was elected, either prevent the Association from purchasing the fidelity bond coverage required by California Civil Code Section 5806, as may be amended, or terminate the Association's existing fidelity bond coverage; or
    - iv. The person is not current in the payment of regular and special assessments, which are consumer debts subject to validation. However, the person shall not be disqualified for failure to be current in payment of regular and special assessments if the person has either paid the regular or special assessment under protest pursuant to California Civil Code Section 5658, as may be amended, or the person has entered into a payment plan pursuant to California Civil Code Section 5665, as may be amended. A person may not be disqualified from nomination for nonpayment of fines, fines renamed as assessments, collection charges, late charges or costs levied by a third party.
  - c. Prior to the disqualification of a candidate, the candidate must be provided the opportunity to engage in internal dispute resolution pursuant to California Civil Code Section 5900 et seq.
  - d. The Board shall establish the period during which nominations may be made ("Nomination Period"). The Board shall provide general notice of the procedure and deadline for submitting candidate nominations at least thirty (30) days before any deadline for submission of nominations. Individual notice shall be delivered to a Member pursuant to California Civil Code Section 4040 if individual notice is requested by a Member.
  - e. A Member may nominate himself/herself (without the requirement of nomination by any Nominating Committee or petitioning other Members) so long as the Member submits a written statement to the Board of Directors during the Nomination Period.
  - f. If, as of the published deadline for receiving nominations, the number of qualified candidates for election to the Board is not more than the number of directors to be elected, then the qualified candidates shall be declared elected and 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 Board meeting after the annual meeting. Written notice of the election shall be given to the Members.
6. Campaign Rules:
- a. Equal access to Association Media shall be provided to any candidate or Member advocating a point of view for purposes that are reasonably related to the election. The term "Association Media" means the Association newsletters, internet websites and/or the Association cable channel. Association Media does not include the official Balloting Materials sent to the Members.
  - b. Access to Association Media shall be limited to the thirty (30) day period immediately preceding the date the Balloting Materials are sent to the Members.
  - c. The Association may not edit or redact from Association Media any statement(s) concerning a Ballot Measure or a nominee; however, the Association is not responsible for the statement(s) and may include a statement specifying that the candidate or Member is responsible for the content. The nominee or Member who made the statement is responsible for that content.

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- d. The Association shall ensure access to common area meeting space, if any exists, during a campaign, at no cost, including those who are not incumbents, to all candidates and to all Members advocating a point of view for purposes reasonably related to the election.
- e. Association funds shall not be used for campaign purposes in connection with any Association election, except to the extent necessary to comply with the duties of the Association imposed by law. The Board may not support or oppose a Ballot Measure or candidate.

### 7. Inspector of Elections:

- a. The Board of Directors shall appoint one Inspector of Elections ("Inspector"). The Inspector shall be an independent third party and can be any one of the following, as determined by the Board of Directors at an open Board meeting prior to the distribution of the Balloting Materials:
  - i. a Member, but that Member may not be a Director or a candidate for Director or be related to a Director or to a candidate for Director;
  - ii. a paid consultant retained by the Association;
  - iii. a volunteer poll worker with the county registrar of voters;
  - iv. a California notary public; or
  - v. a licensee of the California Board of Accountancy.
- b. 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.

### 8. Role of Inspector of Elections:

- a. The Inspector shall:
  - i. determine the number and classes of memberships entitled to vote;
  - ii. determine the voting power of each membership;
  - iii. receive Ballots;
  - iv. determine the authenticity, validity and effect of proxies, if any, and Ballots;
  - v. hear and determine all challenges and questions in any way arising out of or in connection with the right to vote;
  - vi. determine when the polls shall close, consistent with the governing documents;
  - vii. count and tabulate Ballots;
  - viii. determine the results of election and promptly report the results of the election to the Board of Directors; and
  - ix. Perform any acts which are 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 the Association's governing documents.

### 9. Ballot:

- a. At least thirty (30) days before Ballots are distributed, general notice of all of the following shall be provided:
  - i. the date and time by which, and the physical address where, Ballots are to be returned by mail or handed to the Inspector;
  - ii. the date, time and location of the meeting at which Ballots will be counted; and
  - iii. the list of all candidates' names that will appear on the Ballot.
- b. The Board shall approve the Ballot, which shall set forth the deadline to submit Ballots and which cannot be less than thirty (30) days after the mailing of the Ballots ("Voting Deadline"). In addition, the Ballot may provide that the Board has authority to extend the Voting Deadline.
- c. The Board shall determine the date that the Ballots must be mailed by the Association.
- d. The Association shall mail by first-class mail or deliver the Ballots on the date determined by the Board, but in no case less than 30 days prior to the deadline for voting.

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- e. If the Ballot includes a Class A Election, the Association shall mail or deliver a separate Ballot to all Class A Members to elect a Class A Director ("Class "A" Election Ballot"), at the same time as the other Ballots are distributed to all Members.
- f. If the Ballot includes a Title 7 Decision, the Association shall mail or deliver a separate Ballot on the Title 7 Decision ("Title 7 Decision Ballot") to all Members, except Declarant.
- g. The "Ballots" shall include to the extent applicable:
  - i. Ballot instructions including providing for a reasonable time within which to return the Ballot;
  - ii. Ballot including the opportunity to specify approval or disapproval;
  - iii. 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;
  - iv. Class "A" Election Ballot, if applicable;
  - v. Title 7 Decision Ballot, if applicable; and
  - vi. Two pre-addressed envelopes: one addressed to the Custodian ("Address Envelope"), the other addressed to "Insert into Address Envelope" ("Ballot Envelope").
- h. After casting a vote, the Member shall place the Ballot into the Ballot Envelope, which is then sealed. Ballots are not to be signed. The Member then inserts the Ballot Envelope into the Address Envelope, which is then sealed. In the upper left-hand corner of the Address Envelope, the Member prints and signs his/her name and prints his/her address number that entitles him/her to vote.
- i. Address Envelopes must be returned by first-class mail or hand delivery to the Custodian at the location specified on the Ballot prior to the Voting Deadline.
- j. No person, including any Member or the Inspector, shall open any Address Envelopes or otherwise review any Ballot prior to the time and place at which the Ballots are tabulated by the Inspector.
- k. Ballots may not be revoked once they are submitted to the Custodian.
- l. Election materials shall be maintained in compliance with California Civil Code Section 5105(a)(7), as may be amended.

### 10. Loss or Inadvertent Opening of Ballots:

- a. If a Member loses his/her Ballot, the Member may request a substitute Ballot from the Association or Inspector, but the Member must sign a statement that the original Ballot was (i) lost, (ii) destroyed or (iii) never received.
  - b. The Inspector shall retain a record of each such request and, if it is determined that the Member voted twice, even by mistake, neither Ballot shall be counted.

### 11. Tabulation of Votes:

- a. Based on the Voting Deadline, the Board shall schedule and notice a meeting of the Members or Board at which the Ballots will be counted. Notice shall be provided in accordance with the Bylaws.
- b. For a meeting of the Members, the Inspector shall determine whether sufficient Ballots are received to satisfy the quorum requirements, if applicable, prior to tabulating the votes. Ballots received are to be counted as Members present for the purpose of establishing a quorum, provided that there is no quorum requirement for the election of directors.
  - i. The Secretary shall verify that the Proxy holders who signed the Address Envelope have written authorization to vote for a Member.
  - ii. If insufficient Ballots are received to establish a quorum, the Inspector shall immediately notify the Board. The Board may then:
    - a. Notice and schedule a meeting of the Board to count the Ballots; and/or
    - b. Extend the Voting Deadline and authorize the Inspector to extend the Poll

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### Close Date.

- c. For a Board meeting, the Inspector shall determine whether quorum requirements, if applicable, have been met prior to tabulating the votes.
- d. The Inspector may appoint and oversee one or more Members other than a Director and other additional persons to assist in the tabulation of votes, provided that the persons are independent third parties ("Assistant").
- e. If quorum requirements are met, the Inspector may tabulate the votes:
  - i. The Inspector shall count the Ballots cast by Proxy, tabulate the approvals and disapprovals of Ballot Measures, determine whether sufficient votes were received for Ballot Measures, and report the election results at the meeting in which the Ballots were counted.
  - ii. For Director Elections, the Inspector shall count the Ballots and determine election results in accordance with Article 6 of the Bylaws.
- f. The Inspector may ask questions of any Member, Management Company, or the Association's attorney if he/she/they need to do so concerning a specific question in helping to determine the validity of a Ballot.
- g. The Secretary shall record the election results in the Association minutes and announce the results at the next open Board meeting and shall be recorded in the minutes of the Board.
- h. The Board shall give notice of the election results to Members within fifteen (15) days of the date of the election.
- i. After tabulation of votes, Ballots shall be transferred to the Association and stored by the Association in a secure place for no less than one (1) year after the date of the election.
- j. In the case of a tie in votes received, a run-off election may be held.
- k. The sealed Ballots, signed voter envelopes, voter list, proxies, and candidate registration list shall at all times be in the custody of the Inspector or at a location designated by the Inspector until the timeframe required 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 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.