Guidelines for Drafting/Reviewing Nonprofit Bylaws

This template is not intended as legal advice. Your organizational goals, purpose, values, and bylaws should drive the creation of this document.

- **Philosophy** – Our overall philosophy on bylaws for nonprofits is that they should be like a constitution, and therefore drafted in such a way that they will need little to no revision for up to ten years. Since an organization’s bylaws are meant to set the overall structure, having bylaws that are predictable and consistent will help the board govern and help the community develop trust.

- **Membership** - The board membership will, and should, vary during its lifetime; therefore, we recommend that bylaws describe the minimum number of members on any board, and never an absolute number of members. At times boards may determine their minimum size is sufficient, and they have what we think is enough; however, during a period of rapid change, or during a significant financial campaign, a larger number may be required. Therefore, no maximum number should be prescribed in the bylaws. There is no research that equates the size of the board to its effectiveness or engagement, so boards can be as large as the organization thinks is necessary, as long as the organization maintain the practices of a high performing board.
  - When an organization is predominantly an earned income organization (80% or more earned income), it should have no fewer than six members, but may have more depending on its mission and current strategic direction. When such an earned income organization is developed, members could have a role to play in electing the board. In addition, designated seats may be used on such a board, although neither designated seats nor member voting privileges should be thought of as preferable, just acceptable within an earned income organization.
  - When an organization determines it should pursue charitable giving to support its mission, and such charitable giving would constitute at least 25% of that agency’s sustainable income, the minimum number of board members should be at least nine. Such a board should be self-sustaining, meaning that while members (as defines in the bylaws) could nominate or endorse candidates for the board, only the board should have final say over acceptable members for the board; these actions should be based on an approved job description, the characteristics needed as described in a board matrix, and the forecast of new member needed, which has been developed through a board development process. Furthermore, all board members of a board that asks for charitable contributions from the community should be required in the bylaws to make an annual financial donation that would be meaningful and significant to them.
Organizational members of either board style – earned income or charitable giving – when associated with an organization that is asking for annual contribution or membership dues from individuals, should be required to make a personal financial contribution, or to be a member at a significant level. In addition to a contribution or membership, other responsibilities of membership should be expected before such a member has any power in nominations, election, or in potential service on the board. Nonprofit boards should have members of the highest common denominator, not those that meet the lowest expectation.

- **Meetings**- Governing boards should meet at least quarterly; therefore, bylaws should prescribe at least quarterly meetings. Some organizations may determine that they should meet monthly, others every-other month, or some, on rare occasions even more than monthly. The bylaws should only reflect the minimum number of meetings the board determines necessary for its mission; when bylaws reflect the absolute number of meetings, a board should meet at least the minimum described. When meeting numbers are defined at a minimum, a board can always opt to meet more often.

- **Committees**- Boards should be encouraged to work in and through a committee structure. That being understood, boards should not prescribe too many standing committees in their bylaws. Rather, the chair should be given the prerogative to create ad-hoc committees or task forces to address the organization’s strategies as needed. The minimum number of standing committees for all organizations should be two – a Finance Committee and a Board Development/Improvement committee dedicated to recruitment, retention, and improvement of the board itself. Any other standing committee prescribed in the bylaws should be justified with rigorous debate of the board to assure the true ongoing need for such a committee. When an organization determines that one of those other committees should be an Executive Committee, attempts should be made to ensure that such a committee does not have too much power which could de-motivate the members of board at large i.e. they should be strategists not ultimate decision makers.

The use of an Executive Committee became a strategy to help boards conduct business in an ever more complex world, in-between the regular meetings of the board. For many organizations it was too difficult to get everyone back together when important issues arose. Unfortunately, today many Executive Committees have become the “real” board, and the board itself has become advisory to the Executive Committee. This has made it hard for many organizations to have fully engaged board members. To mitigate this problem a new and preferable tactic involves using electronic tools, which are prescribed
in the bylaws, so every board member can be engaged in making decision (see quorum section).

When a board determines it would like to have more input from constituents or consumers, or when the board wants to develop a strategy to engage future governance board members, organizations may choose to create an advisory board. When such an advisory board is prescribed in the bylaws, responsibilities of said board should be specific, and the rules of engagement with the governing board should be described.

- **Quorum** - Although Alaska law allows that only 10% of the members of any “authority” (Board of Membership) are required to make a quorum, which is an unacceptably low number of decision makers, a quorum should be at least 51% of the members at the meeting. In the modern world, many boards are choosing to use phones or videoconference to conduct meetings. Alaska law has limits on the use of email for board decisions. Please reflect current state laws in your bylaws.

- The Bylaws should contain language giving the rest of the board the discretion to unseat an inactive member – these “removal” provisions should be included in the Bylaws.

- **Roberts Rules** - While these rules are the standard for nonprofit operations, most organizations do not use these rules verbatim and are confused about whether they should even use them at all. Roberts Rules serve a function to help ensure that the discussion of the whole board are noted in the minutes and can also be helpful in keeping order during a contentious meeting. Roberts Rules however can stifle necessary discussion on mission related issues and can interfere with the board overall using meetings to focus on education, discussion, and decisions. Roberts Rules dictate that a motion must be “on the floor” in order for discussion to take place. Often there is value in focusing on a mission-driven topic with the full board prior to decisions or action taken. The usual result of one of these discussions is that Roberts Rules will be used to make a motion to create a task force to further study the issue and bring back recommendations to the full board for a vote. In order to have productive and engages meetings, it is best to use Roberts Rule only as a framework for the meeting and worry less about the formalities of the process than about having a mission-driven meeting. With a strong Board Chair this is often accomplished by establishing ground rules on appropriate decorum for meetings and having them stand as “Chair Rules.”

- **Indemnity** - No board member wants to volunteer only to be sued. Therefore, bylaws should fully describe the indemnity that a board member can expect while acting as a board member. Although there are limited liability protections for board members in
Alaska law, in litigious times a prospective member may be “frightened off” by the potential of legal obligations. It is best to include this information as a standing practice in the bylaws.

- **Overall Size of Bylaws**: An organization should attempt to keep bylaws as short as possible in order to encourage all board members to be familiar with their contents. They should be long enough to cover the framework without over burdening it with details that could change over time.