

ELECTION OPERATING RULES
OF
PARK ASHTON HOMEOWNERS
ASSOCIATION, INC.
(a California Nonprofit Mutual Benefit Corporation)

These rules once adopted supersede and replace in its entirety any formerly adopted election operating rules by Park Ashton Homeowners Association, Inc. (*hereinafter* “association”), but do not supersede any provisions of the association’s CCR’s, if any such provisions conflict with the provisions herein, unless the CCR provision has been superseded by California law. These rules do supersede and replace any provision in the association’s Bylaws that conflict with the provisions adopted herein, but otherwise incorporate herein any non-conflicting election rules stated in the association’s Bylaws, unless the Bylaw provision has been superseded by California law. Because these rules change terms of the association’s Bylaws, these rules must be approved in the same manner as an amendment to the Bylaws must be approved (Bylaws Article XII).

1.00: APPLICATION OF ELECTION OPERATING RULES: These election rules govern elections held by the association membership on any topic that requires a vote by secret ballot that is either a topic expressly identified in the association’s governing documents as being subject to California Civil Code §§ 5100, *et seq.* (Civil Code § 5100(b)), or is a topic identified by Civil Code §§ 5100, *et seq.* as requiring a vote by secret ballot, or any other election held by the association that is conducted by secret ballot. These election rules shall apply to votes cast directly by the membership, but do not apply to votes cast by delegates or other elected representatives (Civil Code § 5100(d)).

2.00 : WHEN SECRET BALLOT IS REQUIRED: elections regarding assessments legally requiring a vote, election and removal of directors (*aka* governors, as that term is used in the association’s Bylaws; the CC&R’s uses the term directors), amendments to the governing documents, or the grant of exclusive use of common area pursuant to Civil Code § 4600, shall be held by secret ballot, as required by Civil Code § 5100(a)(1).

2.01 : Secret ballot requires ballots to be distributed to association members outside of a membership meeting that allows the member to vote and return the ballot.

2.02 : Secret ballots are not required if, as stated in Civil Code § 5100(g), as of the close of nominations for directors on the board, the number of director nominees is not more than the number of vacancies to be elected, as determined by the inspector or inspectors of the elections, in which case the director nominees shall be considered elected by acclamation if all of the following are true:

(1) The association includes 6,000 or more units.

(2) The association provided individual notice of the election and the procedure for nominating candidates at least 30 days before the close of nominations.

(3) The association permits all candidates to run if nominated, except as follows:

(A) The association shall disqualify a person from nomination as a candidate if the person is not a member of the association at the time of the nomination. This subdivision does not restrict a developer from making a nomination of a nonmember candidate consistent with the voting power of the developer, as set forth in the regulations of the Department of Real Estate and the association's governing documents.

(B) Through its bylaws or election operating rules adopted herein pursuant to subdivision (a) of Section 5105 only, the association shall disqualify a person from nomination as a candidate based on any of the following:

(i) 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.

(ii) The association shall disqualify a nominee who is not current in the payment of regular and special assessments, and the association shall disqualify a director who is not 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:

(I) The nominee has paid the regular assessment or special assessment under protest pursuant to Section 5658.

(II) The nominee has entered into a payment plan pursuant to Section 5665.

(III) 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.

(iii) 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.

(iv) If that person has been a member of the association for less than one year.

3.00: TIME FOR ELECTION OF BOARD OF DIRECTORS: the association shall hold an election for a seat on the board of directors at the expiration of the corresponding director's term and at least once every four years, as required by Civil Code § 5100(a)(2). The ByLaws Article V, Section 2, states that there shall be 5 directors who serve a term of one (1) year. Directors shall not be required to be elected pursuant to these election rules if the governing documents provide that one member from each separate interest is a director (Civil Code § 5100(f)).

4.00 : INSPECTOR OF ELECTIONS: Pursuant to Civil Code § 5105(a)(5), the association hereby specifies a method of selecting one or three independent third parties as inspector or inspectors of elections utilizing one of the following methods: (A) Appointment of the inspector or inspectors by a vote of the board; (B) Election of the inspector or inspectors by the members of the association; (C) Any other method for selecting the inspector or inspectors.

4.01 : The association shall select an independent third party (defined below) or parties as an inspector of elections. The number of inspectors of elections shall be one or three. (Civil Code § 5110(a)). If there are three inspectors of elections, the decision or act of a majority shall be effective in all respects as the decision or act of all. (Civil Code § 5110(d)). The inspector or inspectors have authority hereby to appoint and oversee additional persons to verify signatures and to count and tabulate votes as the inspector or inspectors deem appropriate, provided that the persons are independent third parties. (Civil Code § 5105(a)(6)).

4.02 : 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 a director or a candidate for director or be related to a director or to a candidate for director. 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, such as the association's manager, accountant, attorney, or other such person or entity. (Civil Code § 5110(b)).

4.03 : The inspector or inspectors of elections shall do all of the following pursuant to Civil Code § 5110(c):

- (1) Determine the number of memberships entitled to vote and the voting power of each.
- (2) Determine the authenticity, validity, and effect of proxies, if any.
- (3) Receive ballots.
- (4) Hear and determine all challenges and questions in any way arising out of or in connection with the right to vote.

(5) Count and tabulate all votes and determine the validity of each vote cast as follows: no fractional votes are to be counted; no more than one ballot per membership shall be counted; no conditional votes are to be counted; any marks not clearly and obviously intended to be a vote shall not be counted; a ballot that exceeds the number of votes permitted (such as in cumulative voting) shall not be counted; a ballot that says both yes and no, for example, in an election asking for a yes or no vote, shall not be counted. The inspector(s) of the election shall decide the validity of any other vote aberration.

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

(7) Determine the tabulated results of the election.

(8) Perform any acts as may be proper to conduct the election with fairness to all members in accordance with this article, the Corporations Code, and all applicable rules of the association regarding the conduct of the election that are not in conflict with this article.

4.04 : The inspector of elections shall perform all duties impartially, in good faith, to the best of the inspector of election's ability, as expeditiously as is practical, and in a manner that protects the interest of all members of the association. Any report made by the inspector or inspectors of elections is prima facie evidence of the facts stated in the report. (Civil Code § 5110(d)).

5.00 : **QUALIFICATION OF CANDIDATES:** The association hereby specifies the qualifications for candidates for the board and any other elected position, consistent with the association's governing documents. (Civil Code § 5105(a)(3)).

5.01 : A nominee is disqualified as a candidate if the person is not a member of the association, as that term is defined in the association's governing documents, at the time of the nomination (Civil Code § 5105(b)). However, 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 to be a qualified member of the association who may be nominated. (Civil Code § 5105(b)(2)). Also, a developer may nominate a nonmember candidate consistent with the voting power of the developer as set

forth in the regulations of the Department of Real Estate and the association's governing documents. (Civil Code § 5105(b)(1)).

5.02 : A person is disqualified from being nominated or continuing as a board of director if the person is not current in the payment of regular and special assessments, which are consumer debts subject to validation (Civil Code § 5105(c)(1)), unless either of the following circumstances is true (Civil Code § 5105(d)): (1) The person has paid the regular or special assessment under protest pursuant to Section 5658; or, (2) The person has entered into a payment plan pursuant to Section 5665.

5.03 : A person is not disqualified for nonpayment of fines, fines renamed as assessments, collection charges, late charges, or costs levied by a third party. (Civil Code § 5105(d)).

5.04 : A person is disqualified from nomination as a candidate 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. (Civil Code § 5105(c)(2)).

5.05 : A person is disqualified as a nominee if that person has been a member of the association for less than one year. (Civil Code § 5105(c)(3)).

5.06 : A person is disqualified as a nominee if that person discloses, or if 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 Civil Code § 5806 or terminate the association's existing fidelity bond coverage (Civil Code § 5105(c)(4)).

5.07 : The association shall not disqualify a person from nomination if the person has not been provided the opportunity to engage in internal dispute resolution pursuant to Civil Code §§ 5900, *et seq.* (Civil Code § 5105(e)).

600 : NOMINATION OF CANDIDATES: This Section is intended to supersede and replace the association's Bylaws, Article VI, Section 1, regarding "Nomination" of candidates for election to the board, as a "nominating committee"

is no longer used for board elections. The association hereby specifies procedures for the nomination of candidates. A nomination or election procedure shall not be deemed reasonable if it disallows any member from nominating themselves for election to the board (Civil Code § 5105(a)(3)).

6.01 : The association shall provide general notice pursuant to Civil Code § 4045 of the procedure and deadline for submitting a nomination at least 30 days before any deadline for submitting a nomination. Individual notice shall be delivered pursuant to Civil Code § 4040 if individual notice is requested by a member. (Civil Code § 5115 (a)). The notice must be sent at least 30 days before the secret ballots are sent to the members.

6.02 : The notice must specify the number of board positions available and the length of the term of each board member being so elected.

6.03 : The notice must designate to whom nominations are to be submitted.

6.03 : Nominations must be submitted in writing by the deadline stated in the notice that the association board is seeking candidates to run for the board. The method of delivery of the nominations must be specified; and, nominations may be submitted by email if the notice provides an email address to which nominations may be submitted.

6.04 : Only members may nominate candidates and members may nominate themselves. If a member nominates another member, the nominating member must first obtain written consent from the person being nominated.

6.05 : Members may make nominations of candidates from the floor of a membership meeting; and, a member may write-in candidates' names on ballots at the time of secretly voting. (Civil Code § 5105(f)). Candidates nominated from the floor of a membership meeting must be present to accept said nomination.

6.06 : A candidate may submit a written statement relevant to the candidacy, to be included with the ballots, not to exceed 300 words. Candidates are responsible for ensuring the statement is legible so that it can either be copied and pasted on the ballot or an image of the statement can be captured and pasted on the ballot.

6.07: Candidates may withdraw their candidacy at any time until the time the inspector(s) of elections begins to count the ballots. The withdrawal shall be in writing and directed in the same manner as specified for nomination, or to the inspector(s) of the election, unless done orally at the meeting to count the ballots. Any votes for candidates that are cast for a member who withdraws shall be ineffective and may not be assigned to other candidates. The withdrawal of a candidate does not require new balloting.

6.08: Candidates must be qualified to serve on the board, such qualifications being set forth herein in Section 5.00, *et seq.*

7.00: ACCESS TO ASSOCIATION MEDIA FOR CAMPAIGN: The association must ensure that if any candidate or member advocating a point of view is provided access to association media, newsletters, or internet websites 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, 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 (Civil Code § 5105(a)(1)).

8.00: ACCESS TO COMMON AREA MEETING SPACE FOR CAMPAIGN: The association must ensure access to the common area meeting space, if any exists, during a campaign, at no cost, to all candidates, including those who are not incumbents, and to all members advocating a point of view, including those not endorsed by the board, for purposes reasonably related to the election (Civil Code § 5105(a)(2)).

9.00: VOTING POWER: Pursuant to Civil Code § 5105(a)(4), the association hereby specifies:

9.01: Consistent with the association's governing documents (*i.e.* CC&R's), each member shall be entitled to one vote per separate interest, which means if a separate interest (*aka* unit) is jointly owned, only one vote may be cast for that separate interest, consistent with the association's CC&R's, Article V, Section 2.

9.02: A member may vote by proxy by designating one individual to act as the designated proxy. For the proxy to be valid it must be in writing; it must be signed within 12 months of any use of the proxy; it must be signed by a member of the association or his or her attorney; and, it must be either submitted to the board at or before the time of a membership meeting, or submitted with a secret ballot when so voting. A member may designate in a proxy that the proxy may only be used for quorum purposes. A member also may direct a designated proxy how the proxy is required to vote, provided any instruction given in a proxy directing the designated proxy how to vote in an election is on a separate page of the proxy document which the designated proxy can detach and retain. The designated proxy will cast the member's vote by secret ballot. This section is meant to replace the association's Bylaws, Article IV, Section 6, entitled "Proxies and Written Ballots." The proxy automatically expires if the member granting the proxy no longer is a member.

10.00 NOTICE REQUIRED BEFORE BALLOTS ARE DISTRIBUTED: Pursuant to Civil Code § 5115(b), the association shall provide general notice pursuant to Civil Code § 4045 of all of the following at least 30 days before the ballots are distributed, but individual notice shall be delivered pursuant to Civil Code § 4040 if individual notice is requested by a member:

(1) The physical address, date and time by which ballots must be returned, if being returned by mail; and, the physical address, date and time by which ballots must be submitted in person to the inspector(s) of elections, if being returned at the meeting to count the ballots.

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

10.01 : 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. (Civil Code § 5105(a)(7)).

11.00 BALLOT FORM AND DISTRIBUTION: Pursuant to Civil Code § 5105(g), ballots must be distributed by the inspector(s) of elections to each

member at the member's address as shown on the association's voting list, as follows:

11.01 : A member shall not be denied a ballot for any reason other than not being a member at the time when ballots are distributed.

11.02 : 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 must be counted if returned in a timely manner.

11.03 : The inspector or inspectors of elections must deliver, or cause to be delivered, at least 30 days before an election, to each member the following documents:

(A) The ballot or ballots. The secret ballot shall not include any place for a member to sign or to write their name, address, or other identifying information, since it is a secret ballot. The ballot must include:

i. The date and time deadline for returning the ballot, and the address for returning the ballot.

ii. The names of any candidates and a space provided to check whether a vote is being cast for that member, if such an election.

iii. If an election other than a board election, the ballot must specify each proposed action and a space provided to specify whether the member is voting to approve or disapprove of such proposed action.

iv. If an election other than a board election, the percentage of members required to pass the proposal.

v. The number of responses required to satisfy any quorum requirement.

(B) A copy of the election operating rules. Delivery of the election operating rules may be accomplished by either of the following methods: (i) Posting the election operating 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, (ii) Individual delivery.

(C) 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. (Civil Code § 5115(g)).

11.04 : Pursuant to Civil Code § 5115(c), ballots and two pre-addressed 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.

11.05 : The two envelopes are used as follows in order to preserve confidentiality. One envelope shall be used for the member to insert the secret ballot into the envelope and seal it, and then put that envelope into the second envelope to return to the inspector(s) of elections. A voter may not be identified by name, address, or lot, parcel, or unit number on the ballot itself or on the envelope in which the member will put the ballot. The ballot itself is not signed by the voter, but is inserted into the envelope that will be sealed by the member. This envelope is inserted into a second envelope that is sealed. In the upper left-hand corner of the second envelope, the voter shall sign the voter's name, indicate the voter's name, and indicate the address or separate interest identifier that entitles the voter to vote.

1200 : MEETING TO COUNT BALLOTS AND QUORUM: The quorum required for votes taken by secret ballot of the members shall be the same as the quorum required for votes taken at membership or board meetings, as forth in the association's governing documents. Except for the meeting to count the votes required in Civil Code § 5120, an election may be conducted entirely by mail unless otherwise specified in the governing documents. (Civil Code § 5115(f)). Pursuant to Civil Code § 5120(a), all votes shall be counted and tabulated by the inspector or inspectors of elections, or the designee of the inspector of elections, in public at a properly noticed open meeting of the board or members, where members can observe the counting process. 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 inspector of elections, or the designee of the inspector of elections, may verify the member's information and signature on the outer envelope prior to the meeting at which ballots are tabulated. Once a secret ballot is received by the inspector of elections, it shall be irrevocable.

The inspector(s) of elections may designate an area in which members cannot enter to keep the secret ballots out of the member's reach as long as members can both see and hear the counting process.

1201 : A quorum shall be required only if so stated in the governing documents or other provisions of law. If a quorum is required by the governing documents, each ballot received by the inspector of elections shall be treated as a member present at a meeting for purposes of establishing a quorum. (Civil Code § 5115(d)).

1202 : EXTENDING THE DEADLINE TO RETURN BALLOTS: The association board may, but is not required to, extend the deadline for the return of secret ballots if the inspector(s) of elections reports to the board that an insufficient number of ballots have been returned to constitute a quorum. The members in attendance at a meeting to count the ballots also may vote to extend the deadline for the return of secret ballots. The board of directors also may include in the general notice of the election that the meeting to count ballots will automatically be continued if an inadequate number of ballots have been cast. The ballots cast shall not be opened and counted if the deadline is extended, until the date of the extended meeting to count ballots. The quorum for the extended meeting shall be twenty-five percent (25%) of the total voting rights of the members of the association. The board must direct the inspector(s) of elections to give all members notice of the deadline extension before the original deadline expires, using the same delivery method used to deliver the secret ballots. The extended period must be at least 5 days later, but in no case more than 30 days later. No other business may be conducted at the meeting or the extended meeting except for casting additional ballots and counting the ballots consistent with the terms of these rules.

1203 : The tabulated results of the election shall be promptly reported to the board and shall be recorded in the minutes of the meeting conducted to count the ballots and shall be available for review by members of the association. Within 15 days of the election, the board shall give general notice pursuant to Civil Code § 4045 of the tabulated results of the election.

1204 : Approval of the ballot tabulation shall be valid when the number of ballots returned meets the quorum requirement and the required percentage of votes to pass a proposed action are cast. Ballots shall not be opened or counted if there is an inadequate number of ballots cast.

1205 : In a board election, those candidates receiving the largest number of votes shall be elected to the board based on how many board positions are available. If the terms of service of board positions being elected are different in length than the candidates with the most votes will be elected to the longer terms. If there is a tie in a board election, the existing board shall determine the winner by a traditional “coin-toss” during the meeting to count the ballots.

1206 : Pursuant to Civil Code § 5125, 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 inspectors of elections or at a location designated by the inspector or inspectors until after the tabulation of the vote, and until the time allowed by Civil Code § 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 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.

1207 : CANCELLATION OF VOTING: The association board may cancel the voting for good cause, such as discovering that an aspect of the election is unlawful or in violation of the governing documents; or, discovering that a duly nominated candidate was not included on the ballot.

13.00: VOTING: The provisions of the association’s CC&R’s Article V, Section 2(d), entitled “Cumulative Voting;” and, the association’s Bylaws Article V, Section 3, entitled “Election; and, Article VI, Section 2, entitled “Election,” governing cumulative voting, election, and removal of the board of directors are expressly incorporated herein and are not superseded or replaced by these rules. (Civil Code § 5115(e)).

14.00: RETENTION OF ELECTION MATERIALS: The association must prepare and retain, as association election materials, the following: both a candidate registration list and a voter list. The voter list shall include name, voting power, which is one vote per membership (if a unit is jointly owned, only one vote may be cast), 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. (Civil Code § 5105(a)(7)).

1500 : LEGAL ENFORCEMENT OF ELECTION OPERATING RULES:

A member of an association may bring a civil action for declaratory or equitable relief for a violation of these Election Operating Rules by the association, including, but not limited to, injunctive relief, restitution, or a combination thereof, within one year of the date that the inspector or inspectors of elections notifies the board and membership of the election results or the cause of action accrues, whichever is later. If a member establishes, by a preponderance of the evidence, that the election procedures of Civil Code §§ 5100, *et seq.*, or the adoption of and adherence to rules provided by Civil Code §§ 4340, *et seq.*, were not followed, a court shall void any results of the election unless the association establishes, by a preponderance of the evidence, that the association's noncompliance with this article or the election operating rules did not affect the results of the election. The findings of the court shall be stated in writing as part of the record. (Civil Code § 5145(a)).

1501 : A member who prevails in a civil action to enforce the member's rights pursuant to Civil Code § 5145 shall be entitled to reasonable attorney's fees and court costs, and the court may impose a civil penalty of up to five hundred dollars (\$500) for each violation, except that each identical violation shall be subject to only one penalty if the violation affects each member of the association equally. A prevailing association shall not recover any costs, unless the court finds the action to be frivolous, unreasonable, or without foundation. If a member prevails in a civil action brought in small claims court, the member shall be awarded court costs and reasonable attorney's fees incurred for consulting an attorney in connection with this civil action. (Civil Code § 5145(b)).

1502 : A cause of action under Civil Code §§ 5145(a) may be brought in either the superior court or, if the amount of the demand does not exceed the jurisdictional amount of the small claims court, in small claims court. (Civil Code § 5145(d)).

16.00: AMENDMENT TO ELECTION OPERATING RULES: These election operating rules shall not be amended less than 90 days prior to an election. (Civil Code § 5105(h)).

17.00: CONFLICT OF LAWS: Pursuant to Civil Code § 5100(e), in the event of a conflict between the election rules set forth at Civil Code §§ 5100, *et seq.*, and the provisions of the Nonprofit Mutual Benefit Corporation Law (Part 3 (commencing with Section 7110) of Division 2 of Title 1 of the Corporations Code) relating to elections, the provisions of Civil Code §§ 5100, *et seq.*, shall prevail.