

**IGNACIO CREEK HOA
ELECTION PROCEDURES
Summary of Proposed Revisions (12/19/22)**

1. Preface –
 - a. Rules cannot be modified less than 90 days before a vote (state mandate)
 - b. Ballot must reference website where the rules are posted (state mandate – and avoids the need to print them out and include with ballot distribution)
2. §1 – Remove reference to §8 (technical change, no substantive effect)
3. §8 – This section will be deleted, and replaced with a new §14 (technical change)
4. §11.1 – Posting early ballot/vote submissions on HOA website – This will allow owners to easily confirm their ballot has been received.
5. §14 – Secret Ballot Procedures
 - a. §14.1 – List of votes requiring a secret ballot (state mandate)
 - b. §14.2 – No identifiers on the ballot (state mandate)
 - i. 14.2.1 – Failure to use (white) secret ballot envelope – While there is no state law addressing this issue, this rule will avoid disenfranchising members whose vote will still be counted.
 - c. §14.3 – Outer envelope must be signed by an owner (state mandate)
 - i. §14.3.1 – Valid owner address – This is necessary to confirm there is a valid owner certification.
 - ii. 14.3.2 – Curing a defective ballot – Again, while there is no state law addressing this issue for HOA’s, this is consistent with state election procedures which permit curing a defect if it is possible to do so in time.
 - d. §14.4 – Rescinding or revoking a ballot not permitted (state mandate)
 - i. 14.4.1 - Replacement ballots – This provision authorizing the issuance of a replacement ballot if the original is lost is consistent with state election practices.
6. §15 – Ballot Arguments and Rebuttals – These provisions are generally drawn from state and county voter guide practices. They are intended to ensure that owners who support or oppose a ballot measure have an opportunity to communicate their concerns to all owners before they cast their ballot.

**IGNACIO CREEK HOMEOWNERS' ASSOCIATION
ELECTION PROCEDURES**

Adopted – July 9, 2020

Revised September 14, 2020,

September 23, 2021, March 24, 2022, **December 19, 2022 (Initial Reading)**

Note: These election rules cannot be amended less than 90 days prior to an election. (Civil Code, §5105(h))

A copy of these rules will be posted on the HOA website. The following notice will also appear on the ballot in at least 12-point font: “The rules governing this election may be found here:” followed by the corresponding internet website address where these election rules have been posted. (Civil Code, §5105(g)(4)(b)(1))

A portion of California's Davis-Stirling Common Interest Development Act (specifically, Civil Code §§5100–5130) requires that common interest development property owner associations, such as the Ignacio Creek Homeowners' Association ("Association"), adopt rules regarding the conduct of elections of directors (as well as other specified votes conducted by an owners' association). The Board of Directors of the Association has adopted the following Election Procedure in conformity with those statutory requirements.

1. Board Election by Acclamation. Notwithstanding the secret balloting requirement **for the election of directors**, or any contrary provision in the governing documents, when, as of the deadline for submitting nominations provided for in Article Five, Section 1 of the Association bylaws, the number of qualified candidates is not more than the number of vacancies to be elected, as determined by the inspector or inspectors of the elections, the board of directors may, but is not required to, consider the qualified candidates elected by acclamation if all of the following conditions have been met:

1.1 A regular election for the directors has been held in the last three years. The three-year time period shall be calculated from the date ballots were due in the last full election to the start of voting for the proposed election (i.e., when ballots are distributed 30 days prior to the election).

1.2 The association will provide individual notice of the election and the procedure for nominating candidates as follows:

1.2.1 Initial notice at least 90 days before the deadline for submitting nominations provided for in the Association bylaws. The initial notice shall include all of the following:

1.2.1.1 The number of board positions that will be filled at the election.

1.2.1.2 The deadline for submitting nominations.

1.2.1.3 The manner in which nominations can be submitted.

1.2.1.4 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. The Board terms will commence on the date of the Annual Meeting of Members as provided in the Association bylaws.

1.2.2 A reminder notice between 7 and 30 days before the deadline for submitting nominations provided for in the Association bylaws. The reminder notice shall include all of the following:

1.2.2.1 The number of board positions that will be filled at the election.

1.2.2.2 The deadline for submitting nominations.

1.2.2.3 The manner in which nominations can be submitted.

1.2.2.4 A list of the names of all of the qualified candidates to fill the board positions as of the date of the reminder notice.

1.2.2.5 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. This statement is not required if, at the time the reminder notice will be delivered, the number of qualified candidates already exceeds the number of board positions to be filled.

1.3 Processing Nominations

1.3.1 Within seven business days of receiving a nomination, a written or electronic communication acknowledging the nomination will be sent to the member who submitted the nomination.

1.3.2 Within seven business days of receiving a nomination, a written or electronic communication will be sent to the nominee, indicating either of the following:

1.3.2.1 The nominee is a qualified candidate for the board of directors.

1.3.2.2 The nominee is not a qualified candidate for the board of directors, the basis for the disqualification, and the procedure, which shall comply with the Internal Dispute Resolution requirements under Civil Code §5900, et seq., by which the nominee may appeal the disqualification.

1.3.3 The written or electronic communication described in Section 1.3.2 may be combined into a single written or electronic communication if the nominator and nominee are the same person.

1.4 Additional provisions

1.4.1 The association will permit all candidates to run if nominated, except for nominees disqualified for running as allowed or required by state law (Civil Code, §5105(b)-(e)).

1.4.2 The Board may disqualify a candidate pursuant to the provisions of Civil Code §5105(c).

1.4.2.1 If a nominee is disqualified pursuant to Civil Code §5105(c), all directors must comply with those same requirements.

1.5 The Board will vote to consider the qualified candidates elected by acclamation at the September Board of Directors meeting. The agenda item shall reflect the name of each qualified candidate who will be seated by acclamation if the item is approved.

2. Equal Access to Association Media. In accordance with previously adopted rules, the following shall apply regarding access to Association media, and related matters, in connection with elections:

2.1. **Access to Association Media.** If any candidate for Association office, or Association member advocating a point of view is provided access to Association media, newsletters, or internet resources sites 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 Association's 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 policy of the Association to provide candidates with other means of access to Association media, newsletters, or Internet websites during a campaign. In the event that the statements or actions of an incumbent director, who is also a candidate for reelection to the board, are reported in any Association media solely in the context of that director's performance of his or her duties, those reports or statements shall not constitute provision by the Association of access to its media for campaign purposes.

2.2. Access to Meeting Space. During an election campaign, all candidates, including those who are not incumbents, and all members advocating a point of view, including those not endorsed by the Association's Board, shall have access to common area meeting space for purposes reasonably related to the election. Such access shall be subject to equally applied rules restricting reservation of space, security, and maintenance of meeting spaces.

2.3. Use of Association Funds. Association funds shall not be used for campaign purposes in connection with any Association Board election. Funds of the Association shall not be used for campaign purposes in connection with any other Association election except to the extent necessary to comply with duties of the Association imposed by law.

2.3.1 For the purposes of this Rule, "campaign purposes" include, but are not limited to, the following:

2.3.1.1 Expressly advocating the election or defeat of any candidate that is on the Association election ballot.

2.3.1.2 Including the photograph or prominently featuring the name of any candidate on a communication from the Association or its Board, excepting the ballot and ballot materials, within 30 days of an election; except that this is not a "campaign purpose" if the communication is one for which these rules require that equal access be provided to another candidate or advocate.

3. Nominations for Election to the Board of Directors; Self-Nomination. In addition to the nomination procedures specified in Article Five, Section 1 of the Association bylaws, by state law, the Association must permit any member to "self-nominate" himself or herself for election to the board of directors. Any member desiring to nominate himself or herself as a candidate for election to the board must (a) satisfy the good standing requirements for candidacy applicable to other candidates at the time the person's candidacy is proposed and thereafter, and (b) present written notice to the board of directors of the person's desire to self-nominate on or before the deadline of the nominating committee for the presentation of its list of candidates to the board.

4. Notice of Voting Procedures. The Association shall provide general notice of the procedure and deadline for submitting a nomination at least 30 days before any deadline for submitting a nomination. Individual notice shall be delivered pursuant to Civil Code §4040 (summarized below) if individual notice is requested by a member. The association shall provide general notice of all the following at least 21 days before the ballots are distributed:

4.1 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.

4.2 The date, time, and location of the meeting at which ballots will be counted.

4.3 The list of all candidates' names that will appear on the ballot.

4.4 The name of the Inspector of Elections.

4.5 If individual notice is requested by a member it shall be given as required by Civil Code §4040 which provides, in part, that an association deliver a document by "individual delivery" or "individual notice," by one of the following methods:

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

Email, facsimile, or other electronic means, if the recipient has consented, in writing or by email, to that method of delivery. The consent may be revoked, in writing or by email, by the recipient.

5. Voting Power. Each Residence Lot shall be entitled to one (1) vote, regardless of the number of owners of that Lot. When more than one person owns a Residence Lot, the vote for that Lot shall be exercised as they may among themselves determine.

6. Proxy Voting. The secret ballot voting requirements of Civil Code §5100(a) do not prohibit the use of proxy voting. However, because the Civil Code secret ballot voting rules require ballots to be mailed (by first-class mail) or delivered to every member, the utility of proxy voting in association director elections is questionable. For that reason, the Civil Code rules relating to proxy voting in the election of directors do not apply to the election of directors under the secret ballot election process utilized by the Association.

7. Duration of the Voting Process. The secret ballot voting procedures of Civil Code §5115(a) specify that ballots for the election of the board of directors must be sent to all eligible members by mail or personal delivery not less than 30 days before the deadline that is established for the tender of ballots. Written ballots must be received by the inspector of elections no later than 7:00 p.m. on the date set for the Annual Meeting of the Members (Bylaws, Article III, Section 1), or when the inspector calls for ballots at the Annual Meeting. Because the law requires that the Association utilize a double-envelope ballot system in the election of directors and that the sealed ballots be mailed or delivered by hand to a location specified by the inspector of elections, any ballots that are sent to the inspector of elections by facsimile transmission or e-mail will not be counted.

~~8. Use of Secret Ballots and Ballot Completion Requirements. In accordance with Civil Code §5100(a), ballots used in the election of directors must be secret ballots that do not identify the voter by name, address, or lot number. The secret ballots, together with 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 of the Association not less than 30 days before the deadline for voting. The unsigned ballot must be inserted into an envelope ("Ballot Envelope") that is sealed, and this sealed Ballot Envelope must then be inserted into a second envelope ("Address Envelope") that is sealed. In the upper left hand corner of the Address Envelope, a space or lines must be presented where the voter can print and sign his or her name, address, and lot number. The Address Envelope must be addressed to the inspector of elections who will tally the votes. The Address Envelope (containing the ballot and the Ballot Envelope) may be mailed or delivered by hand to the location specified by the inspector of elections for the return of ballots, and the member may request a receipt for delivery of the ballot.~~

9. 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. Cumulative voting is permitted. In the event there is a tie vote between those candidates who receive the lowest number of votes necessary to qualify the candidate for election, the tie shall be broken by random drawing. The election results shall be promptly

reported to the Board and shall be recorded in the minutes of the next meeting of the board and shall be available for review by members of the association. Within 15 days of the election, the board shall give general notice pursuant to Civil Code §4045 of the tabulated results of the election.

10. Supervision of Election Process; Appointment of Inspector(s) of Elections. To ensure secrecy of ballots and fairness in the conduct of director elections, the board of directors must select an independent third party or parties to serve as the inspector(s) of elections. Civil Code §5110 specifies that the number of inspectors of elections shall be one or three. The Association's board of directors will notify the members of the person selected to serve as inspector of elections in accordance with the provisions of Section 4 above. As the duly appointed inspector of elections, such person, or that person's successor, shall have the full powers of an inspector of elections appointed by the board under Corporations Code §7614 and shall perform his or her duties impartially, in good faith, to the best of his or her ability, and as expeditiously as is practical. Any report made by the inspector of elections is prima facie evidence of the facts stated in the report.

Without limiting the foregoing, the inspector of elections shall do all the following:

- (a) Determine the number of memberships entitled to vote and the voting power of each.
- (b) Determine the authenticity, validity, and effect of proxies, if any.
- (c) Receive ballots. Sealed ballots must at all times be in the custody of the inspector of elections or at a location designated by the inspector until after the tabulation of the vote, and until the time for challenging the election has expired, at which time custody of the ballots shall be transferred to the Association.
- (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 close, consistent with the governing documents.
- (g) Determine the tabulated results of the election.
- (h) Perform any acts as may be proper to the conduct of the election with fairness to all members and in accordance with the Association rules pertaining to the conduct of elections and Civil Code §§5100–5130.

11. Requirements for Counting and Tabulation of Ballots. The designated inspector of elections must count and tabulate the votes in public at a properly noticed open meeting of the board of directors 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 Association's management company, if any, shall open or otherwise review any ballot before the time and place at which the ballots are counted and tabulated. In the event that tabulation of the ballots cannot be concluded before the designated time for adjournment of the annual membership meeting, the meeting shall be continued for such time as is required to complete the tabulation of ballots, and members shall be entitled to remain in attendance at the continued meeting to observe the tabulation.

11.1 Early Ballot-Voter Count – The Election Officer may publish an updated list of early ballots received by unit address on the HOA website to allow owners to confirm that their ballot has been received by the Election Officer.

12. Announcement of Results of Election. The results of the election shall be promptly reported to the board of directors of the Association, shall be recorded in the minutes of the next meeting of the board, and shall be available for review by members of the Association. Within 15 days of the election, the board shall give general notice (as specified in Civil Code §4045) to the

members of the tabulated results of the election.

13. **Retention of Ballots.** After tabulation, election ballots shall be stored by the Association in a secure place for not less than one year after the date on which the inspector of elections reports the results of the election to the Board and the membership of the election. In the event of a recount or other challenge to the election process, the Association shall, on written request, make the ballots available for inspection and review by Association members or their authorized representatives. Any recount shall be conducted in a manner that shall preserve the confidentiality of the vote.

14. Procedures for Member Voting on Matters Requiring a Secret Ballot

14.1 Elections Requiring Secrecy. The following matters must be voted on by secret ballot, regardless of any provision to the contrary in our governing documents (Civ.Code §5600(a)):

14.1.1 Special assessments over 5% (except for an “emergency situation”¹)

14.1.2 Regular assessments over 20% (Civ.Code §5605)

14.1.3 Election and removal of directors

14.1.4 Amendments to the governing documents (CC&Rs, Articles of Incorporation and Bylaws)

14.1.5 Grant of exclusive use of common area property (see exceptions in Civ.Code §4600(b))

Note: Member surveys do not require a secret ballot.

14.2 No Identifiers on Ballots. To preserve confidentiality, voters may not be identified by name, address, or lot, parcel, or unit number on ballots. The ballot itself is not signed by the voter but is inserted into an envelope that is sealed. (Civ.Code §5115(c)(1)) If the owner inadvertently signs the ballot, it is still valid.

14.2.1 Failure to use (white) Secret Ballot Envelope. A ballot will not be disqualified merely because the owner failed to return their ballot inside the white Secret Ballot Envelope, so long as the owner has signed the Outer Envelope.

14.3 Signed Outer Envelope. The ballot envelope is inserted into a second outer envelope that is sealed. The upper left-hand corner of this envelope must contain the voter's name and unit address. The envelope must also be signed by the voter.

¹ State law provides an exception that allows boards, without membership approval, to impose a special assessment of more than 5% if there is an "emergency situation" which includes any of the following circumstances (Civ.Code §5610):

1. An extraordinary expense required by a court order.
2. An extraordinary expense necessary to repair or maintain the common interest development or any part of it for which the association is responsible where a threat to personal safety on the property is discovered.
3. An extraordinary expense necessary to repair or maintain the common interest development or any part of it for which the association is responsible that could not have been reasonably foreseen by the board in preparing and distributing the annual budget report under Civ.Code §5300.

However, before it can impose or collect an "emergency situation" assessment under #3 above, the board is required to pass a corporate resolution containing written findings as to (a) the necessity for the extraordinary expense involved and (b) why the expense was not or could not have been reasonably foreseen in the budgeting process. The resolution must be distributed to the members with the notice of the "emergency situation" assessment that is required to be provided by Civ.Code §5615.

(Civ.Code §5115(c)(1)) State law requires that owners "shall sign" their name to certify their vote. Accordingly, a typed name by itself is not sufficient. Signatures should be in ink so they cannot be erased. The signature must be an owner of the property (i.e., a Resident Lot Owner, not a non-Owner spouse). Failing to sign the outer envelope renders the ballot void.

14.3.1 Valid Owner Address. An illegible or invalid owner's address also invalidates the ballot. The second (outer) envelope is addressed to the Inspector of Elections.

14.3.2 Curing Defective Ballots – If the Elections Officer can determine that a ballot is defective prior to the time for counting ballots (e.g., the certification signature and/or unit address are missing) and there is sufficient time to identify the owner and correct the error, the Association may contact that owner to correct the error(s) and resubmit their ballot.

14.4 Rescinding or Revoking a Ballot. Once a member has cast their ballot – either by depositing it in the HOA office mailbox (300 Indian Way, Novato) prior to the meeting or delivering it to the Election Officer at the meeting when the votes are to be counted - that member cannot retrieve it to change their vote, nor can they revoke their ballot. (Civ.Code §5120(a))

14.4.1 Replacement Ballots. If a member has not yet voted and has lost or misplaced their ballot, the Association may provide them with a replacement ballot so they can cast their vote, provided they do so prior to the cutoff date and time for counting the ballots.

15. Ballot Arguments and Rebuttals. The following procedures apply to voting by secret ballot on measures other than the election of directors (e.g., amending the governing documents, approval of special assessments, etc.).

15.1 Voter Information Guide. Members will be provided with an information guide along with their ballot at least 30 days prior to the meeting when the votes are to be counted. This guide will include the following:

15.1.1 Measure – The measure question and a description of the purpose for and effect of the measure.

15.1.2 Argument in Favor – The governing board or proponents of the measure may submit a statement in support - limited to 300 words - at least 60 days prior to the deadline for ballots to be distributed.

15.1.3 Rebuttal to Argument in Favor – A member or group of members opposed to the measure may submit a statement in rebuttal to the argument in favor of the measure that is limited to 250 words. This document must be submitted to the Association at least 40 days prior to the deadline for distributing ballots.

15.1.4 Argument Against - A member or group of members opposed to the measure may submit a statement in an argument against the measure that is limited to 300 words. This document must be submitted to the Association at least 40 days prior to the deadline for distributing ballots.

15.1.5 Rebuttal to Argument Against – The governing board or proponents of the measure may submit a statement in rebuttal to the argument against - limited to 250 words - at least 20 days prior to the deadline for ballots to be distributed.

15.2 Submitting Arguments and Rebuttals. Arguments and Rebuttals can be submitted to the HOA e-mail address (contact@ignaciocreek.com), along with an Argument Signature Form containing the names, signatures and addresses of the

members supporting the argument. The documents must be submitted using Microsoft Word (which contains a word-count tool). If a member requires assistance converting an electronic document to MS Word, the Association can provide technical support.

15.2.1 Multiple Arguments or Rebuttals – If multiple arguments or rebuttals are received prior to the submission deadline, the version with the most members signing the Argument Signature Form will be included in the guide. If both versions have the same number of supporters, the one that was submitted first will be used for the voter guide.

15.2.2 Posting on HOA website – The arguments and rebuttals that have been selected for the guide will be posted on the HOA website no later than three (3) business days after the submission deadline.

15.2.3 Maximum of 5 supporters to be listed in Guide – While there is no limit on the number of supporters for a ballot argument or rebuttal who may add their name to the Argument Signature Form, a maximum of five (the first five whose names appear on the form) will be included in the Guide.

**Ignacio Creek HOA
Ballot Measure Argument Signature Form**

Received: ___/___/___

HOA Use Only

Measure # _____ Election Date: ___/___/___

No more than five supporters shall be listed with any argument. If there are more than five supporters, only the first five names listed below will appear in the Voter Information Guide.

This form is required to be submitted by the Filer. Every Signer of the argument must be listed on this form, including the Filer if applicable.

Check one of the following to describe the argument:

___ Primary Argument *in Favor* of Measure (300-word maximum)

___ Rebuttal to Argument in Favor of Measure (250-word maximum)

___ Primary Argument *Against* Measure (300-word maximum)

___ Rebuttal to Argument Against Measure (250-word maximum)

1. _____
Proponent Signature Printed Name

Unit Address

2. _____
Proponent Signature Printed Name

Unit Address

3. _____
Proponent Signature Printed Name

Unit Address

4. _____
Proponent Signature Printed Name

Unit Address

5. _____
Proponent Signature Printed Name

Unit Address

6. _____
Proponent Signature Printed Name
- _____
- Unit Address
7. _____
Proponent Signature Printed Name
- _____
- Unit Address
8. _____
Proponent Signature Printed Name
- _____
- Unit Address
9. _____
Proponent Signature Printed Name
- _____
- Unit Address
10. _____
Proponent Signature Printed Name
- _____
- Unit Address
11. _____
Proponent Signature Printed Name
- _____
- Unit Address
12. _____
Proponent Signature Printed Name
- _____
- Unit Address
13. _____
Proponent Signature Printed Name
- _____
- Unit Address
14. _____
Proponent Signature Printed Name
- _____
- Unit Address