

**BAY VILLAGE HOMEOWNERS ASSOCIATION  
NOTICE OF PROPOSED OPERATING RULES AND ELECTION RULES**

MAY 19, 2020

**Notice of Proposed Rule Change:** At a monthly meeting of the Board of Directors of Bay Village Homeowners Association, on May 19, 2020, the Board considered amending its Operating Rules and discussed new California State legislation, SB 323, effective January 1, 2020, which requires that Associations adopt Election Rules.

The Board has authorized the attached Election Rules to be delivered by General Notice to the Members for comment. Before the Rules can be adopted, the Board is required to consider comments from Members relating to the proposed Rules after a period of at least twenty-eight (28) days. Members are encouraged to comment at or before the **Board Meeting scheduled on August 18, 2020 beginning at 3:00 pm**, at which time the Board will consider comments to the proposed change, and adopt the final version of the Rules. As of this date, the Board plans to meet at the YWCA building at 340 E. Beach St, Watsonville.

The attached Election Rules consist of the new Election Rules which comply with SB 323.

**Purpose and Effect.**

"Operating Rules" are broadly defined as any rule or regulation that applies to the management and operation of a common interest development or the conduct of its business and affairs. (Civ. Code §4340.)

Under SB 323, the Association is required to adopt "Election Rules" that comply with the requirements set forth in Civil Code § 5105 et seq. in order to conduct any election that requires the use of secret ballots. (Civ. Code § 5105(a)). The bill provides (not an exhaustive list):

- Elections for the Board of Directors must be held at the end of each director's expiring term and a minimum of every four (4) years (Civ. Code §5100).
- Extends the election timeframe by changing the procedural requirements for the period leading to the election (Civ. Code §5115).
- Requires candidates to be a member of the Association at the time they are nominated for a position on the Board (Civ. Code §5105(b)).
- Authorizes the Association to disqualify a person from serving or being nominated for a position on the Board for limited specified reasons (Civ. Code §5105(c)).
- Election rules may not deny a ballot to a member or a person with general power of attorney for an owner (Civ. Code §5105(g)).
- Requires additional election materials to be held in the inspector of election's custody until after vote tabulation (Civ. Code §5125).

- Association rules may no longer allow a person, business entity, or subdivision of a business entity that is employed or under contract with the Association for any compensable services to serve as inspector of elections (Civ. Code §5110).
- Association records are to include members' e-mail addresses (Civ. Code §5200).
- The Association must allow members to verify their individual information at least thirty (30) days before ballots are distributed (Civ. Code §5105(a)).
- The Association is prohibited from filing a civil action unless the Association has already complied with dispute resolution procedures (if requested by the member) (Civ. Code §5910.1).
- Election Rules may not be amended less than ninety (90) days before an election (Civ. Code §5105(h)).
- The Election Rules must require retention of, as election materials, both a candidate registration list and a voter list. The Association must permit members to verify the accuracy of their individual information at least thirty (30) days before the ballots are distributed. The Association or member must report any errors or omissions to either list to the inspector of elections who must make the corrections within two (2) business days. (Civ. Code § 5105(a)(7)).

**Adopting & Amending Election Rules and Operating Rules.** Election Rules and Operating Rules are “operating rules” within the meaning of Civil Code § 4355. (Civ. Code § 4355(a)(7)). As such, they are adopted and amended by the Board provided that the required amendment procedure mandated by Civil Code § 4360 is followed.

**Bylaw Amendment to Follow.** The Association will present a proposed Bylaw Amendment later this year as amendments to the Bylaws are required to comply with SB 323.

Please send your comments to: BAY VILLAGE, Board of Directors at **[contact@bayvillagewatsonville.com](mailto:contact@bayvillagewatsonville.com)** before **August 18, 2020** or bring your comments to the Board meeting on **August 18, 2020 at 3:00 pm.**

**ELECTION RULES  
BAY VILLAGE HOMEOWNERS ASSOCIATION**

**ARTICLE I -- ELECTION RULES, GENERAL**

**1.1. Election Rules.** The following rules constitute the election rules of the BAY Village Homeowners Association, (“Association”) enacted pursuant to the requirements of the Davis-Stirling Common Interest Development Act (“Act”).

**1.2. Conflict between the Act and the Corporations Code.** In the event of a conflict between the provisions of the Act relating to elections and the provisions of the California Nonprofit Mutual Benefit Corporation Law relating to elections, the provisions of the Act shall prevail. (Civil Code Section 5100(e)).

**1.3.Amendment.** Election rules adopted pursuant to this section shall not be amended less than 90 days prior to an election. (Civil Code Section 5105(h)).

**1.4. Definitions.**

(a) General Notice. If a provision of these rules requires “general delivery” or “general notice,” the document shall be provided by one or more of the following methods:

(1) Any method provided for delivery of an individual notice pursuant to Civil Code Section 4040.

(2) Inclusion in a billing statement, newsletter, or other document that is delivered by one of the methods provided in this section.

(3) 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, prepared pursuant to Civil Code Section 5310.

(4) If the Association broadcasts television programming for the purpose of distributing information on Association business to its Members, by inclusion in the programming.

(5) Notwithstanding the foregoing, if a Member requests to receive general notices by individual delivery, all general notices to that Member, given under this section, shall be delivered pursuant to Section 4040. The option provided in this subdivision shall be described in the annual policy statement, prepared pursuant to Civil Code Section 5310. (Civil Code Section 4045).

(b) Individual Notice. If a provision of these rules requires that an Association deliver a document by “individual delivery” or “individual notice,” the document shall be delivered by one of the following methods:

(1) First-class mail, postage prepaid, registered or certified mail, express mail, or overnight delivery by an express service carrier. The document shall be addressed to the recipient at the address last shown on the books of the Association.

(2) Email, facsimile, or other electronic means, if the recipient has consented, in writing or by email, to that method of delivery. The consent may be revoked, in writing or by email, by the recipient.

(3) Upon receipt of a request by a Member, pursuant to Section 5260, identifying a secondary address for delivery of notices of the following types, the Association shall deliver an additional copy of those notices to the secondary address identified in the request:

(A) The documents to be delivered to the Member pursuant to Article 7 (commencing with Civil Code Section 5300) of Chapter 6.

(B) The documents to be delivered to the Member pursuant to Article 2 (commencing with Civil Code Section 5650) of Chapter 8, and Civil Code Section 5710.

(4) For the purposes of this section, an unrecorded provision of the Governing Documents providing for a particular method of delivery does not constitute agreement by a Member to that method of delivery. (Civil Code Section 4040).

( c ) “Member” shall mean and refer to Titled Property Owners only.

**1.5. Secret Ballot Timeline.** The following is the timeline for the secret ballot process.

(c) Step 1: Nomination Process. At least thirty (30) days before any deadline for submitting nominations, **General Notice** of the procedure and deadline for submitting nominations must be given (Civil Code Section 5115(a)).

(d) Step 2: Appoint Inspector of Elections, Provide Notice of Secret Ballot Process and Allow For Verification. At least thirty (30) days before the secret ballots are distributed,

(1) The Board shall appoint an Inspector of Elections; and

(2) The Association shall provide **General Notice** of all of the following:

(A) 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.

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

(C) The list of all candidates' names that will appear on the ballot. (Civil Code Section 5115(b)); and

(3) The Board shall allow Members to verify the accuracy of their individual information on the candidate registration list and voter list. (Civil Code Section 5105(a)(7)). The Inspector of Elections must change and correct lists within two (2) business days of any error or omission being reported. (Civil Code §5105(a)(7)).

(e) Step 3: Delivery of Ballots and Election Rules. At least 30 days prior to the date established for opening of ballots, the Inspector of Elections must deliver, or cause to be delivered, ballots and a copy of the election rules. Such rules may be delivered (1) by Individual Notice (Civil Code §4040) or (2) by posting the rules on an internet website and including the website address (URL) on the ballot with the phrase, in at least 12-point font: "The rules governing this election may be found here \_\_\_\_\_." (Civil Code Section 5115(c) and Civil Code Section 5105(g)(4)).

(f) Step 4: Open and Count Ballots. All votes shall be counted and tabulated by the Inspector of Elections, or the designee(s) 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. The Inspector of Elections, or the designee of the Inspector of Elections, may verify the Member's information and signature on the outer envelope prior to the meeting at which ballots are tabulated. Once a secret ballot is received by the Inspector of Elections, it shall be irrevocable. (Civil Code Section 5120(a)).

(g) Step 5: Report Results of Election. 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. Within 15 days of the election, the Board shall give General Notice of the tabulated results of the election. (Civil Code Section 5120(b)).

(h) Step 6: Retention of Election Documents. The sealed ballots, signed voter envelopes, voter list, proxies, and candidate registration list shall at all times be in the custody of the Inspector of Elections or at a location designated by the Inspector 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 shall be transferred to the Association. If there is a recount or other challenge to the election process, the Inspector shall, upon written request, make the ballots available for inspection and review by a Member or the Member's authorized representative. Any recount shall be conducted in a manner that preserves the confidentiality of the vote. (Civil Code Section 5125).

**1.6. Candidates.** Any candidate or Member advocating a point of view shall be provided access to Association media, newsletters, or internet websites (if any) 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. (Civil Code Section 5105(a)(1)).

**1.7.Access.** At no cost, the Association shall provide access to the clubhouse during a campaign to a candidate or a Member, 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 an election. (Civil Code Section 5105(a)(2)).

**1.8.Nomination.** The 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, and 90 days before the meeting to open the secret ballots. (Civil Code Section 5115(a)).

**1.9.Nominations by Nominating Committee.** Nomination for election to the Board of Directors may be made by a Nominating Committee appointed by the Board. The Nominating Committee shall make as many nominations for election to the Board as it shall in its discretion determine.

**1.10.Self-Nomination.** A Member is expressly allowed to nominate himself or herself as a candidate. (Civil Code Section 5105(a)(3)).

**1.11.Nominations on Ballots.** There shall be no nomination of candidates from the floor of membership meetings after the deadline for nominations, and there shall be no write-in candidates on the ballots. (Civil Code Section 5105(f)).

**1.12.Candidates' Names on Official Ballot.** The names of all qualified candidates that were received by the Board on or before any deadline for nominations shall be listed on the official ballot.

### **1.13. Quorum.**

(a) A quorum of Members shall be as set forth in the Bylaws. Notwithstanding anything herein to the contrary, a quorum for purposes of obtaining membership approval of Special Assessments or increases in Regular Assessments means more than fifty percent (50%) of the Owners pursuant to Civil Code Section 5605.

(b) A quorum is not required for the election of Directors. Voting for Directors shall be by secret ballot, and the candidates receiving the highest number of votes, up to the number of Directors to be elected, shall be elected.

## **ARTICLE II - DIRECTORS**

**2.1.Number of Directors.** The number of Directors shall be as set forth in the Bylaws. Each Director shall hold office the period of time set forth in the Bylaws, or until his earlier

resignation or removal, and until his successor is duly elected and qualified. Directors may be elected to an unlimited number of successive terms. A majority of Directors shall constitute a quorum for the transaction of business of the Board, except to adjourn as provided in the Bylaws of the Association.

## **2.2. Qualifications of Directors.**

(a) The Association shall disqualify a nominee for a Board seat for not being a Member of the Association at the time of the nomination. (Civil Code Section 5105(b)(1)).

(b) If title to a separate interest parcel 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 for purposes of these Rules. (Civil Code Section 5105(b)(2)).

(c) The Association may disqualify a nominee for a Board seat if the nominee, and a Director during their Board tenure, is not current in the payment of regular and special assessments, which are consumer debts subject to validation. If the Association requires a nominee to be current in the payment of regular and special assessments, it shall also require a Director to be current in the payment of regular and special assessments. Notwithstanding the foregoing:

(1) The Association may not disqualify a nominee for nonpayment of fines, fines renamed as assessments, collection charges, late charges, or costs levied by a third party; and

(2) The person shall not be disqualified for failure to be current in payment of regular and special assessments if either of the following circumstances is true:

(A) The person has paid the regular or special assessment under protest pursuant to Civil Code Section 5658.

(B) The person has entered into a payment plan pursuant to Civil Code Section 5665. (Civil Code Section 5105(d)).

(d) The Association shall disqualify a person 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 Space as the person and the other person is either properly nominated for the current election or an incumbent Director. (Civil Code Section 5105(c)(2)).

(e) The Association shall disqualify a nominee 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. (Civil Code Section 5105(c)(4)).

(f) The Association shall not disqualify a person from nomination if the person has not been provided the opportunity to engage in internal dispute resolution pursuant to Article 2 (commencing with Section 5900) of Chapter 10. (Civil Code Section 5105(e)).

**2.3. Vacancies on Board of Directors.** Vacancies on the Board shall be filled pursuant to the Bylaws.

## **2.4. Campaign Funds**

(a) Association funds shall not be used for campaign purposes in connection with any Board election. Funds of the Association shall not be used for campaign purposes in connection with any other Association election except to the extent necessary to comply with duties of the Association imposed by law.

(b) For the purposes of this section, “campaign purposes” includes, but is not limited to, the following:

(1) Expressly advocating the election or defeat of any candidate that is on the Association’s election ballot.

(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 an election. It is not a campaign purpose if the communication is one for which subdivision (a) of Civil Code Section 5105 requires that equal access be provided to another candidate or advocate. (Civil Code Section 5135).

## **ARTICLE III - INSPECTOR OF ELECTIONS**

**3.1. One Inspector of Elections.** The Board or its designated Manager shall appoint one independent third party as an Inspector of Elections for any Member vote on 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 pursuant to Section 4600. (Civil Code Section 5105(a)(5)).

**3.2. Independent Third Party.** For the purposes of this Article, an independent third party includes, but is not limited to, a volunteer poll worker with the county registrar of voters, a licensee of the California Board of Accountancy, or a notary public. An independent third party may be a Member, but may not be a Director or a candidate for Director or be related to a Director or to 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. (Civil Code Section 5110).



**3.3. Duties of Inspector.** The Inspector of Elections shall do all of the following:

- (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.
- (d) Hear and determine all challenges and questions in any way arising out of or in connection with the right to vote.
- (e) Count and tabulate all votes.
- (f) Determine when the polls shall close, consistent with the governing documents.
- (g) Determine the tabulated results of the election.
- (h) Perform any acts as may be proper to conduct the election with fairness to all Members in accordance with this article, the Corporations Code, and all applicable rules of the Association regarding the conduct of the election that are not in conflict with the Act. (Civil Code Section 5110).
- (i) Perform all duties impartially, in good faith, to the best of the Inspector of Elections' ability, as expeditiously as is practical, and in a manner that protects the interest of all Members of the Association. Any report made by the Inspector of Elections is prima facie evidence of the facts stated in the report. (Civil Code Section 5110).

**3.4. Custody of Ballots, Etc.** The sealed ballots, signed voter envelopes, voter list, proxies, and candidate registration list shall at all times be in the custody of the Inspector of Elections or at a location designated by the Inspector of Elections 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 shall be transferred to the Association. If there is a recount or other challenge to the election process, the Inspector of Elections shall, upon written request, make the ballots available for inspection and review by a Member or the Member's authorized representative. Any recount shall be conducted in a manner that preserves the confidentiality of the vote. (Civil Code Section 5125).

**3.5. Volunteer Assistants.** The Inspector of Elections may retain any number of volunteer assistants (who are neutral, independent third parties) to help the Inspector fulfill his/her duties, including verifying signatures and processing and tabulating votes. Any assistants will be under the direct supervision of the Inspector of Elections. (Civil Code Section 5105(a)(6)).

## **ARTICLE IV - RECORD DATES CANDIDATE REGISTRATION AND VOTER LIST**

**4.1. Record Dates.** For the purpose of determining which Members are entitled to notice of any meeting, to act by secret ballot, or exercise any rights in respect to any other lawful action, the Board may fix, in advance, a “record date” as provided in the Bylaws. Unless the Board adopts a “record date”, the record date for determining the Voter List shall be the date the ballots are sent to Members.

**4.2. Member Rights.** Only Members of record and eligible to vote as of the record date are entitled to vote by secret ballot (or other means) and/or receive notice of any meeting or other event or act.

**4.3. Candidate Registration and Voter List.** As of the record date, the Association shall retain or cause to be retained, 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 of Elections, who shall make the corrections within two business days. The Association's list of Members eligible to vote shall be provided to the Inspector of Elections on or before the date the ballot packets are mailed. (Civil Code Section 5105(a)(7)).

## **ARTICLE V - BALLOTS**

### **5.1. Mandatory Use of Secret Ballots.**

(a) 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 pursuant to Section 4600 shall be held by secret ballot in accordance with the procedures set forth in these election rules (Civil Code Section 5100).

(b) Except for the meeting to count the votes required in subdivision (a) of Civil Code Section 5120, an election may be conducted entirely by mail unless otherwise specified in the governing documents. (Civil Code Section 5115(f)).

(c) In an election to approve an amendment of the governing documents, the text of the proposed amendment shall be delivered to the Members with the ballot. (Civil Code Section 5115(g)).

**5.2. Discretionary Use of Secret Ballots.** Unless voting by secret ballot is required by Civil Code Section 5100, the Board has discretion on whether to use the secret ballot process.

**5.3.Election Notice.** The Association shall provide **General Notice** of all 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 of Elections.
- (b) The date, time, and location of the meeting at which ballots will be counted.
- (c) The list of all candidates' names that will appear on the ballot. (Civil Code Section 5115(b)).

**5.4. Delivery.** The Inspector of Elections shall deliver or cause to be delivered both of the following documents:

- (a) The ballot or ballots.
- (b) A copy of the election rules. Delivery of the election rules may be accomplished by either of the following methods:

(1) **Posting the election 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:\_\_\_\_\_"; or

(2) **Individual Delivery.** (Civil Code Section 5105(g)).

(c) Ballots and two preaddressed 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. In order to preserve confidentiality, a voter may not be identified by name, address, or lot, parcel, or unit number on the ballot. The Association shall use as a model those procedures used by California counties for ensuring confidentiality of vote by mail ballots, including all of the following:

(1) 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.

(2) The second envelope is addressed to the Inspector of Elections, who will be tallying the votes. The envelope may be mailed or delivered by hand to a location specified by the Inspector of Elections. The Member may request a receipt for delivery. (Civil Code Section 5115(c)).

**5.5. Denial of Ballot; Power of Attorney.** The Association shall not:(a) deny a ballot to a Member for any reason other than not being a Member at the time when ballots are distributed or

(b) deny a ballot to a person with general power of attorney for a Member. The ballot of a

person with general power of attorney for a Member shall be counted if returned in a timely manner. (Civil Code Section 5105(g)).

## **5.6. Quorum and Approval Requirements.**

(a) A quorum shall be required only if so stated in the governing documents or other provisions of law. If a quorum is required by the governing documents, each ballot received by the Inspector of Elections shall be treated as a Member present at a meeting for purposes of establishing a quorum. (Civil Code Section 5115(d)).

(b) All ballot solicitations shall indicate the number of responses needed to meet the quorum requirement and, with respect to ballots other than for the election of Directors, shall state the percentage of approvals necessary to pass the measure submitted. (Corporations Code Section 7513).

## **5.7.No Cumulative Voting.** Cumulative voting is not allowed.

**5.8. Balloting Period.** The ballot solicitation must specify the time by which the ballot must be received, and the address to which the ballot is to be delivered, in order to be counted. (Corporations Code Section 7513).

**5.9. Extension of Balloting Period.** The deadline for receipt of the ballots (i.e., closure of the polls) may be extended by the Board of Directors or the Inspector of Elections at any time prior to the Inspector of Elections opening the first ballot return envelope.

**5.10. Replacement Ballots.** The Inspector of Elections may provide a requesting Member with a duplicate or replacement ballot (or ballot packet) if the Inspector of Elections has verified that:

(a) The Member requesting a duplicate ballot is a Member eligible to vote; and

(b) The Association has not already received a returned ballot envelope for that Member's Space. The Member will need to sign a statement under penalty of perjury that the Member's original ballot was lost, destroyed, or stolen before that Member is entitled to receive a duplicate ballot. The Inspector of Elections shall list the number of replacement ballots provided to Members and the name(s) of the Member(s) who requested and received those replacement ballot packets.

## **5.11. Counting Ballots; Irrevocable.**

(c) All votes shall be counted and tabulated by the Inspector of Elections, or the designee(s) 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. The Inspector of Elections, or the designee of the Inspector of Elections, may verify the Member's information and signature on the outer envelope

prior to the meeting at which ballots are tabulated. Once a secret ballot is received by the Inspector of Elections, it shall be irrevocable. (Civil Code Section 5120(a)).

(d) 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. Within 15 days of the election, the Board shall give **General Notice** pursuant to Section 4045 of the tabulated results of the election. (Civil Code Section 5120(b)).

(e) The sealed ballots, signed voter envelopes, voter list, proxies, and candidate registration list shall at all times be in the custody of the Inspector of Elections or at a location designated by the Inspector 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 shall, upon written request, make the ballots available for inspection and review by a Member or the Member's authorized representative. Any recount shall be conducted in a manner that preserves the confidentiality of the vote. (Civil Code Section 5125).

**5.12. Proxies.** There shall be no voting by proxy.

## **ARTICLE VI -- RECEIPT & HANDLING OF VOTING MATERIALS**

**6.1. Voting Ballots & Delivery to Inspector of Elections.** Each Member eligible to vote has the right to mark his voting choices on the Association's official ballot and return that ballot to the Inspector of Elections using the returned ballot envelope and secret ballot envelope in accordance with the election rules, the Bylaws, the Declaration and the Act.

**6.2. Returned Ballot Envelopes Containing Invalid or Insufficient Information.** Prior to the meeting where the tabulation of ballots is to occur, the Inspector of Elections must make a determination on whether those returned ballot envelope(s) are to be processed/counted as valid or voided. The Inspector of Elections can obtain additional information from the Association, the manager, and/or Members to assist in determining how the returned ballot envelopes are to be processed. If the returned ballot envelope does not contain the signed name or address information required by these Rules but contains information sufficient to verify the Member's identity (as decided in the sole discretion of the Inspector of Elections), the ballot may be counted.

**6.3. Authentication of Signatures.** The authentication of signatures by the Inspector of Elections shall be made in accordance with the following:

(a) If the name signed on a ballot, consent or waiver corresponds to the record name of a Member, the Association, if acting in good faith, is entitled to accept the ballot, consent or waiver and give it effect as the act of the Member.

(b) If the name signed on a ballot, consent or waiver does not correspond to the record name of a Member, the Association, if acting in good faith, is nevertheless entitled to accept the

ballot, consent or waiver and give it effect as the act of the Member if any of the following occur:

(1) The Member is an entity and the name signed purports to be that of an officer or agent of the entity.

(2) The name signed purports to be that of an attorney-in-fact (pursuant to a General Power of Attorney) of the Member and if the Association requests, evidence acceptable to the Association of the signatory's authority to sign for the Member has been presented with respect to the ballot, consent or waiver.

(3) Two or more persons hold the membership as cotenants or fiduciaries and the name signed purports to be the name of at least one of the co-holders and the person signing appears to be acting on behalf of all the co-holders.

(c) The Inspector of Elections is entitled to reject a ballot, consent or waiver if the Inspector, acting in good faith, has a reasonable basis for doubt concerning the validity of the signature or the signatory's authority to sign for the Member.

(d) The Association, the Inspector of Elections and any Director, officer or agent thereof who accepts or rejects a ballot, consent or waiver in good faith and in accordance with the standards of this section shall not be liable in damages to the Member of the consequences of the acceptance or rejection.

**6.4. Voided Returned Ballot Envelopes.** Any returned ballot envelopes that are marked "UNOPENED" or "VOID" shall be left unopened and bundled separately from those returned ballot envelopes that have been validated.

**6.5. No Disclosure of Voting Choices.** Each Member has the right to keep his (or her) voting selections and preferences secret. No person has the right or ability to compel a Member to disclose how that Member voted on any Member vote. The Inspector of Elections has the right to advise the Association of the names of those Members who have not yet voted in order to allow the Association to contact those Members to encourage them to vote. An Inspector of Elections who provides this information is not violating the secrecy provisions of the Member vote.

**6.6. Tie Vote.** In the event of a two-way tie, the winner of the seat shall be determined by flipping a coin. In a three-way tie, the winner or winners of the seat shall be determined by drawing straws. The Inspector of Elections shall officiate over the process to determine the winner of the seat or seats. An incumbent Director whose seat was tied shall continue in office until the winner for his/her seat is determined.

## **ARTICLE VII - CUSTODY AND STORAGE OF VOTING MATERIALS ELECTION INSPECTOR'S REPORT**

**7.1. Custody Prior to Election.** The sealed ballots at all times shall be in the custody of the Inspector Elections or at a location designated by the Inspector of Elections until after the tabulation of the vote. (Civil Code Section 5125).

**7.2. Custody After Election.** All election material should be held by the Inspector of Elections until the time allowed by Section 5145 for challenging the election has expired, at which time custody must be transferred to the Association. (Civil Code Section 5125).

**7.3. Inspection.** While election materials are in the custody of the Inspector of Elections, the Inspector must make the ballots available for inspection and review by a Member or the Member's authorized representative. (Civil Code Section 5125).

**7.4. Recount.** Any recount shall be conducted in a manner that preserves the confidentiality of the vote. (Civil Code Section 5125).

**7.5. Preparation of Report.** As soon as possible after the tabulation of the votes, the Inspector of Elections is required to prepare and execute an Inspector of Elections report. Any Inspector of Elections report made by the Inspector of Elections is prima facie evidence of the facts stated in the report.

**7.6. Contents.** The Inspector of Elections shall prepare a report substantially similar to the Association's approved Inspector of Elections report which shall contain the following:

(a) Eligibility Decisions and Void Returned Ballot Envelopes/Ballots. A list of the decisions on all returned ballot envelopes marked "UNOPENED" or "VOID" and explain the reason(s) for each eligibility decision.

(b) Vote Totals. The vote totals and the vote results on all matters the Members voted upon; and any quorum or Member approval requirements.

(c) Execution. The date the report was signed by the Inspector of Elections; the name(s) of the Inspector(s) of Elections, and the signature(s) of the Inspector(s) of Elections.

## **ARTICLE VIII -- ELECTION CHALLENGES**

**8.1. Judicial Enforcement of Election Procedures.** The following remedies are available for a violation of the Act relating to elections.

(a) A Member of the Association may bring a civil action for declaratory or equitable relief for a violation of the Act, including, but not limited to, injunctive relief, restitution, or a combination thereof, within one year of the date the cause of action accrues. Upon a finding that the election procedures of the Act, or the adoption of and adherence to election rules provided by

Article 5 (commencing with Section 4340) of Chapter 3, were not followed, a court may void any results of the election.

(b) A Member who prevails in a civil action to enforce the Member's rights relating to the election procedures in the Act or these election rules shall be entitled to reasonable attorneys' fees and court costs, and the court may impose a civil penalty of up to five hundred dollars (\$500) for each violation, except that each identical violation shall be subject to only one penalty if the violation affects each Member of the Association equally. A prevailing Association shall not recover any costs, unless the court finds the action to be frivolous, unreasonable, or without foundation.

(c) A cause of action under Civil Code Sections 5100 to 5130, inclusive, with respect to access to Association resources by a candidate or Member advocating a point of view, the receipt of a ballot by a Member, or the counting, tabulation, or reporting of, or access to, ballots for inspection and review after tabulation may be brought in small claims court if the amount of the demand does not exceed the jurisdiction of that court. (Civil Code Section 5145).

#### CERTIFICATE OF SECRETARY

The undersigned duly elected and acting Secretary of the mutual benefit nonprofit corporation, known as BAY Village Homeowners Association, Inc., does hereby certify that the above and foregoing rules consisting of 14 pages (including this page), was adopted in compliance with the Act in that the Board: (1) provided the members with General Notice of the proposed adoption of said rules and a copy of the proposed rules at least 28 days before the Board adopted these rules;

(2) voted to approve the proposed rules at a Board meeting (and after considering any member comments); and (3) provided, by General Notice, notice of the adoption of the rules within 15 days of making the rule change (Civil Code Section 4360(c)).

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Signature of Secretary

*Carol Solon*

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Date *October 1, 2000*