

Adopted by the Board [March 25th, 2020]

**SHADOW BROOK SWIM CLUB AND HOMEOWNERS' ASSOCIATION  
ELECTION OPERATING RULES**

Whereas, California Civil Code § 5105(a) requires the adoption of Operating Rules (“Rules”) for election procedures; and

Now, therefore, be it resolved that Shadow Brook Swim Club and Homeowners’ Association (the “Association”) does hereby adopt the following Rules:

**A. Effective Date**

These rules shall become effective upon adoption at the noticed board meeting.

**B. Vote by Secret Ballot for Specified Matters**

1. Notwithstanding any other law or provision of the governing documents, the following matters require a vote by secret ballot in accordance with the procedures set forth herein:
  - a. Elections regarding assessments legally requiring a vote.
  - b. Election and Removal of Directors.
  - c. Committees, if any, elected by the Membership.
  - d. Amendments to the governing documents.
  - e. The grant of exclusive use of common area pursuant to California Civil Code § 4600.
2. These Rules do not limit the authority of the Board of Directors to impose assessments sufficient to perform its obligations in accordance with the provisions of the governing documents and the California Civil Code.
3. These Rules do not limit the Board of Directors from making recommendations to the Membership in regard to all matters, including those matters covered under this Section, with the sole exception of advocating the election or defeat of any candidate that is on the election ballot, to the extent deemed necessary to comply with duties of the Association as imposed by the governing documents and the law.

**C. Timeline Prior to Election**

1. The Association shall provide general notice and, if requested by a Member, individual notice, of the procedure and deadline for submitting a nomination at least 30 days before any deadline for submitting a nomination.

2. A nomination must be submitted at least 60 days prior the election, or by a date determined by the Board which would allow timely notice under Paragraph 4 of this Section.
3. The Association shall provide general notice and, if requested by a Member, individual 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 or inspectors 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, if applicable.
4. The Inspector(s) of Elections shall deliver, or cause to be delivered, at least 30 days before an election, to each Member, both of the following documents:
  - a. The ballot(s) and two (2) pre-addressed envelopes with instructions on how to return the ballots via first-class mail or delivered by the Association to every Member.
  - b. A copy of these Election Rules by either of the following methods:
    - i. Posting these 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:"
    - ii. Individual delivery.
5. Written ballots must be returned and received by the Inspector(s) of Elections no later than one hour prior to the scheduled time at the meeting at which votes will be tabulated.

#### **D. Definitions**

"Individual notice" or "individual delivery" means:

1. First-class mail, postage prepaid, registered or certified mail, express mail, or overnight delivery by an express service carrier 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, except if the recipient revokes consent in writing or by email.

#### **E. Ballots and Secret Voting Procedure**

In the event that a replacement ballot is needed, the Inspector(s) of Elections is authorized to provide a replacement ballot to the member. Official ballot materials must be returned, as set forth below. To preserve confidentiality, a voter may not be identified by name or address; or by lot, parcel, or unit number on the ballot. The Association shall conform to those procedures used by California counties for ensuring confidentiality of voter absentee ballots, including all of the following:

1. The ballot shall list all the candidates being voted on, with the candidates in an order randomly determined by the Inspector(s) of Elections. Ballots shall also have as many blank lines available for write-in candidates as positions for that office. If applicable, ballot issues should have simple Yes or No options identified for the issue to be checked or circled, with no further explanation besides the initiative question.
2. The ballot itself is not signed by the voter but is inserted into an envelope that is sealed. This envelope is inserted into a second envelope that is also sealed. In the upper left-hand corner of the second envelope, the voter prints and signs his or her name, address, and lot, or parcel, or unit number that entitles him or her to vote.
3. The second envelope is addressed to the Inspector(s) of Elections, who will be tallying the votes. The envelope may be mailed or delivered by hand to a location specified by the Inspector(s) of Elections. The member may request a receipt of delivery.

#### **F. Fairness in Elections & Use of Association Resources for Campaign Purposes**

1. Association funds shall not be used for campaign purposes in connection with any Association board election. Association funds 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.
2. For the purposes of this Section, the term “campaign purposes” includes, but is not limited to, the following:
  - a. Expressly advocating the election or defeat of any candidate that is on the Association election ballot.
  - b. Including the photograph or prominently featuring the name of any candidate on a communication from the Association or the Board, excepting the ballot and ballot materials, within 30 days of an election, provided that this is not a campaign purpose if the communication is one for which subdivision (a) of Section 5105 requires that equal access be provided to another candidate or advocate.
3. A Member in Good Standing, as defined in the governing documents, may nominate themselves or another Member as a candidate for a seat on the Board of Directors,

subject to these Rules, by submitting a Candidate Application. If nominated by another Member, a Candidate may decline the nomination.

4. The Association shall ensure that if any candidate or member advocating a point of view is provided access to Association media, newsletters, or internet websites during a campaign, for purposes that are reasonably related to that election, equal access shall be provided to all candidates and members advocating a point of view, including those not endorsed by the Board, for purposes that are reasonably related to the election. The Association shall not edit or redact any content from these communications but may include a statement specifying that the candidate or member, and not the Association, is responsible for that content.

It is not the policy of the Association to allow Candidates or Members to campaign via Association media, newsletters, or websites.

5. Access to the Common Area meeting space, if any exists, shall be made available during a campaign, at no cost, to all candidates, including those who are not incumbents, and to all Members advocating a point of view, including those not endorsed by the Board, for purposes reasonably related to the election. This requirement, which is imposed by statute, shall not be interpreted as prohibiting the Association from managing or restricting the dates or times of day when the Common Facilities are available, as long as equal access is provided for all points of view during a campaign. The Association retains its authority and responsibility to enforce usage rules to ensure that the Common Area and Common Facilities are managed, operated, and accessed for the common benefit and enjoyment of all Association members.
6. The Association shall specify the qualifications for candidates for the Board of Directors, and any other elected position, and procedures for the nomination of candidates, consistent with statutory law, the governing documents and subject to these Rules.
7. California Civil Code § 5105(a) requires the Association to specify the voting power of each membership, the authenticity, validity, and effect of proxies, and the voting period for elections, including the times at which polls will open and close, consistent with the governing documents. The voting power of each membership shall be as stated in the governing documents of the Association.
8. Each ballot received by the Inspector(s) of Elections shall be treated as a Member present at a meeting for purposes of establishing a quorum.

#### **G. Inspector(s) of Elections**

1. The Association's Board of Directors shall, for each matter to be voted on falling under Section B of these Rules, select one or three independent third party(ies) as Inspector(s) of Elections. The number of Inspector(s) of Elections shall be one or three.
  - a. An independent third party includes, but is not limited to:
    - 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. A Member of the Association, subject to the below.
  - b. An independent third party may not be:
    - i. A Director or a candidate for Director.
    - ii. Related to a Director or to a candidate for Director.
    - iii. An incumbent in any office in the current election.
    - iv. A Candidate for any office in the current election.
    - v. Related to an incumbent in office in the current election.
    - vi. Related to a Candidate for any office in the current election.
    - vii. A person, business entity, or subdivision of a business entity that is currently employed or under contract to the Association for any compensable services other than serving as an Inspector(s) of Elections.
2. Retention of Election Materials by Inspector.
  - a. The sealed ballots, signed voter envelopes, voter list, proxies, and candidate registration list shall at all times be in the custody of the inspector or inspectors of elections or at a location designated by the inspector or inspectors until after the tabulation of the vote, and until the time allowed by California Civil Code § 5145 for challenging the election has expired [one (1) year from the date that the inspector or inspectors of elections notifies the board and membership of the election results or the cause of action accrues, whichever is later], at which time custody shall be transferred to the Association.
  - b. If there is a recount or other challenge to the election process, the inspector or inspectors of elections shall, upon written request, make the ballots available for inspection and review by an association member or the member's authorized

representative. Any recount shall be conducted in a manner that preserves the confidentiality of the vote.

3. The Inspector(s) 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.
  - g. Determine the result(s) of the election.
  - h. Perform any acts as may be proper to conduct the election with fairness to all members in accordance with the governing documents of the Association regarding the conduct of the election that are not in conflict with these Rules.
4. The Inspector(s) of Elections shall perform all duties impartially, in good faith, to the best of the Inspector(s) of Elections' ability, as expeditiously as is practical, and in a manner that protects the interest of all Members of the Association.
  - a. If there are three Inspector(s) of Elections, the decision or act of a majority shall be effective in all respects as the decision or act of all.
  - b. Any report made by the Inspector(s) of Elections is prima facie evidence of the facts stated in the report.

#### **H. Distribution of Ballots**

The Association may not deny a ballot to a Member of the Association for any reason other than not being a Member at the time that ballots are distributed, except under the following circumstances:

1. The Association may not deny a ballot to a person with general power of attorney for a Member.
2. The Association shall count the ballot of a person with general power of attorney for a Member if returned pursuant to these Rules.

## **I. Proxies**

Any instruction given in a proxy issued for an election that directs the manner in which the proxy holder is to cast the vote shall be set forth on a separate page of the proxy that can be detached and given to the proxy holder to retain. The proxy holder shall cast the member's vote by secret ballot. Proxy forms must comply with Civil Code § 5130(a)(2) to be valid.

## **J. Election and Removal of Directors**

The Association shall hold an election for a seat on the Board of Directors, by secret ballot in accordance with the procedures set forth herein, at the expiration of the corresponding Director's term but not less than once every four (4) years.

## **K. Qualifications of Candidates**

1. A Candidate shall be disqualified for not being a Member of the Association at the time of the nomination, subject to the following:
  - a. A developer is not restricted from making a nomination of a nonmember candidate consistent with the voting power of the developer as set forth in the regulations of the Department of Real Estate (DRE) and the Association's governing documents.
  - 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.
2. A Candidate shall be disqualified if any of the following apply:
  - a. The Candidate is not current in the payment of regular or special assessments, subject to validation, except if:
    - i. The Candidate has paid the regular or special assessment under protest.
    - ii. The Candidate has entered into a payment plan for the delinquent regular or special assessments.
  - b. The Candidate, if elected, would be serving on the Board at the same time as another person who holds a joint ownership interest in the same separate interest parcel as the Candidate, and the other person is either properly nominated for the current election or an incumbent Director.
  - c. The Candidate has been a Member of the Association for less than one (1) year.
  - d. The Candidate discloses, or 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 California Civil

Code § 5806 or result in the termination of the Association's existing fidelity bond coverage.

3. A Candidate shall not be disqualified under the following circumstances:
  - a. For nonpayment of fines, fines renamed as assessments, collection charges, late charges, or costs levied by a third party.
  - b. If the Nominee has not been provided the opportunity to engage in internal dispute resolution pursuant to California Civil Code §§ 5900-5920.

#### **L. Retention Policy**

The Association shall retain both of the following:

1. A candidate registration list.
2. A voter list.
  - a. The voter list shall include name, voting power, and either the physical address of the voter's separate interest, the parcel number, or both.
  - b. 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.

#### **M. Access to Candidate Registration List and Voter List**

1. The Association shall permit Members to verify the accuracy of their individual information on either list at least 30 days before the ballots are distributed.
2. The Association or Member shall report any errors or omissions to either list to the Inspector(s) of Elections who shall make the corrections within two (2) business days.

#### **N. Determining the Voting Outcome**

1. All votes shall be opened, counted, and tabulated by the Inspector(s) of Elections in public at a properly noticed open meeting of the Board of Directors or the Membership. A quorum need not be in attendance at such a meeting. 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, a member of the Board of Directors, 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. However, the Inspector(s) of Elections, or a designee of the Inspector(s) of Elections, may verify the Member's information and signature on the outer envelope prior to the meeting at which the ballots are tabulated. Once a secret ballot is received by the Inspector(s) of Elections,



it shall be irrevocable; only the first ballot received from a Membership shall be counted, the second ballot is to be discarded. California Civil Code § 5120(a).

2. In the event of a tie vote of two or more candidates, the Inspector(s) of Elections shall conduct a run-off election of the tied candidates. The new ballots will be sent within seven (7) calendar days of the original election with a new election date thirty (30) calendar days after the original election date. No new candidates or nominees may be submitted for the new election. All votes shall be counted and tabulated at a properly noticed open meeting of the Board of Directors or the Membership. In the event of a further tie, the Inspector(s) of Elections shall determine the winner by drawing straws at the same meeting.
3. The results of the election shall be promptly reported to the Board of Directors of the Association, shall be recorded in the minutes of the current meeting of the Board of Directors (or next, if quorum of the Board has not been met), and shall be available for review by members of the Association.
4. Within fifteen (15) calendar days of the election, the Board shall publicize the results of the election in a communication directed to the Membership.

#### **O. Amendment of Operating Rules**

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

#### **P. Conflict**

In the event of a conflict between these Rules and any provision of the governing documents, these statutorily mandated Rules shall control.