

ARROYO PARK TOWNHOME ASSOCIATION
NOTICE OF PROPOSED UPDATED ELECTION RULES

June 8th, 2022

Dear Member:

Enclosed are new Election Rules that the Board of Directors intends to consider and adopt at an open meeting of the Board on **July 19th, 2022**. These new Election Rules are to comply with changes in California law affecting the way membership votes in homeowner associations are to be conducted. Requirements include new deadlines; address verification tasks and mailings; candidate qualifications; member voting qualifications; inspector(s) of election qualifications; and recordkeeping obligations.

The law requires our Association to adopt Election Rules consistent with these new requirements. The Board has consulted with the Association's legal counsel to develop Election Rules that comply with the requirements of the law and which will work in a practical way for our Association. These Election Rules will apply to elections of directors as well as any other official votes by the membership.

Members may submit comments for consideration by the Board. All comments will be considered in advance of the Board's vote to adopt these Election Rules. Comments may be submitted in writing and may be sent to the Board of Directors via the Community Manager, Haley Hudson at haley.hudson@associa.us no later than July 18th, 2022. Members may also attend the Board meeting and offer comments on the proposed Election Rules at that time.

Sincerely,

Board of Directors

Arroyo Park Townhome Association

Election Rules

These Election Rules apply to all Member votes undertaken by ARROYO PARK TOWNHOME ASSOCIATION ("Association"). These Election Rules shall be effective on the date of adoption, shall supersede any other rules of the Association affecting voting or elections, and shall remain in effect until modified by the Board of Directors (the "Board").

ARTICLE 1 MEMBER VOTING RIGHTS

1.1 Member Voting Rights. Notwithstanding anything to the contrary in the Association's governing documents, all Members shall be entitled to vote, and no Member shall be denied a ballot for any reason other than not being a Member. "Member" means a person who holds legal title to the separate interest (i.e., is named in the recorded deed for the separate interest property). The "separate interest" property means the lot owned by a Member.

1.1.1 Entity Owners. In the case of a Member that is not a natural person (such as a trust, corporation or other entity), the vote of such Member may be cast by any authorized representative of the Member designated by written notice to the Association.

1.1.2 General Power of Attorney. A person with general power of attorney for a Member, who has provided satisfactory evidence thereof, shall not be denied a ballot and said ballot shall be counted if returned by the deadline for voting.

1.2 Voter List. The Association shall maintain a "Voter List" which shall include for each separate interest: the Member's name; voting power; and, unless the Member has "opted out" of the public distribution of their address, the physical address of the Member's separate interest, or the parcel number, or both, and the mailing address of the Member if it is different than the physical address of the separate interest (or if the parcel number is used). Upon request, the Association shall permit Members to verify the accuracy of their individual information on the Voter List at least 30 days before the ballots are mailed. The Member shall report any errors to the Inspector of Elections who shall make the correction within two business days. The Association may, at its discretion, report any known errors to the Inspector of Elections. The Voter List shall be retained as "association election materials" as required by law.

1.3 Voting Power of Each Membership. On each matter before the Members, only one (1) vote shall be cast for each separate interest. Once a ballot is received by the Inspector of Elections, it may not be rescinded. Votes on behalf of a separate interest owned by more than one person or entity shall be treated as a single member for voting purposes. The vote for such separate interest shall be exercised as the owners among themselves shall determine, but in no event shall more than one (1) vote be cast with respect to any separate interest. If the joint owners of a separate interest are unable to agree among themselves as to how their vote is to be cast, they shall lose their right to vote on the matter in question. If any joint owner of a separate interest casts a vote representing the separate interest, it will thereafter be conclusively presumed for all purposes that such owner was acting with the authority and consent of the other owners of that separate interest.

1.4 Cumulative Voting. Cumulative voting is permitted in the election of directors.

1.5 Proxies. Proxies may be used by the Members at a membership meeting only as authorized in the Bylaws. In any election or vote of the Members conducted by the Association,

only official ballots issued by the Association shall be counted as votes. Proxies are not ballots and are not valid as votes in any election or vote conducted by the Association.

1.6 General Power of Attorney. A Member may delegate their voting rights to a third party by use of a general power of attorney that conforms to the laws of the state in which the power is conveyed. The power of attorney must be returned to the Association at or before the casting of the ballot for which voting rights have been delegated.

ARTICLE 2 VOTING PROCEDURE

2.1 Notice of Election Information. At least thirty (30) days before the ballots are distributed for elections of directors or to recall directors (but not required for elections of other matters), the Association shall provide general notice of all of the following: (i) the date and time by which, and the physical address where, ballots are to be returned by mail or handed to the Inspector of Elections; (ii) the date, time, and location of the meeting at which ballots will be counted; and (iii) the "Candidate Registration List," as defined in Section 3.3 below.

2.2 Distribution of Ballots. For a vote on any of the matters specified in *Civil Code* section 5100(a), voting by the Members shall be conducted by secret ballot using a "double envelope system" as described in *Civil Code* section 5115(c). Ballots and two envelopes with instructions on how to return ballots shall be mailed by first-class mail or delivered to all Members in such vote or election. Ballots shall be distributed a minimum of thirty (30) days prior to the deadline for voting. These matters are: (i) elections regarding assessments legally requiring a Member vote, (ii) election and removal of directors, (iii) amendments to the governing documents, and (iv) grants of exclusive use of common area property pursuant to *Civil Code* section 4600.

For votes on any other matter, votes may be by secret ballot, written ballot or any other manner not prohibited by law (including electronic voting), and the polling period for such voting may be a reasonable time as determined by the Board unless otherwise prescribed by law.

2.3 Election by Acclamation. Notwithstanding the secret balloting requirement of Section 2.2 or anything to the contrary in the Association's governing documents, if, as of the published deadline for receiving nominations, the number of qualified candidates for election to the Board is not more than the number of directors to be elected, as determined by the Inspector of Elections, then the qualified candidates may be declared elected by acclamation if all of the following conditions have been met:

- 2.3.1 The Association has held a regular election for directors in the last three years. The three-year time period shall be calculated from the date ballots were due in the last full election to the start of voting for the proposed election.
- 2.3.2 The Association provided individual notice of the election and the procedure for nominating candidates at least 90 days before the deadline for submitting nominations that includes all of the following:
 - (a) The number of Board positions to be filled at the election.
 - (b) The deadline for submitting nominations.
 - (c) The manner in which nominations can be submitted.
 - (d) A statement informing Members that if, at the close of the time period for nominations, there are the same number or fewer qualified candidates as there are Board positions to be filled, then the Board may, after voting to do so, seat the qualified candidates by acclamation without balloting.

2.3.3 The Association provided a reminder notice between 7 and 30 days before the deadline for submitting nominations that includes all of the following:

- (a) The number of Board positions to be filled at the election.
- (b) The deadline for submitting nominations.
- (c) The manner in which nominations can be submitted.
- (d) A list of the names of all of the qualified candidates to fill the Board positions as of the date of the reminder notice.
- (e) A statement reminding members that if, as of the deadline for nominations, there are the same number or fewer qualified candidates as there are Board positions to be filled, then the Board may, after voting to do so, seat the qualified candidates by acclamation without balloting. This statement is not required if, at the time the reminder notice will be delivered, the number of qualified candidates already exceeds the number of Board positions to be filled.

2.3.4 The Association provides, within 7 business days of receiving a nomination, a written or electronic communication acknowledging receipt of the nomination to the Member who submitted the nomination, and if the nominee and the Member who submitted the nomination are not the same person, then a written or electronic communication to the nominee within the same time period indicating the following:

- (a) The nominee is a qualified candidate for the Board; or
- (b) The nominee is not a qualified candidate for the Board, the basis for the disqualification, and the Association's internal dispute resolution procedure, which shall comply with *Civil Code* section 5900 et al., by which the nominee may appeal the disqualification.

2.3.5 The Association permits all candidates to run for election, except for any nominees disqualified from running as allowed or required pursuant to Section 3.1.

2.3.6 The Board votes to consider the qualified candidates elected by acclamation at an open meeting for which the agenda item reflects the name of each qualified candidate that will be seated by acclamation if the item is approved.

2.4 Frequency of Director Elections. The Association shall hold an election for a seat on the Board at the expiration of the corresponding director's term or sooner if required by the Bylaws but at least once every four years.

2.5 Extension of Voting. The Board shall be entitled to extend the deadline for the return of ballots one or more times due to the lack of a quorum or for such other reason(s) as the Board deems reasonable and prudent.

2.6 Tabulation and Observation. The Inspector of Elections shall open all ballots and tabulate the votes at a properly noticed open meeting of the Board or Members in a manner that allows the Members to view the opening and tabulation. The Inspector of Elections may appoint additional persons to assist in the opening of ballots and tabulation of votes who meet the same

qualifications as the Inspector of Elections. Observers must remain at least five (5) feet from the area of opening and tabulation and not communicate, harass, or otherwise interfere with the Inspector of Elections and/or those assisting the Inspector of Elections in any manner whatsoever. The Inspector of Elections or the Board shall have the power and authority to cause the removal of any person who interferes with or disrupts the voting, opening or tabulating process. The Inspector of Elections may suspend the opening and tabulation process if anyone causes interference with or disrupts the process.

2.7 Reporting Election Results. The tabulated results of the election shall be promptly reported to the Board and shall be recorded in the minutes if reported at a meeting of the Board or recorded in the minutes of the next meeting of the Board if reported at a Member meeting. Within fifteen (15) days of the election, the Board shall give the Members general notice of the tabulated results of the election.

2.8 Retention of Association Election Materials. "Association election materials" shall mean the returned ballots, signed voter envelopes, the Voter List, proxies, and the Candidate Registration List. The association election materials shall at all times be in the custody of the Inspector of Elections or at a location designated by the Inspector of Elections for a period of one (1) year after the Inspector of Elections notifies the Board and the Members are notified of the election results, at which time custody shall be transferred to the Association. The Association shall retain the association election materials for the current fiscal year and prior two (2) fiscal years. At the expiration of the retention period all association election materials may be destroyed.

ARTICLE 3 CANDIDATES FOR THE BOARD AND NOMINATION PROCEDURES

3.1 Qualification of Candidates. Candidates for the Board must be Members at the time of their nomination and must meet all other qualifications or restrictions set forth in these Election Rules. In the case of a Member that is not a natural person (such as a corporation or other entity), the entity Member shall have the power to appoint a natural person as the "Member" for purposes of director elections. The Association shall disqualify a nominee for the Board for any of the following reasons:

3.1.1 The nominee is not a Member.

3.1.2 If the nominee, at the time of nomination, is delinquent in the payment of regular and/or special assessments. A nominee shall not be considered "delinquent" if the delinquency relates to the payment of fines, fines renamed as assessments, collection charges, late charges, or costs levied by a third party and/or if the nominee: (a) has paid the regular or special assessment under protest; (b) has entered into a payment plan for repayment of the delinquent assessments and is not delinquent in payments due under the plan; or (c) has requested and has not been provided an opportunity to engage in internal dispute resolution.

3.1.3 If the nominee has been a member of the Association for less than one year.

3.1.4 If the nominee discloses, or if the Association is aware or becomes aware of, a past criminal conviction that would, if the Member was elected, either prevent the Association from purchasing the fidelity bond coverage required by *Civil Code* section 5806 or terminate the Association's existing insurance coverage required by *Civil Code* section 5806 as to that person should the person be elected.

3.2 Nominations.

3.2.1 Solicitation of Candidates. At least thirty (30) days before the deadline for submitting a nomination, the Association shall provide general notice of the procedure and deadline for submitting a nomination for the Board. Any Member who satisfies the qualifications and is not otherwise prohibited from running for the Board may place their name in nomination for the Board by submitting the nomination before the published deadline for receiving nominations. In addition, the Board may recruit qualified candidates and/or may appoint a nominating committee to nominate qualified candidates.

3.2.2 No Write-Ins. No “write-in” candidates shall be permitted on the ballots in the election of directors.

3.3 Candidate Registration List. The “Candidate Registration List” shall mean the list of candidates who will appear on the ballot and shall include the candidate’s name and address. Upon request, the Association shall permit candidates to verify the accuracy of their individual information on the Candidate Registration List at least thirty (30) days before the ballots are mailed. The candidate shall report any errors to the Inspector of Elections who shall make the correction within two business days. The Association may, at its discretion, report any known errors to the Inspector of Elections. The Candidate Registration List shall be retained as “association election materials” as required by law.

3.4 Notice of Known Candidates. The names of all persons on the Candidate Registration List shall be set forth on the ballot.

3.5 Candidacy Statements. Any candidate who wishes to submit a candidacy statement may only do so using the Association’s authorized form. The content of any candidate statement shall be limited to a statement of the candidate’s qualifications to serve as a director.

3.6 Directors May Not be Delinquent. Any Member serving on the Board shall be current in the payment of regular and special assessments. A director shall not be considered “delinquent” in the payment of assessments if the delinquency relates to the payment of fines, fines renamed as assessments, collection charges, late charges, or costs levied by a third party and/or if the director: (a) has paid the regular or special assessment under protest; (b) has entered into a payment plan for repayment of the delinquent assessments and is not delinquent in payments due under the plan; or (c) has requested and has not been provided an opportunity to engage in internal dispute resolution.

ARTICLE 4 USE OF ASSOCIATION MEDIA AND CAMPAIGNING

4.1 Access to Association Media – Candidates for the Board. The Board may, but is not required to, make Association media (e.g., newsletter, notice board, website, or other notices provided to the Members) available to qualified 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 any candidate access to Association media, then all qualified candidates shall be allowed equal access to the same media.

4.2 Access to Association Media – Other Matters. If the Board utilizes Association media to advocate a point of view on any matter (other than election of directors) that requires Member approval or allows any Member access to Association media for that purpose, then all Members advocating a different point of view shall be allowed equal access to the same media. The Board shall not be required to allow access to more than one Member advocating the same point of view.

4.3 “Equal Access.” “Equal access” shall mean publication of written statements not to exceed a predetermined length as determined by the Board. The Board shall not edit or redact

any statement but shall not be required to publish any statement that exceeds the predetermined length restrictions. Modifications to formatting may be made so as to allow for space and/or media restrictions. If any formatting modifications should become necessary, they shall be applied equally to all submissions and at no time shall any formatting be applied that may signify a preference or partiality.

4.4 Responsibility for Content. All statements published in Association media pursuant to the “equal access” rules must identify the author or proponent. No anonymous statements will be permitted. The author and/or proponent of any statement or point of view shall be solely responsible and liable for the content of their statements. The Association shall not be responsible or liable for the content of any statement published pursuant to the “equal access” rules.

4.5 Campaigning. No Association funds shall be expended for the purposes of campaigning in connection with any vote or election other than those funds specifically required to distribute required correspondence, notices, or forms that may contain the names of candidates or necessary information on the issues being voted upon, or as is otherwise deemed by the Board to be necessary or appropriate for the fair and reasonable conduct of a vote or election, or to the extent necessary to comply with duties of the Association imposed by law. Specifically excluded is the expenditure of Association funds for the purposes of expressly advocating approval, election, or defeat of any candidate.

ARTICLE 5 USE OF COMMON AREA MEETING SPACE

5.1 Access to Common Area Meeting Space – Campaigning by Candidates for the Board. The Board shall ensure that during a campaign all qualified candidates for election to the Board are given access to common area meeting space (if any) upon request, at no cost, for purposes reasonably related to their campaigns.

5.2 Access to Common Area Meeting Space – Other Matters. Whenever the Board places a matter before the Members which requires Member approval, the Board shall ensure that Members advocating a point of view on the matter are given access to common area meeting space (if any) upon request, at no cost, for purposes reasonably related to advocating their point of view, whether or not they agree with the point of view advocated by the Board on the matter at issue.

5.3 All Access. Any use of the common area facilities for the purposes described above shall be regulated by any existing rules and regulations for such use. The Board, in its sole discretion, may reasonably limit a candidate’s or Member’s access to common area facilities in order to facilitate equal access for other candidates and Members, and so as not to unreasonably interfere with other Members’ rights to use such facilities.

ARTICLE 6 INSPECTOR OF ELECTIONS

6.1 Appointment of Inspector of Elections. Whenever there is a membership vote or election, the Board shall appoint one (1) or three (3) Inspectors of Elections, hereinafter individually or collectively referred to as the “Inspector of Elections,” whose powers and duties shall be as set forth in Civil Code section 5100 *et seq.* The Board shall have the power to remove an Inspector of Elections who ceases to meet the required qualifications, is unable or unwilling to perform their duties, or for other good reason, and to appoint a new Inspector of Elections in their place.

6.2 Qualification of Inspector of Elections. The Inspector of Elections may be any persons the Board reasonably believes to be independent with respect to the matter or matters being voted on and may include Members of the Association, but may not be (i) a member of the Board or a candidate for election to the Board or be related to a current member of the Board or

a candidate for election to the Board or (ii) the Association's manager, accountant, legal counsel, or any other person, business entity, or subdivision of a business entity that is employed by or under contract with the Association to provide compensable services to it at and/or after commencement of the election process other than serving as Inspector of Elections.

6.3 Payment to Inspector of Elections. The Board may authorize payment of Association funds to any third party appointed to serve as Inspector of Elections; however, no payment may be authorized for any Member appointed to serve as the Inspector of Elections.

6.4 Duties of the Inspector of Elections. The Inspector of Elections shall be responsible to perform their duties as follows:

6.4.1 Perform those tasks enumerated in Civil Code section 5110(c); and

6.4.2 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; and

6.4.3 Make any necessary corrections to the Candidate Registration List or the Voter List within two business days of being informed of an error by a Member or by the Association; and

6.4.4 Deliver (or cause to be delivered) the following documents to the members at least thirty (30) days before an election: (a) the ballot(s) by first-class mail and (b) a copy of these Election Rules by (i) individual delivery or (ii) by posting the internet website address where these Election Rules may be accessed on the ballot together with the phrase in at least 12-point font, "The rules governing this election may be found here: [*insert internet website address*]"; and

6.4.5 Retain the association election materials as provided herein.

6.5 Indemnification of Inspector of Elections; Liability Insurance. The Association may, at the Board's sole discretion, indemnify the Inspector of Elections to the fullest extent provided by law. The Association shall have the power to purchase and maintain insurance to protect it and/or the Inspector of Elections against any liability asserted against the Association and/or against the Inspector of Elections arising out of the Inspector of Elections' acts and/or omissions relating to any Association vote or election.

ARTICLE 7 AMENDMENTS

The Board may amend these Election Rules from time to time except that these Election Rules may not be amended less than ninety (90) days prior to an election unless that amendment is merely to conform to non-discretionary changes in the law.

I, _____, am the Secretary of the ARROYO PARK TOWNHOME ASSOCIATION, and certify that these Election Rules were duly adopted by the Board of Directors of the Association and came into effect on the ____ day of _____, 2022.

Secretary

_____, 2022
Date