19. Bylaws
Content & Maintenance
Establishing Criteria For Bylaws

Any person or committee that undertakes a bylaw revision should carefully establish benchmark criteria by which to judge each proposal. Benchmarks are developed with the consultation of legal counsel and through consultation with other local clubs.

What You Should Know

Clubs should opt for a balanced strategy that provides them with some latitude to deal with variation in daily routines; however, they should be specific enough to avoid a direct challenge to governance. The need for flexibility must be weighed against the possibility of having to re-write the bylaws regularly as conditions within the club environment change.
The following two call-outs are drawn from CMAA's Premier Club Services® Topical Reference Series on Bylaws:

### WHAT YOU SHOULD KNOW

**GUIDELINES FOR WRITING BYLAWS**

- Research the issue(s) thoroughly.
- Check that the bylaw change aligns with the club mission.
- Don't institute change just "for the sake of change."
- Keep bylaws simple.
- Use focus groups and surveys to ensure wide consultation with members.
- Talk to sister clubs who have worked with bylaws.
- Discuss implementation strategies.

### WHAT DOES IT MEAN?

** VOCABULARY, CLARITY AND BREVITY ISSUES**

1. If a bylaw cannot be clearly understood by the membership, it will not be enforceable or upheld in a legal challenge by a member.

2. The shorter and easier bylaws are to understand, the more likely they are to receive buy-in and compliance from club members.

**SOME HELPFUL TIPS:**

- Write in an active voice.
- State clearly the objective (intent) of the bylaw.
- Keep the bylaws general so they do not become overly restrictive.
- Make sure the language is gender-neutral.

### LEGAL IMPLICATIONS

**WHAT TO LOOK FOR**

Bylaws must be carefully worded to minimize liability. If the courts can interpret the bylaw as a commitment on the part of the club to provide a particular protection or service, the club can be held to that "promise."
WHAT YOU SHOULD KNOW
Always circulate drafts for the "Review and Approval" of the Board, President and membership.

CREATION OF BYLAWS

WHAT YOU SHOULD KNOW
The creation of bylaws is separate and apart from the legal foundation of Articles of Incorporation. While the bylaws may contain aspects and provisions found in the Articles of Incorporation, the bylaws normally "flesh out" the standard operating procedures, governing policies, and operational rules necessary for the club to conduct business on a day-to-day basis.

Bylaws govern most if not all non-profit organizations. It is critical that those bylaws reflect the organizational culture, traditions and expectations of the club's membership wherever possible.

Merriam-Webster's Collegiate Dictionary states: "Bylaws are the rules adopted by an organization chiefly for the government of its members and the regulation of its affairs."20

It is important that non-profit organizations have bylaws that are responsive to the organization's constituents. It has been repeatedly observed that organizations that never review their bylaws may be burdened with a legal framework that is no longer responsive to their organizational needs.

One of the most important reasons to change bylaws is that the organization's stakeholders see a need for change. The bylaws must remain responsive to the changing demands of the people it serves.22
WHAT YOU SHOULD KNOW

CONSIDERATIONS FOR ESTABLISHING BYLAW REVISIONS

Any person or committee that undertakes a bylaw revision should carefully establish criteria by which to judge each proposal. It is also important to establish what issues will not be included in the bylaws.

WHAT YOU SHOULD KNOW

The purpose and objective of a club must be in compliance with the law and in the best interests of the community, whether a club is incorporated or not. An application for a club’s Articles of Incorporation (outlining the principles, functions and organization of a body) will be denied by the Secretary of State if the proposed bylaws (the laws or rules governing the internal affairs of the organization) provide for illegal methods of management.

WHAT YOU SHOULD KNOW

GENERAL GUIDELINES FOR BYLAW DESIGN

Clubs that embrace pragmatism as an operating strategy develop bylaws that are specific enough to direct the club but are generic enough to allow flexibility to operate comply with the statutory provisions of the law.

For example, club bylaws should state how frequently club Boards should meet, but refrain from giving a specific time, date and place.

WHAT YOU SHOULD KNOW

COMMUNITY AWARENESS CONCERNS

"Clubs must often look beyond the law books and even beyond their own membership. They must have an appreciation of their community's needs and expectations ..."

"A club built at the turn of the century in an exclusive downtown may now find that the neighborhood has fallen victim to urban blight and that its members have new challenges in using the club facilities."
"Likewise, a club that was once the only facility for miles around may find that, as new neighbors move in, there are greater restrictions on liquor licenses, entertainment licenses and developmental permits."23

**WHAT TO LOOK FOR**

Boards and bylaw committees have four major issues they must address when evaluating each bylaw revision24:

- Membership concerns
- Legal compliance concerns
- Community awareness concerns
- Vocabulary and clarity concerns

When memberships demands precipitates a change in bylaws, the bylaws committee needs to make certain that what it has written reflects the best interests of the membership.

**CHANGE IN ORGANIZATION MISSION**

*The mission is the organization's guiding beacon.*25

Sometimes the organization's mission is contained in its articles of incorporation (also known as its charter).26 Organizations that engage in strategic long-range planning may find that their bylaws must change to stay in harmony with the new direction that the strategic plan provides.

A change in a club's charter or articles of incorporation could affect not only club members and club employees but also the non-profit status of the club. Charters do change, however, and so do the bylaws that support the charter.27

The acquisition of land or the construction or renovation of buildings may require the forming of bylaws to govern their uses. Additional services to the membership, while adding to the value, frequently require additional internal regulations.
Every governing body seeks to operate in a manner that reaps the greatest benefit for the people it serves. To do this, the Board must frequently re-evaluate the rules by which it governs. These operating issues make up the bulk of most bylaws. Operating issues that may result in bylaw changes can be divided into those that affect:

- Organization governance and meeting procedures
- Standing committees
- Indemnification of officers
- Response to specific situations

WHAT YOU SHOULD KNOW

Many clubs have found that rather than addressing a specific situation in the bylaws, it is more efficient to set up a grievance procedure.

No non-profit Board can foresee every situation that must be addressed in its bylaws. Each club will have its unique problems and challenges that must be addressed within the parameters of the club's values, customs and traditions. When solutions to new problems are found, some clubs will want to codify the solution to create consistency and to ensure that things flow more efficiently in the future.

Some examples of common changes that arise in response to specific situations in the club industry include annual meeting time and procedures, resignations and the shifting definitions of constituents that the club serves.

Some organizations find themselves with bylaws that for decades have not been updated. In fact, the bylaws may no longer be feasible to enforce as written. There may be references to buildings that no longer exist or procedures that are no longer relevant.
RESPONSE TO SPECIFIC SITUATIONS

Many clubs wish to codify (memorialize) solutions to make things flow more efficiently in the future.

More common changes that arise in response to specific situations could include:

1. Annual meeting time and procedures
2. Resignations
3. Definitions of constituents served (membership categories)
4. Suspension or expulsion

CHANGING PRACTICES THAT NEED DOCUMENTING

Every organization constantly searches for better ways to accomplish its tasks. An organization may grow over time and subsequently change the way it operates. Non-profit organizations may find that they have adopted certain processes and practices or have formed long-standing committees that have never been documented. Any time a process, committee or practice has existed for many years and has become institutionalized, an organization may decide to document it, which—in some cases—would require a revision of its bylaws.

CHANGE IN SOCIAL OR LEGAL ENVIRONMENT

The social environment (whether evolving naturally or legally imposed) impacts organizations with a non-profit status. Organizations are frequently swept up in the political and legal maelstroms that swirl through communities across the nation. Boards and bylaw committees must carefully consider the legal ramifications of any proposed bylaw. The club must be careful to safeguard its non-profit status. It must carefully evaluate each bylaw, making sure they are "clean" and do not violate federal, state or local regulations. Likewise, bylaws must be carefully worded to minimize exposure to liability.

Courts have an expectation that organizations will live up to the standards of their bylaws. Clubs that do not meet this expectation open themselves to a wide range of civil lawsuits.
MISSION STATEMENTS

Every club should have a mission statement reflecting the purpose for which the club was formed. This statement provides guidance for the club’s entire operation and ensures that the club’s activities are consistent with its mission. The following are sample mission statements and objectives from a variety of clubs that will help you in formulating or revising your own mission statement.

MISSION STATEMENTS

NAME
This Club shall be known as the [insert name], and the mission of the Club is to [e.g., promote social intercourse, and outdoor sports, including those usually encouraged by other social clubs] and to provide means thereof.

SAMPLE OBJECTIVES
The objectives of this Corporation are to operate a Club exclusively for the pleasure, recreation, and other non-profit purposes of its members; to promote social intercourse among them; and to encourage their development and enjoyment of golf, tennis, swimming, and other games and sports.

The object of the Club shall be to encourage and stimulate an interest in golf and other outdoor sports, and perform such things that pertain to such purposes; to own or lease, operate and maintain a Clubhouse, golf course, tennis courts and related facilities for the benefits and accommodation of its members.

PURPOSE CLAUSE
The purpose of the Club shall be the establishment, maintenance and support of a private country club offering its members facilities for dining, golf, tennis, swimming, social and recreational benefits and such other activities as the Board of Directors of the Club shall approve.

The Club’s mission is to provide golfing and social facilities to a family oriented membership consistent with the traditions of the club through quality services and sound financial policies.

The purposes for which the Club exists are to encourage and promote the social, athletic, and other interests of members within a country club atmosphere. In pursuance of these objectives, the Club may buy, sell, mortgage, pledge, or deal in real or personal estate as may be necessary or desirable.
PURPOSES AND OPERATIONS
The Club is organized exclusively for the following charitable and educational purposes within the meaning of sections 170(c)(2) and 501(c)(3) of the Internal Revenue Code of [date], as amended (hereinafter referred to as "Code Section"): 
(a) to promote and encourage the instruction, practice and play of sports and athletically related activities;
(b) to provide and maintain a facility and physical plant which shall be available to the membership and shall [insert primary resources] and such other sources of recreation as may be relevant to the membership of the club;
(c) to provide and maintain a facility and physical plant which shall be available to the membership to service their accommodation, food and beverage, and social needs as identified by the membership;
(d) to provide and maintain a meeting place for members and other invited persons with common interests;
(e) to conduct or sponsor athletic and sports related instruction on its own account or in cooperation with other clubs, professional societies, associations or organizations; and
(f) to do such other things as may be advisable or incidental to the accomplishment of the foregoing purposes.

BYLAW BASICS — WHO DOES WHAT?

Whatever process is used to amend bylaws, the following questions must be posed and answered:

WHO PROPOSES CHANGE?
The general membership has the power to adopt or amend the bylaws. In most instances, members of the Board act in their fiduciary capacity to propose amendments for ratification by the membership.

WHO Prepares the ByeLaws?
While the assistance of counsel is invaluable — if not indispensable — in the drafting of bylaws, a common tactic used by club managers is to consult with sister clubs, inquiring about their strategic position on an issue and then drafting their own for review.

There is an old adage that "he who drafts a document is in the best position to shape that policy." The author of a document has the advantage of outlining the parameters of the
proposal affecting its scope, validity and effectiveness. While the actual draft should come from counsel, the spirit and direction of the proposal will more deliberately reflect your members' intent than a document created in the isolation of a lawyer's practice.

**WHO VOTES AND HOW MANY VOTES ARE NEEDED?**

The essence of a club's bylaws is the various provisions for identifying the voting process and procedures. Some states regulate the process while others leave the particulars to each organization. In either case, the prudent general manager has a grasp of both the technical requirements and the practical implications of any vote by the membership.

**HOW DOES THE CLUB MEET THE REQUIREMENT OF MEMBER NOTIFICATION OF THE CHANGES?**

Often proscribed by statute, common law or preferably in the organization's bylaws themselves, the provision for member notice of a pending change forms the basis of the organizational transparency necessary to generate trust and support for any club bylaw initiative. A general manager would be wise to lay the groundwork for any such initiative months before the actual vote.

**WHAT IS THE PROCESS FOR BYLAW AMENDMENTS, ADDENDUMS AND DELETIONS?**

The required number of votes that are needed for ratification of the bylaw change varies depending on any number of factors. In essence, the club founders predetermined the usual club practice/history/tradition by their initial approach to bylaw ratification. Whether by a simple majority vote or by a complicated formula, the process for amendment must be closely followed.

**WHO PREPARES THE ACTUAL PROPOSAL?**

As indicated in previous sections, a club would be well advised to hire competent counsel familiar with bylaw construction; the applicable provisions of jurisdictional state
law regarding nonprofit corporations; associations and organizations; and the traditions, customs and historical importance of legacy that occurs in a club environment.

**WHAT YOU SHOULD KNOW**

Often during the course of a Board meeting the various officers will offer resolutions in the attempt to modify the conduct of business within the club environment. It is important to remember a resolution is a formal expression of a decision, attitude or opinion of the Board or a committee regarding an issue but does not itself constitute a binding bylaw. A resolution is a single act that expresses an official attitude on a matter. A bylaw is the embodiment of a permanent act impacting the governance of all members.

**WHAT YOU SHOULD KNOW**

It is important — if not critical — to make a distinction between club bylaws and club rules. In most instances, club rules cover the specific permissions and prohibitions regarding club facilities. In addition, they cover a wide range of matters relating to members of the club including, but not limited to: payment of dues, club communication, dress code, rules of play and the procedures for termination of membership rights and obligations.

**MAJOR BYLAW ISSUES**

**WHAT TO LOOK FOR**

The following areas are usually major sources of club conflict and often require bylaw changes within a club:

- Gender-neutral wording
- New technology use
- Discrimination
- Dress codes
- Membership categories
- Voting
- Election of members, admissions process
The General Provisions of Bylaws for Clubs

- Club governance
- Stock or certificate of membership procedures
- Board of directors: authority, elections, etc.
- Identifying standing committees
- Indemnification of officers and directors
- Smoking
- Annual meeting time and procedures
- Resignations
- Non-payments of accounts
- Suspension or expulsion
- Significant others
- Use of the club by members, spouses and other family members
- Dates and escorts
- Divorce

**AMENDMENTS, ADDITIONS OR DELETIONS — THE GENERAL RULE**

Once the Articles of Incorporation are filed and legal counsel establishes a state prescribed platform, it is the number of complex changes and the need for revision and modification of those bylaws that create the next set of problems for club managers.

Usually, the wording and impact of the bylaws themselves dictate the process for amendments, additions or deletions. Depending on the club, the process may be elaborated to include such items as the number of votes required, the place and mechanics of posting and the minimum number of days that a bylaw change must be considered by the membership.

Other clubs may choose only to codify — i.e., write down — the general requirements for bylaw amendments and leave the rest to the individual Boards. Those Boards are then charged with implementing procedural rules and regulations outside the framework of club bylaws.
WHAT YOU SHOULD KNOW

Bridgette Redman in CMAA's White Papers on Club Management described commonly cited issues that GM/COOs say should not be added to bylaws. They include:

- Membership approval for raising dues
- Membership approval for spending money or incurring debt
- Membership approval for assessments
- Exact criteria for evaluating membership nominees
- Specific days and months to hold meetings
- Drinking age of members

Given the complexity and relative permanency of bylaws, the strategy of providing a general outline of intent regarding a proposed bylaw (but drafting it so that it gives the Board the ability to generate specific policies and procedures – i.e., club rules – for implementation) might prove the most efficient and effective way to craft a framework of responsibilities. However, in the end, different clubs have found a variety of ways to be effective.

AMENDMENT TO BYLAWS (Suggested Language)
The Bylaws may be amended, supplemented or repealed at any regular meeting of the Board or at any Special Meeting of the Board, provided that such meeting must be attended by eleven (11) or more of the Directors, and provided further that at least ten (10) Directors vote for and approve the proposed action. Notwithstanding anything contained herein to the contrary, the Bylaws may be amended or repealed by a majority vote of the voting membership of the Club at an Annual Meeting or a Special Meeting called for such purpose.

THE MECHANICS OF IMPLEMENTATION

Once a bylaw has been ratified, clubs must make certain each member is notified of the change. If bylaws are ratified by the general membership, this task is made somewhat easier.

Clubs have an obligation to provide "actual notice" to the members of any change in bylaws. Without actual notice, the bylaws are not legally binding.
TERM LIMITS FOR OFFICERS AND DIRECTORS

WHAT YOU SHOULD KNOW

The question of how long directors and officers should be permitted (or required) to serve the club is an area that bears some scrutiny.

AND THE SURVEY SAYS...

DIRECTORS

Among country clubs responding to a survey by The Private Club Advisor, 95.5 percent reported term limits of three years or less as the standard for directors. In city clubs, 84.6 percent limit directors' terms to three years or less. Nearly half of the composite group of all club types limits directors to no more than two consecutive terms. About 30 percent of all responding clubs limit directors to one term, but 97 percent allow directors to run again after sitting off the Board for some period.

PRESIDENT

More than 80 percent of country club respondents have a one-year term limit for the club’s president; however, 65 percent of those clubs allow the president to serve more than one consecutive term, and 22 percent allow more than three.

Presidential term limits for city clubs tend to be longer, but 77 percent of those clubs specify no more than two consecutive terms, and only eight percent allow more than three consecutive terms.

Club attorney Fred Somers recommends three-year terms with the right to serve for two successive terms as an allowed exception. “The exception to a three-year term would be a director who is a useful contributor and shows continued enthusiasm. For many directors, three years absorbs their enthusiasm. Dividing the Board into classes, in which one-third or one-fourth of the Board (depending on its size) is up for election or reelection each year, is a way to revitalize the Board yet assure continuity.” Somers goes on to suggest that clubs with no existing guidelines consider the American Bar Association’s Proposed Model
Nonprofit Corporation Act as a guideline.

States have their own versions on file, which serve as a default rule for clubs that have no defined tenure in their bylaws or policies.

Section 8.05(a) of the Proposed Model Nonprofit Corporation Act (Third Edition February 2006 Exposure Draft) states:

The articles of incorporation or bylaws may specify the terms of directors. If a term is not specified in the articles or bylaws, the term of a director is one year. Except for directors who are appointed by persons who are not members or who are designated in a manner other than by election or appointment, the term of a director may not exceed five years.\textsuperscript{9}

Special Note: As promised -- because everybody likes a template to work with -- what follows are three sets of sample club bylaws, each with its own table of contents, so that the reader can quickly cross-reference key areas of the document for specific topics and strategies.