

MINUTES
FOURTH WALNUT CREEK MUTUAL
FRIDAY, MAY 8, 2020 AT 2:00 P.M.
ZOOM

President Swisher called to order a special meeting of the Board of Directors of Fourth Walnut Creek Mutual at 2:00 p.m. on Friday, May 8, 2020 via ZOOM.

ROLL CALL: PRESENT: Vicki Swisher President
 Carolee Perrich Treasurer
 Pamela Ovalle Secretary
 Sheldon Schwartz Director

ABSENT: Linda Brown, Vice President

Representing Mutual Operations was Anne Paone, Administrative Secretary.

Ms. Swisher welcomed 5 residents in attendance.

RESIDENTS' FORUM

A resident had a question regarding water pressure.

Ms. Swisher reported that areas of the Mutual were losing water pressure at night. MOD searched for leaks, etc. EBMUD said they had no explanation. Mr. Donner told EBMUD that there were not any problems that MOD could find. EBMUD came out and stated a vapor lock is occurring. They agreed that it is probably their problem. Ms. Swisher advised members to turn on the shower when they first get up. This will help move the air out.

ADOPTION OF ELECTION RULES

Ms. Swisher gave a summation of the new election rules as follows:

- Much like municipal governments, HOAs, such as Fourth Mutual, use elections to choose members to serve on the association's board of directors. The Davis-Stirling Act sets forth certain basic ground rules for these elections. The HOAs conduct the elections through a paper and mail based balloting system that closely resembles California's vote-by-mail process. Beyond these basic ground rules, however, the Davis-Stirling Act leaves many aspects of the association elections process to the discretion of the association, including the board itself.
- Over a year ago, an **anti-HOA lobbying organization** started developing Senate Bill 323. The proponents of this bill asserted that incumbent boards have seized upon the discretions permitted in their current governing documents to undermine the democratic function of the elections by, among other things, disqualifying members from running for the board, limiting members' ability to vote, and rigging the balloting procedures. To prevent such manipulation of the process, this bill enacted a series of reforms to the laws governing HOA elections.
- Ms. Swisher thought it was important to note that to her knowledge Fourth Mutual Boards have never used the current governance in Policy 10.6 to unfairly restrict any Mutual Member from running for Board office. In fact, the Mutual typically has difficulty in finding Members interested in running for the Board.
- None-the-less, the California legislature and the Governor agreed with the proponents of SB 323 and enacted the Bill on January 1, 2020. This required extensive changes to Fourth Mutual policy 10.6 dealing with mandatory and permissive candidate

qualifications, a longer election cycle, nomination procedures, who may serve as inspectors of election, verification of voter and candidate information, the inclusion of email addresses in the membership list, and the inspection and retention of election materials. In many cases the bill required an expansion in the language contained in the Fourth Mutual policy, not necessarily a change in the election rules. Of particular note, this bill:

1. Requires an HOA to hold elections for a seat on the board of directors at the end of each expiring term and in any event at least once every four years.
2. Prohibits an HOA from amending its elections operating rules within 90 days of an election.
3. Requires an HOA to disqualify a nominee from becoming a candidate for the board of directors if the nominee is not a member of the association at the time of the nomination.
4. Limits the grounds on which an HOA may disqualify a nominee from becoming a candidate for the board of directors. Examples of grounds for disqualification include:
 - The nominee has not paid the regular or special assessments and has not entered into a payment plan or agreed to an internal dispute resolution.
 - The nominee, if elected, would cause a violation of an association by-law prohibiting two or more joint owners of the same HOA parcel from serving on the board simultaneously.
 - The nominee has been a member of the association for less than one year.
 - The HOA becomes aware that the nominee has a past criminal conviction that would, if the person was elected, prevent the HOA from obtaining or retaining fidelity bond coverage.
5. Provides that an HOA's election rules must require:
 - Retention of elections materials that include a voter list with name, parcel number, and voting power, a candidate registration list, and all balloting materials.
 - The HOA permit members to verify the accuracy of their individual information on both voter and candidate lists at least 30 days before the ballots are distributed.
 - Correction of any identified errors in the voter or candidate lists within two business days.
6. Requires an HOA to provide general notice of all of the following in accordance with specified timelines:
 - The procedure and deadline for submitting a nomination must be provided at least 30 days before the deadline for submitting a nomination.
 - At least 30 days before distribution of ballots the HOA must provide notice of the date, time, and physical address where ballots are to be returned by mail or handed to the inspector
 - At least 30 days before distribution of ballots the HOA must provide notice of the date, time, and location of the meeting at which ballots will be counted.
 - At least 30 days before distribution of ballots the HOA must provide notice of the list of all candidates' names that will appear on the ballot.
7. Requires an HOA's election operating rules to:
 - Prohibit the denial of a ballot to a member for any reason other than not being a member at the time when ballots are distributed.
 - Prohibit the denial of a ballot to a person with power of attorney for a member.
 - Require the inspector of elections deliver to each member, at least 30 days before an election, both of the following documents a copy of the election operating rules; and the ballot or ballots.
8. Prohibits an HOA's election rules from permitting any person, business, or subdivision of a business entity to serve as the inspector of elections if currently

- employed or under contract with the HOA for any compensable services other than to serve as an inspector of elections.
9. Defines “association election materials” to mean returned ballots, signed voter envelopes, the voter list of names, parcel numbers, and voters to whom ballots were sent, proxies, and the candidate registration list, and specifies members are entitled access to such materials under specified procedures.
 10. Provides that signed voter envelopes may only be inspected, but not copied.
 11. Adds signed voter envelopes, voter list, proxies, and a candidate registration list to the list of items that shall be in the custody of the inspector or inspectors of elections or at a location designated by the inspector or inspectors until after the tabulation of the vote and until the 1 year time allowed for challenging the election has expired.
 12. Provides that a cause of action for a violation of member elections may be brought within one year of the date that the inspector notifies the HOA board and membership of the election results or the cause of action accrues, whichever is later.
 13. Requires a court to void the results of an election if the member challenging the election shows, by a preponderance of the evidence, that the election procedures were not followed.
 14. Prohibits an HOA from filing a civil action regarding a dispute in which a member has requested internal dispute resolution unless the association has engaged in specified internal dispute resolution procedures in good faith.
- The Fourth Mutual Board retained our legal firm of Adams Stirling to prepare new election rules that would comply with SB 323.
 - After the Board received draft policy 10.6, we reviewed the draft and prepared a comparison spreadsheet to determine whether the proposed election rules complied with SB 323, the differences from our current governance, and how it impacted our CC&Rs and By-Laws.
 - One of the major issues was the new election rules are in conflict with some of the governance in the existing CC&Rs and By-Laws. Normally the CC&Rs and By-Laws override the Mutual policies if there is a conflict. However, under these circumstances, Policy 10.6 complies with the laws of California, which override the governance in our CC&Rs and By-Laws.
 - Questions that resulted from this comparison were discussed with the attorney and resolved. The final proposed Policy 10.6 Election Rules was placed on the Rossmoor.com website over 28 days ago for Member review and Members were notified by letter of the proposed policy and the date of this Special Meeting.
 - At this time, Ms. Swisher opened the meeting to Members. Members were asked to restrict their questions and comments to the proposed election rules policy. The Chair asked that each resident limit their time to 3 minutes per question or comment to ensure that everyone had an opportunity to address the Board.
 - The Board had asked Members to submit their comments in advance to Anne Paone. They only received one comment and it indicated support of the new rules.
 - Ms. Swisher asked the Board if they had any further items to discuss regarding the new Election Rules policy before proceeding to a vote.
 - Having no further changes to incorporate into the policy,
Mr. Schwartz moved to approve Mutual 4 Policy 10.6, Election Rules. Ms. Ovalle seconded and the motion carried without dissent.

APPOINTMENT OF INSPECTOR OF ELECTIONS

Ms. Swisher reported the following:

- Based on the new Election Rules, an employee of MOD may no longer act as our Inspector of Elections. As a result, the Board must find a volunteer from this or another Mutual, hire an attorney firm willing to provide this service (must not be Fourth Mutual's attorneys) or hire a company that provides Inspector of Election services.
- Due to the newness and complexity of the Election Rules, I doubt if someone will volunteer for the job and am concerned whether any volunteer could be considered qualified.
- Some law firms are willing to provide this service. However, they are really overqualified for this job and will charge us hourly fees in excess of \$300/hour.
- Anne Paone provided the Mutuals with a preliminary list of six companies for consideration. Their costs range between a flat fee of \$500 and \$1100, or hourly rates of \$130 - \$245 which likely translates to over \$1100 based on the number of hours needed to complete all of the tasks.
- Since the evaluation started one of the companies has withdrawn from consideration.
- Two of the companies require the Mutual to provide insurance and indemnify them for their role as Inspector of Elections. Since our Mutual insurance policy only covers volunteers, we would need to change our policy. At this time, it is unknown whether we could get a policy of this type and the cost per year could be excessive.
- The remaining list of potential companies include Collins Management, Bellwether Election Solutions, and Condominium Financial Management. Ms. Swisher received a new proposal from Bellwether Election Solutions verifying that they do not require us to insure and indemnify them. Ms. Swisher asked for further discussion from the Board on these three candidates or another possible approach to the Inspector of Elections for 2020?

After discussion regarding the likelihood and appropriateness of having a volunteer from the community or another Mutual act as the Inspector, the following motion was made.

Mr. Schwartz moved to select Bellwether Election Solutions as the 2020 Inspector of Elections in the amount of \$875.00 for base services. Ms. Ovalle seconded and the motion carried without dissent.

ANNOUNCEMENT

The next meeting is the Regular Meeting scheduled for Monday, May 18, 2020 at 1:30 p.m. via ZOOM.

ADJOURNMENT

Having no further business, the meeting adjourned at 3:30 p.m.



Anne Paone, Assistant Secretary
Fourth Walnut Creek Mutual