

The logo for Village Park Community Association features the words "VILLAGE PARK" in a large, serif font above the words "COMMUNITY ASSOCIATION" in a smaller, sans-serif font. The text is white and set against a dark, rectangular background.

To: Members of Village Park Community Association
From: Board of Directors
Date: February 26, 2021
Attachment: 11 02 20 Draft Bylaws vs Original
SUBJECT: BYLAW AMENDMENT FAQ'S

The Board of Directors is unanimously in favor of the Bylaw Amendment and urges a YES vote.

Introduction

The purpose of these FAQ's is to provide information to the Members as official communication you have received from the Board, which has unanimously approved this Bylaw Amendment for general membership vote.

The documents committee (the "Committee") has received thoughtful and informed comments from our community members on current drafts of governing documents that have been prepared by legal counsel specializing in community association management. The Committee met nearly every week from August~November 2020 before publishing to our Members for review and comment.

Q: What is the role of the Committee?

A: The Committee serves the Board by seeking to build consensus and has advisory role to the Board. The Board decides upon general Membership vote, not the Committee. The Committee sought to leave out controversial items and focus on essential updates.

Q: Can we only put in all the legally required items for the first vote and then do additional votes later based on want?

A: Multiple special elections have proved to be contentious, time consuming, confusing and expensive. As competent and experienced volunteers are in short supply to serve on boards and committees, Boards must form consensus and take action in a one-year time frame they have together (each Directors' 2-year terms are staggered).

What are 3 key benefits to Owners in the Bylaw Amendment?

1. Greater influence in all Board decisions.

By reducing quorum requirements from 50% to 25%, as few as 32 disapproving Members (5% of 636 Lots) can trigger a vote to deny decisions and/or recall Directors with as few as 80 votes ("majority of quorum" or 25% of 636 Lots). This a very good safeguard to protect owners



against overreaching directors and allows those that are interested in the affairs of the association (the ones who vote) to work efficiently.

This Amendment does not change the requirements for a member-approved assessment increase. That quorum is set by the Civil Code at a “majority of the members” regardless of what the governing documents say.

Owners also benefit from the reduction of time wasted when required quorum is not met. VPCA historically has had difficulty meeting quorum and made use of proxies, with inherent potential for election fraud.

In new developments it is now common to see quorum requirements starting at 15 or 25%. Even government elections do not use quorum requirements.

2. Improve the ACC process.

This Amendment changes the ACC role to be the same advisory role as all other standing committees that first seeks to build consensus and has advisory role to the Board, which has decision-making role. A minimum of 5 board members is required to hire an expert consultant to advise the ACC to prevent bias, limit overreach and expedite processing. If passed, the Bylaw Amendment currently on the ballot ensures that greater care is taken to ensure that “ugly” changes are not accidentally approved.

3. Bring Bylaws into full compliance with State law.

What other benefits to Owners are in the Bylaw Amendment?

Deleting Cumulative Voting	<p>There are no true benefits to cumulative voting. No municipal, county, state, or federal election procedure uses it. Cumulative voting is intended for use by stock corporations so small shareholders can have a voice. Otherwise, companies would be completely dominated by large shareholders. Cumulative voting is automatically included in a new homeowner association's bylaws so as to give owners a voice when the association is controlled by the developer. Once the developer is out of the picture, there is no need for cumulative voting. As described in Robert's Rules of Order:</p> <p>This method of voting, which permits a member to cast multiple votes for a single candidate, must be viewed with reservation since it violates the fundamental principle of parliamentary law that each member is entitled to one and only one vote on a question. (Robert's Rules, 11th ed., p. 444.)</p>
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	<p>The problems with cumulative voting far outweigh any theoretical benefit related to minority interests. Cumulative voting makes it easy for disruptive, fringe, and single-issue candidates to get on the board. Moreover, once a problem director has been elected, cumulative voting makes it almost impossible to remove that director from the board. With conventional voting, i.e., casting one vote for each candidate, candidates must seek a broader base of support thereby increasing the likelihood that more moderate, business-like candidates are elected. If a director is dysfunctional, a conventional (non-cumulative) voting system allows the membership to more easily remove the director from office.</p> <p>https://www.davis-stirling.com/HOME/Cumulative-Voting-in-HOA-Elections</p>
<p>Fines</p>	<p>Sections IV.3, VIII.1.(j), VIII.1.(k)</p> <p>Q: Are there specified procedures stated in Bylaws regarding fines?</p> <p>A: Yes. The notion that the Amendment allows for unlimited fining is False, as discussed during committee.</p> <p>VIII.1.(j):</p> <ul style="list-style-type: none"> * The law provides that a fine schedule must be adopted in the same rule-making procedures (Civil Code section 4355, 4360). The law also provides for a due process hearing before any fine is imposed (Civil Code section 5855, 4935). * The Amendment requires the Board to draft a schedule of fines for Member review and as few as 32 disapproving Members (5% of 636 Lots) can trigger vote to deny the proposed schedule of fines with 80 votes ("majority of quorum") . This is the safeguard built into the law to protect owners against future overzealous directors. <p>VIII.1.(k):</p> <ul style="list-style-type: none"> * Invites owner to a hearing before as required by Civil Code Section 5855, impose a reimbursement assessment against the owner to reimburse the Association for costs incurred to repair damage to Common Area or Association equipment or facilities for which the owner or the owner's family, tenants, guests or invitees were responsible. <p>People tend to be opposed to fines because the alternatives have not been considered. Without modest disciplinary tools, the Board would be forced to spend significant amounts of money to litigate serious violations. Fines</p>



	<p>give the Board the ability to take action without spending your money on lawyers.</p>
<p>"Project"</p>	<p>Section VIII.1.a)</p> <p>Q: Does substituting “project” in place of “Common Area and facilities” allow the Board to regulated things and activities in your home and on your private property. "What if the Board says they don’t like you smoking in your backyard?"</p> <p>A: This notion that the amendment allows for the board to regulate your private lives is categorically False, as discussed during committee.</p> <p>* The CC&R's language governing use of private property is overly broad and unclear: “shall not be used so as to disturb the neighborhood or occupants of adjoining property.” This provision is unclear as to specifics (such as complaints the Board regularly hears from our Members) and "nuisance claims are difficult to prove." This Amendment allows the Board to specify broad and unclear powers that currently exist in CC&R's, rather than leaving it up to this board or future boards to interpret the documents as they see fit.</p> <p>* The CC&R's language of "one single dwelling" is no longer enforceable due to recent changes in State law (see Multiple Dwelling Units / ADU's below). The Bylaw Amendment allows future Boards to deal with nuisance that may be caused by ADU's but future CC&R amendment is needed to address architectural standards (but the amendment may not prohibit ADU's in accordance with State law).</p> <p>* The proposed Amendment requires the Board to draft rule for Member review and as few as 32 disapproving Members (5% of 636 lots) can trigger a vote to deny the proposed language with 80 votes ("majority of quorum," or 25% of 636 lots). This is the safeguard built into the law to protect owners against future overzealous directors.</p> <p>https://altitude.law/resources/newsletter/nuisance-know-see/</p>
<p>Role of Paid Experts</p>	<p>Q: Should expert consultants or contractors who are not members be allowed to perform tasks or advise Committees and Boards?</p> <p>A: Yes. The current Bylaw Amendment requires a minimum of 5 board members to authorize use of expert consultants or contractors to advise or perform tasks. Unpaid volunteers with proper expertise have been in short supply in Village Park and this Amendment allows the board to address</p>

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	<p>problems that linger. Poorly-advised decisions create legal issues for our Association and result in higher insurance premiums and higher dues. I think we all want the Board to make educated, informed decisions rather than to ask board members to rely on Google research.</p> <p>Relying solely on volunteers who are homeowners does not avoid all problems. Since state law prohibits imposing most qualifications to volunteer to serve on boards, a "verified stakeholder" can certainly include incompetent and biased volunteers (including sex offenders and child molesters).</p> <p>https://www.davis-stirling.com/HOME/Sex-Offender-on-the-Board</p> <p>The proposed Bylaw Amendment also makes uniform the role of all committees, including the ACC (which are appointed, not elected) to have advisory roles to the Board, which has decision-making role.</p>
ACC	<p>Section IX.2</p> <p>Q: What language was deleted in the ACC?</p> <p>A: Past boards have delegated and empowered the ACC with "the approving authority, subject to appeal to the Board." This approval power previously granted to the ACC is unique and differs from all other standing committees. This Amendment changes the ACC role to be the same advisory role as all other standing committees (including the current Documents Committee) that first seeks to build consensus and has advisory role to the Board, which has decision-making role.</p> <p>Q: Can the Board appoint a non-VPCA member to the ACC.</p> <p>A: Not likely. A minimum of 5 board members is required to hire an expert consultant to advise the ACC to prevent bias, limit overreach and expedite processing (which has proved difficult with committee members who volunteer their time). If passed, the Bylaw Amendment currently on the ballot ensures that greater care is taken to ensure that "ugly" changes are not accidentally approved.</p>
Multiple Dwelling Units / ADU's	<p>Q: Is multiple dwelling units on a single lot or ADU's (Accessory Dwelling Units) a real problem in VPCA?</p>

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A: Possibly. California Assembly Bill 68 superseded VPCA governing documents and City of Irvine zoning code to allow the construction of Accessible Dwelling Units (ADUs) on every single-family lot in California.

Q: Can the Board prohibit the construction of an ADU?

A: No. Assembly Bill 670 (2019) amended Section 4751 of the Civil Code to preclude planned developments from prohibiting or unreasonably restricting the construction or use of an ADU on a lot zoned for single family residential use. Covenants, conditions and restrictions (CC&Rs) that either effectively prohibit or reasonably restrict the construction or use of an ADU or JADU on such lots are void and unenforceable. Applicants who encounter issues with creating ADUs within CC&Rs are encouraged to reach out to HCD for additional guidance.

Q: Does California HCD have enforcement authority over ADU ordinances?

A: Yes. After adoption of the ordinance, HCD may review and submit written findings to the local agency as to whether the ordinance complies with state ADU law. If the local agency's ordinance does not comply, HCD must provide a reasonable time, no longer than 30 days, for the local agency to respond, and the local agency shall consider HCD's findings to amend the ordinance to become compliant. If a local agency does not make changes and implements an ordinance that is not compliant with state law, HCD may refer the matter to the Attorney General. In addition, HCD may review, adopt, amend, or repeal guidelines to implement uniform standards or criteria that supplement or clarify ADU law.

<https://www.hcd.ca.gov/policy-research/accessorydwellingunits.shtml>