

WEST CREEK AND WEST HILLS COMMUNITY ASSOCIATION

April 21, 2020

**To: All Owners/Members of
West Creek and West Hills
Community Association**

**RE: WEST CREEK AND WEST HILLS COMMUNITY ASSOCIATION
("Association")
- 2020 Annual Election**

Dear Owners/Members:

The purpose of this letter is to address various issues surrounding the 2020 annual election and to inform you of the Board of Directors' plan to address those issues.

The West Creek West Hills Community Association annual membership meeting and election is held in January of each year. As in previous years, to ensure that the election is carried out in an unbiased and independent manner, the Board of Directors contracted a professional third-party inspector of election to carry out all the duties of the election. This includes mailing out and receiving ballots, determining the authenticity and validity of proxies, counting and tabulating votes, and other defined acts, as needed, to ensure that the election is conducted in accordance with Civil Code and as per all Association rules.

This year's election was originally scheduled to be held on January 21, 2020. By a large margin, quorum was not reached at this meeting and, per Association Bylaws 6.7, Election Rule 7.1, and Civil Code Section 5115(d), the inspector of election was unable to open any ballots. The meeting was adjourned to January 30, 2020, and again, due to lack of quorum, was further adjourned to February 19, 2020 in order to allow members additional time to cast their ballots.

At the February 19, 2020 meeting, the inspector of election spent significant time attempting to verify 150+ proxies that were hand-delivered at the meeting. Ultimately, he invalidated various proxies and ballots that were cast due to the proxy-giver name not appearing on his voter list. The inspector determined, for the third time, that quorum was not reached. The members present at the meeting did not motion to further adjourn the meeting, and accordingly, the inspector declared that the 2020 annual meeting failed for lack of quorum. Because quorum is required in order to tabulate ballots, the ballots were unable to be opened, and this concluded the 2020 annual election.

**To: All Owners/Members of
West Creek and West Hills
Community Association**

April 21, 2020

Page 2

Thereafter, one of the Association members made a claim to the inspector of election that a handful of the 150+ proxies that she had submitted were invalidated but should not have been. After investigation and review of the election materials, it was determined that due to a fluke or technical error by the inspector of election, the names of certain Association members were inadvertently left off the voter list.

This led to several of the proxies being invalidated at the February 19, 2020 meeting. More importantly, it called into question whether other members had been unfairly deprived of the ability to vote based on this error.

Without notifying or coming to the Board to discuss the issues, this Association member filed a small claims action against the inspector of election on March 30, 2020. Even though it is not a party to the claim, the Association is currently defending the small claims action based upon the contract it has with the inspector of election, which obligates the Association to hold harmless, indemnify, and defend the inspector from third party claims that arise from the services provided by the inspector.

The Board of Directors, upon reviewing the advice of the Association's legal counsel, had to determine the appropriate next steps to address the 2020 election. Under any other circumstances, the Board would have resolved to re-do the 2020 election, from scratch, to ensure that all members receive a fair opportunity to vote. However, due to a number of factors, including not knowing the full extent of the inspector of election's error, having no legal precedence for continuing a failed election, timing constraints, recent changes in the Civil Code regarding elections, and limitations imposed by COVID-19, the Board has resolved to let the 2020 election stand, as being declared to have failed by the inspector of election due to lack of quorum. Barring any unforeseen circumstances, the 2021 election will go forward, as planned, in January 2021.

The timing of a potential re-do of the 2020 election was a primary factor in the Board's decision. In order to re-commence the election from scratch, the process begins at least 120 days before the date of the annual meeting. The timeline for the procedures in an election are governed by law and are carefully spelled out in Section 5115 of the Civil Code. This means that for the January 2021 election, the process begins in September 2020. If the Association re-noticed the 2020 election, the earliest possible date the election could take place would be August 2020. Based on past history, the annual meeting is generally adjourned at least once for lack of quorum, which means it would be projected to go into September and overlap with the 2021 election process.

Additionally, on January 1, 2020, material changes in relevant election law went into effect, which drastically change the way in which owners' associations conduct elections. This requires the Association to adopt new election rules in order to be in compliance with the new laws. As part of these new laws, Civil Code Section 5105(h) prevents a Board from amending or revising election rules within ninety (90) days of an election. This meant it was not possible to adopt new rules before the 2020 election. As such, the Board's plan was to work on the new election rules with legal counsel so that

**To: All Owners/Members of
West Creek and West Hills
Community Association**
April 21, 2020
Page 3

they could be adopted in plenty of time for the 2021 election. If the 2020 election was re-done, this would effectively prevent the Association from being able to adopt new election rules for the 2021 election, and would put the Association out of compliance with Civil Code.

The restrictions of COVID-19 and current "Stay at Home" orders also heavily factored into the Board's decision regarding the handling of the election. Membership meetings should only be conducted once it is safe to resume large group gatherings and the timetable for this determination is currently unknown.

Furthermore, to date, the Association has spent \$17,963.05 addressing the 2020 election, including the costs of mailing, inspector of election fees, adjourned meeting fees, management fees, and legal fees. Many of these expenses were unbudgeted. In light of the risks and challenges to re-do the election, and in order to prudently manage the Association's finances, the Board seeks to avoid a situation where it incurs significant additional expense to re-do a meeting that potentially cannot go forward due to serious health and safety reasons.

The Board considered the option to "continue" the 2020 election by opening the ballots that had previously been submitted. There is, however, no legal authority for reopening an annual meeting to tabulate votes from a flawed election previously determined to have failed for lack of quorum. Furthermore, without knowing the exact scope and impact of the inspector of election's error, it would be difficult to identify the number of Association members who may have been deprived of a ballot.

This decision was exceptionally difficult. The Board hopes that the membership can respect this decision, and understand that the Board's sole desire is to act in the best interest of the community as a whole.

In order to help ensure that the 2021 election is conducted successfully, and without any errors, the Board will be contracting with a new third-party inspector of election. In addition, and more importantly, the Board has started working with legal counsel to draft and adopt updated election rules to ensure compliance with Civil Code, and to minimize the risk of any future election-related errors.

Thank you for your attention to this matter.

Sincerely,

**WEST CREEK AND WEST HILLS
COMMUNITY ASSOCIATION**

Board of Directors