

By-Laws & Resolutions Advisory Committee
November 12, 2021
Microsoft Teams

Present: Chair Jim Trummel and Committee members Lora Pangratz, Keith Kaiser and Steve Jacobs were present; member Bob Hillegass later joined the meeting in progress. Also, present were Director Colette Horn, committee liaison, Josh Davis, OPA Marketing and Public Relations Director and Greg Ellison of Bayside Gazette. Chair Jim Trummel called the meeting to order at 1:05 PM.

The agenda was approved after adding three by-laws review items received from the Board of Directors as Charging Documents (see attachments). The items were (1) Owner of record, section 5.02(a), (2) eligible to vote, sections 5.02(a) and 3.01(c) and (3) cause for removal, section 5.12(c). These items were added to the agenda in New Business, after Develop format for submitting by-laws proposals to the Board.

The minutes of the October 15, 2021 meeting were approved.

PUBLIC COMMENTS: None.

UNFINISHED BUSINESS

Review of status: The By-laws Work Group met and reviewed our input on proposals to amend the By-laws. The attached Excel By-laws Review status indicates the results of that meeting. Those topics with a **red** status indicate that more work is to be done before a proposal goes to the Board. Those topics with a **Prepare final proposal** are cleared for the Committee to finalize the proposal reviewed by the Work Group for submittal to the Board. It is intended that the status of the Search Committee be a discussion topic at the December Board meeting. It is also intended that the participation of Associate Members in Association affairs be a discussion at the January Board meeting.

NEW BUSINESS

Search Committee discussion at Board meeting: It was agreed that a “talking points” paper would be sent to the liaison to be included in the Board meeting materials package for the Board meeting. The chair will provide the talking points. The talking points will be the Search Committee options reviewed by the Work Group edited, if necessary, by the chair. The anticipated procedure at the Board meeting is that Roberts Rules of Order would be suspended so that the Committee chair can participate in the discussion.

Developing a format for submittal of proposals to the Board. The topic was discussed without there being any decisions regarding format. The discussion included the following:

a. The submittal to the Board should be in a format that includes information that can be adapted to materials provided to the Association membership for a by-laws approval referendum.

b. Can the by-law approval referendum (see section 11.02 of the By-laws) provide for a vote on the individual proposals rather than a single vote on the entire package of proposals?

Eligible to vote sections 5.02(a) and 3.01(c): The Board has requested a further clarification of annual charge payment as a requirement for an Association member to be a candidate for the Board of Directors. In particular, concern was expressed that the 35-day provision in 3.01(c) is vulnerable to delaying a determination of eligibility

to the point that it interferes with the voting process. Proposal options were discussed and will be considered at the next Committee meeting.

Owner of record section 5.02(a): The Board requested a recommendation regarding the meaning of “owner of record” in section 5.02(a). Owner of record has been problematic and resulted in litigation in recent elections. After discussing the topic, the Committee decided to defer consideration of “owner of record” until current litigation is concluded.

Definition of “Cause”: The Board request is to discuss cause and discuss the merits of a new resolution containing a code of ethics. A now canceled resolution M-08 attempted to define “cause”. During discussion of this item, the Committee considered whether the Committee itself was a sufficient resource to effectively make recommendations on this topic. The concern is that organization legal and human resources personnel would be needed to be effective. The liaison was asked to communicate these concerns to the Board for a determination of the extent the Committee is to proceed.

The Committee decided to hold the next meeting December 3, 2021 at 1:00 PM on Microsoft Teams.

The meeting was adjourned at 3:12 PM on a unanimous vote of the Committee.

Jim Trummel
Minutes Recorder

ATTACHMENT 2

OPA Board/Advisory Committee Charging Document

Request for Performance by: ☐ Board
Date: 11/07/2021 ☒ Bylaws and Resolutions Advisory Committee

Submitted By: OPA Board Liaison, Colette Horn

For Inclusion in Meeting to be Held on: _____, 20____

Request: ☒ The Board requests the Bylaws and Resolutions Advisory Committee to:
☐ The _____ Advisory Committee requests the Board to:

Give a recommendation to the board regarding expansion of the definition to include behavior that violates generally norms for codes of ethics and conduct for nonprofit boards of directors.

Background: (Explain the environment of why the Board/Committee wants and/or needs the actions performed)

Based on prior actions to remove a director, the insufficiency of the definition of "cause" has been a problem with respect to moving forward with removal for cause. Resolution B-08 was an attempt to provide such definition but was an overall failure because contained arcane procedures that by all accounts were unnecessary, given the language of 5.12(b). The Board wishes to consider adopting or developing a code of ethics and conduct that simply sets the standard and defers action to the Board as stipulated in Section 5.12 of the bylaws. For reference two national organizations are quoted below with respect to an argument for a code of ethics and conduct for nonprofit boards.

Board Source: *Under well-established principles of nonprofit corporation law, a board member must meet certain standards of conduct and attention in carrying out his or her responsibilities to the organization. Several states, in fact, have statutes adopting some variation of these duties that would be used in court to determine whether a board member acted improperly. These standards are usually described as the duty of care, the duty of loyalty, and the duty of obedience.*

National Council of Nonprofits: *It's useful to adopt a set of principles to guide a nonprofit organization's decision making and activities, as well as the behavior of its employees, volunteers, and board members. These principles could be called a "code of ethics" but they might be called the nonprofit's "statement of values" or "code of conduct," or something else. The purpose of adopting such a statement formally is to provide employees, volunteers, and board members with guidelines for making ethical choices and to ensure that there is accountability for those choices.*

Discussion: (Topics for discussion by the Board/Committee to assure full understanding of what is expected)

Expansion of the meaning of "cause" for Bylaws Section 5.12(b).

Merits or lack thereof of adopting a resolution defining a code of ethics and conduct as a stand-alone document setting standards of expectation for members of our board of directors. Recommendations for action to be taken with respect to such a resolution.

Committee Chair: _____ Date: _____

Board Liaison: _____ Date: _____

Board Secretary: _____ Date: _____

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Request for Performance by: ☐ Board
☒ Bylaws and Resolutions Advisory Committee

Date: 11/07/2021

Submitted By: OPA Board Liaison, Colette Horn

For Inclusion in Meeting to be Held on: _____, 20____

Request: ☒ The Board requests the Bylaws and Resolutions Advisory Committee to:
☐ The _____ Advisory Committee requests the Board to:

Give a recommendation to the board regarding clarifying or adding a definition of “owner of record” for Bylaws Section 5.02(a).

Background: (Explain the environment of why the Board/Committee wants and/or needs the actions performed)

The meaning of “owner of record” was problematic in the 2021 election and also in the 2017 election, both times resulting in costly litigation. The court has been troubled by the fact that this is not clearly defined in our bylaws. The attached charging document is a request for your committee to

Discussion: (Topics for discussion by the Board/Committee to assure full understanding of what is expected)
Discuss the meaning of "owner of record" and provide the board with a recommendation for bylaws language change that provides clarity on this matter.

Committee Chair: _____ Date: _____

Board Liaison: _____ Date: _____

Board Secretary: _____ Date: _____

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☒ Bylaws and Resolutions Advisory Committee

Date: 11/07/2021

Submitted By: OPA Board Liaison, Colette Horn

For Inclusion in Meeting to be Held on: _____, 20____

Request: ☒ The Board requests the Bylaws and Resolutions Advisory Committee to:
☐ The _____ Advisory Committee requests the Board to:

Give a recommendation to the board regarding resolution of the conflict between Bylaws Section 5.01(a) and Section 3.01(c) regarding the timing for an applicant to become a candidate for the board of directors to meet the voting eligibility requirement regarding payment of the annual assessment and any added interest.

Background: (Explain the environment of why the Board/Committee wants and/or needs the actions performed)

The issue here is that 3.01(c) specifies that the annual assessment and any interest levied by the Association must be paid no later than 35 days prior to the voting deadline. Yet the Secretary must verify that the Association's records support candidate eligibility as of May 15th and submit the list of eligible candidates to the EC not later than June 1st. Both of these dates are much sooner than the 35-day prior to voting deadline requirement. This was an issue in the OPA v Hill case in which it was argued that these two provisions conflicted with each other in terms of the timing of the required actions. The argument was that the candidate shouldn't be required to have paid their assessment prior to the 35-day deadline per 3.01(c). The attached charging document is a request for your committee to discuss revision of 5.02(a) in such a way as to resolve any conflict with respect to candidate eligibility requirements.

Discussion: (Topics for discussion by the Board/Committee to assure full understanding of what is expected)

Committee Chair: _____ Date: _____

Board Liaison: _____ Date: _____

Board Secretary: _____ Date: _____

As of November 3, 2021

By-laws Review Status

Sections/pages	Purpose of Proposal	Status
3.01(c) and 3.01(d) page 1	Clarify voting eligibility	Prepare final proposal
3.04 and 4.07(a) page 1	To provide increased certainty as to who is eligible to vote or sign petitions	Prepare final proposal
4.03, 4.07(c)(2) and 4.07(c)(3) page 2	To clarify the meaning of "maximum number of votes"	Prepare final proposal
4.04(c) page 3	The proposal is to add members' meetings notice provisions from charter	Prepare final proposal
4.08(c) page 4	To require a minimum number of votes be cast for approval of a referendum	Prepare final proposal
5.02(b) pages 5 and 6	To determine the future of the Search Committee	An agenda item for discussion of the Search Committee and its future is planned for the December Board meeting.
5.02(c) pages 5 and 6	To revise board candidate application going to the Search Committee	Same as 5.02(b) Search Committee
5.10 page 7	To clarify requirements for Informal Action by making direct reference to Code	Prepare final proposal
5.11 page 8	To revise Board member amenity privileges	Prepare final proposal
5.13(h) page 9	To consider if there is a conflict between this provision and ARC authority in DRs	Input has not been received. Chair will follow-up with counsel.

As of November 3, 2021

By-laws Review Status

Sections/pages	Purpose of Proposal	Status
5.14(e) & (f), 8.04(b), & 9.02(c) pages 10 and 11	To determine how to identify source references in the by-laws	Prepare final proposal
6.06(a)(6) page 12	To add a duty to the list of duties for the president	No proposal will be submitted

The following proposals have been received from outside the Work Group and By-laws and Resolutions

10.02 page 13	To allow associate members of OPA to be committee members.	An agenda discussion item for the overall participation of associate members in Association affairs is planned for the January Board meeting.
5.12(a)(4) page 14	To make it easier for association members to remove a director	No proposal will be submitted
4.07(a) and 5.14(l) page 15	Insert references to a petition that has been certified as valid by the Secretary	Prepare final proposal