

**Magee Ranch Homeowners
Association Election Rules**

2020

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MAGEE RANCH HOMEOWNERS ASSOCIATION
ELECTION AND BALLOTING PROCEDURES
Approved _____, 2020

The Davis-Stirling Common Interest Development Act (specifically Civil Code Section 5105(a)) requires property owner associations, such as the Magee Ranch Homeowners Association (the “*Association*”), to adopt rules regarding the procedures that the Association will use in the conduct of elections and the qualifications for being a nominee for election to the Board of Directors (collectively “*Election Rules*”).

In compliance with these requirements of the Davis-Stirling Common Interest Development Act (California Civil Code section 4000 et seq; the “*Act*”), the following Election Rules have been adopted by your Board of Directors and will be used for the annual election of directors of the Magee Ranch Homeowners Association, as well as other votes conducted by the Association that are subject to the secret ballot voting rules under Civil Code Sections 5110 through 5145 (see Paragraph 2(d), below).

The procedures set forth below comply with all current requirements of the Civil Code, the Corporations Code, and Association Governing Documents. From time to time the Election Rules may be further amended or supplemented if changes in underlying law occur, or if revisions are needed to reflect any subsequently enacted State of California legislation pertaining to the conduct of elections or voting by common interest owner associations. Civil Code section 5105(h) provides that existing Election Rules cannot be amended at any time within 90 days prior to the date of a scheduled election

Although Civil Code section 5105(a) designates these Election Rules as a form of “*Operating Rules*”, to the extent that any further changes to the Election Rules are undertaken solely to reflect a rule change that is required by law and the Board has no discretion with respect to the rule change, the amendment may be approved on Board action alone and without necessity of complying with Civil Code sections 4360 and 4365 (which require 28 days prior notification to Members of proposed rule changes and which provide Members with the opportunity to challenge proposed changes in existing rules).

1. Useful Terms From The Davis-Stirling Act That Are Used in These Election Rules.

(a) “*General Delivery*” and “*General Notice*” are terms that are defined in Civil Code section 4045 to include these permissible means of providing information by an Association to its Members when the Act specifically approves use of “General Delivery” or “General Notice”: (i) any method provided for delivery of a document by “Individual Notice” (as defined below); (ii) inclusion of a copy of the Election Rules in a billing statement, newsletter,

or other document that is delivered by one of the methods provided in that section of the Act; (iii) posting the printed document in a prominent location in the Common Area that is accessible to all Members, if the location has been designated for the posting of General Notices by the Association in the Association's Annual Policy Statement; or (iv) if the Association broadcasts television programming for the purpose of distributing information on Association business to its Members, by inclusion in the programming. If a particular Member specifically requests that Individual Notice be used to send information or documents to that Member, then some form of Individual Notice must be used.

(b) “*Individual Delivery*” and “*Individual Notice*” are terms that are defined in Civil Code section 4040 to include the following methods for the delivery of documents and/or notices to the Members when required by the Act: (i) 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; or (ii) e-mail, facsimile, or other electronic means, if the recipient has consented, in writing or by email, to that method of delivery. The consent to receive documents and notices by electronic means may be revoked by the recipient, in writing or by email addressed to the Association.

2. **General Election Rules Requirements.** In accordance with Civil Code section 5105(a), the Association is required to adopt operating rules for the conduct of elections that do all of the following:

(a) Equal Access to Association Media. Civil Code section 5105(a)(1) instructs that owner associations must 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 current policy of the Association to provide candidate access to Association media, newsletters, bulletin boards, or internet websites during a campaign. This action is intended to eliminate any perception of support by the Board for particular candidates or favoritism in the election process.

(b) Access to Association Meeting Space. In accordance with Civil Code section 5105(a)(2) the Association ensures access to the Common Area meeting space, if any exists, 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.

(c) Prohibition on the Use of Association Funds in Elections. Civil Code section 5135 provides that Association funds cannot be used for campaign purposes in connection with any Association Board election and Association funds may only be used in connection with other Association elections if necessary to comply with the duties of the Association imposed by law.

(d) Most Association Member Votes and Elections Must Be Conducted by Use of a Mailed, Secret Ballot Voting Procedure. Civil Code section 5200(a) now requires that practically all significant actions and approvals requiring a vote of the Members be conducted by use of a secret mailed ballot in accordance with the procedures set forth in Civil Code sections 5110 (dealing with the powers and duties of Inspectors of Elections – see Paragraph 5, below), 5115 (rules for the conduct of elections and the ballot mailing procedures), 5120 (the procedures for the tabulation of the secret ballots), and 5125 (the requirements for retention of ballots following an election). These secret ballot voting rules apply to these director elections and to several other important matters that require the prior approval of the Association’s Members:

- (i) The election of directors (unless the Governing Documents say that every owner of a Lot is a member of the Board of Directors The election of directors (unless the Governing Documents say that every owner of a Lot is a member of the Board of Directors);
- (ii) Member votes to remove one or more directors from office;
- (iii) Votes to approve increases in Regular Assessment or to approve Special Assessments when Member approval is required under Civil Code section 5605(b);
- (iv) Any Vote to amend the Governing Documents; and
- (v) Any vote to grant exclusive use common areas to a particular Member or Members (when the Exclusive Use Common Area was not created by the original Governing Documents).

The procedures that must be followed to properly conduct a Member vote by use of a mailed secret ballot vote are set forth in Paragraphs 4 (“*General Secret Balloting Requirements*”) and 5 (“*Duties and Responsibilities of the Inspectors of Elections*”), below.

3. **Qualifications for Candidates.** Association Election Rules must state the qualifications for individuals who wish to be candidates for election to the Board and procedures for the nomination of candidates, consistent with the Governing Documents and the

Davis-Stirling Act. The Act permits only the following qualifications to be imposed on persons who desire to declare their candidacy for election to the Board:

(a) Members have the right to self-nominate themselves, as an alternative to being selected or recruited by the Association's nominating committee;

(b) A person is disqualified from nomination as a candidate if that person is not a Member at the time of nomination;

(c) If title to a Lot is held by an entity, rather than an individual, the governing body of the entity can appoint a natural person to be a member and a candidate. Although not required by the election provisions of the Act, it is strongly recommended that an entity-Member appoint a representative that is in an executive capacity within the entity organization and with authority to make binding decisions on behalf of the entity);

(d) Civil Code sections 5100(g)(3)(B)(ii) and 5105(c)(1) provide that owner associations may require a nominee for election to the Board (and also for continued service as a director) to be current in the payment of Regular and Special Assessments. That is the policy of this Association. If an announced candidate has paid his or her regular assessment or special assessment under protest, as permitted by Civil Code section 5658) or the nominee is participating in a Board-approved payment plan to retire delinquent assessments (Civil Code section 5665) that person is an eligible nominee. A nominee is not disqualified for nonpayment of fines, fines renamed as assessments, collection charges, late charges, or costs levied by a third party (Civil Code sections 5100(g)(3)(B)(II) and 5105(d)). If an announced nominee is delinquent in the payment of regular or special assessments but has been denied the right to participate in internal dispute resolution (Civil Code sections 5900 through 5915) to discuss a payment plan to retire the delinquency in accordance with Civil Code section 5665) the person's status as a nominee is valid.

(e) The Act provides that a person may be disqualified as a candidate if that person would be serving on the Board at the same time as another person who holds a joint ownership interest in the same Lot (Civil Code section 5105(c)(2)). It is the policy of this Association to adhere to this rule and the rule is interpreted to also include the prohibition of two spouses or same sex partners from serving on the Board at the same time.

(f) A nominee is disqualified if that person has been an Association Member for less than a year (Civil Code section 5105(c)(3)).

(g) Finally, the Act says that an Association may disqualify any nominee if the nominee discloses or the Association becomes aware of a past criminal conviction that would (if

the person was to be elected) prevent the Association from obtaining fidelity bond coverage or terminate existing bond coverage (Civil Code sections 5100(g)(3)(B)(i) and 5105(c)(4)).

(h) Because of the difficulties associated with the mailed secret ballot voting process it is not the policy of this Association to prepare the ballot form in a manner that includes a space for write-in candidates.

4. Voting Rights of Members. Civil Code section 5105(g) requires association Election Rules to do all of the following:

(a) No Member may be denied a ballot for any reason other than not being a Member at the time that ballots are distributed in an election;

(b) If a Member has issued a general power of attorney to another person to represent the Member for purposes of voting in an election, the holder of the power of attorney cannot be denied a ballot, although the Association is entitled to receive a copy of the power of attorney. So long as the holder of the power of attorney returns the ballot prior to the deadline for voting, but ballot must be counted;

(c) The Election Rules must require the Inspector or Inspectors of Elections (see Paragraph 5, below) to deliver, or cause to be delivered, to each Member the following documents at least 30 days prior to the date of the election:

(i) the ballot or ballots. 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));

(ii) a copy of these Election Rules (which may be posted on the Association's website or sent by some form of Individual Delivery. If posted the Website must say: "Election Rules may be found here.").

(iii) Candidates for election to the Board of Directors are invited to submit a statement not to exceed 300 words with photo that will be included with the ballot package. The Association cannot edit or redact any content received from any candidate, but the Association can include a statement indicating that the candidate, and not the Association, is responsible for the content of the candidate's statement.

5. The Requirements for Conducting a Vote by Secret Mailed Ballot.

Use of Secret Ballots and Ballot Completion Requirements. The secret ballot voting procedures set forth in Civil Code section 5115 require associations to conduct a vote by mailed secret ballot in accordance with subparagraphs (a) through (f), below:

(a) Notice of the Procedures and Deadlines for Submitting a Nomination for Election to the Board. Owner Associations must provide general notice to all Members of the procedures and the deadline for submitting a nomination for election to the Board at least 30 days before the stated deadline for submitting a nomination. Any Member who has requested to receive this information by some form of Individual Delivery is entitled to notice in that fashion.

(b) Obligation to Provide Notice to All Members of Election and Balloting Requirements Prior to the Distribution of Ballots. Civil Code section 5115(b) provides that owner associations must provide, by some form of General Notice, all of the following to Members at least 30 days before the ballots are distributed:

- (i) 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 appointed by the Board of Directors (see Paragraph 5, below);
- (ii) The date, time, and location of the meeting at which ballots will be counted.
- (iii) The list of all candidates' names that will appear on the ballot.

If a particular Member requests that this voting information be provided to that Member by Individual Notice, then some form of individual notice must be used.

(c) Description of the Secret Balloting Distribution Process. Civil Code section 5115(c) sets forth these rules and procedures for the distribution and return of the secret ballots in those elections or Member votes where the secret ballot voting process is mandated (see Paragraph 1(d), above):

(i) 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 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:

(ii) The ballot itself shall not be signed by the voter. Instead the ballot shall be inserted into an envelope (the "*Ballot Envelope*") that is sealed and that sealed envelope shall

then be 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 other identifier of the Member's Residence (such as a Lot Number) that entitles the voter to vote.

(iii) The second envelope (the "*Return Envelope*") that is provided to Members in the balloting materials is slightly larger than the Ballot Envelope and must be addressed to the Inspector or Inspectors of Elections, who will be tallying the votes. The Ballot Envelope is inserted in the Return Envelope which is then mailed or delivered by hand to a location specified by the Inspector or Inspectors of Elections. The Member may request a receipt for delivery of the Return Envelope.

(iv) A quorum shall be required for the vote 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(s) of Elections shall be treated as a Member present at a meeting for purposes of establishing a quorum.

(v) If the Governing Documents permit cumulative voting in the election of directors, then the balloting process must be designed to accommodate cumulative voting. Cumulative voting shall be permitted in the election of directors in accordance with Section 4.05(c) of the Association Bylaws.

(vi) Except for the meeting that is required by Civil Code section 5120(a) to count the votes an election utilizing these secret ballot procedures may be conducted entirely by mail unless otherwise specified in the Governing Documents.

(vi) 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.

(d) The Process for Tabulating Ballots and Announcement of the Results of the Vote. All votes shall be counted and tabulated by the Inspector or Inspectors of Elections, or the designee of the Inspector(s) of Elections, in public at a properly noticed open meeting of the Board or the 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(s) of Elections, or the 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 ballots are tabulated. Once a secret ballot is received by the Inspector(s) of Elections that ballot is irrevocable.

The tabulated results of the election shall be promptly reported to the Board of Directors and shall be recorded in the minutes of the next meeting of the Board and shall be available for review by the Members of the Association. Within 15 days following the election, the Board shall give General Notice to the Members of the tabulated results of the election.

(e) Determination of Election Results/Succession to Office. The candidates receiving the highest number of votes, up to the number of vacancies to be filled in the election, shall be elected as directors and shall take office immediately following their election. In the event there is a tie vote, the tie shall be broken by random drawing.

(f) Retention of Election Materials and Access to Ballot Information by Members. Civil Code section 5105(a)(7) requires Association to retain, as part of the Association's election materials (as defined in Civil Code section 5200(e)¹, both a candidate registration list and a voter list. The voter list must 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 Residence or if only the Lot number is used. This Association permits its 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 are obligated to report any errors or omissions to either list to the Inspector(s) of Elections, who shall then make the corrections to the list within two (2) business days.

6. Inspectors of Elections; Powers and Duties. Civil Code sections 5105(a)(5) and 5110(A) require owner associations to appoint either one or three Inspectors of Elections to oversee the election and voting process and the tabulation of ballots and announcement of the results of the election (in elections that must be conducted through the use of a mailed secret ballot). It is the policy of this Association that the Inspector or Inspectors shall be selected by the Board of Directors at a meeting that is open to the Members. In accordance with Civil Code section 5110, the persons appointed as Inspectors of Election must be "independent third parties" which means that they cannot be a person or an entity that is currently employed or under contract to the Association for any compensable services other than serving as an Inspector of Elections. Eligible persons include (but are not limited to): a poll worker with the county registrar of voters, a licensee of the California Board of Accountancy (so long as that person is not providing services to the Association other than being an Inspector of Elections), or a notary public.

¹ Civil Code section 5200(e) is problematic, in that it defines the term "Association Election Materials" in the context of Member Inspection rights under Civil Code sections 5200 through 5240. In that context the term includes "returned ballots, signed voter envelopes, the voter list of names, parcel numbers, and voters to whom ballots were to be sent, proxies (if any), and the candidate registration list. Singed voter envelopes may be inspected but may not be copied." Isn't the entire goal of the double envelope secret ballot voting process to retain the confidentiality of each Member's vote? Hopefully future legislation will add clarity to that issue.

Here are the duties and powers of those persons who are appointed by the Board of Directors as Inspectors of Elections, which powers and duties must be performed in good faith, to the best of the abilities of the Inspector or Inspectors, and as expeditiously as practical, and in a manner that protects the interests of all Members of the Association (Civil Code section 5110 and also Civil Code section 5105(a)(4)):

- (a) Determine the number of memberships entitled to vote and the voting power of each membership.
- (b) Determine the authenticity, validity, and effect of proxies, if any. Pursuant to Amendments to the Association Bylaws, use of proxies in connection with membership meetings and membership votes is expressly prohibited.
- (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 and Civil Code section 5115, subparagraphs (a) and(b);
- (g) Determine the tabulated results of the election (with that tabulation being conducted either by the Inspector(s) of Election or the designee of the Inspector(s) of Election in public at a properly noticed open meeting of the Board or the Members (Civil Code section 5120)). The tabulated results of the election must be reported to the Board promptly and recorded in the next meeting of the Board;
- (h) Comply, in a timely manner, with the election document distribution requirements at least 30 days prior to the election date, that are set forth in subparagraph (e)(iii), above, and Civil Code section 5105(g)(4); and
- (i) Perform any acts as may be proper to conduct the election with fairness to all Members in accordance with the Davis-Stirling Act election provisions (Civil Code sections 5100 through 5145). the Corporations Code, and all applicable rules of the Association regarding the conduct of the election that are not in conflict the Davis-Stirling Act.

OTHER COMMON ELECTION RULES
THAT ARE NOT MANDATED BY THE DAVIS-STIRLING ACT:

7. **Campaign Signs.** Campaign signs may not be erected or maintained on any portion of the Common Areas of Magee Ranch. Campaign signs on a candidate's Lot or Residence or on other Lots or Residences (with the permission of the Owners of such Lots), shall comply with the requirements listed on the candidate instruction form and shall be removed no later than 10 days following the date of the election.

8. **Provision of Mailing Labels.** Candidates and other Members are entitled to purchase labels from the Association for mailing election materials by paying the fee currently in place at the time a request for mailing labels is made. Payment must be made at the time the labels are ordered.

9. **Proxy Voting and Cumulative Voting.** The secret ballot voting requirements of the Davis-Stirling Common Interest Development Act do not prohibit the use of proxy voting (subject to certain constraints imposed by Civil Code section 5130). Use of proxies in connection with membership meetings and membership votes is expressly prohibited. Cumulative voting is permitted in the election of directors in accordance with Section 4.05(c) of the Association's Bylaws.

10. **Election of Directors by Acclamation.** When, as of the close of nominations for candidates for election to the Board of Directors the number of eligible director nominees does not exceed the number of vacancies on the Board that are to be filled in the election (as determined by the Inspector or Inspectors of Election) the director nominees shall be deemed to have been elected to office without necessity of distributing secret, mailed ballots so long as the Association has given all Members Individual Notice of the election and notice of the procedures for nominating candidates at least thirty (30) days prior to the close of nominations and the Association permits all qualified candidates to run, once nominated. The report of the Inspector or Inspectors of Election on the applicability of using the election by acclamation process shall be announced at a duly noticed Open Meeting of the Board and shall be noted in the minutes of that meeting.

REPRESENTATIVE TIMELINE FOR THE CONDUCT OF
ASSOCIATION ELECTIONS

Computing the election deadline requirements is an exercise in "back-timing", meaning that you need to start with the date that is established for the conclusion of balloting in the election or other member vote and the tabulation of ballots and announcement of the results of the voting by the Inspectors of Election. Associations need at least two election time-lines to

follow, one for director elections where the law imposes deadlines for notifying Members of nomination deadlines, and another for votes on other matters like Governing Document amendments and Assessment increases, where there are fewer fixed deadlines, but a secret mailed ballot is required.

In the case of director elections, many commentators recommend that the date for conclusion of the election process should be 105 days after the Association sends Members Individual Notice of the election and the procedures for nominating candidates (which notice must be sent 30 days before the deadline fixed for the close of nominations) (Civil Code section 5100(g)). A sample timeline for director elections is provided below.

Civil Code section 5115(b) obligates the Association to provide General Notice to all Members at least 30 days before ballots are distributed informing Members of (i) the date, time and place where ballots must be returned to the Inspectors of Election; (ii) the date, time and location of the meeting at which the ballots will be counted (which can be after the deadline for casting ballots); (iii) the list of candidates names that will appear on the ballot. It is recommended that this publishing date be at least 5 days following conclusion of the nominating deadline. Bear in mind also that Civil Code 5105(a)(7) states that Members have the right to verify their personal information on both the candidate registration list and the “member voter list” at least 30 days before ballots are distributed, so that reminder ought to be included in this General Notice.

Although Civil Code section 5110 requires owner associations to appoint one or three Inspectors of Election, no stated deadline is imposed for making that selection. However, given the long list of responsibilities that fall on the shoulders of the Inspector or Inspectors of Elections, it is recommended that a selection be made before the 30 day notice required by Civil Code section 5115(b) (preceding paragraph) is issued so that the notice can inform the recipient Members who the identity of the persons or persons who will be the Inspector(s) of Elections.

Then 5105(g)(4) and 5115(c) require the Inspector of Elections to deliver the balloting materials and the election rules to all Members at least 30 days prior to the date of the election (meaning the deadline for voting). Although Civil Code section 5105(g)(4) does not state any particular form of delivery, Civil Code section 5115(c) states that the ballots and the two preaddressed envelopes and voting instructions must be sent by first-class mail or “delivered” to every Member. Individual Delivery is advised.

Once the votes have been tabulated and the results of the election announced, the Board of Directors is obligated to provide General Notice to all Members of the tabulated results of the election.

Sample Timeline for Director Elections

DAYS OUT	DATE	CIVIL CODE	ACTION
105		5115(a)	Association to provide general notice to members of elections and procedures for nominating candidates, as well as deadlines for submitting nominations, at least 30 days before close of nominations.
90		5105(h)	Last day to amend election operating rules.
75			Nomination period closes. Association to appoint Inspector of Elections.
65		5115(b)	Association to provide general notice to members to include: (A) date, time and place for return of ballots; (B) date, time and place for counting of ballots; (C) a list of all candidates' names that will appear on the ballot.
60		5105(a)(7)	Association to permit members to verify accuracy of individual information on voter and mailing lists at least 30 days prior to distribution of ballots.
30		5115(c); 5105(g)(4)	5115(c): Distribution of ballots and two pre-addressed envelopes not less than 30 days prior to the deadline for voting. 5105(g)(4): Inspector to deliver or cause to be delivered: (i) the ballot or ballots; (ii) a copy of the election operating rules (via website or Individual Delivery).
0		5120(b)	Deadline for submission of ballots. Annual Meeting scheduled for _____, 2020.
+15		5120(b)	Association to provide general notice of election results.
+380		5145; 5125	5145: Earliest limitations period for Member to bring action on violation of election operating rules. 5125: Earliest day Inspector may transfer custody of the sealed ballots, signed voter envelopes, voter list, proxies (if any), and candidate registration list to the Association.