

SONATA PATIO 1 HOA

ELECTION OPERATING RULES

Adopted 7/2020

These Election Operating Rules are adopted per the Davis-Stirling Act, California’s Nonprofit Mutual Benefit Corporation Law, the Association’s Articles of Incorporation, Bylaws, and Declaration. Unless otherwise stated, all capitalized terms will be the same as provided for in the Declaration.

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1. VOTING RIGHTS

- A. Membership Voting Rights.** Ownership of a Separate Interest (Condominium or Lot or Unit) entitles a single membership vote on all matters presented to the Members for voting. The Association shall send a ballot to each Member for each election, and if more than one person owns a Separate Interest, all owners will be deemed one Member for voting purposes and will cast one vote per Separate Interest. No vote will be allowed if the majority of co-owners of a Separate Interest cannot agree. Fractional votes will not be allowed. In the event more than one ballot is cast for a particular Separate Interest, only the first ballot received will be opened and counted. The Association shall count the ballots of a person with a general power of attorney for a Member if returned in a timely manner.
- B. Record Date.** The Board may set a “Record Date” for voting and notice of the election as provided in the Bylaws’ otherwise the Record Date for notice is the day the notice is sent out and the record date for voting is the close of the polls. Only those Owners on title by the Record Date are entitled to vote. Persons acquiring title to a Separate Interest after the Record Date may attend the election meeting. (Corp. Code § 7611(b) & (c))
- C. Proof of Membership.** No person or entity may exercise the rights of membership without an ownership interest in property subject to the Association’s Declaration. If the Board requests proof of ownership, such proof will be in the form of a copy of a recorded grant deed.

2. PETITIONS

- A. Purpose.** Five percent of the membership may call for a special membership meeting. The purpose of the petition for a membership meeting must be set forth on each page of the petition so Members know what they are signing. Meetings may only be called for a lawful purpose. (Corp. Code, §§ 7510(e), 7511(a))
- B. Signatures.** Only Members may sign petitions. Signatures by spouses not on title and by tenants are not valid. The Association may validate signatures by comparing them against signatures on file with the Association or by contacting signers to verify their signatures. Any person on title to a property can sign on behalf of the property but it counts only once. For example, if two Owners are on title for one Separate Interest, and all sign a petition, it will count as one signature, not two.
- C. Withdrawal of Signatures.** Signatories may not withdraw their signatures once the petition is received by the Association or manager.

- D. Setting the Date.** The date of the special meeting will be set by the Board and may not be less than 35 nor more than 90 days from receipt of the petition. Notice of the date will be given to the Membership not less than 10 days nor more than 90 days before the date of the meeting. If the Board fails to give notice within twenty (20) days after receipt of request, the person representing the petitioners may call for the special meeting and may give notice consistent with the Bylaws. (Corp. Code § 7511(a) and (c))

3. BALLOTS AND PROXIES

A. Ballots

1. *Official Ballots/Non Revocable.* Only those ballots printed by the Association or the Inspectors of Election (“IOE”) will be the official secret ballots. Official secret ballots will be delivered by the Association to every Member. Voters cannot substitute their own ballots for official ballots. Once an official secret ballot has been received by an IOE, it is irrevocable. (Civ. Code §§ 5115 & 5120(a).)
2. *Secret Ballot.* A vote of the membership will be held by secret ballot for (i) elections regarding assessments legally requiring a vote, (ii) election and removal of directors, (iii) amendments to the governing documents, (iv) the grant of exclusive use of common area under Civil Code §4600, and (v) any other meeting required by the governing documents or determined by the chairman of a Member meeting. (Civ. Code § 5100(a).) Secret ballot voting procedures are as follows:
 - a) Voting Materials. A ballot(s) and two pre-addressed envelopes with instructions on how to return ballots will be mailed by first-class mail or delivered by the Association to every Member entitled to vote not less than 30 days prior to the deadline for voting. To preserve confidentiality, a voter will not be identified by name, address, unit, or parcel on the ballot. (Civ. Code § 5115(a).)
 - b) Ballot. The ballot should be filled out, but not signed by the voter and inserted into an inner envelope addressed to the IOE. (Civ. Code § 5115(a)(1).)
 - c) Inner Envelope. The inner envelope is sealed with the completed unsigned ballot. This sealed inner envelope is then inserted into a second envelope, which is also sealed. (Civ. Code § 5115(a)(1).)
 - d) Second Envelope. In the upper left-hand corner of the second envelope, the voting Member must print and sign his or her name, mailing address, and address within the Association or account number that entitles him or her to vote. The second envelope must be addressed to the IOE. (Civ. Code § 5115(a)(1).)
 - e) Delivery. The envelope may be mailed to the address on the envelope or delivered by hand to a location specified by the IOE. Members may request a receipt of delivery. (Civ. Code § 5115(a)(2).)

- f) Custody. The sealed ballots will be in the custody of the IOE 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 section 5145 for challenging the election has expired, at which time custody will be transferred to the Association. (Civ. Code §§ 5125, 5145.)
 - 3. *Non-Secret Ballots*. For voting on other matters submitted to the Members for approval which do not require the secret ballot method above, written ballots will be distributed to all eligible members at least 30 days prior to the date set for voting and tabulation. All written ballots will provide at least 30 days to return the ballots to the Association and will state the date the ballots must be returned to be counted. (Corp. Code, § 7513(a).)
 - 4. *Quorum by Ballot*. Each ballot received by an IOE will be treated as a Member present at a meeting to establish a quorum. (Civ. Code § 5115(b).)
 - 5. *Ballot Markings*. A ballot which contains any of the following symbols will be counted and tabulated as if the symbol was the number “1”: an “x”, a checkmark, or any non-numerical symbolic designation indicating the voter’s intent to vote for any candidate, issue or ballot measure. A ballot will not be invalidated due to the inclusion of a signature but may be invalidated per the determination of the IOE that it fails to comply with these rules or law, per the Inspector’s authority as set forth below. (Civ. Code § 5110(c)(8).)
- B. Proxies.** Proxy voting is allowed. Written authorization by a Member for the proxy holder must be filed with the IOE. Each proxy is revocable and will automatically expire eleven (11) months after execution unless the written authorization specified a length of time, which in no event shall exceed three (3) years. The proxy last received by the Association shall supersede all prior proxies. (Corp Code § 7613)

4. QUORUM REQUIREMENTS

- 1. *Quorum*. Quorum is per the Bylaws. If quorum is present at the initial meeting, Members present at such duly called or held meeting may continue to do business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum. If quorum is not present at the initial meeting, a vote of the majority of those Members present at the meeting in person or by ballot may adjourn the meeting to a time not less than five (5) days nor more than thirty (30) days after the time the original meeting was called. (Civ. Code § 4070; Corp. Code, § 7512(d))

5. ELECTION OF DIRECTORS

- A. Number of Directors.** The authorized number of directors shall be per the Bylaws.
- B. Owners that are Legal Entities.** For Owners that are not a natural persons, its’ governing authority shall appoint a natural person to be a Member for election purposes. (Civ. Code § 5105(b)(2).)

C. Disqualification. The Association shall disqualify a person from nomination only if:

1. He or she is not a Member of the Association at the time of the nomination. (Civ. Code § 5105(b).)
2. The candidate is not current in regular and special assessments, only if sitting directors are current in their regular and special assessments. Members shall not be disqualified for failure to be current in payment of regular and special assessments if any of the following are true: (a) the person has paid the regular or special assessment under protest pursuant to Civil Code § 5658 or (b) the person has entered into a payment plan pursuant to Civil Code § 5665 or (c) if a person has paid a regular/special assessment under protest or (d) if he or she has not been provided the opportunity to engage in Internal Dispute Resolution.
3. That candidate is a joint owner with another nominee or a sitting director.
4. That candidate has been a Member for less than one year.
5. The candidate has a past criminal conviction that, if the person was elected, would either prevent the Association from purchasing fidelity bond coverage or terminate existing fidelity bond coverage.
6. The Association shall not disqualify a candidate for any other reason; including but not limited to failure to pay fines, fines renamed as assessments, collection charges, late charges, or costs levied by a third party;

D. Term. The terms of office of the Directors shall be per the Bylaws. The candidate(s) receiving the highest number of votes shall fill the vacant term. Further there are no term limits. Each director, including a director appointed or elected to fill a vacancy or elected at a special meeting of the Members, shall hold office until the expiration of the term for which elected and until a qualified successor has been elected to fill his or her seat.

E. Nominations. Individuals can become candidates for election to the Board only under these procedures. (Civ. Code § 5105(b).)

1. *Nomination Committee.* The Board may, but is not required to, form a nomination committee to nominate candidates.
2. *Nomination Forms.* The Association shall distribute nomination forms to the membership seeking qualified candidates for directors.
3. *Self-Nominations.* Qualified candidates may nominate themselves, provided they submit their nomination prior to the date set for close of nominations.
4. *Write-In and Floor Nominations Not Allowed.* All nominations must be submitted prior to the date set for close of nominations. No write-in nominations or nominations from

the floor will be allowed. (Civ. Code § 5105(f).)

- F. Voting.** Members may vote for those candidates properly nominated and meeting the director qualifications. The candidates receiving the highest number of votes shall be elected as directors and shall take office immediately following their election.
- G. Tie Votes.** In the event of a tie between candidates receiving the lowest number of votes for the last open seat on the board, as determined by the Board the tie shall be broken by (1) voluntary withdrawal by a candidate; (2) voting by those Members present, one vote per Separate Interest; (3) random drawing; or (4) flipping a coin. (Civ. Code § 5105(b).)
- H. Cumulative Voting.** Every Member entitled to vote at any election for Directors shall have the right to cumulate his votes and give one or multiple candidates all or some of his votes if permitted per Bylaws.

6. CAMPAIGNING

A. Access to Media

- 1. No Use of Association Resources.** The Association's newsletter, website, bulletin board, or other association media may not be used for campaign purposes.
- 2. Exception.** Only *if* any candidate or Member is provided access to Association newsletters, website, bulletin board or other Association media during an election, for purposes reasonably related to that election, *then* equal access will be provided to all candidates and members. The access will be limited to information relating to that election, and will include those candidates and members not endorsed by the Board. The Association will 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. The Association and its directors, officers, and agents, shall be immune from liability for the content of those communications. (Civ. Code § 5105(a)(1).)

7. USE OF COMMON AREA

- 1. No Cost for Use.** The Association will ensure access to the Common Area 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. (Civ. Code § 5105(a)(2).)
- 2. Reservation.** Each candidate or Member who wants to use the common area meeting place, if any exists, must make a reservation in advance of the date and time requested. Candidates' and members' requests to use the Common Area will be granted on a first-come, first-served basis, provided that the area is not already reserved. To assure fairness, each candidate may not reserve or use the common area clubhouse or pool

area, if permitted by the Association, for over two (2) hours. In addition, each candidate and each Member will only be allowed to make one (1) reservation per election to use the Common Area. If the Association has a bulletin board for Notices and provides access to it by candidates, all candidates shall be provided an equally proportionate share.

B. No Use of Association Funds for Campaign Purposes. Association funds will not be used for campaign purposes for any Association Board election. Funds of the Association will not be used for campaign purposes for any other Association election except to comply with duties of the Association imposed by law (Civ. Code § 5135.) “Campaign purposes” includes:

1. Expressly advocating the election or defeat of any candidate on the Association election ballot. (Civ. Code § 5135(b)(1).)
2. Including the photograph or prominently featuring the name of any candidate on a communication from the Association or its Board, except on the ballot, ballot materials, or a communication legally required, within 30 days of an election. This is not a campaign purpose if the communication is one for which the Association must provide equal access to another candidate or advocate. (Civ. Code § 5135(b)(2).)
3. The restrictions of this section do not preclude directors in their capacity as a Member from advocating the election or defeat of any issue or candidate on the ballot. However, they may not use Association funds to do so.

8. MEETINGS FOR VOTING

- A. Members Represented by Ballot.** Members present at a membership meeting in person, proxy or by ballot shall be counted towards satisfaction of the quorum requirements specified herein.
- B. Loss of Quorum.** The Members present at a duly called election at which a quorum is required, and present may continue to transact business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum, so long as any action taken (other than adjournment) is approved by at least a majority of the Members required to constitute a quorum. (Corp. Code, § 7512(c))
- C. Lack of Quorum.** Absent a quorum at a meeting where quorum is required, no business may be transacted except to adjourn the meeting to another date and time. A majority of the Members present and entitled to vote may adjourn the meeting. (Corp. Code, § 7512(d))
- D. Adjournment.** Any membership meeting, whether or not a quorum is present, may be adjourned by the vote of the majority of the Members represented at the meeting to a time as stated in the Bylaws.
- E. Counting Ballots.** All votes will be counted and tabulated by the IOE, or the designee of

the IOE, in public at a properly noticed open meeting of the Members. Any candidate or other Member of the Association may witness the counting and tabulation of the ballots. No person will be allowed to open or otherwise review other than the IOE any ballot prior to the time and place at which the ballots are counted and tabulated. (Civ. Code § 5120(a).)

- F. Interference with IOE.** All persons shall keep at least five (5) feet away from the IOE's table while he or she is tabulating the votes and shall not communicate with, interrupt or interfere with the IOE's duties.

9. INSPECTOR OF ELECTIONS

A. Selection

1. *Process.* The Board of Directors will select either one (1) or three (3) persons as IOE. (Civ. Code §§ 5105(a)(5), 5110(a).) The Board may appoint an inspector or inspectors. If the Board does not appoint an inspector, the members may elect the inspector or inspectors. If neither the Board nor the members select an inspector or inspectors, any other method for selecting the inspector or inspectors may be used.
2. *Eligible Inspectors.* The following may serve as IOE (Civ. Code § 5110(b):
 - a) Poll Worker. A volunteer poll worker with the County Registrar of Voters;
 - b) Accountant. A licensee of the California Board of Accountancy, unless such licensee is under contract to the Association;
 - c) Notary. A notary public;
 - d) Recording Secretary. A recording secretary;
 - e) Association Members. Members of the Association, but not: (i) members of the board, (ii) candidates for the board, (iii) persons related to a Member of the board, or (iv) persons related to a candidate for the board; or,
 - f) Third Party IOE Company. A third-party IOE company.

B. Duties. The duties of IOE include the following

1. *Standard of Care.* The IOE must perform his or her duties as expeditiously as practical and in a manner that protects the interest of all members of the Association. (Civ. Code § 5110(d),)
2. *Membership.* Determine the number of memberships entitled to vote and the voting power of each. (Civ. Code § 5110(c)(1); Corp. Code, § 7614(b).)

3. *Appoint Designees.* The Inspector or Inspectors 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 as defined in Civil Code § 5110(b).
4. *Validity of Proxies.* Determine the authenticity, validity, and effect of proxies, if any. (Civ. Code § 5110(c)(1); Corp. Code § 7614(b).)
5. *Quorum.* Determine the existence of a quorum for conduct of the election. (Corp. Code, § 7614(b).)
6. *Receive Ballots.* Receive all ballots. Once a secret ballot has been received by an IOE, it will be irrevocable (Civ. Code §§ 5110(c)(3), 5120(a); Corp. Code § 7614(b).)
7. *Closing of Polls.* Determine when the polls close. (Civ. Code § 5110(c)(6); Corp. Code § 7614(b).)
8. *Custody.* The IOE must maintain custody of the (a) sealed ballots, (b) signed voter envelopes, (c) voter list, (d) proxies, and (e) candidate registration list. These documents must be kept by the Inspector until after the tabulation of the votes. (Civ. Code § 5125.)
9. *Challenges.* Hear and determine all challenges and questions arising out of or in connection with the right to vote. If there is a recount or other challenge to the election process, the Inspector will, upon written request, make the ballots available for inspection and review by an Association Member or the Member's authorized representative. Any recount will be conducted in a manner that preserves the confidentiality of the vote. (Civ. Code §§ 5110(c)(4), 5125; Corp. Code § 7614(b).)
10. *Verification of Signatures.* The IOE, or his or her designee, may verify the Member's information and signature on the outer envelope prior to the meeting at which ballots are tabulated. However, no person, including a Member of the Association or an employee of the management company, will open or otherwise review any ballot prior to the time and place at which the ballots are counted and tabulated. (Civ. Code §§ 5105(a)(6), 5120(a).)
11. *Counting.* All votes will be counted and tabulated by an IOE, or his or her designee, 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 subject to Section 6(E) and 6(F). (Civ. Code §§ 5110(c)(5), 5120(a).)
12. *Appoint Assistants.* Appoint and oversee additional independent third parties to verify signatures, and to count and tabulate votes as the IOE deem appropriate provided that such persons are independent third parties. (Civ. Code § 5105(c)(6).)
13. *Results.* Determine the tabulated results of the election. (Civ. Code § 5110(c)(7); Corp.

Code, § 7614(b).)

14. Majority Rule. If there are three IOEs, the decision or act of a majority will be effective. (Civ. Code § 5110(d); Corp. Code, § 7614(c).)

15. Impartiality. Perform their duties impartially, in good faith, to the best of their ability, and as expeditiously as is practical. Any report made by the IOE is prima facie evidence of the facts stated in the report. (Civ. Code § 5110(d); Corp. Code, § 7614(c).)

16. Miscellaneous. Perform any acts as may be proper to conduct the election with fairness to all Members under the Davis-Stirling Act, the Corporations Code, the Association's governing documents, and all rules of the Association. (Civ. Code § 5110(c)(8).)

C. Privilege. The IOE is an agent of the Board and as such shall have the right to communicate with the Association's legal counsel and the attorney-client privilege shall be preserved.

D. Removal. The Board will have the power to remove an inspector who ceases to meet the required qualifications as provided for in these rules, is unable or unwilling to perform their duties, or for other good reason, and to appoint a new inspector in his/her place.

10. POST-ELECTION RESULTS

A. Results of the Election. The tabulated results of the election will be announced immediately at the annual meeting or special meeting called for this purpose, and will be recorded in the minutes of the next meeting of the Board. Within 15 days of the election, the Board will give general notice under Civil Code § 4045 of the tabulated results of the election. (Civ. Code § 5120(b).)

B. Status of the Ballots after Election. The sealed ballots will be in the custody of the IOE or at a location designated by the Inspector until after the tabulation of the vote, and until the time allowed by Civil Code § 5145 or amended for challenging the election has expired, at which time custody will be transferred to the Association. (Civ. Code § 5125.)

C. Election Recount. If there is a recount or other challenge to the election process, the IOE will, upon written request, provide the ballots for inspection and review by a Member or the Member's authorized representative within one (1) week of the election at the offices of the Association manager or the IOE as determined by the Board. Any recount will be conducted in a manner that preserves the confidentiality of the vote. The recount may be observed by Members of the Association. No election materials may be touched or handled by any person without the express consent of the IOE and under the supervision of the IOE. The results of the recount will be reported to the Board of Directors within five (5) days of the recount, the Board will give general notice under Civil Code § 4045 of the tabulated results of the recount if the recount result is different. (Civ. Code § 5125.)

D. Record Retention. The Association shall retain, as part of its election materials, both a candidate registration list and a voter list. The voter list shall include the 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 allows members to verify the accuracy of their individual information on both the candidate registration list and the voter list 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.

11. HOLDING OF ANNUAL ELECTIONS. The Association shall hold an election for a seat on the board of directors in accordance with the procedures set forth in this article at the expiration of the corresponding director's term and at least once every four years. (Civil Code § 5100(a)(2).)

12. TIMELINE FOR ELECTION OF DIRECTORS. The voting period for each election commences when the ballot is mailed out. The IOE will determine the cutoff for voting. Ballots will be tabulated, and results announced at the meeting. **See following Exhibit "A"** for a detailed description of the timeline for an election. This timeline is prepared in accordance with Civil Code §§ 5105 and 5115, which state:

A. Amendment to Election Operating Rules. The Association shall not amend these Election Operating Rules less than 90 days prior to an election. (Civil Code § 5105.)

B. Notice of Process and Deadline to Submit Nominations. The Association shall provide general notice of the process and deadline to submit nominations at least 30 days before any deadline for submitting a nomination. This notice may be provided individually, if requested by a Member.

C. Ballot Return, Meeting and Candidate Information. The Association shall provide notice of the following at least 30 days before the ballots are distribution:

1. The date, time and physical address where, ballots are to be returned by mail or handed to the inspector of elections;
2. The date, time and location of the meeting to tabulate ballots; and,
3. A list of all candidates that will appear on the ballot.

D. Ballot Mailing. The IOE shall deliver, at least 30 days before the election, the following documents:

1. The ballot; and,
2. A copy of these Election Operating Rules, which may be posted to the Association's web page if the Association's web page address is on the ballot together with the phrase, in at least 12-point font: "The rules governing this election may be found here _____" – or by individual delivery.

E. Notice of Election Results. Within 15 days of the meeting, the results of the election shall

be published to the membership.

- 13. INDIVIDUAL NOTICE AND ELECTRONIC TRANSMISSION.** The Association shall provide individual notice of the Return, Meeting and Candidate Information listed above, if so requested by a Member. Members may consent to send and receive all communications from the Association via email.
- 14. OPTING OUT.** Members may request to opt out of sharing his or her name, property address and mailing address by notifying the Association in writing that he or she prefers to be contacted via an alternative process. For example, the Association can require the Member who wants to mail a letter to opted-out members to deliver to the Association their letter in sealed envelopes with postage already applied. The Association (or its management company) then applies mailing labels to the envelopes and drops them in the mail. Alternatively, a completed mailing list of all members (including opt-out members) could be provided by the Association to an independent printer/mailer. A Member who wants to mail a letter to all other members takes it to the company, which then applies mailing labels and mails it to everyone. The opt-out shall remain in effect until changed by the Member.



