

# WALNUT CREEK MUTUAL NO. TWENTY-EIGHT

## VOTING AND ELECTION RULES

### 1. **General.**

- 1.1 These Rules are intended to comply with Civil Code sections 5100 through 5130 and shall apply to Member voting: (1) to elect or remove Members of the Board of Directors; (2) regarding assessments; (3) regarding amendments to the governing documents; (4) regarding the granting of exclusive use of common area property; and (5) at the discretion of the Board of Directors, regarding any other matter that may be the subject of a vote of Mutual Members. The Mutual may utilize an Inspector or Inspectors of Elections to conduct an election by electronic secret ballot, except for an election regarding regular or special assessments pursuant to Civil Code section 5600. The Board may choose a default method for conducting secret ballot elections (i.e., written secret ballots only, opt in to electronic secret ballot, or opt out of electronic secret ballot) which shall be in effect until notice is otherwise provided.
- 1.2 As used in these Rules, “general notice” means providing notice by one or more of the following methods: any method provided for delivery of an individual notice pursuant to Civil Code section 4040; inclusion in a billing statement, newsletter, or other document; posting the printed document in a prominent location that is accessible to all Members or on the Mutual’s website, if any, if such location(s) has/have been designated for the posting of general notices by the Mutual in the annual policy statement; if the Mutual broadcasts television programming for the purpose of distributing information on Mutual business to its Members, by inclusion in the programming.
- 1.3 As used in these Rules, “ballot” shall mean a secret ballot used in a Mutual election that is conducted in accordance with the procedures set forth in these Rules; a ballot can be an electronic secret ballot or a written secret ballot.
- 1.4 As used in these Rules, “electronic secret ballot” means a ballot conducted by an electronic voting system that ensures the secrecy and integrity of a ballot pursuant to the requirement of Civil Code section 5100, *et seq.*
- 1.5 As used in these Rules, “written secret ballot” means a ballot conducted by a paper voting system that ensures the secrecy and integrity of a ballot pursuant to the requirements of Civil Code section 5100, *et seq.*

### 2. **Access to Mutual Media and Facilities.**

- 2.1 If any candidate or Mutual Member advocating a point of view is provided access to Mutual media including, but not limited to, newsletters, bulletin board, internet website

or television programming 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 Mutual shall not edit or redact any content from these communications.

- 2.2 No candidate or Mutual Member advocating a point of view for purposes related to an election covered by these Rules shall be allowed access to any form of Mutual media including, but not limited to, newsletters, common area bulletin board, internet website, social media pages or television programming after ballots are distributed as specified in Section 8.2 until the conclusion of the election. “Mutual media” shall not include correspondence to the Members via first-class mail, personal delivery or email. For purposes of this section, “advocacy” shall not include the following on behalf of the Mutual and/or its Board: (1) “get out the vote” efforts or publication of communications in any format which are solely for the purpose of encouraging Members to timely return written secret ballots and/or electronic secret ballots to the Inspector(s) of Elections for tabulation; (2) descriptions of the purpose and effect of a proposed rule change pursuant to Civil Code section 4360; or (3) a factual summary of significant changes to the governing documents accompanying the text of a proposed amendment pursuant to Civil Code section 5115(e).
- 2.3 “Equal access” shall mean, for written statements on any platform, publication of written statements not to exceed a predetermined number of words. The Board shall not edit or redact any statement, and shall not be required to publish any statement, which exceeds the predetermined word limit.
- 2.4 The Mutual shall not be responsible or liable for the content of any statement published pursuant to the “equal access” rules. The author or proponent of any statement or point of view shall be solely responsible and liable for the content of their statements. All statements published in Mutual media pursuant to the “equal access” rules must identify the author or proponent, which author or proponent must be a Mutual Member to be eligible to publish in Mutual media. Anonymous statements will not be accepted or published.
- 2.5 No Mutual funds shall be used for campaign purposes in connection with any election which is subject to these Rules, except for the “get out the vote” activities described in Section 2.1, above.
- 2.6 Sections 2.1 through 2.5, above, specify the manner in which the Mutual shall comply with the legal requirement in Civil Code section 5105(a)(1) that “if any candidate or member advocating a point of view is provided access to Mutual 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.”

**3. Qualifications of Candidates.** Consistent with Civil Code section 5105(b), candidates for the Board of Directors and seated Directors must meet qualifications as set forth hereafter.

- 3.1 Be a Member of the Mutual at the time of nomination;
- 3.2 Be current in all regular and special assessment payments;
- 3.3 Not have a past criminal conviction that would either (a) prevent the Mutual from purchasing the fidelity bond or insurance coverage required by Civil Code section 5806 should the person be elected, or (b) terminate the Mutual's existing fidelity bond or insurance coverage as to that person should that person be elected; and
- 3.4 Not be a co-Owner of a particular Unit with another candidate or Director; no more than one (1) Owner of any particular Unit may serve on the Board at the same time.

**4. Nomination of Candidates.** To the extent not in conflict with Civil Code sections 5100 and 5105, candidates for the Board of Directors shall be nominated as set forth hereafter.

- 4.1 At least thirty (30) days before any deadline for submitting a nomination, the Mutual shall provide general notice of the procedure and deadline for submitting a nomination and shall give all Members an opportunity to nominate themselves as candidates for the Board of Directors.
- 4.2 Notwithstanding Section 4.1, above, in order to elect directors by acclamation, the Mutual must provide an initial notice, via individual notice, at least ninety (90) days before the deadline for submitting nominations, that includes all of the following: the number of Board positions that will be filled at the election; the deadline for submitting nominations; the manner in which nominations can be submitted; and a statement informing Members that if, at the close of the time period for making nominations, there are the same number or fewer qualified candidates as there are Board positions to be filled, then the Board of Directors may, after voting to do so, seat the qualified candidates by acclamation without balloting. In addition, the Mutual must provide, between seven (7) and thirty (30) days before the deadline for submitting nominations, a reminder notice, via individual notice, that includes all of the following: the number of Board positions that will be filled at the election; the deadline for submitting nominations; the manner in which nominations can be submitted; a list of the names of all of the qualified candidates to fill the Board positions as of the date of the reminder notice; and a statement reminding Members that if, at the close of the time period for making nominations, there are the same number or fewer qualified candidates as there are Board positions to be filled, then the Board of Directors may, after voting to do so, seat the qualified candidates by acclamation without balloting. If, at the time the reminder notice will be delivered, the number of qualified candidates exceeds the number of Board positions to be filled, the reminder notice is not required.

- 4.3 Interested persons must inform the Mutual's managing agent or Board of Directors in writing of their request to be a candidate for the Board of Directors (self-nomination). Any self-nominated candidate must disclose a past criminal conviction that would either prevent the Mutual from purchasing the fidelity bond or insurance coverage required by Civil Code section 5806 should the person be elected or terminate the Mutual's existing fidelity bond or insurance coverage as to that person should that candidate be elected to the Board.
- 4.4 Nominations for candidates shall close on the date established by the Mutual. All nominations must be in writing and delivered to the Mutual by the deadline established by the Mutual, which deadline shall be in advance of the date on which the ballots are scheduled to be distributed.
- 4.5 The Mutual shall review all persons so responding for compliance with the qualifications identified in Section 3 of these Rules. In order to conduct an election by acclamation, within seven (7) business days of receiving a nomination, the Mutual must provide: 1) a written or electronic communication acknowledging the nomination to the Member who submitted the nomination; and 2) a written or electronic communication to the nominee, indicating whether the nominee is or is not a qualified candidate. If the nominee is not a qualified candidate, the Mutual must communicate the basis for the disqualification and the procedure by which the nominee may appeal the disqualification (which procedure shall be compliant with Civil Code section 5900).
- 4.6 All qualified persons who timely respond to the Mutual's solicitation shall be candidates for the Board of Directors at the next election.
- 4.7 For any election of Directors and any recall election, the Mutual shall provide general notice of the following at least thirty (30) days before the ballots are distributed:
- 4.7.1 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;
  - 4.7.2 For an election where voting by electronic secret ballot is permitted, the date and time by which electronic secret ballots are to be transmitted to the internet-based voting system and preliminary instructions on how to vote by electronic secret ballot upon commencement of the voting period;
  - 4.7.3 The date, time and location of the meeting at which a quorum will be determined (if the governing documents require a quorum) and at which ballots will be counted;
  - 4.7.4 The list of all candidates' names that will appear on the ballot; and

## **5. Electronic Secret Ballot.**

- 5.1 A Member may change their preferred method of voting from electronic secret ballot to written secret ballot, or written secret ballot to electronic secret ballot, no later than ninety (90) days before an election.
- 5.2 In any election conducted in whole or part by electronic secret ballot, the electronic secret ballot and a written secret ballot shall contain the same list of items which are the subject of the vote.
- 5.3 The Mutual shall maintain a voting list identifying which Members will vote by electronic secret ballot and which Members will vote by written secret ballot, and include information on the procedures to either opt out of or opt into voting by electronic secret ballot, as applicable, in the annual statement prepared pursuant to Civil Code section 5310.
- 5.4 A Member who votes by electronic secret ballot shall provide a valid email address to the Mutual.
- 5.5 Nomination of candidates from the floor of membership meetings shall be prohibited.
- 5.6 An electronic secret ballot may be accompanied by or contained in an electronic individual notice in accordance with Civil Code section 4040(a).
- 5.7 In an election where Members are permitted to opt into voting by electronic secret ballot, the Mutual shall be required to send electronic secret ballots only to those Members who have opted into voting by electronic secret ballot.
- 5.8 In an election where Members are permitted to opt out of voting by electronic secret ballot to vote by written secret ballot, the Mutual shall be required to mail written secret ballots only to those Members who have opted out of voting by electronic secret ballot or for whom the Mutual does not have an email address required to vote by electronic secret ballot. In addition, in any opt out election the Mutual shall provide individual notice at least thirty (30) days before the deadline to opt out of voting by electronic secret ballot, of all of the following:
  - 5.8.1 The Member's current voting method;
  - 5.8.2 If the Member's voting method is by electronic secret ballot and the Mutual has an email address for the Member, the email address of the Member that will be used for voting by electronic secret ballot;
  - 5.8.3 An explanation that the Member is required to opt out of voting by electronic secret ballot if the Member elects to vote by written secret ballot;

- 5.8.4 An explanation of how a Member may opt out of voting by electronic secret ballot; and
- 5.8.5 The deadline by which the Member is required to opt out of voting by electronic secret ballot if the Member elects to exercise that right.
- 5.9 A vote made by electronic secret ballot is effective when it is electronically transmitted to an address, location, or system designated by an Inspector(s) of Elections.
- 5.10 The Mutual shall deliver, at least thirty (30) days before the election, individual notice of the electronic secret ballot to each Member who will vote via electronic secret ballot. The notice may be accomplished by electronic submission to an address, location, or system designated by the Member and shall contain instructions on both on the following:
  - 5.10.1 How to obtain access to the internet-based voting system; and
  - 5.10.2 How to vote by electronic secret ballot.
- 5.11 A vote made by electronic secret ballot is effective when it is electronically transmitted to an address, location, or system designated by an Inspector or Inspectors of Elections.
- 5.12 A vote made by electronic secret ballot shall not be revoked.
- 5.13 If the Mutual does not have a Member's email address required to vote by electronic secret ballot by the time at which ballots are to be distributed, the Mutual shall send the Member a written secret ballot.
- 5.14 For purposes of determining a quorum, a Member voting electronically shall be counted as a Member in attendance at the meeting. Once the quorum is established, a substantive vote of the Members shall not be taken on any issue other than the issues specifically identified in the electronic vote.

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

- 6.1 The Board shall appoint one (1) or three (3) Inspector(s) of Elections who shall perform all functions required by Civil Code sections 5105 and 5110, including:
  - 6.1.1 Determine the number of Members entitled to vote and the voting power of each;
  - 6.1.2 Determine the authenticity, validity and effect of proxies, if any;
  - 6.1.3 Receive and be the custodian of ballots and direct the location to which ballots shall be sent until tabulated by the Inspector(s) of Elections;

- 6.1.4 Provide each Member voting by electronic secret ballot with the following:
- a. A method to authenticate the Member's identity to the internet-based voting system;
  - b. A method to transmit an electronic secret ballot to the internet-based voting system that ensures the secrecy and integrity of each ballot; and
  - c. A method to confirm, at least thirty (30) days before the voting deadline, that the Member's electronic device can successfully communicate with the internet-based voting system.
  - d. Any internet-based voting system that is utilized shall have the ability to accomplish all of the following:
    - i. Authenticate the Member's identity;
    - ii. Authenticate the validity of each electronic secret ballot to ensure that the electronic secret ballot is not altered in transit;
    - iii. Transmit a receipt from the internet-based voting system to each Member who casts an electronic secret ballot;
    - iv. Permanently separate any authenticating or identifying information from the electronic secret ballot, rendering it impossible to connect an election ballot to a specific Member; and
    - v. Store and keep electronic secret ballots accessible to elections officials or their authorized representatives for recount, inspection, and review purposes.
- 6.1.5 Correct errors or omissions on the candidate registration list (if any) and/or voting list within two (2) business days of the errors or omissions being reported, with receipt of satisfactory documentary evidence;
- 6.1.6 Hear and determine all challenges and questions in any way arising out of or in connection with the right to vote;
- 6.1.7 Count and tabulate all votes;
- 6.1.8 Determine when the polls shall close, with the discretion to extend the deadline for voting as necessary;
- 6.1.9 Determine the results of the election;

- 6.1.10 Report the results of the election to the Board of Directors; and
- 6.1.11 Retain the candidate registration list and voter list for the time period set forth in Section 8.4.5, below.
- 6.2 Eligible Inspectors of Elections may include:
  - 6.2.1 Any Mutual Members who are not Members of or candidates for the Board of Directors nor relatives of Members or candidates for the Board of Directors; and
  - 6.2.2 An independent third party who is not currently employed or under contract to the Mutual for any compensable services other than serving as an Inspector of Elections.
- 6.3 The Mutual may, at the discretion of the Board of Directors, provide reasonable compensation to the Inspector(s) of Elections.
- 6.4 The Inspector(s) of Elections may appoint and oversee additional persons to verify signatures and to count and tabulate votes as the Inspector(s) deem appropriate, provided that the appointed persons would themselves be eligible to serve as Inspector(s) of Elections pursuant to Section 6.2, above.

## **7. Voting Rights.**

- 7.1 Each Mutual Member shall be entitled to a single vote with regard to each matter that is the subject of a pending election. For purposes of these Rules, therefore, all record owners of a single Unit shall collectively constitute one “Mutual Member.” In an election of Directors, each Mutual Member shall be entitled to cast the number of votes equal to the number of Directors to be elected. However, cumulative voting is not permitted. Write-in candidates are not permitted in an election of Directors.
- 7.2 A Member shall not be denied a ballot for any reason other than not being a Member at the time when ballots are distributed.
- 7.3 A ballot may not be denied to a person with general power of attorney for a Member and a ballot of a person with general power of attorney for a Member must be counted if returned in a timely manner (i.e., by the ballot return deadline).
- 7.4 The voting period will run from the date on which ballots are distributed (as specified in Section 8.2, below) until the polls are closed.



## **8. Voting Procedures.**

- 8.1 Candidate Registration List and Voter List. The Mutual shall permit Members to verify or correct, by providing documentary evidence (including, but not limited to, a grant deed or general power of attorney) satisfactory to the Inspector(s) of Elections, the accuracy of their individual information on the candidate registration list (as applicable). The Mutual shall maintain a voter list which shall include each voter's/Member's name, voting power, preferred voting method (electronic or written secret ballot) and either the physical address of the voter's (a) Unit, or (b) parcel number, or (c) both, and the mailing address for the ballot if it differs from the physical address of the separate interest or if only the parcel number is used.
- 8.2 Mailing of Voting Packets. At least thirty (30) days before the election, one voting packet shall be delivered to each Mutual Member, unless the Mutual conducts an election by electronic secret ballot, in which case only Members who will vote by written secret ballot shall be mailed or delivered a packet containing the following:
- 8.2.1 The ballot or ballots;
  - 8.2.2 Two (2) sealable envelopes. The smaller (inner) envelope shall have no markings identifying the voter. The larger (outer) envelope shall be pre-addressed to the Inspector(s) of Elections, Walnut Creek Mutual No. Twenty-Eight. The upper left corner of the larger envelope shall contain the Member's name, address, and Unit number that entitles the Member to vote (or provide spaces to fill in such information) and provide a place for the Member's signature;
  - 8.2.3 Instructions on how to use the two-envelope system;
  - 8.2.4 Notice of the date, time and location of the meeting of the Board or Members at which the ballots will be opened and tabulated; and
  - 8.2.5 A copy of these Voting and Election Rules (via individual delivery or posting to an internet website and including the corresponding website address on the ballot together with the phrase, in at least 12-point font: "The rules governing this election may be found here:").
- 8.3 Ballot Content. Each ballot shall contain the following:
- 8.3.1 In an election of Directors, each candidate's name listed alphabetically;
  - 8.3.2 The identification of any other matter that is the subject of a pending Member vote;
  - 8.3.3 A statement of when ballots must be returned by mail or hand delivery.

#### 8.4 Receipt of Ballots.

- 8.4.1 All ballots shall be received by the Inspector(s) of Elections at locations as specified by the Inspector(s) of Elections.
- 8.4.2 If so directed by the Inspector(s) of Elections, the Mutual's management staff shall maintain a log of all ballot envelopes received, noting whether the outer envelopes were signed or unsigned. The Inspector(s) of Elections may contact Members who return unsigned envelopes and make arrangements for Members to sign the envelopes prior to the date that the ballots are opened and tabulated.
- 8.4.3 Once a ballot has been received by the Inspector(s) of Elections, it may not be revoked. A ballot shall be considered received when the voting packet envelope (the outer envelope containing the inner envelope containing the ballot) has been received by the Inspector(s) of Elections.
- 8.4.4 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 if a quorum is required by the governing documents or California law to conclude the election.
- 8.4.5 The sealed ballots, signed outer voter envelopes, voter list, proxies, and (if applicable) candidate registration list (collectively, the "Mutual election materials") shall at all times be in the custody of the Inspector(s) of Elections or at a location designated by the Inspector(s) until after the tabulation of the vote at a properly noticed, open meeting of the Members or the Board of Directors. Following the meeting at which ballots are opened and tabulated, the Inspector(s) of Elections shall proceed pursuant to Section 11.2, below.

- 8.5 Text of Amendment. If the Mutual conducts an election to approve an amendment of governing documents by electronic secret ballot, the Mutual may email the text of the proposed amendment to those Members who vote by electronic secret ballot. The Mutual shall also deliver a written copy of the text of the proposed amendment to those Members upon request and without charge. If a Member votes by written secret ballot, the Mutual shall deliver a written copy of the text of the proposed amendment to the Member with the ballot.

- 8.6 Proxies. The use of proxies in connection with the votes of the Members and/or meetings of the Members is expressly prohibited.

**9. Election by Acclamation.** If the Mutual has complied with the requirements of these Rules regarding election by acclamation and the provisions of Civil Code section 5103 and/or any successor statutes related to election by acclamation and, if, as of the published deadline for nominations, the number of qualified candidates nominated does not exceed the number of

Directors to be elected, then the individuals nominated and qualified to be elected may be declared elected by the Board of Directors at an open meeting of the Board of Directors (the agenda for which must reflect the name of each qualified candidate that will be seated by acclamation if the item is approved), after which written notice of the election results shall be given to the Members.

## **10. Tabulation of Ballots.**

- 10.1 The voting packet envelopes shall be opened by the Inspector(s) of Elections after the close of the of the polls which shall be determined by the Inspector(s). The Inspector(s) of Elections, or their designees, may verify the Member's information and signature on the outer envelope prior to the opening and tabulation of ballots.
- 10.2 The voting packet envelopes shall be opened and the ballots tabulated by the Inspector(s) of Elections in public at a properly noticed, open meeting of the Members or of the Board of Directors. A person, including a Member of the Mutual or an employee of the management company, shall not open or otherwise review any tally sheet of votes cast by electronic secret ballots before the time and place at which the ballots are counted and tabulated.
- 10.3 Any candidate or other Member of the Mutual may witness the counting and tabulation of the ballots. However, no Mutual Member or candidate shall communicate with the Inspector(s) during the tabulation process, and all Members and candidates must remain at least five (5) feet away from the counting area. The Inspector(s) of Elections may cause the removal of any observer who interferes with or disrupts the counting or tabulation process.
- 10.4 At the meeting at which ballots are to be opened and tabulated, the Inspector(s) of Elections may announce to the Members present those Members who voted by written secret ballot and neglected to sign the outer envelope and provide an opportunity for those Members to sign the outer envelope prior to tabulation of the ballots.
- 10.5 In the event there is a tie between candidates for the last open position on the Board, the candidates subject to the tie may decide on an appropriate method of breaking the tie (e.g., flip a coin, draw straws, etc.). If the candidates subject to the tie cannot agree on a method to break the tie, then a runoff election shall be conducted via electronic secret ballot and/or written secret ballot in accordance with these Rules. Under these circumstances, the procedures set forth above regarding the nomination of candidates shall not apply.
- 10.6 The 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 of Directors.

## 11. Additional Procedures.

- 11.1 The Board of Directors shall give general notice of the tabulated results of the election within fifteen (15) days by a communication directed to all Members.
- 11.2 Following general notice of the tabulated results of the election being provided to the Members, the Inspector(s) of Elections shall designate that custody of all ballots, signed outer voter envelopes, voter list, proxies (if applicable), candidate registration list and tally sheet of votes cast by electronic secret ballot (if applicable) (collectively, "Mutual election materials") be transferred to the custodian of records for the Mutual. After such designation has been made, the Inspector of Elections shall immediately transfer the Mutual election materials to the Mutual and the Mutual shall maintain the Mutual election materials for such time period as required by Civil Code section 5210.
- 11.3 In the event of a re-count or challenge, the Inspector(s) of Elections shall, upon written request, make the Mutual election materials available for inspection by the challenging Mutual Member or its authorized representative. Outer voter envelopes may be inspected but may not be copied. The Mutual shall be entitled to redact the address of any Member on the voter list who has opted out of the membership list and the voter list. Any re-count shall be conducted in a manner designed to preserve the confidentiality of the vote.

*The foregoing Election Rules were adopted by the Board of Directors of Walnut Creek Mutual No. Twenty-Eight at an open meeting of the Board held on \_\_\_\_\_, 2025, pursuant to Civil Code section 4355(b)(4) and are effective as of that date.*

Date: \_\_\_\_\_

**WALNUT CREEK MUTUAL NO. TWENTY-EIGHT**

By: \_\_\_\_\_  
Secretary

Print Name: \_\_\_\_\_