

Morningstar One Community Association

**AMENDED AND RESTATED
ELECTION AND VOTING RULES**

(Civil Code Sections 5100 and Following)

Effective January 13,
2020

1. **Secret Ballots and the Delegate System**

- a. The Association will utilize a secret ballot process, as described in these Rules for membership votes on:
- (i) Election and removal of Delegates and Alternate Delegates (references below to "Delegates" shall be deemed to also refer to "Alternate Delegates," where appropriate);
 - (ii) *Member Instructions to Delegates:* When instructed, Delegates are required to vote, as nearly as possible, in the proportion of instructions received from members in their Delegate District [Sec. 3.7(e) of the CC&Rs];
 - (iii) Other membership votes on matters requiring the approval of Association members, including:
 - (1) Assessments that require a membership vote;
 - (2) Amendments that require a membership vote;
 - (3) Prior to granting exclusive use of common area where required by Civil Code Section 4600;
 - (4) Other matters where a direct vote of the members is required by Section 3.9 of the CC&Rs.

- b. Other business at Association or Delegate District meetings, such as approval of minutes, motions to close registration, motions to adjourn and other parliamentary procedures required by a recognized system of parliamentary procedure, may be conducted by a show of hands, voice vote or other method, including a roll call vote.
- c. All membership meetings and votes will be conducted in accordance with the Association's governing documents and California Corporations and Civil Codes, as appropriate.
- d. Members will have one vote per unit/lot/parcel owned. Members vote to elect Delegates but do not directly elect Directors.
- e. If allowed by law, any vote to be conducted pursuant to the secret ballot process described herein may be conducted by mail only, without holding a membership meeting for voting purposes. An annual membership meeting must be held for election of Directors. Further, the counting and tabulation of votes may only be performed by inspector(s) of election in the open at a properly noticed open meeting of the members or Board.

2. **Association Membership Meetings, Annual Meeting and Election of Directors**

- a. The Association will hold an Annual Meeting of the members to elect Directors and to conduct Association business. The Annual Meeting is generally held in April.
- b. The Board of Directors consists of five Directors. Directors must be Association members. Directors are elected for two-year terms by the Delegates. (Bylaws, Sec. 5.2.) The terms are staggered with alternate years in which two Directors or three Directors are elected.
- c. The Association will send out a Notice of Annual Meeting with information on when polls will open and when the members and candidates may attend the Annual Meeting and witness the review, count and tabulation of ballots by the inspector(s) of election.
- d. Other meetings of the members may be noticed and held by the Association to vote on matters which are proper for member vote. For member votes that are to be conducted pursuant to the secret ballot process described herein, the meeting notice sent by the Association will include information on when polls will open and when the members may attend a membership or Board meeting to witness the review, count and tabulation of ballots by the inspector(s) of election.

3. **Delegate District Meetings and Election of Delegates**

- a. Each Delegate District will hold an annual balloting of its membership to elect Delegates.

- b. Each district will elect one Delegate and one Alternate Delegate.
- c. Delegates are elected for one-year terms, or until their successor is elected, whichever is later. Delegates must be Members of the Association.
- d. The Association will send out a Notice of Delegate District Balloting with information on when polls will open and when the members and candidates may attend the Annual Meeting and/or Board meeting to witness the review, count and tabulation of ballots by the inspector(s) of election.
- e. Meetings of the members of a Delegate District (“Delegate District Special Meetings”) may be noticed by the Association from time to time to vote on matters which are proper for such vote.

4. **Candidates for Elected Office**

- a. 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. Individual notice shall be delivered pursuant to Section 4040 if individual notice is requested by a member.
- b. Prior to the Annual Meeting or District Meetings, the Association or its Nominating Committee will distribute a request-for-candidates form seeking candidates for the Board or for Delegates. The form must be completed by the candidate or by a nominating member and received by the Association/Nominating Committee by the deadline stated in the form in order to ensure the candidate's name appears on the ballot. Regardless of whether a candidacy form was completed, any candidate may still be nominated by himself, herself or by someone else from the floor of the meeting.
- c. The candidacy form may include the opportunity for each candidate to submit a 150-word written statement reasonably related to the election, including advocating a point of view. Candidate statements received on a timely basis will be included with the Association's mailing of the notice and ballot materials. The Association will not edit or redact these statements but may include a statement specifying that the candidate is responsible for that content.
- d. **Disqualification**
 - i. The Association shall disqualify a person from a nomination as a candidate for not being a member of the Association at the time of the nomination.
 - ii. 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 either prevent the Association from purchasing the fidelity bond coverage required by Section 5806 should the person be elected or

terminate the Association's existing fidelity bond coverage as to that person should the person be elected.

- iii. The Association shall disqualify a nominee for failure to be current in the payment of regular and special assessments which are consumer debts subject to validation. The Association also requires a director to be current in the payment of regular and special assessments. 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. The Association shall not disqualify a nominee for failure to be current in payment of regular and special assessments if any of the following circumstances are true:
 - (1) The nominee has paid the regular assessment or special assessment under protest pursuant to Section 5658;
 - (2) The nominee has entered into a payment plan pursuant to Section 5665;
 - (3) The nominee has not been provided the opportunity to engage in internal dispute resolution pursuant to Article 2 (commencing with Section 5900) of Chapter 10.
- iv. The Association shall disqualify a nominee 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 separate interest parcel as the person and the other person is either properly nominated for the current election or an incumbent director.
- v. The Association shall disqualify a nominee if that person has been a member of the Association for less than one year.
- e. *Meet the Candidates Night:* The Association may hold an informal gathering prior to the Annual Meeting. All Board candidates may participate, including those who did not submit a candidate's form but who have advised the Association of their intention to be nominated from the floor of the meeting. The Association may establish a neutral agenda and guidelines for the event.

5. **Inspector(s) of Election**

- a. One or three inspector(s) of election ("Inspectors") will be selected and appointed by the Board of Directors at an open Board meeting approximately 90 to 120 days prior to the date of the Annual Meeting and any other membership vote to be conducted by the secret ballot process described in these rules.
- b. The Board may, but is not required to, select non-member third parties as the Inspectors, which may include, 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.

- c. The Board will not select a member of the Board of Directors, a candidate for the Board of Directors, a relative of a member of the Board or of a candidate, or a person or business entity currently employed by or under contract to the Association for other compensable services.
- d. The Board may determine to pay compensation to the Inspectors.
- e. Inspectors' Duties:
 - (i) Determine number of memberships entitled to vote and the voting power of each;
 - (ii) Determine the authenticity, validity and effect of proxies, if any;
 - (iii) Receive ballots;
 - (iv) Hear and determine all challenges and questions in any way arising out of or in connection with the right to vote, including verification of signatures;
 - (v) Count and tabulate all votes;
 - (vi) Determine when the polls shall close;
 - (vii) Determine the results of the election;
 - (viii) Perform any acts as may be proper to conduct the election with fairness to all members;
 - (ix) Determine, prior to the mailing of the ballots by the Association, the location where the sealed ballots will be mailed or delivered and where the Inspectors will maintain custody of the sealed ballots until after the tabulation of the vote by the Inspectors; unless the Inspectors select otherwise, the Association's management office will be the default choice to receive the sealed ballots on behalf of the Inspectors; management will not open, review or count the ballots;
 - (x) All duties must be performed in good faith, to the best of the Inspector's ability and as expeditiously as practical, in a manner that protects the interests of all members of the Association.
- f. The Inspectors may appoint additional personnel to assist them in their duties, including registration, counting, tabulating and verifying signatures, but the Inspectors will oversee and be responsible for all actions of such personnel, and such personnel must not be in the category of persons or entities, in subsection "c" above, that the Board may not select.

g. If there are three Inspectors, the decision to act must be by a majority of the Inspectors and is effective, in all respects, as the decision of all.

6. **General Notice Prior to Member Ballot Mailing**. The Association shall provide general notice of all of the following at least 30 days before member 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;
- (d) Individual notice of the above paragraphs shall be delivered pursuant to Section 4040 if individual notice is requested by a member.

7. **Secret Ballot Procedures**

- a. Members have a right to verify the accuracy of their individual information on both the candidate list and the voter list at least 30 days before ballots are distributed. The Association or member shall report any errors or omissions to the Inspector or Inspectors who shall make the corrections within two business days.
- b. The inspector or inspectors of elections shall deliver, or cause to be delivered, at least 30 days before an election, to each member, both of the following documents:
 - (i) The ballot or ballots; and
 - (ii) A copy of the election operating rules; delivery of the election operating rules may be accomplished by either of the following methods:
 - (1) Posting the election operating 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:"
 - (2) Individual delivery.

The Inspectors will also mail to members two preaddressed envelopes. A notice will also be sent with instructions on and deadlines for the return of ballots.

- c. The ballot will not identify the voter by name, address, lot, parcel number or unit number.

- d. For election of Directors the ballot will contain the names of any candidates known to the Association at the time the ballot is mailed and blank lines for candidates nominated from the floor.
- e. The ballot itself is not signed by the voter but is inserted into a sealed, preaddressed (to the Inspectors) envelope (Envelope #1).
- f. The sealed Envelope #1 is then inserted by the voter into a second preaddressed (to the Inspectors) envelope (Envelope #2) which should then be sealed. In the upper left-hand corner of Envelope #2, the voter shall sign his or her name, indicate his or her name, and indicate the address or other identifying account/unit/lot number that entitles him or her to vote. Envelope #2 may be mailed or delivered by hand to the preaddressed address specified on the envelope.
- g. The owners of multiple properties must submit separate sealed ballot envelopes (#1 and #2) for each property.
- h. The member may request a receipt for hand delivery of the sealed Envelope #2 to the location selected by the Inspectors. Any member desiring a receipt for mail delivery should send the ballot by certified mail, return receipt requested, to the location selected by the Inspectors.
- i. Only the Association's ballots in the form which are sent out to the membership by the Association or are provided by the Association at the membership meeting will be accepted by the Inspectors.
- j. No member shall be denied a ballot for any reason other than not being a member of the Association at the time when ballots are distributed.

8. **Proxies**

- a. Proxies will be accepted only if Inspectors determine the proxies meet the requirements of the Bylaws, California Corporations Code and California Civil Code.
- b. Any instruction given in a proxy that directs the manner in which the proxy holder is to cast the vote must be set forth on a separate page of the proxy that can be detached and given to the proxy holder to retain.
- c. The proxy holder must be present in person at the meeting and shall cast the member's vote by secret ballot.
- d. Any member who gives another person his/her proxy does so with the full understanding that the Association and Inspectors will not be responsible for ensuring that any proxy holder votes the proxy in accordance with the proxy holder's direction.

- e. General Power of Attorney: A ballot shall not be denied to a person with a general power of attorney for a member.

9. **Effect of Submitting a Ballot**

- a. Once a member mails or delivers his/her ballot, that ballot cannot be changed or revoked.
- b. Only one ballot may be submitted for each address. Once a member submits a ballot with regard to a particular address, no other ballot or proxy may be submitted for that property. Should more than one ballot be received for any property, the first ballot received will be the one counted. If it cannot be determined which ballot was the earliest received, no ballot will be counted for that property except one ballot for quorum purposes only.

10. **Registration of Secret Ballots at the Meeting**

- a. The Association will have the membership voter list at the meeting.
- b. Management will not register any of the ballots or proxies received by the Association. Registration will be performed by the Inspectors.
- c. All ballots must be sealed in the two sealed, preaddressed envelopes, and Envelope #2 must contain all required information on the upper left-hand corner.
- d. If a member brings ballots for other members to the membership meeting, the ballots must be sealed in separate individual Envelopes #1 and #2 as required above. The Inspectors will register and make all necessary determinations regarding those sealed ballot envelopes.
- e. The Inspectors will review the information provided on the upper left-hand corner of Envelope #2, and will determine whether the failure to include any information should result in the ballot being counted for quorum purposes only or not counted for any purpose. The Inspectors will require, at a minimum, the following:
 - (i) The name of the member must be legible and must match the name of at least one of the record owners of the property as shown on the Association's membership list;
 - (ii) The member's signature must be on the Envelope #2;
 - (iii) The address shown on Envelope #2 must correspond to the member's property address on the Association's membership list.
- f. The ballot of a person with general power of attorney for a member shall be counted if returned in a timely manner.

11. **Registration of Members in Person**

- a. Members wishing to vote in person at the membership meeting must present themselves at the registration table.
- b. A member may not revoke any previously mailed or delivered ballot. If the Inspectors confirm that a ballot was received by the Inspectors, the member may attend the meeting but will not be given a new ballot to vote at the meeting. If the Inspectors confirm that a ballot was not received, the member will be given a ballot and two envelopes to mark, seal and complete and cast in secret at the meeting.
- c. Members voting in person at the meeting must still use the Association-provided ballot and Envelopes #1 and #2, and Envelope #2 must be filled out, sealed and signed. Failure to use the two envelope system at the meeting may lead to invalidation of the ballot cast at the meeting and shall prevent the ballot from being counted at any adjourned date if the meeting is adjourned for lack of a quorum.

12. **Registration of Proxies/Determination of Quorum**

- a. If a person brings proxies to the membership meeting, the Inspectors will review and make all necessary determinations regarding those proxies, including the validity of those proxies.
- b. The Inspectors will determine, based upon the count of the number of members voting (as appropriate) in person, by proxy, or by mail, as shown on the registration list, that quorum has been obtained.
- c. If a member has cast a ballot by mail or delivery to the Inspectors, that ballot will supersede and control over any proxy submitted, regardless of date.
- d. Upon determination that a quorum has been obtained, the Inspectors may close registration at the polls. Once registration at the polls has been closed, no member may revoke his/her proxy.

13. **Adjourned for Lack of Quorum/Recessed Meeting.**

- a. If any membership meeting is adjourned to another date due to lack of quorum, ballots already received by the Inspectors in properly completed, sealed Envelopes #1 and #2 will be valid for adjourned meetings.
- b. The ballots will be counted during a properly noticed open meeting of the Board or during a membership meeting. The Inspectors may request that any meeting be recessed to allow the Inspectors to continue the counting and tabulation of the ballots at another time. Notice of the recessed meeting will be given as required by law. The Inspectors will continue to maintain custody of all ballots until the counting and tabulation is complete.

14. **Observation/Custody of Ballots, Etc.**

- a. Any candidate or other member of the Association may witness the counting and the tabulation of the votes.
- b. No person, including any member of the Association, any employee or manager, may open or otherwise review any ballot prior to the time and place at which the ballots are counted and tabulated.
- c. The sealed ballots at all times will be in the custody of the Inspectors. After the tabulation of the votes, all election materials will be in the custody of the Inspectors for at least one year following conclusion of the vote and until time for challenging the election per Civil Code Section 5145 has expired. After which time, custody of the election materials shall be transferred to the Association.

15. **Materials/Voter List Availability.** Retention of, as Association election materials, both a candidate registration list and a voter list are required. 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 or inspectors who shall make the corrections within two business days.

16. **Consultation With Association Counsel.** The Inspectors will have the authority to confer with Association legal counsel in advance or at the meeting. Legal counsel represents the Association and does not represent the members, Inspectors, Board members, management or any other person. By the adoption of these rules, Association legal counsel has been authorized by the Board of Directors to provide advice to and to waive the attorney-client confidential communication privilege, as determined necessary or prudent by the attorney, to inform and advise the Inspectors regarding issues related to the Inspectors performing their duties for the Association. The Inspectors may confer with Association legal counsel outside the presence of the members.

17. **Nominating/Balloting.** Once registration for the polls has been closed, if a quorum is present, the membership meeting may proceed with nominations from the floor (if applicable), followed by balloting, etc.

18. **Tabulation, Counting, Inspectors' Conduct, Etc.**

- a. Once the balloting has been closed by the Inspectors, the Inspectors may then open the sealed envelopes and begin the count and tabulation of the ballots.
- b. All votes shall be counted and tabulated by the Inspectors in public, at a properly noticed open meeting of the Board or of the members, after verification of a quorum of the membership.

- c. If the Inspectors open the envelopes and determine that there is no ballot in the envelopes, then the Inspectors will indicate on the registration list next to that owner's name that no ballot was received.
 - d. Members and candidates may witness the counting and tabulation from a distance of no less than six feet from any Inspector.
 - e. The Inspectors will not provide members or candidates with information, will not answer questions, engage in discussion and will not provide any interim counts or tabulations. Inspectors will only provide the members or Inspectors with a final count and tabulation.
 - f. Members and candidates may not communicate with the Inspectors during the inspection, registration, count or tabulation process.
 - g. Ballots must be legible and clearly marked.
 - h. Inspectors will certify the results of the membership election by completing a report.
19. **Voting by Delegates.** Delegates shall cast all votes in accordance with the membership instructions from their districts except to the extent the Delegates are permitted by the governing documents to exercise discretion. Delegate-cast ballots are not secret ballots, and by necessity, each must reflect the Delegate district for which the Delegate ballot was cast. The Inspectors of Election may employ such Delegate voting procedures as the Inspectors of Election determine are reasonably necessary to facilitate the Delegates' performance of their duties and ensure the will of the members is accurately transmitted via Delegate voting.
20. **After Tabulation**
- a. Results of the election shall be announced and be promptly reported to the Board of Directors and recorded in the minutes of the next meeting of the Board.
 - b. Results shall be available for review by all members after the certification of the membership meeting by the Inspectors.
 - c. Tie Votes: In the event of a tie vote among any number of the candidates, the Association will notice a special membership meeting and send out ballots to all eligible members for a vote to break the tie. Said vote shall be conducted in accordance with the procedures herein, to the extent they are applicable to a run-off vote. No previously cast ballots or proxies will be used at the meeting to break the tie.
 - d. Within 15 days of the election, the Board shall publicize the results of the election in a communication directed to all the members.

- e. In the event of an election challenge and upon receipt of a written request from a member, the Association will make the ballots available for inspection and review by Association members or their authorized representatives. In order to protect the security of the ballots, one or more Association representatives must be present during such review. The Association will not make proxies available for review or inspection.
- f. Any recount shall be conducted in a manner that shall preserve the confidentiality of the vote.

21. **Access to Association Facilities and Communications/Use of Association Funds.**

- a. If any candidate or member advocating a point of view is provided access to any Association media, including newsletters, Internet websites, other Association publications during any campaign, for purposes that are reasonably related to that election, then all candidates and members advocating a point of view shall be provided with equal access for purposes reasonably related to that election.
- b. The Association shall not edit or redact any content from these communications but will provide a statement specifying that the candidate or member, not the Association, is responsible for that content.
- c. The Association has no common area meeting space.

22. **Opportunity for Internal Dispute Resolution ("IDR").** Any member disputing or challenging any aspect or application of these rules, including, without limitation, the member's qualifications to be nominated as a candidate for the Board, has the opportunity to engage in IDR with the Association pursuant to the procedure provided at Civil Code Section 5915.

The foregoing Amended and Restated Membership Meeting and Voting Rules were adopted January 13, ~~2020~~, by the Board of Directors, Morningstar One Community Association, in a duly noticed open Board meeting following the Board's compliance with Civil Code Section 4360.

ATTESTED TO:

By: Jeff Hartsuyker
Secretary, Morningstar One Community Association

General Notice of Association Rules adoption was given to the membership within 15 days of the adoption date.

ATTESTED TO:

By: [Signature]
Title: C. M.