

# AMERICANA GARDENS HOMEOWNERS ASSOCIATION

## ELECTION OPERATING RULES

(Adopted September 11, 2023)

### APPLICABILITY OF ELECTION OPERATING RULES

- i. These Election Operating Rules shall apply to elections required to be held by secret ballot pursuant to *Civil Code* Section 5100(a). The Board of Directors may, in its discretion, also determine to apply these Election Operating Rules to govern an election on any topic that is not expressly required by statute to be conducted by secret ballot.

### ACCESS TO ASSOCIATION COMMUNICATIONS

2. All candidates or Members advocating a point of view shall have equal access to all Association media, newsletters, and websites during a campaign for purposes reasonably related to that election. Equal access may include no access to any candidate or Member.
3. The Association will not edit or redact (black out) any content from communications set forth in Section 2. The Association may include a statement that the candidate or Member, and not the Association, is solely responsible for the content of the communication.
4. Candidates, including those who are not incumbents, and Members advocating a point of view reasonably related to the election, shall have equal access to any Common Area meeting space, if any exists. This access shall be provided at no charge for purposes reasonably related to the election, except that the Association may implement procedures for reserving Common Area meeting spaces and access may not be provided if the area is already in use or has already been reserved.

### CANDIDATE QUALIFICATIONS

5. Qualifications for candidates to the Board of Directors shall include:
  - a. Candidates must be Members of the Association. Any Member that is not a natural person (such as a corporate Member) may appoint a natural person to be a candidate on its behalf.
  - b. If the candidate, if elected, would be serving on the Board at the same time as another Member who holds a joint ownership interest in the same separate interest parcel as the candidate and the other Member is either properly nominated for the current election or an incumbent Director, the candidate may be disqualified.
  - c. Candidates must not be delinquent in the payment of any regular or special assessments, with the exception of Members who have entered into a valid payment plan with the Association and are in compliance with such plan.

- d. Candidates must have held membership in the Association for at least one (1) year prior to the date of the election.
- e. Candidates must not have been convicted of a crime that would prevent the Association from obtaining or maintaining the insurance coverage required by *Civil Code* Section 5806 as to that candidate should he or she be elected.

#### NOMINATIONS

- 6. At least thirty (30) days prior to the deadline for submission of candidacy nominations for an election of Directors or a recall election, the Association shall provide Members with notice (via general delivery) of the procedures and deadline for submitting a candidacy nomination.
- 7. Procedures for nomination of candidates to the Board shall allow for a Member to nominate himself or herself and shall be consistent with the Governing Documents.
- 8. See Section 34, below, for additional requirements for election by acclamation.

#### VOTING

- 9. At least thirty (30) days prior to the mailing of ballots in an election of Directors or a recall election, the Association shall prepare:
  - a. A candidate registration list that includes the name and address of each person nominated as a candidate for election to the Board; and
  - b. A voter list that includes the name, voting power, mailing address (if different from the separate interest address), and separate interest address or parcel number for each Member.
- 10. Members have the right to inspect and verify the accuracy of their individual information on both lists identified in Section 9. Errors reported to the Inspector(s) of Elections shall be corrected within two (2) business days.
- 11. The Board may, but is not required to, set the date the ballots are mailed or otherwise delivered as the “voting cut-off date” to establish membership status for voting.
- 12. Every Member of record shall have the right to vote, unless the Board adopts the voting cut-off date and an individual was not a Member of Record as of that date.
- 13. The voting power of each Member shall be as described in the Association’s Bylaws and/or Declaration.
- 14. The Board may determine whether proxies will be used in any vote or election of the Association, pursuant to the Association’s Bylaws.
- 15. Cumulative voting is prohibited in all elections.

### INSPECTOR(S) OF ELECTIONS

16. Inspector(s) of Elections (i.e. independent third parties) shall be appointed by the Board. The number of Inspector(s) of Elections shall be one (1) or three (3). If there are three (3) Inspectors of Elections, the decision or act of a majority shall be the decision or act of all.
17. The following persons may not serve as Inspector(s) of Elections: Board Members, candidates, persons who are related to Board Members, persons who are related to candidates, or any party who is currently employed or under contract with the Association for compensable services.
18. The following persons are independent third parties and may serve as Inspector(s) of Elections: Any third-party person or company hired by the Association solely for this specific purpose. Association Members may serve as Inspector(s) of Elections if they are not a Director, a candidate, or a person related to any Director or candidate.
19. Independent third parties may be compensated for performing Inspector(s) of Elections services. Association Members, however, are not entitled to compensation for serving as Inspector(s) of Elections.
20. Inspector(s) of Elections may appoint and oversee additional independent third parties to verify signatures and to count and tabulate votes, provided that the persons appointed are independent third parties who meet the requirements in Sections 15 and 16 above.
21. The Inspector(s) of Elections are charged with performing the following duties:
  - a. Determine the number of memberships entitled to vote and the voting power of each.
  - b. Determine the authenticity, validity and effect of proxies, if any.
  - c. Receive ballots or determine a location where ballots are to be delivered.
  - d. Verify the Member's information and signature on the outer envelope. For mailed ballots, the Inspector(s) may verify the Member's information and signature on the outer envelope prior to the election;
  - e. Hear and determine challenges and questions in any way arising out of balloting or the election.
  - f. Count and tabulate all votes.
  - g. Determine when the polls shall close, consistent with the Association's Governing Documents.
  - h. Determine the tabulated results of the election.
  - i. Report the tabulated results of the election or balloting promptly to the Board of Directors to ensure that the Board can publicize the results to the Members within 15 days of the election.
  - j. Retain the ballots, signed voter envelopes, voter list, proxies, and candidate registration list at a location designated by the Inspector(s) of Elections pursuant to *Civil Code* Section 5125.

- k. Perform any acts as may be proper to conduct the election with fairness to all Members in accordance with *Civil Code* Sections 5100 - 5145, the *Corporations Code*, and these Election Operating Rules to the extent not in conflict with *Civil Code* Sections 5100 - 5145.

#### ELECTION PROCEDURES

22. After the deadline for submission of candidacy nominations, and at least thirty (30) days prior to the mailing of ballots, the Association shall prepare the candidacy registration list and voter list, pursuant to Section 9 above.
23. At least thirty (30) days prior to the mailing of ballots for an election of Directors or a recall election, the Association shall provide Members notice of the following (via general delivery):
  - a. The date, time, and physical location for the return of ballots;
  - b. The date, time, and location of meeting; and
  - c. The names of all candidates that will appear on the ballot.
24. At least thirty (30) days prior to the deadline for voting, the Inspector(s) of Elections or Association shall mail or otherwise deliver ballots to the Members. Within this same timeframe, a copy of these Election Operating Rules shall be provided to the Members either:
  - a. By mail with the ballots; or
  - b. By posting to a 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: ..."
25. The voting period for elections shall commence when the notice of the meeting and/or ballots have been mailed/ delivered to all Members and shall terminate as stated in the notice and/or ballot or as determined by the Inspector(s) of Elections, consistent with the Governing Documents.
26. The form and content of election materials, i.e., secret written ballot, envelopes, proxies, etc., shall conform to the requirements of the *Civil Code*.
27. No Member shall be denied a ballot, unless the Board adopts the voting cut-off date and an individual was not a Member of Record as of that date.
  - a. No person who holds a valid general power of attorney for a Member shall be denied a ballot, if requested.
  - b. A ballot cast by a person who holds a valid general power of attorney for a Member shall be counted if received timely by the Inspector(s) of Elections.
28. Once a ballot has been received by the Inspector(s) of Elections, it shall be irrevocable. If more than one ballot is received for the same property, only one shall be accepted as determined by the Inspector(s) of Elections. If proxies are allowed and a Member submits both a proxy and a ballot to the Inspector(s) of Elections, the ballot will supersede the proxy.

29. The authenticity, validity and effect of proxies submitted by Members shall be determined by the Inspector(s) of Elections, consistent with the Association's Governing Documents and California law.
30. Proxies may not be used in lieu of a ballot. Proxies may be revoked by the Member prior to receipt of the ballot by the Inspector(s) of Elections.
31. Votes shall be counted and tabulated by the Inspector(s) of Elections or their designee(s) in an open area at a properly noticed open meeting of the Board or Members. Any candidate or other Member may witness the counting and tabulation of the votes. To ensure anonymity of the voting, Members must stand at least five (5) feet away from the Inspector(s) of Elections or their designee(s) during the tabulation process. Members are prohibited from speaking to the Inspector(s) of Elections or their designee(s) during the tabulation process or interrupting the tabulation process in any way.
  - a. If the meeting is being conducted by video conference as a result of a disaster or emergency in accordance with *Civil Code* Section 5450, a camera must be placed in a location such that Members can witness the Inspector(s) of Elections and their designee(s) count and tabulate the votes.
32. Notice of the tabulated results of the election shall be provided to the Members (by general delivery) within fifteen (15) days of the election.
33. Ballots, signed voter envelopes, the voter list, proxies, and the candidate registration list shall be retained in the custody of the Inspector(s) of Elections or at a location designated by the Inspector(s) of Elections as set forth in *Civil Code* Section 5125, at which time the ballots shall be transferred to the Association.
34. If there is a recount or other challenge to the election process, the Inspector(s) of Elections shall, upon written request, make the ballots available for inspection and review by an Association Member or his or her authorized representative, at a location and time as determined by the Inspector(s) of Elections. The recount shall be conducted in a manner that preserves the confidentiality of the vote. The candidate or Member requesting the recount shall be responsible for any and all costs related to the recount, including compensation to the Inspector(s) of Elections, if applicable.
35. Directors shall be required to comply with the qualifications set forth in Section 5, above, during such Director's term on the Board.

#### **ELECTION BY ACCLAMATION**

36. If the number of qualified candidates is not more than the number of vacancies to be elected, as determined by the Inspector(s) of Elections, the Association may, but is not required to, consider the qualified candidates elected by acclamation if all of the following requirements of *Civil Code* Section 5103 are satisfied:

- a. The Association has held a regular election for the Directors in the last three (3) years. The three (3) year time period is calculated from the date ballots were due in the last full election to the start of the voting for the proposed election.
- b. The Association provides Members with individual notice of the election and the procedure for nominating candidates as follows:

An **initial notice** provided at least ninety (90) days before the deadline for submitting nominations. The notice shall include the information specified in *Civil Code* Section 5103(b)(1);

**and**

A **reminder notice** provided between seven (7) and thirty (30) days before the deadline for submitting nominations. The notice shall include the information specified in *Civil Code* Section 5103(b)(2).

- c. Within seven (7) business days of receiving a nomination, the Association provides a written or electronic communication acknowledging the nomination to the Member who submitted the nomination.
- d. Within seven (7) business days of receiving a nomination, the Association provides a written or electronic communication to the candidate with the information specified in *Civil Code* Section 5103(c)(2).
- e. The notices described in Sections 34.c. and 34.d., above, may be combined into a single written or electronic communication if the candidate and nominator are the same person.
- f. The Association permits all candidates to run if nominated, except for candidates disqualified from running pursuant to *Civil Code* Section 5105(b)-(e).
- g. The Board votes to consider the qualified candidates elected by acclamation at a Board meeting for which the agenda items reflect the name of each qualified candidate that will be seated by acclamation if the item is approved.

#### CERTIFICATE OF SECRETARY

I certify that I am the duly qualified and acting secretary of AMERICANA GARDENS HOMEOWNERS ASSOCIATION. The foregoing Election Operating Rules were duly adopted by the Board of Directors at a meeting held on September 11, 2023, and entered into the minutes of said meeting. The resolution is in conformity with the Articles of Incorporation and the Bylaws of the corporation and has not been modified or appealed and is, as of now, in full force and effect.

Dated: September 11, 2023

By: C. Garcia  
Secretary