

# MARQUEE PARK PLACE HOMEOWNERS ASSOCIATION

## ELECTION AND VOTING RULES

### I. INTRODUCTION

Pursuant to the CC&R's, Bylaws and these Election and Voting Rules ("Rules"), the Association will hold meetings of the Membership to elect Directors and to conduct Association business. These Rules are intended to establish certain procedural rules for the successful management of membership meetings and the successful implementation of the relevant provisions of the Association's Bylaws concerning membership elections and membership voting. These procedural Rules are written pursuant to Civil Code §5105 and are not intended to conflict with, replace, or supersede the provisions of the Association's Bylaws concerning voting rights, Board Member qualification, or any other matter addressed in the Bylaws. Any inconsistency between these Rules and the Bylaws shall be governed in accordance with the Civil Code.

### II. MEMBERSHIP MEETINGS

- A. The Association's Annual Meeting as required by the Association's Bylaws, will be held on a date and time specified in these Rules and consistent with the Association's Bylaws, Article 4, Section 4.5. Other meetings of the Members ("Special Membership Meetings") may be noticed and held by the Association to elect directors and/or to consider and vote on any other matters, which are of concern to the Members, required by the Bylaws or State statute.
- B. The Board may schedule a Board or Membership meeting to allow for the counting of Secret Ballots.
- C. The Members of the Association who are in good standing may vote at all Membership Meetings. A Member is in "Good Standing" for voting purposes unless their membership rights and privileges have been suspended after notice and opportunity for hearing before the Board of Directors in accordance with Article 4, Section 4.4.2(a) of the CC&R's, and Corporations Code § 7341 and Civil Code § 5855.
- D. The Association's Annual Meeting will be held in the same month of the preceding Annual Meeting and in no event later than fifteen (15) months from the date of the preceding annual meeting. The Association shall send out a Notice of Annual Meeting ("Notice") to all Members pursuant to the Governing Documents, these Rules and applicable state statute.
- E. The Notice shall include the following:
  - a. Times when polls will open (when Ballots may/can be cast).

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- b. Times when the Members and candidates may witness the Member registration, as applicable, and the review, counting and tabulation of Secret Ballots by Inspector(s) of Election.

### III. CANDIDATES

- A. The Board of Directors will consist of five (5) Directors. Directors are elected and serve a term of two (2) years.
- B. In order to run for the Board of Directors, a member must meet the eligibility/qualifications identified below:
  1. Must be a member of the Association.
- C. Election of Directors, as well as other votes of the Members as specified in Civil Code §5100, must be elected solely by Secret Ballot as provided in these Rules and Civil Code §5100 et seq., and any successor statute. Voice vote, show of hands, or any method, other than Secret Ballot, shall be prohibited.
- D. The nomination process to nominate a candidate to run for the Board of Directors shall be as follows:
  1. The Association shall distribute to all Members a notice seeking candidate(s) for the Board (“Request for Candidates”), approximately sixty (60) days prior to the Annual Meeting date. The Request for Candidates shall include a demand for certification by the candidate that s/he meets the qualifications set by the Bylaws, Article V, Section 5.3.
  2. The Request for Candidates shall also include a form for each candidate to submit a written statement reasonably related to the election, including advocating a point of view. The Board of Directors may limit the length of the Candidacy Statement. Candidates’ Statements will be included with the Association’s mailing of the Notice and Secret Ballot materials if the Statements are provided prior to the stated deadline.
  3. Any eligible member is permitted to self-nominate himself/herself for election to the Board of Directors by submitting a candidate statement by the deadline date contained within the Request for Candidates. The Association shall accept into nomination all eligible candidates whose statements are received by the deadline date. Any views, comments or opinions set forth in any communication from a candidate or Member are those solely of the candidate or Member, and the Association is not responsible or liable for such content. The candidate or Member, and not the Association, is solely responsible for the content of all materials and /or communications presented by the candidate or Member.

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4. The Request for Candidates will provide a candidacy application that must be completed by the candidate and received by the Association by the deadline stated in the application in order for a candidate's name to appear on the Notice of Annual Meeting and the Secret Ballot. The Chairperson may call for nominations from the floor at the Annual Meeting. Any eligible member may nominate himself/herself, or may nominate another eligible individual if the individual being nominated is present to accept the nomination. Once the nominations have been announced, the Chairperson, upon a motion and second from the floor, shall call for a voice vote of those eligible voters in attendance to close the nominations. A Secret Ballot once voted may not be revoked by the Member and may not be replaced by subsequently voting a second Secret Ballot.
- E. If any candidate or Member advocating a point of view is provided access to Association media, newsletter, or internet web site 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 of Directors, for purposes that are 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.
- F. Association funds shall not be used for campaign purposes, including but not limited to expressly advocating the election or defeat of any candidate up for election. The Association shall not include the photograph of any candidate or prominently feature the name of any candidate on a communication from the Association or its Board of Directors made within thirty (30) days of an election, excepting the official ballot materials sent to the members, including the Candidates Statements, or a communication which is legally required.
- G. At each Annual Meeting, the Association shall hold an open forum during which Members and candidates for election may address the Board and the Membership. Access to common area meeting space will be made available during a campaign, at no cost, to all candidates and Members advocating a point of view, for purposes reasonably related to the election.

## IV. INSPECTOR(S) OF ELECTION

- A. One (1) Inspector of Election or three (3) Inspectors of Election shall be appointed by the Board of Directors, and shall perform the duties set forth below and shall sign a report or certificate evidencing the voting results. In the event three (3) Inspectors are appointed, the decision of a majority of the Inspectors shall control.

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- B. The Board may not designate a member of the Board, a nominee for the Board, an individual related to or residing with a member of the Board or an individual related to or residing with a nominee running for the Board as Inspector.
- C. The Board may, at its sole discretion, select a Non-Member of the Association as Inspector. An Inspector may be a person, business entity, or subdivision of a business entity who is currently employed or under contract to the Association for compensable services.
- D. The Board may, in its discretion, pay compensation to the Inspector. When the Board opts to compensate a Non-Member of the Association as Inspector, that Inspector shall be required to obtain errors and omissions insurance and provide proof of same to the Board prior to the commencement of the Inspector's work. The errors and omissions insurance policy shall be in an amount not less than One Million Dollars (\$1,000,000.00), that indemnifies the Association and its Board Members from liability and provides that the Association is named insured of the policy.
- E. Duties of Inspector(s) of Election:
  - 1. Determine the number of memberships entitled to vote and the voting power of each;
  - 2. Receive the proxies and ballots;
  - 3. Confirm the number of lots represented at the meeting;
  - 4. Confirm the existence of a quorum;
  - 5. Hear and determine the authenticity, validity and effect of proxies and ballots;
  - 6. Hear and determine all challenges and questions in any way arising in connection with the right to vote;
  - 7. Determine when the polls shall close;
  - 8. Count and tabulate all ballots;
  - 9. Determine the results of election; and
  - 10. Perform any acts which may be proper to conduct the election with fairness to all members in accordance with Civil Code §15110, and any successor statutes, and the Governing Documents.
- F. The Inspector(s) of Election shall perform his or her duties impartially, in good faith, to the best of his or her ability, and as expeditiously as practical.
- G. Any report made by an Inspector is prima facie evidence of the facts stated in the report.
- H. Prior to the mailing of the Secret Ballots by the Association, the Inspector(s) of Election shall pass a Resolution designating the location for return of Secret Ballots, and if no location is designation, the offices of Action Property Management, Inc. as the location to receive the sealed Secret Ballots and maintain the custody of the sealed

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Secret Ballots until the time upon which tabulation of the Secret Ballots by the Inspector(s) shall occur.

**V. ISSUANCE OF BALLOTS**

- A. The Association shall utilize a Secret Ballot process, as described below, for any or all of the following matters:
1. A vote of the Membership regarding assessments per Civil Code §5605;
  2. Election of Members of the Association's Board of Directors;
  3. Amendments to the Governing Documents;
  4. Grant of exclusive-use Common Area property pursuant to Civil Code §4600;
  5. Any other purpose as required in the Civil Code.
- B. Notwithstanding any other law or provision of the Association's Governing Documents, Board of Directors elections and other elections required to be submitted to the membership pursuant to Civil Code §5100 shall be conducted by a Secret Written Ballot submitted to the member pursuant to Corporations Code §7513 and Civil Code §5115. Ballots and two pre-addressed envelopes with instructions on how to return ballots, and a Notice of Meeting, if applicable, must be mailed by first class mail or delivered by the Association to every Member not less than thirty (30) days prior to the deadline for voting. In order to preserve confidentiality, a voter may not be identified by name, address or lot, parcel or unit number on the ballot itself. The balloting materials shall include all of the following:
1. One Secret Ballot shall be issued for each separate interest owned and the owner of each separate interest is entitled to cast one ballot, regardless of the number of owners shown on the Association's membership roster. If more than one owner of a jointly-owned separate interest attempts to submit a ballot, even by mistake, the first ballot received will be counted.
  2. A write-in candidate, , must also be nominated from the floor of the Annual Meeting (or other Membership meeting where voting by Secret Ballot will occur), by him or herself, or by another Member.
  3. The Secret Ballot shall NOT identify the Member (or their designee) by name, address, lot, parcel number or number. If the Member does sign the Secret Ballot or identify him/her self, the Member shall waive his or her right to secrecy.
  4. The Secret Ballot itself is NOT signed by the Member (or their designee), but is placed into a ballot envelope ("Ballot Envelope"), which is then sealed. The Ballot Envelope is then inserted into the second pre-addressed envelope ("Address Envelope") that is then sealed. In the upper left hand corner of the

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Address Envelope, the Member (or their designee) must print and sign his/her name, address and lot, parcel or unit number that entitles him/her to vote.

5. The owners of multiple properties (with the exception of the Declarant) must submit separate sealed Secret Ballot envelopes for each separate interest owned.
6. The Address Envelope is addressed to the Inspector(s) of Election for the tallying of votes. The Address Envelope can be mailed or delivered by hand by the Member to the location designated by the Inspector(s) of Election. Any member can request a receipt for hand-delivery of his or her Secret Ballot. Any Member desiring a receipt for mail delivery shall send the Secret Ballot by certified mail, return receipt requested, to the location designated by the Inspector(s).
7. The sealed Secret Ballots shall be kept in the custody of the Inspector(s) of Election or at a location designated by the Inspector(s) of Election until after the tabulation of the Secret Ballots by the Inspector(s), at which time custody will then be transferred to the Association per designation by the Inspector(s). After tabulation, Secret Ballots shall be stored by the Association in a secure place for no less than three (3) years after the date of the election.
8. Ballots distributed to each and every member shall identify the proposed action, provide an opportunity to specify approval or disapproval of the action, and provide at least thirty (30) days upon which to return the ballot to the Inspector(s) of Election. The voting instructions contained within the ballot materials will show a date by which the ballots must be delivered to the location designated by the Inspector(s) of Election by either the United States Postal Service, overnight delivery service or hand delivery.
9. Only Secret Ballots prepared by the Association will be accepted by the Inspector(s) either by mail or in person.
10. For elections of Directors, cumulative voting will be used as permitted by the Association's Bylaws, Article 5, Section 5.2.3. Cumulative Voting means that a Member may cast all votes for one Candidate or divide up the votes among the Candidates at his or her option. No fractional votes are permitted or allowed.
11. Once a Member mails or delivers his/her Secret Ballot to the location designated by the Inspector(s), that Secret Ballot cannot be changed or revoked.

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**VI. PROXIES**

- A. Proxies will be accepted pursuant to the Bylaws, Article 4, Section 4.12, only if those Proxies are determined by the Inspector(s) to meet the requirements of the Bylaws, and the California Corporations and Civil Codes. The Association shall not be obligated to prepare and mail proxies to the owners.
- B. All proxies received by mail prior to the election shall be held by the Inspector(s) of Election in the location designated by Resolution and shall be brought to the meeting for validation and registration at the meeting.

**VII. REGISTRATION – GENERAL**

- A. The Inspector(s) will register all Secret Ballots at or prior to the membership meeting (Annual or Special). A membership roster will be maintained at each registration station for purposes of registering each separate interest present and voting at the meeting, whether in person or by proxy.
- B. The Inspector(s) shall verify that all Secret Ballots are sealed in two sealed preaddressed envelopes and contain all required information on the upper left-hand corner of the Address Envelope.
- C. If a Member brings Secret Ballots for other Members to the Annual Membership Meeting, Special Members meeting, or Board meeting, the Secret Ballots must also be sealed in separate individual Ballot and Address Envelopes as required above. The Inspector(s) will register and make all necessary determinations regarding the sealed Secret Ballot envelopes.
- D. The Inspector(s) will review the information provided on the upper left-hand corner of the Address Envelope. The Inspector(s) will require, at a minimum, the following:
  - 1. That the printed name of the Member be legible and match the name of at least one of the record owners of the property as shown on the Association's Membership list;
  - 2. That the Member's signature is on the Address Envelope; and
  - 3. The address shown on the Address Envelope corresponds to the Member's address on the Association's Membership list.
- E. If, in the sole discretion of the Inspector(s), the requirements above are not met, the envelope/Secret Ballot will not be registered, and will not be valid for any purpose, including establishing a Quorum. If the requirements are met, subject to verification of membership and the member's ability to vote, the Inspector(s) of Election shall register each Secret Ballot received by placing a "B" on the membership roster alongside the member's name.

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- F. If a person brings Proxies to the Annual, or Special Meeting, the Inspector(s) will review and make all necessary determinations regarding those Proxies, including their validity. Subject to this verification, the Inspector(s) of Election shall register each Proxy received by placing a "P" on the membership roster alongside the member's name.
- G. Any Candidate or other Member of the Association may witness the registration of sealed Secret Ballots, Proxies (if any), and the counting and tabulation of Secret Ballots.
- H. No person, including any Member of the Association, or any employee or Association Manager, may open or otherwise review, any Secret Ballot prior to the time and place at which the Secret Ballots are counted and tabulated.
- I. A Member who chooses to vote in person at the Annual, or Special Meeting must present himself/herself at the registration table area and must sign the membership roster alongside his or her name and unit address.
- J. If a Member has not previously voted his or her Secret Ballot, the Inspector(s) shall give the Member a Secret Ballot and two envelopes to mark and cast in secret at the Annual Membership or Special Members meeting.
- K. Members voting in person at the meeting must use the Ballot and Address Envelopes, and satisfy all other requirements for a valid Secret Ballot.
- L. If a member attends the meeting and registers to vote, with the intent to revoke any Proxy previously submitted by that member, all Proxies previously submitted by the member shall be deemed revoked, but maintained in the Association's records. Provided that a valid Secret Ballot signed by a different owner has not already been registered on behalf of the separate interest, the member shall be issued a Secret Ballot. The member's Proxies shall be so marked to indicate their revoked status.
- M. If two Proxies are registered for the same separate interest and one is dated and one is undated, the dated Proxy prevails.
- N. If two dated Proxies are registered for the same separate interest, the most current dated Proxy prevails.
- O. If a Proxy and a Secret Ballot are registered for the same separate interest, the Proxy shall be revoked and the Secret Ballot shall prevail.
- P. If the property is co-owned (i.e., husband and wife) or if the property is owned by a corporation, partnership, etc, and two or more co-owners or two or more

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- representatives submit separate Proxies, the most current dated Proxy prevails. If a Proxy and a Secret Ballot are submitted, the Proxy shall be revoked and the Secret Ballot shall prevail.
- Q. If more than one Secret Ballot is received for any property, the first Secret Ballot received will be the one counted. If it cannot be determined which Secret Ballot was the earliest received, no Secret Ballot will be counted for that Member's property except for the purpose of establishing quorum.
- R. Any changes to the Secret Ballot must be initialed by the member. Changes not initialed may result in the Secret Ballot not being used for voting purposes, but used for quorum purposes only as determined by the Inspectors.
- S. The Association's Managing Agent shall provide the Inspector(s) with a list of those Members whose rights and privileges have been duly suspended, who are not Members in Good Standing and/or who are not entitled to vote at the Annual Membership or Special Members meeting where voting by Secret Ballot is to occur or be counted. The Inspector(s) will take appropriate steps, including making notations or otherwise marking the Membership registration list and/or sealed Secret Ballot envelopes, to prevent suspended Members from voting at the meeting.
- T. All unsigned Proxies shall be invalid and shall not be used for quorum purposes.
- U. All voided/invalidated Proxies and Secret Ballots are to have "VOID" written across them, the reason for voiding and the initials of the Inspector(s) of Election.

## VIII. DETERMINATION OF QUORUM

- A. The Inspector(s) of Election shall confirm the memberships verified as being in attendance in person or by proxy, as indicated on the official membership roster and shall inform the Chairperson that a quorum is or is not in attendance. Except as otherwise provided in the Bylaws, the presence in person or by proxy of **25%** of the voting power of all members of the Association who are entitled to vote constitutes a quorum.
- B. When the Chairperson announces, following a motion duly seconded and approved by the membership, that registration is closed, no further members may be registered, except for those who are in line and recognized by the Chairperson at the moment the announcement is made.
- C. Once registration has been closed, if a Quorum is present, the meeting, if it is a meeting of the Membership may proceed with nominations from the floor from additional Candidates. Further, unless the Candidates have submitted their written nomination to the Board, write in Candidates must also be nominated from the floor.

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**IX. ADJOURNED MEETING - ISSUANCE OF BALLOTS**

If the meeting is adjourned to another date due to lack of quorum, at the adjourned meeting date, new Secret Ballots and two pre-addressed envelopes may be issued to all members present. Any Secret Ballots which are cast at the Annual Meeting and put directly into the Secret Ballot box without the Ballot and Address Envelopes will not be valid for that or the adjourned meeting. Secret Ballots which are mailed or delivered to the Inspector(s), or which are cast at the Annual Meeting and put directly into the Secret Ballot box, in properly completed, sealed Ballot and Address Envelopes will be valid for adjourned meetings. As stated above, if two ballots are received for the same separate interest, the earliest dated Secret Ballot shall prevail.

**X. COUNTING AND TABULATION OF BALLOTS**

- A. Once the polls have been closed, the Inspector(s) shall open the sealed envelopes and begin the counting and tabulation of the Secret Ballots.
- B. The tabulation and counting of the votes by the Inspector(s) of Election shall be conducted at a properly noticed open meeting of the Members or Board of Directors.
- C. Any Member of the Association may witness the counting and tabulation of votes from a distance of no less than five (5) feet from any Inspector. Members, including Candidates, may not communicate with the Inspector(s) during the inspection, registration, counting or tabulation process. Inspector(s) may cause the removal of any witness who interferes with the counting or tabulation process.
- D. All Secret Ballots must be legible and clearly marked.
- E. If the number of votes cast on a Secret Ballot exceeds the number of positions to be elected, no votes will be counted, and the Secret Ballot will be used for quorum purposes only.
- F. When a box is checked or otherwise marked for a candidate, and it is the only box **checked or marked**, all of the member's votes shall be counted for that candidate. When fewer boxes are checked on the ballot than the number of Directors to be elected, the count shall be one vote per check not to exceed the number of authorized votes.
- G. The Inspector(s) will provide the members of the Board with a final count and tabulation of the Secret Ballots.

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H. During the counting and tabulation process, the Inspector(s) shall not:

- a. Provide members and Candidates with information regarding the Secret Ballot;
- b. Answer questions concerning the Secret Ballot and vote; and
- c. Provide any interim counts or tabulations.

I. The Inspector(s) will certify the results of the Membership election by completing a report and providing it to the Board.

**XI. ANNOUNCEMENT OF RESULTS**

The results of any election shall be promptly reported to the Board of Directors and shall be recorded in the minutes of the next Board meeting and shall be available for review by all Members of the Association. Within fifteen (15) days of the election, the Board shall publicize the tabulated results of the election in the manner for giving general notice to members pursuant to Civil Code §4045.

**XII. TIE VOTES**

In the event of a tie vote among any number of the Candidates, the Association will notice a Special Membership or Board meeting and send our Secret Ballots to all Members for a vote to break the tie. Said vote shall be conducted in accordance with the procedures set forth herein, to the extent they are applicable to a run-off vote. No previously cast Secret Ballots will be used at the meeting to break the tie.

**XIII. RECOUNTS AND ELECTION CHALLENGES**

In the event of an election challenge and upon receipt of a written request from a Member, the Association will make the Secret Ballots available for inspection and review by Association Members or their authorized representatives. In order to protect the security of the Secret Ballots, one or more Association representatives must be present during such review.

*Adopted by the Board of Directors on \_\_\_\_\_, 2014.*