



# **ELECTION RULES**

**MISSION HOMES OF MONTCLAIR HOMEOWNERS  
ASSOCIATION**

**[PROPOSED DRAFT]**

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# **ELECTION RULES**

## **MISSION HOMES OF MONTCLAIR HOMEOWNERS ASSOCIATION**

Adopted \_\_\_\_\_, 2019

These Election Rules for the Mission Homes of Montclair Homeowners Association ("Association") are adopted per Civil Code § 5105 of the Davis-Stirling Common Interest Development Act ("Act") and the Association's authority under its Bylaws and Declaration.<sup>1</sup> Unless otherwise indicated, all capitalized terms are as defined in the Declaration or Act. The Election Rules supersede and replace all prior versions.

### **ARTICLE 1: MEMBERSHIP MEETINGS**

#### **1.1 Generally.**

- a. *Annual Meetings.* Annual meetings of the Members are held each year to conduct Association business that requires a membership vote, such as Director elections. *Bylaws, Article IV, Section 1.*
- b. *Special Meetings.* Special meetings may be called by any of the following: (i) President of the Board, (ii) a majority of a quorum of the Board, or (iii) five percent (5%) or more of the Members. If a special meeting is called by the Members of the Association, the request must be submitted in writing to the President or Secretary specifying the nature of the business to be transacted. *Bylaws, Article IV, Section 2; Corp. Code §7510(e).*
- c. *Date, Time and Location of Meetings.* Annual and special membership meetings will be held at the Project or another location in the City as may be designated by the Board and on a date and time designated by the Board. *Bylaws, Article IV, Section 6.*

#### **1.2 Notice Requirements.**

- a. *Notices for Membership Meetings.* Notices of a membership meeting must be sent not less than ten (10) days if given by first class, registered or certified mail (no later than 20 days if given otherwise) but not more than ninety (90) days before the date of the meeting. However, any notice of a membership meeting which accompanies a written ballot must be given no less than thirty (30) days prior to the deadline for voting. *Bylaws, Article IV, Section 3; Corp. Code §7511(a); Civ. Code §5115(a).*

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<sup>1</sup> Declaration of Restrictions for Mission Homes of Montclair recorded on October 12, 1984, as Instrument No. 84-245563, Official Records of San Bernardino County, California, as amended.

- b. *Notices for Special Membership Meetings.* Notice of a special membership meeting properly requested by the Members must be sent not less than 20 days of receipt of the request and the special membership meeting must be held within 35 to 90 days following the receipt of the request. If the Association fails to provide notice of the meeting within 20 days, the Members calling for the special meeting may give notice. *Corp. Code §7511(c).*
- c. *Notice Contents.* Notice of membership meeting will specify the place, date, and hour of the meeting and (i) in the case of a special meeting, the nature of the business to be transacted as specified by those calling the meeting (and that no other business may be transacted except as specified in the notice), or (ii) in the case of the annual meeting, those matters which the Board intends to present for membership action. *Bylaws, Article IV, Sections 2, 3; Corp. Code §7511(a).*
- d. *Delivery.* Notice of any membership meeting must be given as follows:
  - i. *Method of Delivery.* Either personally, by electronic transmission (when consented to by the Member), or by first-class mail, registered or certified, charges prepaid.
  - ii. *Location of Delivery.* To the Member: (a) at a primary or secondary address as provided by the Member (a); or (b) if the Member fails to provide such notice, the last address provided in writing by the Member; or (c) if none of the above, the address of the Member's separate interest. *Civ. Code §§ 4040 and 4041.*
  - iii. *Notice Deemed Given.* Notice of a membership meeting is deemed given when delivered personally, deposited in the mail, or upon completion of electronic transmission to those Members who have consented to same. *Civ. Code § 4050.*

1.3 Chair of Meeting. The President of the Board or another appointed officer can call the membership meeting to order and chair the meeting.

1.4 Quorum. "Quorum" means the minimum number of Members that must be present in person, by proxy or ballots for the Members to have a meeting and take action. Quorum for membership meetings is at least fifty-one percent (51%) of the voting power of the Association. When a quorum is present, the affirmative vote of the majority on any matter shall be the act of the Members unless the vote of a greater number is required by the Governing Documents or law. *Bylaws, Article IV, Section 4.*

1.5 Lack of Quorum/Adjourned Meetings. In the absence of a quorum, no business may be transacted except to adjourn the meeting to another date and time and a majority of the Members present in person or by proxy and entitled to vote may adjourn the meeting to a time and date between five (5) and thirty (30) days from the original meeting. Quorum for such an adjourned meeting shall be 25% of the total voting power of the Members. *Bylaws, Article IV, Section 4; Corp. Code §7512(d).*

1.6 Loss of Quorum. The Members present at a duly called membership meeting at which a quorum is initially present may continue to transact business until adjournment, notwithstanding the loss of quorum. The business must be approved by enough Members to constitute at least a majority of a quorum had a quorum been present. *Corp. Code §7512(c)*.

1.7 Proper Decorum. Only Members are permitted at membership and Board meetings, unless authorized by the Board. Attendees at any meeting are prohibited from engaging in the following:

- a. Making personal attacks, insulting, or belittling others present or otherwise;
- b. Using threatening or abusive language or gestures;
- c. Disturbing, disrupting, impeding, or otherwise interfering with the conduct of any meeting;
- d. Recording (video, audio, or otherwise) any meeting or person without permission;
- e. Interrupting any attendee or Director who has the floor, including during Board discussion.

The Board is authorized to remove an attendee or adjourn the meeting for disorderly conduct or violations of the above. The Board is authorized to seek any penalty, order, or remedy authorized by the Association's Governing Documents and law against any person who violates these rules including suspension of membership privileges or monetary fines.

1.8 Open Forum. A homeowner forum will be held at any membership and Board meeting, as determined by the Board. Owners who wish to speak during open forum must observe the following:

- a. Each owner, regardless of number of homes owned, will be permitted one opportunity to speak during the open forum;
- b. Owners must sign into the meeting and may be required to fill out a comment card and provided it to the Association before open forum;
- c. Each speaker has three minutes (or other time limit as determined by the Board) and must conclude their comments at the conclusion of their allotted time.

*Civ. Code § 4925(b), 5000(b)*.

## **ARTICLE 2: DIRECTORS, NOMINEES, AND QUALIFICATIONS**

2.1 Number and Term of Directors.

- a. The Board will consist of five (5) Directors.
- b. Each Director serves a term of two (2) year or until a qualified successor is elected to fill his/her seat, i.e., if a Director's seat is unfilled, that Director remains.

- c. Directors terms are staggered – three Directors are elected one year; two the next year.

*Bylaws Article V, Sections 1 and 2.*

2.2 Director Nominee Disqualification. A nominee will be disqualified where:

- a. *Membership.* The person is not a Member at the time of their nomination.
- b. *Joint-Owners Eligible for Only One Position.* The person, if elected, would serve on the Board with their joint owner of a home.
- c. *Current on Assessments.* The person is delinquent in the payment of any Assessment, except where the person has paid the Assessment under protest, or where the person has entered into a payment plan.
- d. *No Convictions Impacting Fidelity Bond.* The person has been convicted of a crime that would, if elected, either prevent the Association from purchasing fidelity bond coverage or would cause the termination existing fidelity bond coverage.
- e. *Member for at Least One Year.* The person has not been a Member for at least one year at the time of nomination.

*Civ. Code §§ 5105(b)-(e), 5658, 5665, and 5806.*

2.3 Director Qualifications. Directors must meet the qualifications set forth in the Bylaws and must not be delinquent in the payment of any Assessment, except where the person has paid the Assessment under protest, or where the person has entered into a payment plan. *Civ. Code §§ Code 5105((c), 5665, 5658.*

2.4 Designee of Impersonal Member. In the event a corporation or other impersonal entity is a Member of the Association or holds title to a Lot, it may designate one person to stand for election to the Board on its behalf. *Civ. Code §5105(b)(2).*

### ARTICLE 3: NOMINATIONS

3.1 Nominations. As authorized by the Bylaws, the Association may utilize any permissible means to obtain nominations for Directors, including a nominating committee, and sending out request for candidates.

3.2 Self-Nomination. Qualified persons may nominate themselves for election to the Board by submitting to the Association a written statement signed and dated by the person nominating himself or herself before ballots are sent. The Association may set a cut-off date for the receipt of self-nomination statements, which date will be provided in advance to the Members. *Civ. Code § 5105(a)(3).*

3.3 Write-Ins/Floor Nominations. Write-ins and floor nominations are permitted. *Bylaws, Article VI, Section 1; Civ. Code § 5105(f).*



### 3.4 Notice of Procedures and Deadlines.

- a. *Content and Timing of Notice.* At least thirty (30) days before the deadline set for submitting nominations, the Association shall provide notice to the Members of the procedures and deadlines for submitting nominations.
- b. *Delivery.* Notice of nomination procedures and deadlines must be given personally or by first-class mail, registered or certified, charges prepaid, email (when consented to by the Members); or inclusion in a billing statement, newsletter, or other document that is delivered by one of the methods provided in this section for Members who have not requested personal, email or mail notice.
  - a) *Location of Delivery.* To the Member: (a) at a primary or secondary address as provided by the Member (a); or (b) if the Member fails to provide such notice, the last address provided in writing by the Member; or (c) if none of the above, the address of the Member's separate interest. *Civ. Code §§ 4040 and 4041*
  - b) *Notice Deemed Given.* Notice of nomination procedures and deadlines is deemed given when delivered personally, deposited in the mail, or upon completion of electronic transmission to those Members who have consented to same. *Civ. Code § 4050.*

*Civ. Code §§ 5105(b); 5115(a).*

3.5 Candidate Registration List. The Association shall, or cause the Inspector(s) to, compile a list of duly nominated candidates and permit Members to verify the accuracy of their individual information on the list at least thirty (30) days before ballots are distributed. The Association shall report any requested changes to the Inspector(s). The list, once returned by the Inspector(s), shall be maintained by the Association for three years from the election. *Civ. Code §§ 5200(a)(14), 5210(a).*

## **ARTICLE 4: INSPECTORS OF ELECTION**

### 4.1 Selection.

- a. *Process.* The Board prior to the date ballots are first sent out and at an open meeting of the Board, select either one (1) or three (3) persons as Inspectors of Election.
- b. *Eligible Inspectors.* The Inspector(s) of Election may include any of the following, unless under contract with the Association to provide services for a compensation other than serving as an inspector of election:
  - i. A volunteer poll worker with the County Registrar of Voters;
  - ii. A licensee of the California Board of Accountancy;

- iii. A notary public;
- iv. 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;
- v. An independent third-party person, business entity or subdivision of a business entity who is not under contract to the Association for any compensable service other than as an election inspector. *Civ. Code § 5110(b)*.

4.2 Duties. Duties of Inspectors of Election shall include the following:

- a. *Deliver Ballots and Rules*: Deliver, or cause to be delivered, at least thirty (30) days before an election, to each Member: (i) the ballot(s) either by prepaid first class mail or personal delivery; and (ii) a copy of these election rules by either prepaid first class mail, personal delivery or by posting them to an internet website and including the internet website address on the ballot together with “The rules governing this election may be found here:” in at least 12-point font.
- b. *Membership*. Determine the number of memberships entitled to vote and the voting power of each.
- c. *Voter and Candidate Lists*: Make changes requested by the Association or Members to the voter and candidate lists within two days of the request.
- d. *Validity*. Determine the authenticity, validity and effect of proxies, if any.
- e. *Closing and Reopening of Polls*. Determine when the polls close and whether to reopen the polls to allow Members to cast a ballot after the polls have been closed.
- f. *Receive Ballots*. Receive all ballots. Once received, ballots are irrevocable.
- g. *Custody*. Maintain custody of the sealed ballots, signed voter envelopes, voter list, proxies, and candidate registration list. The sealed ballots, signed voter envelopes, voter list, proxies, and candidate registration list, shall be in the custody of the Inspector or at a location designated by the Inspector until after the tabulation of the vote and until the time allowed by Civil Code § 5145 for challenging the election has expired, at which time custody shall be transferred to the Association. 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 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.
- h. *Challenges*. Hear and determine all challenges and questions in any way 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(s) shall make the ballots available for inspection and review upon written request. A Member may authorize a representative to review the ballots on his or her behalf. Any recount shall be conducted in a manner that preserves the confidentiality of the vote.

- i. *Count Ballots.* Count and tabulate all votes. All votes shall be counted and tabulated by an Inspector of Elections or his or her designee at a properly noticed open meeting of the Board or Members. Candidates and Members may witness, but not interfere with the counting and tabulation of the votes from at least two (2) feet away from the Inspector and his/her assistants.
- j. *Appoint Assistants.* Appoint and oversee additional independent third parties to verify signatures, and to count and tabulate votes as the Inspectors of election deem appropriate provided that such persons are independent third parties.
- k. *Results.* Determine the tabulated results of the election.
- l. *Impartiality.* Perform their duties impartially, in good faith, to the best of their ability, and as expeditiously as is practical in a manner that protects the interest of all Members of the Association. Any report made by the Inspectors of Election is prima facie evidence of the facts stated in the report.
- m. *Miscellaneous.* Perform any acts as may be proper to conduct the election with fairness to all Members in accordance with the Civil Code, the Corporations Code, the Governing Documents, and all applicable rules of the Association regarding the conduct of the election that are not in conflict with the Civil Code. If there are three inspectors, a majority will decide any issues not agreed upon by all. Any inspector report is prima facie evidence of the facts stated therein. *Civ. Code §§ 5105(g)(4); 5110(c) and (d)), 5120, and 5125.*

4.3 Removal. The Board has the power to remove Inspectors who cease to meet the required qualifications, are unable or unwilling to perform their duties, or for other good reason, and to appoint new Inspectors in their place.

## **ARTICLE 5: BALLOTS AND PROXIES**

5.1 Notice. At least thirty (30) days before ballots are distributed, the Association shall provide, or cause to be provided by the Inspector(s), notice to the Members as follows:

- a. *Notice Contents.* (i) The date and time by which, and the physical address where, ballots are to be returned by mail or handed to the Inspector(s); (ii) The date, time, and location of the meeting at which ballots will be counted; and (iii) The names of all candidates that will appear on the ballot.
- b. *Delivery.* The notice provided by this section must be given as follows:

- i. *Method of Delivery.* Either by electronic transmission (when consented to by the Member), by prepaid first-class mail, posting in a prominent location accessible to all Members that has been designated for the posting of general notices in the Association's annual policy statement, inclusion in a billing statement, newsletter, or other document that is delivered by one of the methods in this paragraph. Members may specifically request mail, personal delivery or email notice. *Civ. Code §§ 4040 and 4045.*
- ii. *Location of Delivery by Mail.* To the Member: (a) at a primary or secondary address as provided by the Member (a); or (b) if the Member fails to provide such notice, the last address provided in writing by the Member; or (c) if none of the above, the address of the Member's separate interest. *Civ. Code §§ 4040 and 4041.*
- iii. *Notice Deemed Given.* Notice of a membership meeting is deemed given when delivered personally, deposited in the mail, or upon completion of electronic transmission to those Members who have consented to same. *Civ. Code § 4050.*

## 5.2 Voting Rights and Restrictions.

- a. *Number of Votes.* Each Member shall be entitled to one (1) vote per Lot owned on all matters presented for a membership vote. *Bylaws, Article III, Section 2.*
- b. *Denial of Ballot.* No Member shall be denied a ballot for any reason other than not being a Member at the time when ballots are distributed. *Civ. Code § 5105(g)(1).*
- c. *Voter List.* The Association will permit Members to verify the accuracy of their individual information on the voter list at least 30 days before the ballots are distributed. The voting list will include Member's name, voting power, and either and physical address of the voter's Lot, and mailing address if different from physical address. The Association will advise the Inspector(s) of any requested changes and maintain the voter list, after return by the inspector, for three years from the election. *Civ. Code §§ 5105(a)(7), 5200(a)(14), and 5210(a).*
- d. *Record Date.* The Board may fix a record date for those Members entitled to notice and vote at membership meetings. If the Board does not set a record date, the record date for notice of meetings will be the date before notices are mailed to the Members of a meeting or for voting, the day written ballots are sent. *Corp. Code § 7611.*
- e. *Proof of Membership.* Except as provided in subdivision (f) of this section, no person or entity may exercise the rights of membership without an ownership interest in a Lot. Proof of membership will be a recorded deed or, if the property was transferred within the past thirty (30) days and a copy of the newly recorded deed is unavailable, a completed escrow closing statement.

- f. *General Power of Attorney.* The holder of a general power of attorney for a Member shall not be denied a ballot and may exercise that Member's right to vote consistent with the terms of these rules. *Civ. Code § 5105(g)(2).*
- g. *Cumulative Voting.* Cumulative voting is permitted for any election for two or more Directors and as further provided in the Bylaws. *Bylaws, Article VI, Section 2.*
- h. *Co-Owners.* Where there is more than one (1) Owner of a Lot ("Co-Owner") all such Co-Owners are Members and may attend any meeting of the Association, but only one Co-Owner shall be entitled to exercise the vote of the Lot.
- i. *Presumption of Consent.* Unless the Inspector of Elections receives a written objection prior to the close of balloting from a co-owner, it will be presumed that the voting owner is acting with the consent of his or her Co-Owner(s) when a ballot is submitted.
- j. *Voting for Properly Nominated Candidates.* Members must vote only for those candidate(s) who have been properly nominated prior to the close of nominations.

### 5.3 Proxy Rules

- a. *Generally.* A proxy is a written authorization signed by a Member or the authorized representative of the Member that gives another Member or Members the power to vote on behalf of that Member. "Signed" means the placing of the Member's name on the proxy (whether by manual signature, typewriting, telegraphic transmission, or otherwise) by the Member or authorized representative of the Member. *Bylaws, Article III, Section 5; Civil Code § 5130; Corp. Code § 7613.*
- b. *Permitted with Restrictions.* Proxies are permitted provided they are in accordance with Governing Documents, applicable laws, and these guidelines:
  - i. A proxy provider must be a Member or the Member's representative and the proxy holder must be a Member.
  - ii. Proxies distributed by the Association or any Member must (a) state the matter(s) to be voted on and provide an opportunity for the proxy provider to approve or disapprove the matter(s); (b) state that the vote(s) of the proxy holder will vote on according to the choice(s) specified, and (c) include the name of the person to whom the proxy is to be given for the purpose of casting the vote to reflect the proxy provider's vote(s) as specified on the form of proxy.
  - iii. Proxies distributed by the Association or any Member for voting on election of Directors must also list the name of all candidates that appear on the ballot with the same requirements as above.

- iv. Any instruction given in a proxy must be on a separate page of the proxy that can be detached and given to the proxy holder to retain.
- v. Proxies are not used in lieu of a ballot.
- vi. The proxy holder will cast the Member's vote by secret ballot unless the proxy is revoked by the Member prior to the receipt of the ballot by an Inspector of Elections
- vii. The Association is not required to prepare or distribute proxies.
- viii. Proxies shall expire a) upon conveyance sale of the Member's Lot who provided the proxy; b) upon the death or judicially declared incompetence of the Member who provided the proxy; or c) 11 months unless otherwise provided on the proxy but maximum of three years from execution.
- ix. The Inspector(s) may invalidate any proxy that does not meet the above requirements.

*Bylaws, Article III, Section 5; Civil Code §§ 5105(a)(4) and 5130 and; Corp. Code § 7613.*

5.4 Secret Ballots. All secret ballots mailed or otherwise delivered to the membership will include a double-envelope system and voting instructions for returning the ballots and be delivered to every Member entitled to vote at least thirty (30) day before the initial voting deadline for those elections that require such voting methods. Ballots seeking approval to amend or restate governing documents must be delivered to the Members with the text of the proposed amendment. *Civ. Code §§ 5100 and 5115.*

- a. *Signature*. Ballots do not require a signature; however, ballots signed by Members remain valid.
- b. *Inner Envelope*. The Association will provide two envelopes. To preserve secrecy, the ballot is to be placed within an inner envelope with no identifying information. However, information written on the inner envelope by a Member will not invalidate the ballot. The inner envelope containing the ballot is to be placed into a second "outer" envelope containing identifying information.
- c. *Outer Envelope*. In the upper left-hand corner of the outer envelope, the voting Member must sign his/her name and indicate (print, type, etc.) his/her name and the address entitling the voter to vote. The outer envelope must be addressed to the Inspector of Elections.
- d. *Delivery*. The outer envelope may be mailed to the address on the envelope or delivered to a location specified by the Inspectors of Election. The Member may request a receipt for delivery.

5.5 Quorum by Ballot. Each ballot received within a properly completed outer envelope from a Member whose voting rights have not been suspended is deemed as a Member present at a meeting for purposes of establishing a quorum. *Civ. Code §5115(d).*

## ARTICLE 6: CAMPAIGNING

6.1 Candidate Statements. Along with their nomination application, candidates for the Board may submit a candidate statement consisting of the candidate's photograph and a biography no longer than 250 words.

6.2 Access to Media.

a. *Use of Association Resources.*

- i. *Common Area Bulletin Board.* Subject to availability and authorization by the Board each candidate, Member, or resident, may post information about the election in a reasonable size and quantity on a common area bulletin board, for a reasonable period of time, at no cost to the candidate, Member, or resident.
- ii. *Association Media.* If any candidate or Member is provided access to Association newsletters, website, or other Association media, if any, during an election, or given permission to post campaign material in the common area for purposes that are reasonably related to that election, *then* equal access shall be provided to all candidates and Members. The access shall be limited to information relating to that election and shall include those candidates and Members not endorsed by the Board. 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. The Association and its Directors, officers, and agents shall be immune from liability for the content of those communications to the fullest extent provided by law. *Civ. Code § 5105(a)(1).*
- iii. *Membership List.* Candidates and Members have the right to request the Association's membership list for the purposes of distributing, at their own expense, materials which advocate a point of view reasonably related to elections. Candidates and Members also have the right to contact Members who have opted out of the membership list through the alternate means of communication permitted under Civ. Code §5220 for the purposes of distributing, at their own expense, materials which advocate a point of view reasonably related to the election.

6.3 Use of Common Area During Election Campaign.

- a. *Purpose.* Any candidate, Member, or resident shall be allowed to use, if available, the Association's common area meeting space at no cost for a purpose relating to

association elections (*Civ. Code § 5105(a)(2)*), or other peaceful assemblies or meetings per *Civ. Code §4515*).

- b. *Reservation.* Each candidate, Member, or resident, who wants to use the common area for the above purposes must make a reservation in advance of the date and time requested. Such requests will be granted on a first-come, first-served basis, provided that the area is not already reserved. To assure fairness, each person may not reserve or use the common area for more than two (2) hours on any particular date, and only be allowed one (1) reservation per day.

6.4 No Use of Association Funds for Campaign Purposes. Association funds may not be used for campaign purposes in connection with any election except to the extent necessary to comply with duties of the Association imposed by law. The Association shall not include the photograph or prominently feature the name of any candidate on a communication from the Association or its Board, excepting the ballot, ballot materials, or communication that is legally required, within thirty (30) days of an election. This restriction does not preclude Directors from advocating the election or defeat of any issue or candidate on the ballot; however, they may not use Association funds to do so. *Civ. Code § 5135*.

6.5 Improper Electioneering.

- a. *Prohibited Activities.* In addition to any of the prohibitions in these rules, candidates, Members, and residents, including their tenants, families, employees, agents, visitors, licensees, or servants are prohibited from engaging in any of the following activities:
  - i. Causing any printed campaign or other election related materials to be placed upon or affixed to any portion of the common area without prior written authorization from the Board or management;
  - ii. Attempting to solicit either a vote or proxy from another Member through deceit, harassment, intimidation, improper influence, undue coercion, or force;
  - iii. Attempting to prevent a Member from casting a vote or delegating their right to vote via proxy through deceit, harassment, intimidation, improper influence, undue coercion, or force;
  - iv. Interfering with the counting or tallying of votes;
  - v. Inducing other Members to divert ballots away from the Inspector(s) of Election; or
  - vi. Interfering with any candidate's ability to distribute authorized campaign materials.



- b. *Report Violations.* Members are encouraged to report any electioneering violations they witness to the Board or management.
- c. *Fines.* The Board may levy a fine of \$100 for each violation of this section after proper notice and hearing.

## ARTICLE 7: CANVASSING AND PETITIONING

7.1 Generally. Canvassing and petitioning the Members, the Board, and residents for purposes permitted in *Civil Code § 4515* (i.e., peaceful assembly to discuss social, political, or educational matters related to the community or matters of public interest) or any election, by telephone and/or personal visits to private residences in the development, is limited to the hours of 9:00 a.m. until 7:00 p.m. However, any Member or resident who declines to be contacted, must not be contacted by telephone or personal visits thereafter.

7.2 Impermissible Conduct. Nothing in this Section shall be deemed to permit a Member or resident to contact another Member or resident in a manner that constitutes a breach of the Member's or resident's quiet enjoyment, or a nuisance.

## ARTICLE 8: PETITIONS

8.1 Purpose. The purpose of the petition for a membership meeting must be set forth in the petition so Members know what they are signing. Meetings may only be called for a proper purpose.

8.2 Signatures. Only one Member per Lot may sign petitions (i.e., if there are ten owners on title for one home, all of whom sign a petition, it counts as one signature not ten.) Signatures by persons not on title are invalid. The Association may validate signatures by comparing them against signatures on file with the Association or by contacting signers to verify their signatures.

8.3 Invalidity of Signatures. A petition can be rendered invalid if a sufficient number of signatures are found invalid or rescinded for good cause (such as fraud, mistake, undue influence or other valid grounds for rescission), such that the number of remaining signatures falls below five percent (5%) of voting power of the membership.

8.4 Setting the Date. The date of the special meeting shall be set by the Board and may not be less than thirty-five (35) nor more than ninety (90) days from receipt of request. Notice of the date shall be given to the membership within twenty (20) days from receipt of the petition. *Corp. Code § 7511(c).*

8.5 Recall Petitions. Recalls may not be started against the Board as a whole or any individual Director if: (a) the Board or Director has held office during the current term for less than ninety (90) days; (b) a recall election has been determined in the Board's or Director's favor within the last six (6) months; or (c) for the recall of a Board an annual meeting will be held within six (6) months or less or the recall of individual Directors, their term will end within six (6) months or less. Additionally, if a recall of the entire Board fails, a six (6) month waiting period must be observed before recall petitions may be filed against individual Directors.

## ARTICLE 9: POST-ELECTION RESULTS

9.1 Breaking a Tie. In the event of a tie leaving the outcome of the election unresolved, the following will apply:

- a. If requested by any Member or candidate, the Inspector of Elections, and any designees, will conduct a recount of the ballots. If there is a charge, the Association will bear the expense. Members may observe the recount under the same conditions as the original ballot counting.
- b. Following the recount, if the tie remains, all other newly elected Directors will begin serving their terms. An incumbent Director whose seat was tied shall continue in office until a runoff election determines the winner for his/her seat. Only those candidates who tied for the seat shall be in the runoff.
- c. In lieu of a runoff and if the tied candidates agree, the winner may be decided by a coin toss or the drawing of names by the Inspector of Elections.

9.2 Results of an Election. The tabulated results of the election will be announced immediately after all the ballots have been counted and reported to the Board and recorded in the minutes of the next Board meeting. Within fifteen (15) days of the election, the Board will publicize the tabulated results of the election in a communication to all Members. *Civ. Code § 5120*

9.3 Status of the Ballots after Election. The sealed ballots will be in the custody of the Inspectors of Election or at a location designated by the Inspector(s) until after the tabulation of the vote and until one year for challenging the election has expired, at which time custody will be transferred to the Association. *Civ. Code § 5125.*

9.4 Election Recount. Election recounts, other than the recount if there is a tie after an election, will be conducted as follows:

- a. Any Member of the Association may demand a recount of the ballots provided (i) demand is made in writing to the Inspector of Elections within five days after the election results have been announced, and (ii) the Member pays in advance for the estimated cost of the recount which estimate will be provided by the Inspector of Elections. Monies advanced by the Member shall be refunded if the outcome of the election is changed by the recount.
- b. The recount shall be commenced no less than ten (10) business days following the request for the recount and shall be done by or under the supervision of the Inspector of Elections. If the Inspector of Elections declines to perform the recount, the Board may appoint a replacement Inspector of Elections, using the criteria specified in these rules and the replacement Inspector will assume custody of the ballots.
- c. Any 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 Inspector of Elections and under the supervision of the Inspector. The results of the recount shall be reported to the Board and shall be recorded in the minutes of the next Board meeting and reported to the membership.

## **ARTICLE 10: CODE OF CONDUCT**

10.1 Proper Decorum. Proper decorum is required by all Members whether at any Association meeting, event, function or interactions with others in the community. All persons, whether a Member, Director, committee Member or attendee at a membership or Board meeting, are obligated to act with proper decorum. Although there may be disagreement with the opinions of others, everyone who lives or visits the community must act with respect and dignity and not make personal attacks on others. Members must focus on issues, not personalities and conduct themselves with courtesy toward others, employees, managing agents, vendors, invitees, and other Members of the Association. Directors will act in accordance with Board decisions and will not act unilaterally or contrary to the Board's decisions or take any action to undermine the entire Board, other Directors, vendors, and manager. Proper decorum and conduct as to Directors include the following:

- a. Taking action on any item of Association business outside of a board meeting. *Civ. Code, §4910(a)*.
- b. Continuing to advocate against an action already decided by a majority of the Board. Once a matter is decided, the Board should speak and act with one voice.
- c. Engaging in personal attacks, insult, or belittle any other Director, individual or group by name or otherwise.
- d. Failing to comply with all established Association and Board policies and resolutions.

10.2 Board Responsibilities. The general duties for Directors are to enforce the Association's Governing Documents, collect and preserve the Association's financial resources, insure the Association's assets against loss, and keep the common areas in a state of good repair. *Corp. Code, § 7231*. To fulfill that responsibility, Directors shall:

- a. Review material provided in preparation for Board meetings. *Corp. Code § 7231*.
- b. Review the Association's financial reports. *Civ. Code, § 5500; Corp. Code § 7231*.
- c. Make reasonable inquiry before making decisions. *Corp. Code, § 7231*; and
- d. Act, at all times, in the best interests of the Association.

10.3 Professional Conduct. Directors and committee members must conduct themselves as follows:

- a. *Self-Dealing*. Self-dealing occurs when a Director makes decisions or takes actions that materially benefit the Director or the Director's Relatives at the expense of the

Association. “Relatives” include a person’s kin, spouse, parents, siblings, children, in-law, and anyone who shares the Director’s residence. “Benefits” include, without limitation, money, privileges, special benefits, gifts or other items of value. Self-dealing by a Director is prohibited. Accordingly, Director may not engage in any of the following activities:

- i. Solicit or receive any compensation from the Association (except reimbursement for Association-related expenses);
  - ii. Make promises, enter into agreements on the Association’s behalf without prior Board approval, or engage in other activities with vendors in exchange for goods, services, preferential treatment, kickbacks or other benefits;
  - iii. Solicit or receive any gift, gratuity, favor, entertainment, loan, waiver of penalties, receipt of special privileges or preferential treatment, or any other benefit or thing of value (monetary, non-monetary, or otherwise) for themselves or their Relatives from a person or company seeking or having an existing business or financial relationship with the Association;
  - iv. Seek preferential treatment for themselves or their Relatives;
  - v. Use their position to obtain benefits, any type of favored treatment for themselves or their Relatives in personal and/or business dealings or to obtain a competitive edge in personal or business dealings;
  - vi. Use Association property, services, equipment or business for the gain or benefit of themselves or their Relatives; and
- b. *Confidential Information.* Directors are responsible for protecting the Association’s and Member’s confidential information. Except when disclosure is duly authorized or legally mandate, Directors (and committee Members with access to any confidential information) may not disclose or use confidential information for the benefit of themselves, Members, residents, or their Relatives. (*Civ. Code, §§ 4935, 5215.*) “Confidential information” includes, without limitation;
- i. Private personal information of fellow Directors, committee members, and Association Members (*Civ. Code, § 5215.*);
  - ii. Private personnel information of the Association’s employees (*Civ. Code, § 5215.*);
  - iii. Disciplinary actions against Members of the Association (*Civ. Code, §§ 4935, 5215.*);
  - iv. Assessment collection information against Members of the Association (*Civ. Code, §§ 4935, 5215.*);

- v. Matters discussed in executive session Board meetings and executive meeting minutes (*Civ. Code*, §§ 4935, 5200, 5215.);
  - vi. Confidential and privileged information in any third-party contracts (*Civ. Code*, §§ 4935, 5215.); and
  - vii. Legal opinions and legal disputes in which the Association is or may be involved-- Directors may not discuss such matters with persons not on the Board without the prior approval of the Association's general counsel. Failure to follow these restrictions could constitute a breach of the attorney-client privilege and loss of confidential information. (*Civ. Code*, §§ 4935, 5215.)
- c. *Misrepresentation.* Directors and committee members may not knowingly misrepresent facts.
  - d. *Interaction with Community Members.* Directors and committee members should speak with one voice when communicating the decisions of the Board. To ensure consistent communication with the membership, only the authorized Board or committee spokesperson should convey information to the membership regarding the decisions of the Board. Directors and committee members should not:
    - i. Contradict or take actions contrary to decisions made by the Board;
    - ii. Author or transmit any oral or written communications, physical or electronic (such as email, social media, forums, etc.), to Members or non-members concerning Association business and action, unless authorized to do so by the Board; or
    - iii. Disclose confidential information even after the expiration of their term.

10.4 When Ethics Issues Arise. Situations may arise that are not expressly covered by this policy or where the proper course of action is unclear. Directors should immediately raise such situations with the Board. If appropriate, the Board will seek guidance from the Association's legal counsel.

- a. *Disclosure and Recusal.* Directors must immediately disclose the existence of any conflict of interest they may have as it relates to any issue that comes before the Board.
- b. *Violations of Policy.* Directors, officers, and committee members who violate the Association's policies are deemed to be acting outside the course and scope of their authority. Anyone in violation of this policy may be subject to disciplinary action, following proper notice and a hearing, which can include, but is not limited to:
  - i. Censure;
  - ii. Removal from committees;

- iii. Removal as an officer or Director of the Board;
- iv. Request for resignation from the Board;
- v. Recall by the membership (*Corp. Code*, § 7222); and
- vi. Legal proceedings (*Corp. Code* § 7223).

Prior to taking any of the actions described in subsection b, the Board shall appoint an executive committee to investigate the violation. The committee shall review the evidence of violation, endeavor to meet with the Director/committee member believed to be in violation, confer with the Association's legal counsel, and present its findings and recommendations to the Board for appropriate action. The Board shall endeavor to meet with the Director/committee member in executive session prior to imposing disciplinary action against that person.

**Certificate of Secretary**  
**of**  
**The Mission Homes of Montclair Homeowners Association**

I, the undersigned, the duly elected and acting Secretary of the Mission Homes of Montclair Homeowners Association, do hereby certify:

That the attached Election Rules were duly adopted at a meeting of its Board of Directors held on the 20th day of may, ~~2019~~ 2020

I have hereunto subscribed my name this 20th day of may, 2019 2020

  
Secretary