

BELL CANYON ASSOCIATION
_____, 2019

SECRET BALLOT

AMENDING BYLAWS

California law requires that a vote to amend the Association's governing documents be made by secret ballot. Please return your ballot according to the enclosed instructions. Please ensure that your name and the address of your home in the Association are on the upper left-hand corner of the return envelope, but not on this form, and that you sign your name where indicated on the envelope (or if not indicated, below your name). In order to be counted, this secret ballot must be received by the inspectors of election before the official counting process begins at the Special Meeting.

The vote below for Ballot Items 1 through 13 to approve various amendments to the Association's Bylaws will be conducted on an item-by-item basis with only those items receiving an "APPROVE" vote from at least two-thirds (2/3) of the Owners to be deemed approved.

In addition, if any Ballot Item 1 through 13 is so approved, then Ballot Item 14.A-14.H shall also be deemed approved.

1. BYLAWS BALLOT ITEM 1 RE ARTICLE I-NAME AND LOCATION:

Purpose: To correct the misspelling of the word "meeting" and other non-substantive language corrections and additions.

Proposal: Article I of the Bylaws is hereby deleted in its entirety and replaced with the following language:

"ARTICLE I
NAME AND LOCATION

The name of the Corporation is Bell Canyon Association, hereinafter referred to as the "Association." The principal office of the Corporation shall be located in the County of Ventura, California, but meetings of Members and directors may be held at such places within the State of California as may be designated by the Board of Directors.

APPROVE: _____ **DISAPPROVE:** _____

2. BYLAWS BALLOT ITEM 2 RE ARTICLE II-DEFINITIONS; SECTION 7-DECLARANT:

Purpose: To delete the reference to the “Declarant” (the project developer) since it is no longer relevant.

Proposal: Article II, Section 7 (Definition of Declarant) is hereby deleted in its entirety.

APPROVE: _____ **DISAPPROVE:** _____

3. BYLAWS BALLOT ITEM 3 RE ARTICLE V-MEETINGS OF MEMBERS; QUORUM:

Purpose: As currently written at Article V-Section 4a of the Bylaws, a quorum consists of members of the Association entitled to cast fifty (50) percent of the membership vote, proxies being allowed, with the further provision that if such quorum is not obtained, there shall be an adjourned meeting at a time not less than forty-eight (48) hours nor more than thirty (30) days from the time of the original meeting at which adjourned meeting only twenty-five (25) percent of the vote of the Association membership is needed. Notice of such adjourned meeting need only be provided by an announcement by the chairman at the original meeting. This current procedure allows for an important vote to be determined by a minority of the members of the Association, voting personally or by proxy, upon oral notice at the adjourned meeting which may or may not be known beyond those members attending the original meeting.

If viewed as a problem, this may be addressed by lowering the initial quorum from fifty (50) percent to thirty-three (33) percent and, if such quorum is not achieved, then requiring that written notice of the adjourned meeting be given in the same manner as had been required for the original meeting.

Proposal: Article V, Section 4.a of the Bylaws is hereby deleted in its entirety and replaced with the following language:

“a. A quorum shall consist of members of the Association entitled to cast at least thirty-three percent (33%) of the membership vote, who vote in person at the meeting or who timely mail or deliver to the ballot box a properly completed ballot in such instances where ballots are offered, except that the quorum requirement for any vote to increase assessments as provided in Civil Code 5605 shall be fifty (50) percent of the voting power of the Members. If such quorum shall not be present, the meeting shall be adjourned by a majority of the Members represented in person at the meeting, and then rescheduled pursuant to written notice given in accordance with the notice provisions of Article V-Section 3 above. Except as otherwise provided in the Articles of Incorporation, Declaration or Bylaws a majority of those present and voting in person shall prevail.”

APPROVE: _____ DISAPPROVE: _____

4. BYLAWS BALLOT ITEM 4 RE ARTICLE V-MEETINGS OF MEMBERS; SECTION 6-PROXIES:

Purpose: A proxy grants another Member the right to vote in place of you. There has been comment concerning whether or not proxies are beneficial. The current Bylaws permit proxy voting. The amendment set forth below, if approved, would eliminate proxy voting wherever appearing in the Bylaws.

Proposal: Article V, Section 6 of the Bylaws is hereby deleted in its entirety and replaced with the following language:

“6. Proxies Prohibited. Notwithstanding anything to the contrary, there shall be no voting by proxy at any meeting of the Members of the Association for any purpose whatsoever. Any references to voting by proxy contained in these Bylaws or the Declaration shall be of no force and effect.

APPROVE: _____ DISAPPROVE: _____

5. BYLAWS BALLOT ITEM 5 RE ARTICLE VI-SECTION 1; NUMBER OF DIRECTORS:

Purpose: The Association’s current Bylaws, as permitted under its Articles of Incorporation, provide for a Board of nine (9) Directors which is the existing practice. The Articles of Incorporation allow the Members by an Amendment to the Bylaws to choose a different number of Directors provided the number selected is not “less than five (5) directors”. The Ballot Item below would change the number of Directors to seven (7) Directors.

Proposal: Article VI, Section 1 of the Bylaws is hereby deleted in its entirety and replaced with the following language:

“Section 1. Number - The affairs of this Association shall be managed by a Board of seven (7) directors who must be owners as defined in Article II, Section 6. The number of directors may be increased or decreased from time to time, but in no event shall there be less than five (5) directors, by amendment of these Bylaws or Articles of Incorporation.

APPROVE: _____ DISAPPROVE: _____

6. BYLAWS BALLOT ITEM 6 RE ARTICLE VI-SECTION 2; ELECTION-NO CUMULATIVE VOTING:

Purpose: Cumulative voting, our current practice under the existing Bylaws, is the procedure which grants each Lot Owner one vote multiplied by the number of directors to be elected which can be allocated to one or shared between more than one candidate. Cumulative voting allows the minority to “get a seat at the table”, but also can be used by the majority to “stack the Board”. Abolishing cumulative voting, as provided for in the Ballot Item below, would mean the Lot Owner could cast the same number of votes but not more than once for any candidate.

Proposal: Article VI, Section 2 of the Bylaws is hereby deleted in its entirety and replaced with the following language:

“Section 2. Election; No Cumulative Voting. The election of the directors by the Members shall be by secret ballot at the annual meeting of Members. The secret ballots for the election of directors shall be counted and tabulated by the inspector(s) of election in public at a properly noticed annual meeting of the Members. Members shall not be entitled to cumulate their votes for the election of directors. For each such election, each Member shall be entitled to as many votes as there are candidates to be elected or removed. A vote for a candidate shall be indicated by the symbol “x” or any other affirmative symbol for that candidate on the form provided. For a ballot to be valid, the Member may cast only one (1) vote for a candidate. The candidates receiving the highest number of votes up to the number of candidates to be elected shall be deemed to have been elected. Write-in candidates and nominations from the floor of the meeting are prohibited.”

APPROVE: _____ **DISAPPROVE:** _____

7. BYLAWS BALLOT ITEM 7 RE ARTICLE VI-SECTION 3; TERM LIMITS:

Purpose: The current practice is to allow a person to serve as a director for as long as he or she is elected or re-elected. The Amendment below would end this practice and, instead, provide for term limits.

Proposal: The following language is hereby added to Article VI of the Bylaws as a new Section 3.A:

“3.A. Term Limits. No person shall be elected as a Director for more than two (2) terms in any twelve (12) year period. The word “elected” as used herein shall include both an election by Members and a situation where a person is appointed by the Board as a Director to fill the remaining part of a term for some other person who was elected a Director which is more than two (2) years in length. Further, a person who is a Director on the effective date of this amendment may complete such Director’s full elected term. Once a person has been termed out as aforesaid, he or she cannot serve as Director (whether elected or appointed) for six (6) consecutive years before being eligible to again be elected as a Director which additional service would restart a new term limits period.

[TEXT OF PROPOSED AMENDMENT CONTINUED ON NEXT PAGE]

By way of example:

(a) If a person is elected to the Board and resigns or is removed during such term, that person shall be considered to have been elected to one term.

(b) If a person serves on the Board for one term, and then, a year later, is appointed to fill the remaining two years of the term of a director who has resigned or is removed, such person shall be considered to have completed two terms and will be unqualified to serve on the Board for another six (6) years.

(c) If a person serves on the Board for one term, and then, two years later, is appointed to fill the remaining one year of the term of a director who has resigned or is removed, such person shall be considered to have completed only one term and is qualified to serve another term.”

APPROVE: _____ **DISAPPROVE:** _____

8. BYLAWS BALLOT ITEM 8 RE ARTICLE VI-SECTION 5; NO DIRECTOR DUES WAIVER:

Purpose: The Davis-Stirling Act protects volunteers from personal liability while on the board of directors provided they meet certain criteria. (Civ. Code §5800). Volunteer generally means the rendering of services without compensation. Compensation generally means remuneration whether by way of salary, fee, or other consideration for services rendered. The current Bylaws provides a monetary benefit to directors by allowing them to exempt one (1) lot from payment of regular assessments. Does this constitute compensation that would deprive directors from the protections otherwise afforded directors under the Civil Code? Giving due respect to the theory “better safe than sorry”, it might be prudent to eliminate the current provision exempting a serving director from payment of “on one only lot of Association regular monthly assessments”. The proposed Amendment eliminates such language.

Proposal: Article VI, Section 5 of the Bylaws is hereby deleted in its entirety and replaced with the following language:

“Section 5. Compensation – No director shall receive compensation for any service he or she may render to the Association as a director, nor shall such director receive exemption from any financial obligation as a lot owner. However, any director may be reimbursed for his or her actual expenses incurred in the performance of duties as a director.”

APPROVE: _____ **DISAPPROVE:** _____

9. BYLAWS BALLOT ITEM 9 RE ARTICLE VI-SECTION 6C; DISTRIBUTION OF MINUTES SHOWING HOW DIRECTORS VOTE:

Purpose: The following Ballot Item provides that the minutes of non-executive session Board meetings reflect how Board members voted on the issues brought before the Board.

Proposal: The following language is hereby added to Article VI, Section 6 of the Bylaws as a new subsection (c):

“c. Minutes. Written Minutes of each non-executive session meeting of the Board of Directors shall be maintained and within fifteen (15) days of approval by the Board shall be published on the Association’s website, posted at the Association’s office (in a conspicuous place available to the Members) and sent to members by email to all Members who have consented to receive electronic communications from the Association in accordance with the Act. Such Minutes shall include a statement of each matter brought before the Board for a vote and how each director voted.”

APPROVE: _____ **DISAPPROVE:** _____

10. BYLAWS BALLOT ITEM 10 RE ARTICLE VI-SECTION 9A AND 9B; INDEPENDENT INSPECTORS AND ELECTION CONTROLS:

Purpose: The following Ballot Item provides additional election controls be imposed including, but not limited to, that inspectors of election be outside third parties. Approval of this Ballot Item will have a financial impact to the Association estimated to be between \$5,000 and \$10,000 per annum (which cost may rise over time) which, on a per Lot-basis, means an approximate cost of 50 cents to \$1.00 per month per Lot (which cost may rise over time).

Proposal: The following language is hereby added to Article VI of the Bylaws as a new Section 9:

“Section 9. Election Oversight.

a. The election of directors shall be conducted, supervised, monitored and regulated by one or three independent third-party inspector(s) of elections, who shall not be a Member of, or related to a Member of, the Association, and who shall not be an employee of or a service provider to the Association. The inspector(s) of elections shall have the power and duties specified in, Civil Code Section 5100 et seq.

[TEXT OF PROPOSED AMENDMENT CONTINUED ON NEXT PAGE]

b. Any candidate or Member advocating a point of view shall be provided access to Association media, newsletters, Internet Web sites and membership lists during a campaign, for purposes that are reasonably related to that election. For purposes of these Bylaws, the membership list shall include the name, property address, and mailing address, but not include information for Members who have opted out pursuant to Civil Code Section 5220(a)(9). Equal access shall be provided to all candidates and Members advocating a point of view, including those not endorsed by the Board, for purposes that are reasonably related to the election. The Association shall not edit or redact any content from these communications but shall include with each such communication a statement specifying that the candidate or Member, and not the Association, is responsible for that content. Access to Common Area meeting space, if any exists, during a campaign, shall be made available, at no cost, to all candidates, including those who are not incumbents, and to all Members advocating a point of view, including those not endorsed by the Board, for purposes reasonably related to the election. For purposes hereof, the term “candidate” shall include any Owner who has nominated himself or herself to run for election regardless of whether such person is currently holding elective office within the Association.”

APPROVE: _____ **DISAPPROVE:** _____

11. BYLAWS BALLOT ITEM 11 RE ARTICLE VI-SECTION 10; PROHIBITION AGAINST TAPING MEETINGS

Purpose: Some Members find taping of meetings to be intrusive and offensive when done by other Members and fear that comments may be selectively edited and distributed. This has caused discord at meetings. The Ballot Item below, if approved, seeks to address this concern.

Proposal: The following language is hereby added to Article VI of the Bylaws as a new Section 10:

“Prohibition Against Taping of Meetings. The minutes taken at any annual or special meeting of the owners or any meeting of the Board of Directors shall be the official record of that meeting. The Taping of any annual or special meeting of the members or any meeting of the Board or any Board-sponsored town hall or forum or other Board-authorized membership meeting (collectively, “Meeting”) is prohibited without the prior written consent of the Board. Any unauthorized Taping of said Meeting shall have no legal effect and may not be used as evidence in any hearing, arbitration or court of law. “Taping” shall include, without limitation, any taping, recording, filming, streaming, transmitting or broadcasting of any sounds and/or images. In addition to any other rights and remedies which the Board may have, the Board or its designated representative chairing or conducting such Meeting, may eject up to two hundred feet (200’) from any Meeting any person engaging in such Taping without consent and/or, after notice and a hearing, impose monetary penalties against the Owner and/or such Owner’s invitees who engaged in such unauthorized Taping of up to \$2,500 per violation.”

APPROVE: _____

DISAPPROVE: _____

12. BYLAWS BALLOT ITEM 12 RE ARTICLE VI-SECTION 12; DUAL DIRECTORSHIPS

Purpose: Currently two (2) members of the Association’s Board also serve on the five (5) member Bell Canyon Community Service District (“CSD”) Board. A third dual directorships would result in the three (3) Association directors having power to control the actions of the CSD board. Such result concerns some Members, creates the potential for conflicts of interest that could prevent the CSD board from acting, and allows for meeting notice issues in violation of the California Government Code under the Brown Act. Legal counsel for the CSD has advised against three (3) dual directors but the CSD cannot compel a person not to run for its board. The Association, however, as a private association, can specify qualifications for its directors which address the above problem. The Ballot Item below, if approved, seeks to address these concerns.

Proposal: The following language is hereby added to Article VI of the Bylaws as a new Section 10:

“No Association Board member may be a candidate for election to, or be appointed to fill a vacancy on, the board of directors of the Bell Canyon Community Service District (“CSD”) if, following such election or appointment, there would be three (3) or more Association Board members serving on the CSD board of directors.”

APPROVE: _____

DISAPPROVE: _____

[SPACE LEFT INTENTIONALLY BLANK]

13. BYLAWS BALLOT ITEM 13 RE ARTICLE XV-AMENDMENTS:

Purpose: Currently, amendments to the governing documents require a vote by which at least two-thirds (2/3) of the record owners in fee of said lots (not two-thirds of those voting) consent thereto. The law of California governing associations such as our Association, provides at Civil Code Section 4275 that the Board of an association and other interested parties with standing may seek relief from this provision of governing documents and the courts have on a case by case basis over-ridden this provision and accepted a lesser majority vote instead. The option of involving the courts raises the specter of attorneys' fees and costs for an association. The language below, if approved, would reduce the vote of the Owners needed to amend the governing documents from 2/3rds of the Owners, to 60% of the Owners in an effort to reduce the need for such litigation and to facilitate the more orderly and timely modification of the governing documents.

Proposal: Article XV of the Bylaws is hereby deleted in its entirety and replaced with the following language:

“ARTICLE XV
AMENDMENTS

“Except in those matters where the Declaration, Articles of Incorporation or Bylaws specify a greater vote for action, in which case such vote shall be required for amendment, the Bylaws may be amended at the Annual meeting or a special meeting of the members by the affirmative vote of not less than sixty percent (60%) of the membership of the Association entitled to vote at that meeting. The vote shall be conducted by secret ballot unless prohibited by California law, with notice of each proposed amendment being mailed to each owner no less than thirty (30) days prior to said meeting. Notwithstanding anything to the contrary contained in these Bylaws, there shall be no proxy voting allowed with respect to any proposed amendment to the Bylaws.”

APPROVE: _____ **DISAPPROVE:** _____

14. BYLAWS BALLOT ITEM 14 RE UPDATES TO BYLAWS TO MAKE CONSISTENT WITH CALIFORNIA LAW AND DECLARATION WHICH WILL BE AUTOMATICALLY APPROVED IF ANY BALLOT ITEM ABOVE IS APPROVED:

Subsequent to the date of the Association’s Bylaws, the Davis-Stirling Act was passed by the California State legislature for the purpose, among others, of codifying and protecting the rights of members of an association such as Bell Canyon Association. If any of the Ballot Items 1 through 13 receive an “APPROVE” vote from at least two-thirds (2/3) of the Owners, then the Bylaws will be amended to include those Ballot Items receiving such vote and, with approval of any amendment, the provisions of the existing Bylaws appearing at Ballot Item 14.A-14.H below shall be deemed approved and would also be included in the Bylaws to conform with California law. This practice will avoid the Amended Bylaws from conflicting with existing law and also avoid confusion that would otherwise result from someone reading the Bylaws and not realizing that these provisions are different under and controlled by California law. This is informative in nature and is not substantive as California law would supersede any contrary provision in the Amended Bylaws.

- A. Purpose:** The existing language in Article V, Section 2 of the Bylaws, which states that special meetings of the members can be called by 1/5th (20%) of the Members is inconsistent with California law, which permits a special meeting of Members be called upon receipt of a petition signed by just 5% of the Members.

Proposal: Article V, Section 2 of the Bylaws is hereby deleted in its entirety and replaced with the following language:

“Section 2. Special Meetings of Members. Special meetings of Members may be called at any time by the President or by the Board, or by any two or more Members thereon, or by five percent (5%) or more of the Members. Except, in special cases where other express provision is made by statute, these Bylaws or the Declaration, notice of such special meetings shall be given in the same manner as for annual meetings of Members.”

- B. Purpose: The existing language of Article V, Section 3 of the Bylaws, which requires notice of Members' meetings at least 7, but not more than 60 days, prior to the meeting, is inconsistent with California law, which requires notice be sent between 10 and 90 days prior to the meeting, and, in certain circumstances, at least 30 days in advance of the meeting.**

Article V, Section 3 of the Bylaws is hereby deleted in its entirety and replaced with the following language:

“Section 3. Notice of Meetings. Written notice of each annual or special meeting of the Members shall be given to each Member entitled to vote, either personally or by mail or other means of written communication permitted by law, charges prepaid, at least ten (10) but not more than ninety (90) days before such meeting, addressed to such Member at such Member’s address appearing on the books of the Association or such address given by such Member to the Association for the purpose of notice, subject to the requirements of the Act which requires, under certain circumstances, that secret ballots be delivered not less than thirty (30) days prior to such meeting. Notwithstanding the foregoing, when a special meeting is requested by a Members pursuant to these Bylaws (i) an authorized officer of the Association shall within twenty (20) days after receipt of such request, send out a notice to the Members fixing a date for such a meeting which is not less than thirty-five (35) nor more than ninety (90) days after receipt of the request, (ii) Members shall be required to vote at such meeting by secret ballot in accordance with the procedures set forth in the Act, and (iii) notice of such meeting shall be provided at least thirty (30) days before such meeting. Any such notice shall be deemed to have been given at the time when delivered personally or deposited in the mail or sent by other means of written communication.”

- C. Purpose: The existing language of Article VI, Section 7 of the Bylaws, which provides that the Board can take action outside of a meeting by unanimous written consent, is inconsistent with California law, which prohibits Board action outside of a meeting except in emergency circumstances.**

Article VI, Section 7 of the Bylaws is hereby deleted in its entirety and replaced with the following language:

“Section 7. Board Action Without a Meeting. The Board shall not take action on any item of business outside of a meeting except as provided in the Act. "Item of business" means any action within the authority of the Board, except those actions that the Board has validly delegated to any other person or persons, managing agent, officer of the Association, or committee of the Board comprising less than a majority of the directors.”

- D. Purpose: The existing language of Article VI, Section 8 of the Bylaws, which requires a nominating committee prior to each election, is inconsistent with California law, which permits each owner to nominate himself or herself.**

Article VI, Section 8 of the Bylaws is hereby deleted in its entirety and replaced with the following language:

“Section 8. Nomination. The Board shall solicit nominations for election for director from the entire Membership. Any Member may nominate himself or herself for election to the Board.”

- E. Purpose: The Association’s CC&Rs already contain language related to assessments. The language in Article XI and XII of the Bylaws regarding assessments (except with regard to language related to the road assessment) is duplicative and not necessary because the language in the CC&Rs would control over language in the Bylaws.**

Articles XI (Covenant for Maintenance Assessments) and XII (Effect of Non-Payment of Assessments –Remedies of Association) of the Bylaws is hereby deleted in its entirety.

- F. Purpose: The existing language of Article XIII of the Bylaws, which allows all books, records and papers of the Association to be inspected by members, is inconsistent with California law, which sets forth specific documents which members can and cannot inspect.**

Article XIII of the Bylaws is hereby deleted in its entirety and replaced with the following language:

“Section 1. By Members. Members shall have the right to inspect the Association’s membership list, books and records, and minutes of meetings of the Owners, of the Board and of committees of the Board as may be permitted by California law, including, but not limited to Civil Code Section 5200 et seq. and Corporations Code Section 8330 et seq. Board minutes, proposed minutes, or a draft or summary thereof (other than those from an executive session), shall be available to Members within thirty (30) days of the meeting, and shall be distributed to any Member upon request and upon reimbursement of the costs in making that distribution. Notwithstanding anything to the contrary, a Member’s right of inspection shall not include the right to inspect minutes of executive session Board meetings or any documentation protected by the attorney-client privilege.

[TEXT OF PROPOSED AMENDMENT CONTINUED ON NEXT PAGE]

Section 2. By Directors. Every director shall have the absolute right at any reasonable time to inspect, including the right to make extracts and copies of, all books, records and documents of the Association and the physical properties owned or controlled by the Association, provided, however, that the Board may limit the right of any director to review ballots and proxies pertaining to an election in which the director was a candidate or Association records wherein the director is a party to an action adverse to the Association.

Section 3. Procedures. The Board shall establish reasonable rules with respect to: (i) notice to be given to the custodian of the records by the Owner desiring to make the inspection; (ii) hours and days of the week when such an inspection may be made; and (iii) payment of the cost of reproducing copies of documents requested by an Owner in accordance with applicable California law.”

G. Purpose: The Association’s existing Bylaws lack these basic procedures provided for under California law regarding the conduct of meetings.

Article XVI of the Bylaws is hereby deleted in its entirety and replaced with the following language:

Section 1. Procedure. Meetings of the membership of the Association shall be conducted in accordance with a recognized system of parliamentary procedure or any parliamentary procedures the Association may adopt.

Section 2. Member Right to Speak. The Board shall permit any Member to speak at any meeting of the Association or the Board, except for meetings of the Board held in executive session. A reasonable time limit for all Members of the Association to speak to the Board or before a meeting of the Association shall be established by the Board.”

H. Purpose: This is just a point of clarification.

The following language is hereby added to Article XVII of the Bylaws as a new Section 3:

“Section 3. Definitions. Any capitalized term used herein which is not defined herein shall have the same meaning as it has in the Declaration of Covenants, Conditions and Restrictions for the Association, as the same may be amended from time to time.”