

**Bylaws Work Group
Meeting Minutes
July 15, 2019**

Attendance: Steve Lotspeich, Julie Potter, Bonnie Waninger, Nancy Chartrand, Attorneys Sara Huddleston and Brian Murphy (all via conference call)

Chair Julie Potter called the meeting to order at 9:37 am. Quorum present.

Adjustments to the Agenda

None.

Public Comment

None.

Attorney Review

Discussion with DINSE attorneys Sara Huddleston and Brian Murphy regarding review of and comments on the draft bylaws.

Brian stated bylaws in good shape and that the Work Group did a great job on them. There are a few questions from both parties (attorneys / work group) that we will address.

Why do established titles and names need to be defined as “terms”? This is standard legal procedure to ensure all terms are defined. Job descriptions evolve from the bylaws being the base constitutional document of the organization.

Why would waiver provision under section 605, notice of meetings, be needed?

Brian advised that in order for a board to take action they need to do 4 things.

- a. Meeting needs to be properly called – needs to be a procedure about who calls meeting
- b. Meeting needs to get noticed –consistent with the bylaws and in compliance with open meeting law
- c. Need to have a quorum
- d. Need to have requisite number of votes (majority of quorum or bylaws can dictate differently)

Significant discussion ensued as to why a waiver may be appropriate and Open Meeting Law requirements as they pertain to CVRPC’s Board and Committee meetings.

It was noted that publishing our Annual Resolution stating regular meeting schedules meets the Open Meeting Law requirements, and that regularly scheduled meetings of the Board or Committees do not need to be re-noticed if included in the resolution.

It was concurred that the bylaws should simply state that Notice of Regular, Special or Emergency meetings to the Public and the Board shall be in accordance with the Vermont Open Meeting Law (1 V.S.A. Sections 310-314).

Sections A & B are regarding distribution of materials and should be outside the bylaws, in an Administrative Procedures Manual.

Indemnification. As a subdivision of state government, are we required to indemnify non-employee participants?

Significant discussion ensued regarding the insurance and indemnification issue. It was noted that Commissioners are volunteers appointed by towns, not paid for service. Therefore, unless there was a special provision by the Town they would not be covered by the town. Committee members are a mix of appointees and members of other organizations or residents of the community.

Brian noted that an overwhelming majority of suits against a Board of Directors are for employment related matters. If there is not insurance for that, it is expected that the organization would pay for Director's defense.

Whether or not CVRPC's policy currently includes coverage for Directors and Officers and/or Public Officials is currently being confirmed with our Insurance Company. Bonnie noted that RPC's usually have this type of insurance.

Steve indicated he believes it is important that there is insurance in place for all Commissioners. In addition, there is the issue of indemnification, and whether the Bylaws should state that Commission members are indemnified and protected in addition to the insurance. Indemnification is separate from insurance to cover any lapse between what policy covers and the claim, if the member was acting in the best interest of the organization.

Brian indicated indemnification language is typically in bylaws or charter. He noted that an organization can agree to indemnify Directors outside of bylaws in an indemnification agreement, but that is not usual.

It was noted that a standard policy may cover these matters, but broker can review and advise if it does and/or if additional riders are necessary.

Brian also suggested a bylaw provision could state the organization will carry D/O insurance and Directors will be provided with an annual certificate. Many organizations don't have the insurance they just have the indemnification. Steve suggested we use the language recommended by the attorneys for the indemnification provision and that we address insurance in an Administrative Procedures Manual.

Brian provided the following language for consideration: The organization may indemnify an individual who is a party to a proceeding because he or she is or was a director if they:

- Acted in good faith
- Reasonably believed the conduct was in the best interests of the organization
- Conduct was not opposed to the best interest of the organization
- Had no reason to believe conduct was unlawful

He also noted that an organization can refuse to indemnify if they believe that a Director did not act in good faith.

Julie requested two additional pieces of information for the Work Group to move forward at their next meeting.

- Status of insurance; which Nancy will obtain.
- Citations of the language that Brian just recited.

She noted that insurance clarification is the most informative step. Insurance analysis will greatly inform whether we want to provide something beyond the policy with regard to indemnification.

Brian suggested municipal indemnification vs. non-profit indemnification language may be more appropriate. It was concurred that we could ask VLCT if they have stock language for indemnification, as well as discuss with one of their risk managers as to whether or not CVRPC needs an indemnification clause, and we could have VLCT review any language we draft.

Section 302: Appointment of Commissioners and Alternates; Terms.

Significant discussion ensued regarding whether or not to specify dates in the language; and whether or not it should state one year; or until a successor is appointed. The Committee will discuss this in more detail at a future meeting.

Section 802: Membership Assessment.

It was recommended that (B) Preferential treatment language should be removed and put in a Cost of Services Policy; which will need to be created.

Section 403(F)(2)(e) Municipal Services Agreement language discussed; and whether or not this should be a duty of the Municipal Plan Review Committee or the Executive Committee. The Committee will discuss this in more detail at a future meeting.

Other: Bonnie advised she noted another RPC put bonding for fiduciary positions with premiums paid by RPC in their bylaws. Is there any issue with including this type of language? Brian advised he did not believe language like this should be in bylaws, but rather in Administrative Procedures.

Next Steps – Next Meeting

Sara provided their TO DO List:

- Send sample indemnification language
- Rework notice of meeting section 605
- Flagging section 403(f)(2)(e) and section 302(B) for further committee discussion

Julie requested that we schedule another meeting for further discussion as outlined after the 29th of July. Nancy will suggest some available times after checking calendars.

Adjourn

Steve moved to adjourn at 11:18 am, seconded by Julie. Motion carried.

Respectfully submitted,

Nancy Chartrand
Office Manager