

Memorandum Concerning Proposed Changes to Bylaws ("Proposals")

Overview:

These Proposals result from a nearly two-year process of detailed review of the existing bylaws, considering both how the existing bylaws have functioned in practical use and how the law and best practices have evolved since the existing bylaws were adopted. The Proposals are intended:

- to streamline;
- to resolve ambiguities;
- to modernize;
- to conform with changes in the law;
- and to solve challenges that have arisen in practice under the existing bylaws.

The Proposals have been considered and endorsed separately by an *ad hoc* Bylaws Subcommittee of the Governance Committee, by the Governance Committee, and by the Board of Trustees. They have also been reviewed by outside counsel.

The Board of Trustees has considered and voted on the Proposals and **RECOMMENDS A "YES" VOTE.**

Selected Noteworthy Provisions:

The Proposals can be reviewed in full on a "redline" comparing them to the existing bylaws. The redline is available on the Annual Meeting webpage <https://nebg.org/annual-meeting/>.

Some proposed changes which Members may find particularly noteworthy include:

Voting Thresholds: In several places, the Proposals newly adopt or raise a threshold number of Trustees who must vote to confirm a particular action. The actions affected include hiring or terminating the CEO (Art. VII, §a) and removal of an Officer or Trustee (Art. V, §4(c)(ii); Art. VI, §7(ii)). See also (Art. X, §3) (raising the "floor" for achieving a *quorum* at Board meetings).

Legal Status of Trustees Emeriti and Honorary Trustees: The Proposals continue these honorary positions and state clearly that the positions create neither rights nor corresponding liabilities for either the persons holding the positions or the Worcester County Horticultural Society (WCHS) (Art. V, §7).

Board President - Normal Term Shortened to 3 Consecutive Years: Absent extraordinary circumstances requiring continuity of leadership, the Proposals shorten the board President's maximum term from five to three consecutive years (Art. VI, §1(f)).

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Committees of the Board of Trustees (Art. VIII): The Proposals specify operating procedures for Board Committees. Board Committees are Committees which perform work, delegated by the Board and specifically within the Board's particular responsibilities. New requirements include that a majority of the members of such Committees be Trustees and that non-Trustee members agree to confidentiality, conflicts, and fiduciary standards equivalent to those that bind Trustees (Art. VIII, §1(b)(4)).

Governance and Nominating Committee Structure (Art. VIII, §2(b) and (c)): The Proposals divide the existing Governance Committee into separate Governance and Nominating Committees with discrete functions. The process for appointing each will be aligned with the process for appointing other Board Committees. Specifically, the full membership of the Society will no longer have a role in appointing committee members, and the Board President will appoint the chair and members of each.

Delineating Expected and Permitted Powers and Responsibilities of the Board and its Committees (Art. V, §2): The Proposals offer additional direction about the scope and expected responsibilities of the Board of Trustees as a whole (Art. V, §2) and of its standing Committees (Art. VIII) *without* making substantive changes to those responsibilities. The Proposals also expressly list powers that the Executive Committee may *not* exercise (Art. VIII, §2(a)(2)). See also Art. V, § 2(a) (listing the "powers reserved to Members").

Miscellaneous:

Many of the Proposals are intended to clarify or streamline existing provisions, ensure consistency, and conform to changes in the law or to existing practices. Examples of such Proposals include:

- Clarifying "notice" timelines and expectations (see, e.g., Art. XV);
- Relocating certain *quorum* provisions into the *Quorum* Article (Art. X);
- Clarifying the succession process when the President becomes unable to complete their term (Art. VI, §3);
- Expressly permitting the use of video and hybrid technologies (e.g., Zoom) for meetings (e.g., Art. IV, §4);
- Conforming the action by consent at board meetings to Massachusetts' unanimity requirement (Art. V, § 8; see M.G.L. ch. 156B, §59);
- Updating indemnity provisions (Art. XIII);
- Noting that the Secretary must be a resident of the Commonwealth (Art. VI, §6) if the Society does not have a registered agent. (See M.G.L. ch. 180, §6A).

Signed: Catherine M. Colinvaux
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