

# NEWARK-CEDAR COMMONS HOMEOWNERS ASSOCIATION

## VOTING AND ELECTION RULES

<https://www.walshpm.com/ccelectionrules>

### 1. General.

- 1.1 These Rules are intended to comply with Civil Code sections 5100 through 5130 and shall apply to Member voting: (1) to elect or remove Members of the Board of Directors; (2) regarding assessments; (3) regarding amendments to the governing documents; (4) regarding the granting of exclusive use of common area property; and (5) at the discretion of the Board of Directors, regarding any other matter that may be the subject of a vote of Association Members.
- 1.2 As used in these Rules, "general notice" means providing notice by one or more of the following methods: any method provided for delivery of an individual notice pursuant to Civil Code section 4040; inclusion in a billing statement, newsletter, or other document; posting the printed document in a prominent location that is accessible to all Members, if the location has been designated for the posting of general notices by the Association in the annual policy statement; if the Association broadcasts television programming for the purpose of distributing information on Association business to its Members, by inclusion in the programming.

### 2. Access to Association Media and Facilities.

- 2.1 No candidate or Association Member advocating a point of view for purposes related to an election covered by these Rules shall be allowed access to any form of Association media including, but not limited to, newsletters, common area bulletin board, internet website, social media pages or television programming after written ballots are distributed as specified in Section 7.1 until the conclusion of the election. "Association media" shall not include correspondence to the Members via first-class mail, personal delivery, or email. For purposes of this section, "advocacy" shall not include the following: (1) "get out the vote" efforts or publication of communications in any format which are solely for the purpose of encouraging Members to timely return ballots to the Inspector(s) of Elections for tabulation; (2) descriptions of the purpose and effect of a proposed rule change pursuant to Civil Code section 4360; or (3) a factual summary of significant changes to the governing documents accompanying the text of a proposed amendment pursuant to Civil Code section 5115(e).
- 2.2 "Equal access" shall mean, for written statements on any platform, publication of written statements not to exceed a predetermined number of words. The Board shall not edit or redact any statement, and shall not be required to publish any statement which exceeds the predetermined word limit.
- 2.3 The Association shall not be responsible or liable for the content of any statement published pursuant to the "equal access" rules. The author or proponent of any statement

or point of view shall be solely responsible and liable for the content of their statements. All statements published in Association media pursuant to the "equal access" rules must identify the author or proponent, which author or proponent must be an Association Member to be eligible to publish in Association media. Anonymous statements will not be accepted or published.

- 2.4 If the Association uses Association media to advocate for a particular position (excepting "get out the vote" activities as described above) regarding an election of Directors to the Board, then it shall make the same media in a comparable format (but not necessarily contemporaneously) available to all candidates to allow advocacy by the candidate(s) regarding the Association position. Additionally, the Board may, but is not required to, generally make Association media (i.e., posting on the Association's official bulletin board/notice board/kiosk, newsletter, or other notices mailed or delivered by the Association to the owners of the Units) available to candidates running for election to the Board for purposes that are reasonably related to the election in which that candidate is running. If the Board allows such general access to Association media, then all candidates shall be allowed equal access to the same media.
- 2.5 If the Association uses Association media to advocate for a particular position (excepting "get out the vote" activities as described above) regarding any other matter, then it shall make the same media in a comparable format (but not necessarily contemporaneously) available to Members advocating a point of view. Additionally, the Board may, but is not required to, generally make Association media (i.e., posting on the Association's official bulletin board/notice board/kiosk, newsletter, or other notices mailed or delivered by the Association to the owners of the Units) available to Members for purposes that are reasonably related to the election in which the Association advocated a position.
- 2.6 No Association funds shall be used for campaign purposes in connection with any election which is subject to these Rules, except for the "get out the vote" activities described in Section 2.1, above.
- 2.7 Sections 2.1 through 2.5, above, specify the manner in which the Association shall comply with the legal requirement in Civil Code section 5105(a)(1) 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."

### **3. Qualifications of Candidates.**

- 3.1 Consistent with Civil Code section 5105(b), candidates for the Board of Directors must meet qualifications as set forth hereafter.
  - 3.1.1 Be a Member of the Association prior to the close of nominations;

- 3.1.2 Be current in all regular and special assessment payments, to the extent that the Bylaws hold current directors to the same standard;
- 3.1.3 Not have a past criminal conviction that would either (a) prevent the Association from purchasing the fidelity bond coverage required by Civil Code section 5806 should the person be elected, or (b) terminate the Association's existing fidelity bond coverage as to that person should that person be elected; and
- 3.1.4 No more than one (1) Owner of any particular Unit may serve on the Board at the same time.

#### **4. Nomination of Candidates.**

- 4.1 To the extent not in conflict with Civil Code sections 5100 and 5105, candidates for the Board of Directors shall be nominated as set forth hereafter.
  - 4.1.1 At least 30 days before any deadline for submitting a nomination, the Association shall provide general notice of the procedure and deadline for submitting a nomination and shall give all Members an opportunity to nominate themselves as candidates for the Board of Directors.
  - 4.1.2 Interested persons must inform the Association's managing agent or Board of Directors in writing of their request to be a candidate for the Board of Directors (self-nomination). Any self-nominated candidate must disclose a past criminal conviction that would either prevent the Association from purchasing the fidelity bond coverage required by Civil Code section 5806 should the person be elected or terminate the Association's existing fidelity bond coverage as to that person should that candidate be elected to the Board.
  - 4.1.3 Nominations for candidates wishing to be included on the mailed ballots shall close on the date established by the Association. All nominations to be included in the written ballot must be in writing and delivered to the Association by the deadline established by the Association, which deadline shall be in advance of the date on which the ballots are mailed.
  - 4.1.4 The Association shall review all persons so responding for compliance with the qualifications identified in Section 3 of these Rules.
  - 4.1.5 All qualified persons who timely respond to the Association's solicitation shall be candidates for the Board of Directors at the next election.
  - 4.1.6 The Association shall provide general notice of the following at least 30 days before the ballots are distributed:
    - a. The date and time by which, and the physical address where, ballots are to be returned by mail or handed to the Inspector(s) of Elections;
    - b. The date, time and location of the meeting at which ballots will be counted; and

- c. In an election of Directors, the list of all candidates' names that will appear on the ballot (i.e., the candidate registration list).
- 4.1.7 The Association shall permit Members to verify or correct, by providing documentary evidence (including, but not limited to, a grant deed or general power of attorney) satisfactory to the Inspector(s) of Elections, the accuracy of their individual information on the candidate registration list (as applicable) and the voter list. The voter list shall include the voter/Member's name, voting power, and either the physical address of the voter's (a) Unit, or (b) parcel number, or (c) both, and the mailing address for the ballot if it differs from the physical address of the separate interest or if only the parcel number is used.

## **5. Inspector(s) of Elections.**

- 5.1 The Board shall appoint one or three Inspector(s) of Elections who shall perform all functions required by Civil Code sections 5105 and 5110, including:
- 5.1.1 Determine the number of Members entitled to vote and the voting power of each;
  - 5.1.2 Determine the authenticity, validity and effect of proxies, if any;
  - 5.1.3 Receive and be the custodian of ballots, and direct the location to which ballots shall be sent until tabulated by the Inspector(s) of Elections;
  - 5.1.4 Correct errors or omissions on the candidate registration list (if any) and/or voting list within two business days of the errors or omissions being reported, with receipt of satisfactory documentary evidence;
  - 5.1.5 Hear and determine all challenges and questions in any way arising out of or in connection with the right to vote;
  - 5.1.6 Count and tabulate all votes;
  - 5.1.7 Determine when the polls shall close, with the discretion to extend the deadline for voting as necessary;
  - 5.1.8 Determine the results of the election; and
  - 5.1.9 Report the results of the election to the Board of Directors.
- 5.2 Eligible Inspectors of Elections may include:
- 5.2.1 Any Association Members who are not Members of or candidates for the Board of Directors nor relatives of Members or candidates for the Board of Directors; and
  - 5.2.2 An independent third party who is not currently employed or under contract to the Association for any compensable services other than serving as an Inspector of Elections.

- 5.3 The Association may, at the discretion of the Board of Directors, provide reasonable compensation to the Inspector(s) of Elections.
- 5.4 The Inspector(s) of Elections may appoint and oversee additional persons to verify signatures and to count and tabulate votes as the Inspector(s) deem appropriate, provided that the appointed persons would themselves be eligible to serve as Inspector(s) of Elections pursuant to Section 5.2, above.

## **6. Voting Rights.**

- 6.1 Each Association Member shall be entitled to a single vote with regard to each matter that is the subject of a pending election. For purposes of these Rules, therefore, all record owners of a single Unit shall collectively constitute one "Association Member." Write-in candidates are not permitted in an election of Directors.
- 6.2 With regard to an election of Directors, because the Association's Bylaws permit cumulative voting, each Member shall be entitled to cast a number of votes equal to the number of Directors to be elected multiplied by the number of Units owned by that Member, and each Member may cumulate its votes. In the event the Association's Bylaws are amended to prohibit cumulative voting, cumulative voting shall not be permitted.
- 6.3 A Member shall not be denied a ballot for any reason other than not being a Member at the time when ballots are distributed.
- 6.4 A ballot may not be denied to a person with general power of attorney for a Member and a ballot of a person with general power of attorney for a Member must be counted if returned in a timely manner (i.e., by the ballot return deadline).
- 6.5 The voting period will run from the date on which ballots are distributed (as specified in Section 7.1, below) until the polls are closed.

## **7. Voting Procedures.**

- 7.1 Mailing of voting packets. At least 30 days before the election, one voting packet shall be delivered to each Association Member. Each packet shall contain the following:
  - 7.1.1 The ballot or ballots;
  - 7.1.2 Two sealable envelopes. The smaller (inner) envelope shall have no markings identifying the voter. The larger (outer) envelope shall be pre-addressed to the Inspector(s) of Elections, Newark-Cedar Commons Homeowners Association. The upper left corner of the larger envelope shall contain the Member's name, address, and Unit number that entitles the Member to vote (or provide spaces to fill in such information) and provide a place for the Member's signature;
  - 7.1.3 Instructions on how to use the two-envelope system; and

- 7.1.4 Notice of the date, time and location of the meeting of the Board or Members at which the ballots will be opened and tabulated.
  - 7.1.5 A copy of these Voting and Election Rules (via individual delivery or posting to an internet website and including the corresponding website address on the ballot together with the phrase, in at least 12-point font: "The rules governing this election may be found here:").
- 7.2 Ballot content. Each ballot shall contain the following:
- 7.2.1 In an election of Directors, each candidate's name listed alphabetically;
  - 7.2.2 The identification of any other matter that is the subject of a pending Member vote;
  - 7.2.3 A statement of when ballots must be returned by mail or hand delivery.
- 7.3 Receipt of ballots.
- 7.3.1 All ballots shall be received by the Inspector(s) of Elections at locations as specified by the Inspector(s) of Elections.
  - 7.3.2 If so directed by the Inspector(s) of Elections, the Association's management staff shall maintain a log of all ballot envelopes received, noting whether the outer envelopes were signed or unsigned. The Inspector(s) of Elections may contact Members who return unsigned envelopes and make arrangements for Members to sign the envelopes prior to the date that the ballots are opened and tabulated.
  - 7.3.3 Once a ballot has been received by the Inspector(s) of Elections, it may not be revoked. A ballot shall be considered received when the voting packet envelope (the outer envelope containing the inner envelope containing the ballot) has been received by the Inspector(s) of Elections.
  - 7.3.4 Each ballot received by the Inspector(s) of Elections shall be treated as a Member present at a meeting for purposes of establishing a quorum if a quorum is required by the governing documents or California law to conclude the election.
  - 7.3.5 The sealed ballots, signed outer voter envelopes, voter list, proxies, and (if applicable) candidate registration list (collectively, the "Association election materials") shall at all times be in the custody of the Inspector(s) of Elections or at a location designated by the Inspector(s) until after the tabulation of the vote at a properly noticed, open meeting of the Members or the Board of Directors, and until the time allowed by Civil Code section 5145 for challenging the election has expired (i.e., one (1) year after the election), at which time custody shall be transferred to the Association.

#### 7.4 Proxies.

7.4.1 The Association shall have the option, but shall not be obligated, to distribute proxies for any election covered by these Rules. If the Association distributes a proxy form, any instruction given in that proxy directing the manner in which the proxy holder is to vote shall be set forth on a separate page of the proxy that can be detached and given to the proxy holder to retain. The proxy holder may then cast the Member's vote by secret ballot which will be provided by the Inspector(s) of Elections upon presentation of the proxy.

7.4.2 If a Member attempts to use a proxy, any instruction given in that proxy directing the manner in which the proxy holder is to vote should be set forth on a separate page of the proxy that can be detached and given to the proxy holder to retain. The proxy holder may then cast the Member's vote by secret ballot which will be provided by the Inspector(s) of Elections upon presentation of the proxy.

7.4.3 In the event the Association's Bylaws are amended to prohibit voting by proxy in connection with votes of the Members and/or Member meetings, voting by proxy shall not be permitted.

7.5 Election by acclamation. Unless prohibited by the Bylaws, if, as of the published deadline for nominations, the number of qualified candidates nominated does not exceed the number of Directors to be elected, then the individuals nominated and qualified to be elected may be declared elected on a date determined by the Board and/or the Inspector(s) of Elections, in which case written notice of the election results shall be given to the Members.

#### 8. Tabulation of Ballots.

8.1 The voting packet envelopes shall be opened by the Inspector(s) of Elections after the close of the of the polls which shall be determined by the Inspector(s). The Inspector(s) of Elections, or their designees, may verify the Member's information and signature on the outer envelope prior to the opening and tabulation of ballots.

8.2 The voting packet envelopes shall be opened and the ballots tabulated by the Inspector(s) of Elections in public at a properly noticed, open meeting of the Members or of the Board of Directors.

8.3 Any candidate or other Member of the Association may witness the counting and tabulation of the ballot. However, no Association Member or candidate shall communicate with the Inspector(s) during the tabulation process, and all Members and candidates must remain at least five feet away from the counting area. The Inspector(s) of Elections may cause the removal of any observer who interferes with or disrupts the counting or tabulation process.

8.4 At the meeting at which ballots are to be opened and tabulated, the Inspector(s) of Elections may announce to the Members present those Members who neglected to sign

the outer envelope and provide an opportunity for those Members to sign the outer envelope prior to tabulation of the ballots.

- 8.5 In the event there is a tie between candidates for the last open position on the Board, a runoff election shall be conducted via secret written ballot in accordance with these Rules. Under these circumstances, the procedures set forth above regarding the nomination of candidates shall not apply.
- 8.6 The results of the election shall be promptly reported to the Board of Directors and shall be recorded in the minutes of the next meeting of the Board of Directors.

**9. Additional Procedures.**

- 9.1 The Board of Directors shall give general notice of the tabulated results of the election within 15 days by a communication directed to all Members.
- 9.2 One year after the conclusion of the election, the Inspector(s) of Elections shall transfer custody of all ballots, signed outer voter envelopes, voter list, proxies and (if applicable) candidate registration list ("Association election materials") to the Association; the Association shall maintain the Association election materials for an additional two (2) years.
- 9.3 In the event of a re-count or challenge, the Inspector(s) of Elections shall, upon written request, make the Association election materials available for inspection by the challenging Association Member or its authorized representative. Outer voter envelopes may be inspected but may not be copied. The Association shall be entitled to redact the address of any Member on the voter list who has opted out of the membership list and the voter list. Any re-count shall be conducted in a manner designed to preserve the confidentiality of the vote.

Adopted on \_\_\_\_\_ **May 12**, 2020  
by the Board of Directors