

Old Orchard Association II

Election Operating Rules

Adopted 02/18/20

In accordance with California Civil Code Section 5100 Et. Seq the Association has adopted the following Election Operating Rules:

Notwithstanding any other law or provision of the governing documents, elections regarding assessments legally requiring a vote, election and removal of directors, amendments to the governing documents, or the grant of exclusive use of common area shall be held by secret ballot in accordance with the procedures set forth in these rules.

The association shall hold an election for a seat on the board of directors in accordance with the procedures set forth in these rules at the expiration of the corresponding director's term and at least once every four years.

These rules also govern an election on any topic that is expressly identified in the operating rules.

These election operating rules shall not be amended less than 90 days prior to an election.

1. Inspectors of Election

- 1.1 The Board shall appoint one or three independent third parties as Inspector(s) of Election An independent third party includes, but is not limited to:
 - 1.1.1 a volunteer poll worker with the county registrar of voters;
 - 1.1.2 a licensee of the California Board of Accountancy;
 - 1.1.3 a notary public;
 - 1.1.4 a member of the Association provided such member is not a director or a candidate for director or be related to a director or 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.
- 1.2 The Inspector(s) of Election shall also do all of the following:
 - 1.2.1 Determine the number of memberships entitled to vote and the voting power of each;
 - 1.2.2 Determine the authenticity, validity, and effect of proxies, if any;
 - 1.2.3 Receive ballots;
 - 1.2.4 Hear and determine all challenges and questions in any way arising out of or in connection with the right to vote;
 - 1.2.5 Count and tabulate all votes;
 - 1.2.6 Determine when the polls shall close, consistent with the governing

documents;

1.2.7 Determine the tabulated results of the election;

1.2.8 Perform any acts as may be proper to conduct the election with fairness to all members in accordance with California Civil Code Chapter 6, Article 4, the Corporations Code, and all applicable rules of the Association regarding the conduct of the election that are not in conflict with that article.

1.3 An Inspector of Election shall perform his or her 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 the members of the Association. If there are three Inspector of Election, the decision or act of a majority shall be effective in all respects as the decision or act of all.

1.4 Any report made by the inspector or inspectors of election is prima facie evidence of the facts stated in the report.

1.5 The Board may remove and replace any Inspector of Election prior to the tabulation of ballots if an Inspector of Election resigns or if the Board reasonably determines that an Inspector of Election will not be able to perform his or her duties impartially and in good faith.

1.6 An Inspector or Inspectors of Election, may 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.

2. Nomination of Candidates

2.1 A person who is not a Member of the Association at the time of nomination shall be disqualified.

2.2 An Association shall provide general notice 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 Section 4040 if individual notice is requested by a member.

2.3 Nominations may be submitted on the candidate statement form which will be provided by the Association, or typed on 8 1/2" x 11" paper, one sided, with a 1" border on all four sides. Font must be 12-point Times or Times New Roman.

2.4 All nominations must be made prior to the deadline for submitting a nomination which shall be set by the board, and shall be at least 60 days before the ballots are to be distributed. All nominations must be submitted in writing and delivered to the location specified by the Association.

2.5 If title to a separate interest 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 member.

2.6 Owners may nominate themselves or another person; provided, however, all candidates must meet the following qualifications:

(1) A nominee for a board seat, and a director during their board tenure, must be current in the payment of regular and special assessments, which are consumer debts subject to validation. A person shall not be disqualified for the failure to be current in payment of regular or special assessments if they have 1) Paid under protest, or 2) entered into a payment plan. The Association shall not disqualify a person from nomination if the person has not been provided the opportunity to engage in internal dispute resolution.

(2) A person will be 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.

(3) A nominee will be disqualified if that person has been a member of the Association for less than one year.

(4) A nominee will be disqualified 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 Section 5806 or terminate the Association's existing fidelity bond coverage.

2.7 Nominations from the floor or write-in candidates will be allowed.

3. Secret Ballot Procedure

3.1 The Association shall provide general notice of all of the following at least 30 days before the ballots are distributed:

3.1.1 The date and time by which, and the physical address where, ballots are to be returned by mail or handed to the inspector or inspectors of elections.

3.1.2 The date, time, and location of the meeting at which ballots will be counted.

3.1.3 The list of all candidates' names that will appear on the ballot.

3.1.4 Individual notice of the above paragraphs shall be delivered pursuant to Section 4040 if individual notice is requested by a member.

3.2 Ballots and two 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.

3.3 In order to preserve confidentiality;

3.3.1 A voter may not be identified by name, address, or lot, parcel, or unit number on the ballot;

3.3.2 The ballot itself is not signed by the voter, but is inserted into an envelope that is sealed. 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.

- 3.3.3 The second envelope is addressed to the Inspector(s) of Election, who will be tallying the votes. The envelope may be mailed or delivered by hand to a location specified by the inspector or inspectors of elections. The member may request a receipt for delivery.
- 3.4 The voting period for elections shall be from the date the ballots are mailed to the members, until the time the polls close, or any extension thereof.
- 3.5 The polls shall open at the time the meeting convenes to tabulate the votes and shall close 15 minutes thereafter, unless such time is extended by the Inspector of Elections.

4. Counting Ballots

- 4.1 The Association shall do all of the following:
 - 4.1.1 Prohibit the denial of a ballot to a member for any reason other than not being a member at the time when ballots are distributed.
 - 4.1.2 Prohibit the denial of a ballot to a person with general power of attorney for a member.
 - 4.1.3 Require the ballot of a person with general power of attorney for a member to be counted if returned in a timely manner.
 - 4.1.4 Require the inspector or Inspector of Elections to deliver, or cause to be delivered, at least 30 days before an election, to each member both of the following documents:
 - 4.1.4.1 The ballot or ballots.
 - 4.1.4.2 A copy of the election operating rules. Delivery of the election operating rules may be accomplished by either individual delivery or 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:"
- 4.2 As secret ballots are returned to the Inspector of Elections, or the designee of the Inspector of Elections, may verify the member's information and signature on the outer envelopes prior to the meeting at which ballots are tabulated. Once a secret ballot is received by the inspectors of election, it shall be irrevocable.
- 4.3 All votes shall be counted and tabulated by the inspector or Inspector of Elections, or designee of the Inspector of Elections, in public at a properly noticed open meeting of the board or members. 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.

- 4.4 The tabulated results of the election shall be promptly reported to the Board and shall be recorded in the minutes of the next meeting of the Board and shall be available for review by members of the Association.
- 4.5 Within 15 days of the election, the Board shall give general notice of the tabulated results of the election.

5. Custody of Ballots

- 5.1 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 Section 5145 for challenging the election has expired, at which time custody shall be transferred to the Association. If there is a recount or other challenge to the election process, the inspector 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.
- 5.2 The law requires the retention of, as Association election materials, both a candidate registration list and a voter list. The voter list shall include name, voting power, 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.

6. Campaigning

- 6.1 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.
- 6.2 The Association shall provide 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.
- 6.3 Association funds may not be used for campaign purposes in connection with any board election. The term campaign purposes includes, but is not limited to, the following:

- 6.3.1 Expressly advocating the election or defeat of any candidate that is on the Association election ballot.
- 6.3.2 Including the photograph or prominently featuring the name of any candidate on a communication from the Association or its board, excepting the ballot, ballot materials, or a communication that is legally required, within 30 days of the election. This is not a campaign purpose if the communication is one for which subdivision (a) of Section 5105 requires that equal access be provided to another candidate or advocate.

7. **Quorum/Voting Power/Cumulative Voting/Proxies**

- 7.1 There are 438 units/lots in the Association, and the governing documents require a quorum of 219, (and a reduced quorum of 110 for any adjourned meetings). Each ballot received by the Inspector of Elections shall be treated as a member present at a meeting for the purposes of establishing a quorum.
- 7.2 In the event that there is no quorum for the election of directors, the ballots shall not be opened, and the members present may adjourn the meeting as allowed by the Association Bylaws and/or California Corporations Code.
- 7.3 Each membership will be entitled to one vote. In the election of directors this shall mean that there is one vote for the number of directors to be elected (i.e. If three directors are to be elected each membership may cast a total of three votes).
- 7.4 Cumulative voting using the secret ballot procedures provided in these rules shall be allowed, as provided for in the governing documents.
- 7.5 Proxies shall not be construed or used in lieu of a ballot.