

GENERAL NOTICE

Notice of Proposed Operating Rule Change

TO: ALL MEMBERS

Pursuant to *Civil Code* §4360, the Board of Directors will be considering a proposed operating rule change at the Board of Directors meeting to be held at the Americana Gardens clubhouse on April 13, 2020, at 2:00 p.m. ("Board Meeting").

Member Comments: If you wish to provide input, submit your written comments via mail, email or fax. **Via mail:** Americana Gardens Homeowners Association, c/o Desert Management, attn: Steffani Miller, Community Association Manager, 400 S. Farrell Drive, #B, Suite 210, Palm Springs, CA 92262. **Via email:** smiller@desertmanagement.com. **Via fax:** 760/778-6846.

Please date, identify your address at Americana Gardens, print and sign your name. Anonymous/unsigned comments will not be considered. Properly submitted comments will be delivered to the Board prior to the Board Meeting. Alternatively, if you can attend the Board Meeting, your constructive comments will be considered by the Board of Directors prior to their making a decision on the proposed rule change. Any and all comments made at the Board Meeting will be subject to the standing rules of the Board related to member comments at Board meetings.

The ~~text~~ of the proposed rule change is set forth in **Exhibit A** attached hereto. A description of the purpose and effect of the proposed rule change is as follows:

Purpose: To provide the Association's Election Rules to conform with new legislation Senate Bill 323 ("SB323").

Effect: The Election Rules will be in compliance with SB323.

EXHIBIT A
Election Rules
(See Attached)

***ELECTION RULES
OF
AMERICANA GARDENS
HOMEOWNERS ASSOCIATION***

*** Adopted May 11, 2020**

IF THIS DOCUMENT CONTAINS ANY RESTRICTION BASED ON RACE, COLOR, RELIGION, SEX, GENDER, GENDER IDENTITY, GENDER EXPRESSION, SEXUAL ORIENTATION, FAMILIAL STATUS, MARITAL STATUS, DISABILITY, VETERAN OR MILITARY STATUS, GENETIC INFORMATION, NATIONAL ORIGIN, SOURCE OF INCOME AS DEFINED IN SUBDIVISION (p) OF SECTION 12955, OR ANCESTRY, THAT RESTRICTION VIOLATES STATE AND FEDERAL FAIR HOUSING LAWS AND IS VOID, AND MAY BE REMOVED PURSUANT TO SECTION 12956.2 OF THE GOVERNMENT CODE. LAWFUL RESTRICTIONS UNDER STATE AND FEDERAL LAW ON THE AGE OF OCCUPANTS IN SENIOR HOUSING OR HOUSING FOR OLDER PERSONS SHALL NOT BE CONSTRUED AS RESTRICTIONS BASED ON FAMILIAL STATUS.

**ELECTION RULES OF
AMERICANA GARDENS HOMEOWNERS ASSOCIATION
(to conform to SB323)**

1. No member shall be provided access to Association media for campaign purposes thirty (30) days prior to an Association election up to the last day ballots can be cast. For purposes of this Section, "Association media" means any Association internet website, newsletter, email blasts, and/or other written communication from the Association. The term "thirty (30) days prior to an Association election" shall mean, for Board of Directors elections, the thirty (30) days prior to the deadline for submitting a self-nomination statement. For all other Association elections (other than Board elections), the term "thirty (30) days prior to an Association election" shall mean the 30 days prior to the date the first ballot materials are sent to the membership. The term "Association media" does not include, within its definition, the official ballot materials sent to the membership which provides an explanation, details and information related to any membership vote, or for board of directors election, any biographical description and/or photographs of nominees that are running for the board of directors. To the extent that the Association permits any other access to Association media by a nominee (or a member advocating a point of view) for purposes that are reasonably related to an election, equal access shall be provided to all other nominees (or members advocating a point of view) that are reasonably related to the election at issue. The Association will not edit or redact any content from a nominee or member communication related to an election, provided, that the nominee or member offering a statement or commentary is responsible for the content and any published comment or comments made. The Association may include a disclaimer specifying that the nominee or member, and not the Association, is solely responsible for the content of the communication.

2. For ballot measures that are required to be submitted to the Membership that are unrelated to Board of Directors election, the Association may (but is not obligated to) have a town hall meeting (not a formal Membership meeting, but an informal gathering of the Members, in which the Members can express their points of view) within 15 days of the date when the election materials are sent to the Membership to amend the Bylaws/ CC&Rs or similar ballot measures requiring Membership approval.

3. The Board of Directors shall appoint one (1) or three (3) Inspector(s) of Elections ("Inspector(s) of Elections"). The Inspector(s) of Elections shall be an independent third party (or parties), as determined by the Board of Directors at an open Board meeting consistent with the election timeline attached hereto and made a part hereof by this reference ("Election Schedule"). An independent third party includes, but is not limited to, a volunteer poll worker with the county registrar of voters, a licensee of the California Board of Accountancy, or a notary public. An independent third party may be a member, but may not be a director or a candidate for director or be related to a director or to a candidate for director. An independent third party may not be a person, business entity, or subdivision of a business entity who is currently employed or under contract to the association for any compensable services other than serving as an Inspector(s) of Elections (hereafter "Independent Third Parties"). Any member(s) who serves as an Inspector of Elections shall be deemed a committee member for purposes of the Association's governing documents as well as any applicable insurance policy.

4. The Inspector(s) of Elections shall determine the number of Memberships entitled to vote and the voting power of each Membership, shall receive the ballots, hear and determine all challenges and questions in any way arising out of or in connection with the right to vote, count

and tabulate the ballots, determine the results of election and shall further perform any acts which may be proper to conduct the election with fairness to all Members in accordance with *Civil Code* §5105 and the Association's governing documents. The Inspector(s) of Elections may also appoint and oversee additional persons to verify signatures and to count and tabulate votes at an Association meeting open to the membership as the Inspector(s) of Elections deem appropriate, provided that the additional persons are Independent Third Parties ("Designees").

5. In order to run for the Board of Directors, a Member must meet the eligibility / qualifications identified below ("Eligibility Requirements"):

a. Must own his/her Residential Unit. If title to the Residential Unit 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 who shall be considered a member eligible to run for the Board of Directors unless they do not meet the other criteria contained in this Section 5.

b. Must be the only Member of the Residential Unit running for election to the Board of Directors and/or serving on the Board of Directors (a candidate shall not meet the eligibility qualifications to be a nominee, if elected, would be serving on the Board at the same time as another person who holds a joint ownership interest in the same Residential Unit as another person who is either properly nominated for the current election or is a director that is not up for election).

c. Must have been a member of the Association for one year or more as of the date of the Nomination Deadline defined in Section 7. below.

d. A nominee for a Board seat (and a director during their Board tenure) must be current in the payment of regular and special assessments provided, however, that an Association may not disqualify a person for nomination (or remove a director) for non-payment of fines, fines renamed as assessments, collection charges, late charges, or other costs levied by a third party for collections. Furthermore, a nominee may not be disqualified (or shall not be removed as a director) and shall be eligible to run for the Board of Directors if that person has paid the regular assessment or special assessment under protest pursuant to *Civil Code* §5658 or the person has entered into a payment plan pursuant to *Civil Code* §5665.

e. A candidate may not be eligible/qualified to run for the Board of Directors if that candidate discloses, or if the Association is aware or becomes aware of, a past criminal conviction that would, if that candidate was elected, either prevent the Association from purchasing the fidelity bond coverage required by *Civil Code* §5806 or terminates the Association's existing fidelity bond coverage.

6. Notwithstanding the provisions of Section 5. above, an Association shall not disqualify a person from nomination, unless that person has been provided an opportunity to engage in Internal Dispute Resolution ("IDR") consistent with the Association's internal dispute resolution policy (or, if the Association has not adopted an internal dispute resolution policy, in accordance with the internal dispute resolution default policy set forth in *Civil Code* §5915) ("IDR Policy"). Notwithstanding any inconsistent scheduling of an IDR in the Association's IDR Policy, any IDR related to eligibility to run for the Board of Directors must be completed by the Nomination Deadline. A Board member must be current in the payment of regular and special assessments and can be removed by the Board of Directors for failure to cure such delinquency in accordance with the provisions contained within the Association's Bylaws and, if none, upon providing written

notice to the Board member to cure the delinquency which notice must be not less than ten (10) days individual delivery and, in addition thereto, the Association shall not remove a Board member for such delinquency unless they offer the Board member IDR consistent with this Section 6.

7. In accordance with *Civil Code §5105(a)(3)*, any Member meeting the Eligibility Requirements, may submit to the Association a written statement nominating himself/herself for election to the Board of Directors ("*Self Nomination Statement*"). The Association shall notify the Members by general notice (via a document delivery that complies with *Civil Code §4040*, e.g., newsletter, posting in a prominent location within the common area, information within billing statement, email if the member has consented to email delivery or first-class mail) and individual notice to those members requesting individual notice of the nomination process ("*Nomination Notice/Process*") and the deadline for Association receipt of the Self-Nomination Statement (the deadline must be at least 30 days after giving the Nomination Notice/Process – hereafter "*Nomination Deadline*"). The written self-nomination shall identify the candidate, containing that person's written consent to serve as a Director and must meet the eligibility requirements identified herein. In light of this self-nomination process, there shall be no Nomination Committee, no write-in candidates or nominations from the floor at any annual or special Member meeting. The Board of Directors may make nominations at any time prior to the Nomination Deadline.

8. Unless a different record date is established by the Board of Directors, the record date for Members entitled to receive notice of any Association election, as well as entitled to vote shall be thirty (30) days prior to the date scheduled for mailing of the ballot materials.

9. The Association shall provide general notice (if a Member has requested individual notice pursuant to *Civil Code §4040*, individual notice shall be provided to the requesting member) of all of the following at least thirty (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(s) of Elections.

b. The date, time, and location of the meeting at which ballots will be counted, provided, however, the Inspector(s) of Elections shall have the right to extend the date and time upon which ballots can be returned and, therefore, a change in the date, time or location of the meeting to afford more members the opportunity to vote.

c. To the extent it's a Board of Directors election, the list of all eligible candidates' names that will appear on the ballot ("*Candidate Registration List*").

d. A statement of the member's right to verify the accuracy of that member's information on the Voter List and, if applicable, on the Candidate Registration List.

10. The Association shall retain, as Association election materials, both the Candidate Registration List, as well as a voter list. The voter list shall include name, voting power and either the physical address of the voter's separate interest, the parcel number or both. The mailing address for the ballot shall be listed on the voter list if it differs from the physical address of the voter's separate interest or if only the parcel number is used ("*Voter List*"). The Association shall permit members to verify the accuracy of their individual information on both the Candidate Registration List as well as the Voter List at least 30 days before the ballots are distributed up to the date the Voter List is finalized (see attached Election Schedule). The Association or the member shall report any errors or omissions to either list (if by member, delivered to the

Association per Civil Code §4035) so that the Association can provide such errors or omissions to the Inspector or Inspectors who shall make the corrections within two business days.

11. Notwithstanding any other law or provision of the Association's governing documents, board of directors elections and other elections required to be submitted to the membership pursuant to *Civil Code* §5100 shall be conducted by a secret written ballot submitted to the Members without a meeting. The Inspector(s) of Elections shall deliver, or cause to be delivered, at least thirty (30) days before an election, to each member the ballot or ballots as well as a copy of the Election Rules (hereinafter, collectively referred to as the "Ballot/Election Rules Delivery"). Ballot/Election Rules Delivery may be accomplished by either posting the Election Rules to an internet website and including the corresponding internet website address on the ballot together with the phrase, in at least 12 pt. font, "*The rules governing this election may be found here*" or by facilitating the Ballot/Election Rules Delivery via individual delivery. If the Inspector(s) of Elections is a member (but still an independent third party), then the Inspector(s) of Elections shall be deemed, pursuant to these Election Rules, to have delegated the responsibility for the Ballot/Election Rules Delivery to the Association (by and through the Association staff or Association's managing agent staff) pursuant to this Section 11. If the Inspector(s) of the Elections is an independent third party who is under contract to the Association for compensable services solely as an Inspector(s) of Elections, then the Inspector(s) of Elections can either facilitate the Ballot/Election Rules Delivery or, alternatively, can delegate the responsibility for the Ballot/Election Rules Delivery to the Association (by and through Association staff or Association's managing agent staff) as set forth in this Section 11. Ballots and two pre-addressed envelopes with instructions on how to return ballots, must be mailed by first class mail or delivered by the Association to every Member not less than thirty (30) days prior to the deadline for voting. In order to preserve confidentiality, a voter may not be identified by name, address, parcel or lot number on the ballot itself. The balloting process shall include all of the following ("Two Envelope Secret Ballot Process"):

a. The ballot shall identify all the nominees or, as it relates to any other election, the proposed action and include the opportunity to specify approval or disapproval of the proposed action.

b. The ballot itself is not signed by the voter, but is placed into a ballot envelope, which is then sealed ("Ballot Envelope"). The Ballot Envelope is then inserted into the second pre-addressed envelope ("Second Envelope") that is then sealed. In the upper left hand corner of the Second Envelope, the voter prints and signs his/her name and separate interest identifier that entitles him/her to vote.

c. The Second Envelope is addressed to the Inspector(s) of Elections. The Second Envelope can be mailed by the Member to the Inspector(s) of Elections or delivered by hand to a location specified by the Inspector(s) of Elections. Any Member can request a receipt for delivery of their ballot. Failure to sign the Second Envelope shall invalidate the ballot.

d. The sealed ballots, signed voter envelopes, Voter List, proxies (only if proxies are permitted by the Association's governing documents), and Candidate Registration List ("Election Materials") shall be kept in the custody of the Inspector(s) of Elections or at a location designated by the Inspector(s) of Elections until after tabulation of the vote and for an additional twelve (12) months following the completion of the election. Thereafter, Election Materials shall be stored by the Association in a secure place for an additional one (1) year.

e. Voting can begin upon receipt of the ballot materials. The voting instructions included in the ballot materials will show the date and time by which ballots must be returned, at which time the polls will be closed and no further ballots will be accepted (unless the Inspector(s) of Elections makes a determination to keep the polls open to afford more members the opportunity to vote). For annual elections to the Board of Directors, ballots must be received by 4:00 p.m. the day before the annual meeting ("Annual Election Deadline"). For other elections, the date will be as specified in the instructions, provided that at least thirty (30) days must be given to return the ballots to the Inspector(s) of Elections. All ballots must be delivered to the location designated by the Inspector(s) of Elections by either the United States Postal Service, overnight delivery service or hand delivery and by the Annual Election Deadline.

f. Notwithstanding anything contained in the Association's governing documents or any other law, the Association:

i. Shall not deny a ballot to a member for any reason other than not being a member on the record date.

ii. Shall not deny a ballot to a person with a valid general power of attorney for a member.

iii. Shall require the ballot of a person with a general power of attorney for a member to be counted if returned in a proper and timely manner.

g. The Inspector(s) of Elections may appoint Association staff or the managing agent's staff to receive the outer envelope containing the ballot materials ("Outer Envelope") and register receipt of the Outer Envelope by verifying the member's information on the voter list and confirming the Outer Envelope has been received by the Inspector(s) of Elections and the date it was received. Notwithstanding the above, the person performing the Outer Envelope verification, unless an Independent Third Party, cannot verify the accuracy of the signature nor shall they be allowed to count and tabulate votes at the meeting where such ballot materials are tabulated.

h. In light of the requirement that the two envelope secret ballot process be utilized for all elections, proxy voting shall not be permitted.

i. Pursuant to the Bylaws, cumulative voting is permitted where at least two (2) positions are being filled.

j. All votes shall be counted by the Inspector(s) of Elections or Inspector Designee(s), at the start of a properly noticed open meeting of the Board of Directors or at a membership meeting. The counting process, which is estimated to take two (2) to four (4) hours, will be followed by the regular business portion of the meeting. Any nominee or other Member of the Association may witness the counting and tabulation of the votes. Anyone who is not an Inspector(s) of Elections or Inspector Designee(s) must remain at least ten feet (10') away from the counting table(s). No person may interfere with, harass or otherwise communicate with the Inspector(s) of Elections or Inspector Designee(s) while the count and tabulation is taking place (other than corporate counsel as deemed necessary by the Inspector(s) of Elections). The Inspector(s) of Elections can cause the removal of any observer who causes interference with or disrupts the counting or tabulation process. Once the Inspector(s) of Elections have finished counting, the Inspector(s) of Elections will thereafter announce the results of the election at the open meeting of the Board of Directors or Members. No person, including any 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 by the

Inspector(s) of Elections.

k. Written ballots may not be revoked once they are submitted to the Inspector(s) of Elections.

12. The balloting process for amendments to governing documents shall be submitted to the Membership in a similar manner as the election for the Board of Directors, except that:

a. The ballots could be sent to the Membership at any time and not in conjunction with the timing of any annual meeting.

b. The addressed envelope may include a statement above the signature line by the owner which would provide, to comply with the governing documents:

By signing below, my vote shall act as my written approval or, if applicable, my written disapproval of the pending ballot measure.

13. The results of any election shall be promptly reported to the Board of Directors and shall be recorded in the minutes of the next board meeting, or membership meeting if appropriate, and shall be available for review by Members of the Association. Within fifteen (15) days of the election, the board shall publicize the results of the election in a communication directed to all Members (this could be done via general notice by posting the results in the common area location identified within the Annual Policy Statement).

14. Association funds should not be used for campaign purposes in connection with any Association election, except to the extent necessary to comply with the duties of the Association imposed by law. For purposes of this Section, the Association can use its funds to have corporate counsel (or other Board-designated individuals) prepare and review appropriate ballots as well as the copying, printing and mailing costs necessary to provide the ballots to the Membership consistent with the Association's governing documents and California law. Association can also add background information and explanation of ballot material. The Association may use funds to distribute, for election of Board of Directors, a biographical description and photograph of the nominees within said election materials. The Board shall not advocate the election or defeat of any nominee that is on an Association election ballot for the Board of Directors.

15. If the owner loses his/her ballot, they may request another ballot, along with the appropriate envelopes from the Inspector(s) of Elections, but they must sign a statement, under penalty of perjury that the original ballot was either lost, destroyed or never received. The Inspector(s) of Elections shall maintain a record of each such request and, if it is determined that the owner voted twice, even by mistake, neither ballot would be counted.

16. Election Rules adopted from and after January 1, 2020, shall not be amended less than ninety (90) days prior to an Association election.

1. Election Rules

2. Inspector(s) of Elections

3. Notice of Nominating Procedure

4. Nomination Deadline

5. Candidate Registration List Finalized

6. Notice of Meeting, Candidate Registration List, Voter List & Record Date (30 Day Notice)

7. Voter List Finalized

8. Ballot Materials Sent

9. Voting Deadline

10. Election Day

| | | |
|--------------------------|--|---|
| <input type="checkbox"/> | <p>1. At Least 120 Days Before Election Day (Initial Scheduled Day for the Return of Ballots)</p> | <p>Election Rules: If the election rules are being restated, general notice of the proposed election rules must have been provided <u>at least 28 Days before</u> the board vote to adopt the restated rules. (Civ. Code §4360).</p> <p><i>If election rules are being amended to conform to SB 323 (what is required by law) the 28 day member notice and comment period do not apply and the BODs can adopt the election rules at an open board meeting at least 90 days prior to the election (or any time before January 1, 2020).</i></p> |
| <input type="checkbox"/> | <p>2. At Least 60 Days Prior to Election Day</p> | <p>Inspector(s) of Elections Appointed</p> |
| <input type="checkbox"/> | <p>3. At Least 30 Days Before Nomination Deadline (via General Notice)</p> | <p>Notice of Nominating Procedure: Notice of the procedure and deadline for nomination ("Nomination Deadline"). (Civ. Code §5115(a)). This should include a list of candidate qualifications along with a statement regarding any potential candidate's right to participate in Internal Dispute Resolution ("IDR") with the association if the potential candidate is subject to disqualification. (Civ. Code §5105(e)).</p> |
| <input type="checkbox"/> | <p>4.</p> | <p>Nomination Deadline</p> |
| <input type="checkbox"/> | <p>5.</p> | <p>Candidate Registration List Finalized: Once the Nomination Deadline has passed and any potential candidate subject to disqualification has been given an opportunity to engage in IDR (see Election Rules), the Candidate List is finalized.</p> |
| <input type="checkbox"/> | <p>6. At Least 30 Days Before Sending Ballot Materials (via General Notice)</p> | <p>Notice of Meeting, Candidate Registration List, Voter List and Record Date (30 Day Notice).</p> <ul style="list-style-type: none"> ❖ Candidate registration list; ❖ Notice of date, time, address of where to send ballots; ❖ Notice of date, time, address of ballot counting meeting; ❖ Statement of member's right to verify accuracy of individual information on both the candidate registration list & voter list; and ❖ Record date established on date the 30 Day Notice is given. |
| <input type="checkbox"/> | <p>7. 15 Days Before Ballot Distribution</p> | <p>Voter List Finalized</p> |
| <input type="checkbox"/> | <p>8. At Least 30 Days Before Voting Deadline</p> | <p>Ballot Materials Sent: (Mailed or delivered to each member on the Voter List)</p> <ul style="list-style-type: none"> ❖ Ballots and two (2) pre-addressed envelopes; ❖ Instructions on how to return ballots; and ❖ Copy of election rules or this statement on the ballot in <u>12-point font</u>: "The rules governing this election may be found here: [website address where rules are posted]" |
| <input type="checkbox"/> | <p>9.</p> | <p>Voting Deadline: (If necessary, the Inspector(s) of Elections can keep polls open and extend the time of balloting to afford an opportunity for more members to return their respective ballots and change the Election Day and ballot counting meeting accordingly).</p> |
| <input type="checkbox"/> | <p>10.</p> | <p>Election Day and Ballot Counting Meeting</p> |
| <input type="checkbox"/> | <p>11. Within 15 Days after Election</p> | <p>Notice of Election Results (General Notice)</p> |