

**RESOLUTION OF  
THE BOARD OF DIRECTORS**

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**RANCHO NIGUEL RECREATION CLUB**

**WHEREAS**, the Board of Directors (“**Board**”) for the Rancho Niguel Recreation Club (“**Association**”) hereby takes the following action at its regularly scheduled meeting at which a quorum is present, by majority vote, pursuant to California Corporations Code section 7211 and the Bylaws of the Association.

**WHEREAS**, the Association is a nonprofit mutual benefit corporation organized under the Nonprofit Mutual Benefit Corporation Law, and is formed for the purpose of operating and managing Rancho Niguel Recreation Club.

**WHEREAS**, the Association and its members are required to comply with the Association’s “governing documents.” The Davis-Stirling Common Interest Development Act defines “governing documents” as including the Association’s Bylaws (“**Bylaws**”). (*See Cal. Civ. Code* § 4150.)

**WHEREAS**, on or about September 16, 1985, the Incorporator of the Association adopted the Bylaws.

**WHEREAS**, in or about May of 1995, the Board solicited membership approval to amend the Bylaws in the following respects:

- (a) To amend Article IV, Section 1 of the Bylaws to increase the number of Directors from three (3) to five (5), and to require that Directors be Members of the Association;
- (b) To amend Article IV, Section 2 of the Bylaws to: (a) require that five (5) Directors be elected, (b) establish staggered two (2) year terms, and (c) establish qualification for Directors to not serve in excess of two (2) consecutive terms; *and*
- (c) To amend Article V, Section 1 of the Bylaws to restrict the submission of candidate nomination to Members only.

The foregoing is collectively referred to herein as the “**Bylaw Amendment**.”

**WHEREAS**, based on the information received, it is reasonable to conclude that the Bylaw Amendment passed despite never being formalized by way of an executed amendment. This belief is predicated on the fact that the number of directors expanded from three (3) to five (5), as noted in the meeting minutes for the July 27, 1995, Open Session Board Meeting. Elected directors have been serving staggered terms since its apparent adoption in 1995. In other words, the Board has been operating as if the Bylaw Amendment had been duly approved by the membership and adopted.

**WHEREAS**, pursuant to California case law precedent governing this issue,<sup>1</sup> the foregoing circumstantial evidence of the Bylaw Amendment’s passage is sufficient for the Board to deem the Bylaw Amendment as having been passed by the membership such that it may be formally adopted.

**WHEREAS**, to promote stability in the Association’s governance, the Board desires to formally adopt the Bylaw Amendment and to execute the Certificate of Secretary appended thereto.

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<sup>1</sup> *Clear Lake Riviera Community Association v. Cramer*  
(2010) 182 Cal.App.4th 459

**NOW THEREFORE**, be it resolved the Board on behalf of the Association hereby duly adopts the Bylaw Amendment attached hereto as Exhibit "A." The Secretary of the Association is authorized and directed to sign the Certificate of Secretary appended thereto as of today's date.

**BE IT FURTHER RESOLVED** that the Bylaw Amendment's incorporation of the requirement contained in Article IV, Section 2 of the Bylaws that a Director not serve in excess of two (2) consecutive terms serves as a Director qualification under *California Corporations Code* section 7151(c)(3), and may therefore be grounds for (a) removal of a Director pursuant to the Board's authority under *California Corporations Code* section 7221(b), and (b) disqualification of a nominee in an uncontested director election held via the acclamation procedures of *California Civil Code* section 5103(d)(2).

**BE IT FURTHER RESOLVED** that a copy of this Resolution be filed in the Minute Book for the Association.

**THE FOREGOING RESOLUTION** of the Board of Directors of the Rancho Niguel Recreation Club is hereby adopted on this 27<sup>th</sup> day of July, 2023

By: R J W Johnson  
Its: President

By: Griffith  
Its: Secretary

By: A Feld  
Its: Vice-President

[Certificate of Secretary on Following Page]

**CERTIFICATE OF SECRETARY**

I, Paul V Kadel, Secretary of the Rancho Niguel Recreation Club, do hereby certify that the above Resolution was duly adopted by the Board of Directors as of the date provided above.

DATED: 7/27, 2023 Paul V Kadel

**EXHIBIT "A"**

**(Bylaw Amendment)**



**FIRST AMENDMENT TO BYLAWS  
OF  
RANCHO NIGUEL RECREATION CLUB**

THE FIRST AMENDMENT TO THE BYLAWS ("*First Amendment to Bylaws*") is made on this 27<sup>th</sup> day of JULY, 2023, by the Rancho Niguel Recreation Club, a California Nonprofit Mutual Benefit Corporation ("**Association**").

**RECITALS:**

A. On or about September 16, 1985, the Incorporator for the Association adopted the Association's Bylaws ("*Bylaws*").

B. In or about May of 1995, the Board of Directors for the Association ("*Board*") solicited membership approval to amend the Bylaws to: (1) increase the number of directors from three (3) to five (5), (2) create staggered terms, and (3) restrict the submission of candidate nominations to members only (collectively, "*Bylaw Amendment*").

C. Based on the information received, it is reasonable to conclude that the First Amendment to Bylaws passed despite never being formalized by way of an executed amendment. This belief is predicated on the fact that the number of directors expanded from three (3) to five (5), as noted in the meeting minutes for the July 27, 1995, Open Session Board Meeting. Elected directors have been serving staggered terms since its apparent adoption in 1995.

D. Accordingly, as set forth in the attached Certificate of Amendment, the Board has a good faith belief that the Bylaw Amendment received the necessary approval of Members pursuant to the Bylaws.

**NOW, THEREFORE**, the Association does hereby amend the Bylaws as set forth herein:

1. **Article IV, Section 1.** Article IV, Section 1, of the Bylaws is hereby amended to read as follows:

Section 1. Number. The affairs of the Association shall be managed by a Board of five (5) directors, who must be members of the Association.

2. **Article IV, Section 2.** Article IV, Section 2, of the Bylaws is hereby amended to read as follows:

Section 2. Term of Office. At the 1995 annual meeting, the Members shall elect five (5) directors and create staggered two-year terms. The three (3) directors receiving the highest number of votes at the 1995 annual meeting will be elected to serve two-year terms, with their successors elected for two-year terms at the 1997 annual meeting and, thereafter, in each odd-numbered year. The two (2) directors receiving the next highest number of votes at the 1995 annual meeting will be elected to serve one-year terms, with their successors to be elected for two-year terms at the 1996 annual meeting and, thereafter, in every even-numbered year. In no event shall any director serve in excess of two (2) consecutive terms. If any such annual meeting is not held, or the directors are not elected thereat, the directors may be elected at any special meeting of Members held for that purpose. All directors shall hold office until their successors are elected.

3. **Article V, Section 1.** Article V, Section 1, of the Bylaws is hereby amended to read as follows:

Section 1. Nomination. Nomination for election to the Board shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating

Committee shall consist of a Chairman, who shall be a member of the Board, and two (2) or more Members. The Nominating Committee shall be appointed by the Board prior to each annual meeting of the Members to serve from the close of such annual meeting until the close of the next annual meeting, and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board as it shall in its discretion determine, but not fewer than the number of vacancies that are to be filled. Such nominations may be made from among the Members only. Anything herein to the contrary notwithstanding, the first election of the Board shall receive nominations only from the floor at the first annual meeting. Each nominee shall be given a reasonable opportunity to communicate to the Members the nominee's qualifications and the reasons for the nominee's candidacy. Each nominee shall be given a reasonable opportunity to solicit votes and the Members shall be given a reasonable opportunity to choose among the nominees.

Except for the foregoing proposed amendments, the Board of Directors proposes no additional changes be made to the Association's existing Bylaws.

**RANCHO NIGUEL RECREATION CLUB, a California Nonprofit  
Mutual Benefit Corporation**

By: R J W Roddyga  
Its: President

By: GR Haddad  
Its: Secretary

*[Certificate of Secretary on Following Page]*

**CERTIFICATE OF SECRETARY**

I, the undersigned, do hereby certify that:

1. I am the duly elected and acting Secretary of the Rancho Niguel Recreation Club, a California nonprofit mutual benefit corporation ("Association"); and

2. Based on the information received, it is reasonable to conclude that the First Amendment to Bylaws passed despite never being formalized by way of an executed amendment. This belief is predicated on the fact that the number of directors expanded from three (3) to five (5), as noted in the meeting minutes for the July 27, 1995, Open Session Board Meeting. Elected directors have been serving staggered terms since its apparent adoption in 1995.

3. Accordingly, it is reasonable to conclude that this First Amendment to Bylaws received the necessary approval of Members pursuant to the Bylaws.

4. A copy of this First Amendment to Bylaws shall be duly placed in the Minute Book of the Association and distributed to the Members of the Association.

DATED: 7/27, 2023

  
Secretary





## FAQ's REGARDING THE 1995 BYLAW AMENDMENT & THE 2023 BOARD ELECTION

The information below provides answers to common questions regarding the recently discovered amendment to the Association's Bylaws from 1995 and its impact on the 2023 Board Election.

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### *What is the issue with the Bylaws?*

The Association's original Bylaws were adopted at the community's inception in 1985 (the "**Original Bylaws**"). The Original Bylaws contain corporate governance provisions, including, among others, provisions regarding the total number of Board members ("**Directors**") to serve on the Association's Board, the terms of office of those Directors, and the qualifications for persons serving as Directors. Those provisions specify that the Association's Board be comprised of three (3) Directors who need not be members of the Association, and that each Director serve a one (1) year term of office.

However, the Association has, since 1995, operated with a Board of five (5) Directors, each of which serving a term of office of two (2) years. Additionally, these terms of office have been "staggered"—resulting in only a portion of the Board seats being up for election in any given year. The Association has therefore been operating for nearly thirty (30) years in a manner that is not consistent with what the Original Bylaws prescribe.

### *How was this issue discovered?*

This issue was discovered by a member during this year's annual election. After reading the Association's Bylaws (the Original Bylaws), the member inquired with the Association's management as to why the Association has been operating with a five (5) member Board when the Bylaws seem to prescribe a three (3) member Board. This inquiry prompted a thorough review of the Association's archived records by the Association's management and legal counsel, culminating in the discovery of the documentation reflecting the amendment of the Bylaws described below.

### *Why has the Association been operating in a manner that is not consistent with the Original Bylaws?*

The review of the Association's archived records referenced above produced documentation reflecting that, in or about May of 1995, a ballot measure was presented to the Association's membership to adopt an amendment to the Original Bylaws (the "**1995 Bylaw Amendment**"). The 1995 Bylaw Amendment purported to amend various provisions of the Original Bylaws to accomplish the following:

- increase the total number of Directors to five (5),
- increase the Director terms of office to two (2) years,
- establish staggered terms of office for Directors,
- prohibit nonmembers from running for the Board and serving as Directors, *and*
- establish a Director qualification prohibiting Directors from serving more than two (2) consecutive terms of office.

The records additionally contain documentation reflecting that the 1995 Bylaw Amendment was indeed approved by the membership and ostensibly adopted by the Association. This documentation includes minutes from Board meetings from and after July of 1995 demonstrating that five (5) persons were serving



on the Board. The Board could not have been comprised of more than three (3) persons unless the Bylaw Amendment was approved.

Unfortunately, however, no action was taken to revise the language of the Original Bylaws such that the 1995 Bylaw Amendment would be reflected in the version of the Bylaws that is distributed to the membership upon request or to prospective purchasers during the escrow process. The Board suspects that this oversight was likely the fault of the Association's custodian of records at that time (the Association's prior management company).

***Has the Association been acting in accordance with the Bylaws as amended by the 1995 Bylaw Amendment?***

Yes.

***Must the membership now vote to make the 1995 Bylaw Amendment effective?***

No. While adopting an amendment to the Bylaws typically requires membership approval, the Association may continue to operate as though the 1995 Bylaw Amendment was adopted without any further action or vote by the membership. The authority to do so is based upon California case law precedent (*Clear Lake Riviera Community Association v. Cramer* (2010) 182 Cal.App.4th 459). That case law precedent permits an HOA's reliance on circumstantial evidence of a governing document's adoption to support the validity of the governing document, even without the availability of direct evidence of its adoption.

In this matter, the circumstantial evidence supporting the validity of the 1995 Bylaw Amendment includes the documentation discovered in the Association's archived records referenced above, and the fact that the Association has been operating for nearly thirty (30) years as though the 1995 Bylaw Amendment was adopted.

To formally place the 1995 Bylaw Amendment into effect and have it reflected in the operative version of the Association's current Bylaws, the Board recently passed a resolution recognizing the formal adoption of the 1995 Bylaw Amendment and directing the Bylaws to be revised accordingly. This resolution was certified (signed by the Board) and made a part of the Association's records. The resolution is available for review by members upon request to the Association's management.

***Why were incumbent Directors who have served more than two (2) consecutive terms allowed to run for the Board in the recent election?***

As referenced above, the 1995 Bylaw Amendment served to, among other things, establish a Director qualification prohibiting Directors from serving more than two (2) consecutive terms of office (the "**Term Limit Director Qualification**"). In this year's annual election, three (3) of the candidates were incumbent Directors who have each served more than two (2) consecutive terms of office on the Board (the "**Incumbent Directors**"). This prompted questions from some members as to why these Incumbent Directors were still permitted to run for the Board even after the existence of the Term Limit Director Qualification was discovered.

The Association's Board elections must be conducted in accordance with the procedural requirements contained in the provisions of the *California Civil Code*. Those provisions do not allow for a Term Limit Director Qualification to be used as a basis for disqualifying a candidate in a Board election such that the candidate is prohibited from running and being elected to the Board. (*Civ. Code §5105(b)-(c)*). Moreover, to the extent of any conflict between those Civil Code provisions and the provisions of an HOA's Bylaws, the Civil Code's provisions prevail. (*Civ. Code §5100(a)*). Disqualifying the candidacy of the Incumbent Directors and prohibiting them from running in the recent Board election would have constituted a statutory violation subjecting the Association to fines and other liability, in addition to voiding the outcome of the election. (*Civ. Code §5145*.)

***Why are the Incumbent Directors allowed to remain on the Board?***

The Term Limit Director Qualification is a director qualification per the terms of *California Corporations Code* section 7151. In a situation where a Director ceases to meet the director qualifications contained in the Bylaws, that Director is not automatically removed from the Board. Rather, *California Corporations Code* section 7221 authorizes the remaining members of the Board to, at their option, vote to remove that Director from the Board by declaring that Director's seat vacant. The Board is not, however, required to exercise this discretionary authority.

As applied to this matter, the two (2) other Association Directors have the option, but not the obligation, to declare the Incumbent Directors' seats vacant by a majority vote. A majority of those (2) Directors did not vote to execute this option. It is believed that the wishes of the members have been respected as reflected in the vote tabulation and ultimate outcome of the election.