



Annotated Sample of Minutes, Consents, and Board Resolutions

California Nonprofit Public Benefit Corporation

About This Form: Public Counsel’s Community Development Project has designed these annotated sample minutes, consents, and board resolutions to serve as a tool for non-membership California nonprofit public benefit corporations and *pro bono* attorneys who represent them.

Exercise of Board Authority and Resolutions

Subject to the provisions of its articles of incorporation, California Nonprofit Corporation Law and any other applicable laws, a California nonprofit public benefit corporation’s business and affairs are managed, and all corporate powers are exercised, by or under the direction of its board of directors (sometimes referred to as “the board”). The board may delegate its management authority to any person or persons, management company, or committee, provided that, ultimately, the activities and affairs of the Corporation are managed and all corporate powers are exercised under the direction of the board.ⁱ

A **resolution** is the written documentation of a binding decision regarding the affairs of a corporation made by its board of directors or committee, either at a meeting or through unanimous written consent. This publication provides sample resolutions for common board actions.

Corporate Minutes

Minutes are the official record of the proceedings of a board or a committee meeting. Every California nonprofit corporation is required to maintain minutes of its board and committee proceedings either in written hardcopy or another format that can be converted into “clearly legible tangible form” (e.g., as an electronic data file).ⁱⁱ Board meeting minutes are typically drafted by or under the supervision of the corporation’s secretary, and committee meeting minutes are typically drafted by or under the supervision of the committee chair or secretary.

Minutes provide a record of corporate actions and the votes taken to approve them, demonstrate compliance by board and committee members with their fiduciary duties, and can serve as a source of evidence in judicial or regulatory proceedings.ⁱⁱⁱ Auditors, the IRS, and courts may rely

ⁱ Cal. Corp. Code § 5210.

ⁱⁱ Cal. Corp. Code § 6320.

ⁱⁱⁱ Copies of board minutes that are certified by the corporate secretary as being correct can serve as legal proof of corporate actions. [Cal. Corp. Code § 5215].

on corporate minutes in determining whether a corporation's board of directors acted lawfully. When minutes are incomplete or inaccurate, it may be more difficult for board members to explain or defend a board action. There is no standardized format for corporate minutes, nor are there precise rules regarding what is required to be included in minutes, although sometimes a corporation's bylaws may articulate specific record-keeping expectations. However, in order to provide an accurate and useful record of board or committee meetings, minutes should include enough information to show both what decisions were made and that the decisions were made lawfully.

It is not recommended to try to record *verbatim* everything that is said at a board or committee meeting – instead, minutes should record actions taken at the meeting and include enough information to establish that the directors were acting within their fiduciary duties and acting in compliance with the corporation's bylaws. As a best practice, minutes should include: (1) the meeting date, time, and location; (2) a list of board or committee members present and absent; (3) identification of corporate staff or other guests present; (4) a statement of whether the meeting is a special or regular meeting and the manner of notice given; (5) a statement of whether a quorum has been achieved; (6) a list of material distributed at the meeting; (7) a brief description of items of discussion (may attach the agenda); (8) the name of any individuals making presentations and a summary of key points; (9) a description of actions taken, including **adoption of resolutions**; (10) a record of votes for or against any action; and (11) identification of any directors or committee members abstaining from the vote on any action. In addition, when the board or a committee acts on any matters for which there are specialized voting rules, such as where there is or may be a conflict of interest, the minutes should clearly explain what information or documents the directors relied on when making their decision.

A common practice is for the corporation's secretary to draft minutes after the meeting is over based on notes taken at the meeting. At the next board meeting, directors review the minutes, make any changes to more accurately reflect the actions taken, and then vote to approve them.

Sections 1.3 and 2.2-2.8 are examples of minutes that could be taken to record common board actions. Minutes of all board and committee meetings should be permanently and securely retained in hardcopy by the corporation in its corporate record books or in electronic format.

Unanimous Written Consents

Unless otherwise provided in its bylaws, a nonprofit corporation's board or one of its committees can take an action or pass a resolution without a meeting if **100%** of the directors or committee members (other than a director or committee member that is "interested" with respect to the vote being taken) **consent in writing** to that action or resolution.^{iv} The written consent to the action or resolution may be signed in counterparts (i.e., the individual directors or committee members can sign separate copies). The written consents should be filed with the minutes of the board.

^{iv} Cal. Corp. Code § 5211(b). For these purposes, the law defines an "interested director" as one who has a material financial interest in a transaction to which the corporation is a party and which is not excepted by California Corporation Code section 5233(b).

Board action by unanimous written consent may be appropriate in the transaction of routine business, or for the approval of specific actions that have already been fully discussed at prior board meetings. Directors should, however, be cautious about the ratification or authorization of major activities or decisions without a meeting or other opportunity for the board as a whole to raise questions and fully evaluate the ramifications of the action because due care is shown by having the opportunity to ask questions. Unanimous consents should not regularly be used as a substitute for meetings.

Sections 1.4 and 2.9 consist of sample consents which can be used to approve actions without a board meeting if signed by each individual board member. Unanimous written consents and all signed counterparts should be permanently and securely retained in hardcopy by the corporation in its corporate record books or in electronic format.

Important Notes:

Some of the provisions in these samples contain bracketed text in italics to indicate where the user is required to insert language to replace the bracketed terms. Optional language is placed in brackets and denoted as optional. A choice between two or more alternatives is bracketed and signaled with the use of a double underlined “OR” or with a slash (/). In some cases, each alternative is labeled as Alternative 1 or Alternative 2. When not obvious from the text of the samples, the annotations in the footnotes explain the circumstances under which a user should include the optional language or choose a particular alternative.

These annotated samples of minutes, consents, and board resolutions are designed to be compatible with the annotated articles of incorporation and bylaws published by Public Counsel. For the latest versions of these annotated documents, see <http://www.publiccounsel.org/publications?id=0059> (articles of incorporation) and <http://www.publiccounsel.org/publications?id=0060> (bylaws).

This form should not be construed as legal advice. Please contact an attorney for legal advice about your organization’s specific situation. This form should not be used “as is” but should be modified after careful consideration of the sample board resolutions.

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Public Counsel’s **Community Development Project** builds strong foundations for healthy, vibrant, and economically stable communities through its comprehensive legal and capacity building services for nonprofits that assist low income neighborhoods in Los Angeles County. If your organization needs legal assistance, or to access the latest version of this document, call the Community Development Project intake line at (213) 385-2977, extension 200 or visit www.publiccounsel.org/practice_areas/community_development.

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Section 1: Initial Organizational Actions to Be Taken Following Incorporation of a Nonprofit Corporation

This section contains sample minutes, actions, and consents documenting the initial acts of a nonprofit corporation. In California, the incorporator(s) of a nonprofit public benefit corporation may file articles of incorporation with or without identifying an initial board of directors.¹ If no initial directors are named in the articles, the incorporator may do whatever is necessary to perfect the organization of the corporation after the articles are filed, such as appointing the initial board of directors, electing officers, and adopting bylaws.² These initial actions should be documented in writing and included in the corporation's minute book. (Action by Sole Incorporator, Section 1.1).

After the incorporator has appointed the initial board, he or she should resign as incorporator and subsequent actions should be approved by the board of directors. Once the directors have been appointed, the board should ratify any actions of the initial incorporator, elect officers (if not yet done so by initial incorporator), appoint an agent for service of process, authorize the officers to establish bank accounts, obtain federal and state tax exemption, complete necessary filings with the state, and take any other steps necessary to become a functioning non-profit corporation. The board may approve these initial actions either at its first board meeting (Waiver of Notice, Section 1.2 and Minutes of First Meeting of Board of Directors, Section 1.3) or through unanimous written consent (Section 1.4). Minutes of the First Meeting of the Board of Directors (Section 1.3) includes samples of resolutions which may be used to approve these initial actions.

¹ Cal. Corp. Code § 5132(c).

² Cal. Corp. Code § 5134.

Section 1.1

**ACTION BY
SOLE INCORPORATOR³
OF
[NAME OF CORPORATION]**

The undersigned, being the sole incorporator (the “Incorporator”) of [name of corporation], a California nonprofit public benefit corporation (the “Corporation”), and acting pursuant to section 5134 of the California Corporations Code, takes the following actions:

Adoption of Bylaws⁴

The form of bylaws attached hereto as **Exhibit A** are adopted as the bylaws of the Corporation.

Appointment of Board of Directors⁵

The following individuals are appointed as the initial directors of the Corporation, effective as of the date hereof, each to serve for a term of [term length] and until the election and qualification of a successor, or until the director’s earlier resignation or removal in accordance with the bylaws of the Corporation:

Resignation of Incorporator

The undersigned, having appointed the board of directors of the Corporation, resigns as the Incorporator of the Corporation, effective as of the date hereof.

IN WITNESS WHEREOF, the undersigned has executed this Action by Sole Incorporator, effective as of the __ day of _____, 20__

[Incorporator’s name], Incorporator

³ Do not use this form if the directors have been named in the articles of incorporation. Instead, the board of directors should approve the initial acts of organization (Section 1.3 or Section 1.4). Also, if there is more than one incorporator, this action should be rewritten accordingly and all incorporators should sign it.

⁴ In this sample, the bylaws are adopted by the incorporator. However, adoption of bylaws is not required to occur at this point in the organization of the nonprofit. The bylaws may also be adopted by the board of directors at its first meeting or by unanimous written consent.

⁵ Since this sample assumes that bylaws have been adopted and attached as an exhibit, the number of directors and their terms of office should be consistent with the number of authorized directors and terms of office set forth in the bylaws.

Section 1.2

**WAIVER OF NOTICE AND CONSENT TO HOLDING
OF FIRST MEETING OF BOARD OF DIRECTORS⁶
OF
[NAME OF CORPORATION]**

We, the undersigned, being all the members of the board of directors of [name of corporation] (the “Corporation”), acting pursuant to section 5211(b) of the California Corporations Code, hereby waive notice of the first meeting of the board of directors of the Corporation and agree to hold said first meeting on [month, date, year] at [time], at [city or town], California, and consent to the transaction of any and all business by the board of directors at said first meeting.

This Unanimous Written Consent shall be filed in the minute book of the Corporation and become a part of the records of the Corporation.

This Unanimous Written Consent may be executed by facsimile (or PDF copy delivered by electronic mail) in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

Dated: _____

[Director’s name], Director

[Director’s name], Director

[Director’s name], Director

[Director’s name], Director

⁶ Unless otherwise provided in the articles of incorporation or bylaws of a nonprofit corporation, the California Nonprofit Corporation Law requires that a board meeting be called by certain officers or directors and that notice of the board meeting be given to the directors in a certain manner. [See Cal. Corp. Code §5211]. If the meeting is not appropriately called and notice of the meeting is not given in the manner required by law and by a corporation’s bylaws, any corporate actions taken arguably might be subject to later challenge. This potential problem can be overcome if the directors (i) waive the right to receive the required notice by signing a written waiver of notice, (ii) sign a written consent to holding the meeting, (iii) approve the minutes of the meeting in writing, or (iv) attend the meeting without protesting the lack of notice before or at the start of the meeting. [Cal. Corp. Code § 5211(a)(3)]. Since the first meeting of the board of directors is often held before the bylaws have been adopted, officers have been elected, and an organizational structure is in place to issue proper notice, a nonprofit corporation may wish, out of an abundance of caution, to require each director to sign a waiver and consent like this one.

Section 1.3

**MINUTES OF FIRST MEETING OF BOARD OF DIRECTORS
OF
[NAME OF CORPORATION]**

Time and Place⁷

The board of directors of [name of corporation] held its first meeting on meeting on [month, date, year] at [time], at [city or town], California.

[Optional: Notice]

All of the directors executed the Waiver of Notice and Consent to Holding of First Meeting. The Waiver of Notice was made a part of the records of the first meeting; it now precedes the minutes of the first meeting in the corporation's minute book.]⁸

Directors Present

The following directors were present at the first meeting:⁹

_____	_____
_____	_____
_____	_____

The following directors were absent:

_____	_____
_____	_____

A quorum [was/was not] present.

[Optional: Others Present]

⁷ It is not necessary to have a heading for each topic discussed at a meeting. This sample of board meeting minutes includes it for ease of reading.

⁸ Use the optional language if a waiver of notice was used for the first meeting (Section 1.2).

⁹ The minutes should note if any directors participated telephonically or through electronic video screen and whether all participants were able to communicate with one another. The law permits the use of conference telephone and video screen communication at a board meeting only if all participating members can hear one another. [Cal. Corp. Code § 5211(a)(6)].

Also in attendance were the following individuals: [*names and titles of non-directors present at meeting.*]

Presiding Officers

[*Name of director*] was elected Temporary Chairperson and then presided over the first meeting. [*Name of director*] was elected Temporary Secretary of the first meeting.

Initial Actions of Corporation

After presentation by the Chairperson, the following resolutions were adopted:¹⁰

Ratification of Acts of Incorporator¹¹

WHEREAS, [*Name of incorporator*] was the sole incorporator (the “Incorporator”) of the Corporation and has executed the Action by Sole Incorporator of [*name of corporation*] dated [*month, date, year*], in which the Incorporator appointed the board of directors of the Corporation, [adopted the bylaws of the Corporation,]¹² and resigned as Incorporator of the Corporation.

RESOLVED, that all actions taken on behalf of the Corporation by the Incorporator are ratified and affirmed.

Adoption of Articles of Incorporation

RESOLVED, that a certified copy of the articles of incorporation, filed with the California Secretary of State on [*month, date, year*] be inserted by the Secretary of the Corporation in the minute book of the Corporation and kept at the principal office for the transaction of business of the Corporation.

Agent for Service of Process

RESOLVED, that [*name of agent for service of process*], named as the initial agent for service of process in the articles of incorporation of the Corporation, is named as the Corporation’s agent for service of process.¹³

¹⁰ Given the noncontroversial nature of the resolutions in this section, it is assumed that all directors will vote in favor of each resolution and thus the board of directors will not deem it necessary to take an individual vote on each resolution, although the board of directors may choose to do so.

¹¹ The board should ratify the actions taken by the incorporator before the board of directors was appointed. See the Action by Sole Incorporator (Section 1.1) for more information.

¹² In the Action by Sole Incorporator the incorporator adopted the bylaws and therefore, their adoption has to be ratified by the full board. However, if the initial incorporator did not adopt the bylaws, the board should do so at its first meeting.

¹³ The board does not have to keep the initial agent for service of process named in the articles of incorporation. If it changes its registered agent, the corporation must notify the California Secretary of State pursuant to the requirements of section 6210 of California Corporations Code.

Adoption of Bylaws

RESOLVED, [that the bylaws attached hereto are adopted as the bylaws of the Corporation and]¹⁴ that the Secretary of the Corporation is authorized and directed to execute a certificate of adoption of the bylaws, to insert the certified bylaws in the Corporation's minute book, and to ensure that a copy of the certified bylaws is kept at the principal office as required by law.

Number of Directors¹⁵

RESOLVED, that the number of authorized directors of the Corporation is [*number of authorized directors*].

[Optional: Staggering Directors¹⁶

WHEREAS, the [bylaws of the Corporation provide/the Board of Directors desires] that the initial directors appointed after incorporation shall serve staggered terms of service;

WHEREAS, implantation of staggered terms [under the bylaws] requires that the initial directors are divided into [*number of groups – equal to length of normal director term*] approximately equal groups and designated by the board of directors to serve [*term length for each group, e.g., one, two, or three-*] year terms.

RESOLVED, that the following persons appointed as directors shall serve an initial one-year term:

RESOLVED, that the following persons appointed as directors shall serve an initial two-year term:

¹⁴ Use the bracketed language if the initial incorporator did not approve the bylaws prior to the appointment of the board of directors.

¹⁵ The corporation must have at least one director, but the law does not place a limit on the maximum number of directors. The law requires that unless already provided in the corporation's articles, the bylaws shall state either the number of directors or a range establishing a minimum and maximum number of directors, or a method for determining the number of directors. [Cal. Corp. Code § 5151(a)]. If the bylaws of the corporation allow for a range of authorized directors, this resolution can be used to fix the number of authorized directors.

¹⁶ If the corporation is concerned that there will be too many vacancies on the board or too little continuity because all terms expire at the same time, the corporation might provide for a staggered board in its bylaws or through a resolution. The board, at a meeting or by unanimous written consent, would be divided into as many groups as there are years in the term and randomly assigned so that each group had a different term expiry date. After the initial terms, each director would be elected for the same term length (e.g., three years), but the terms would expire at different times so that at all times the board would include at least some directors who had experience with the board and its operations.

RESOLVED, that the following persons appointed as directors shall serve an initial 3-year term:

_____]

Election of Officers¹⁷

RESOLVED, the following persons are elected to the following offices to serve for [*term length*] and until the election and qualification of a successor, or until the officer’s earlier resignation or removal in accordance with the bylaws:

[Chairperson/President]: _____

Secretary: _____

Treasurer: _____

[Optional: Vice President: _____]

Incorporation Expenses

RESOLVED, that each of the officers of the Corporation is authorized and directed to cause the Corporation to pay the expenses of its incorporation and organization.

¹⁷ The law requires each corporation to have both a board and at least three officers who have responsibilities to fulfill a variety of corporate compliance tasks, including the execution of contracts and other documents. Specifically, the required officers are (i) a chairperson of the board or a president, or both; (ii) a secretary; and (iii) a treasurer or a chief financial officer, or both. A corporation is not required to have a vice-president. Because the president cannot be the same person as the secretary or treasurer/chief financial officer, at least two separate individuals will have to serve as officers of the corporation. [*See* Cal. Corp. Code § 5213(a)]. Nonprofit corporations may choose to identify any of these statutory officers by a title not used in the law, such as “chief executive officer” instead of president. People chosen to serve as officers are not required by law to be directors (although the term “chairperson” usually refers to an officer who also is on the board), but officers may be, and frequently are, selected from among the directors. Even if an officer is also serving as a director, the two roles are distinct. The bylaws should establish the term length for officers and limits on consecutive terms, if any.

Establishment of Bank Accounts¹⁸

RESOLVED, that any two officers of the Corporation, acting together, are authorized to:

- a) Designate one or more banks, trust companies, or other similar institutions as a depository of the funds, including, without limitation, cash and cash equivalents, of the Corporation;
- b) Open, keep, and close general and special bank accounts, including general deposit accounts, payroll accounts, and working fund accounts, with any such depository;
- c) Cause to be deposited in accounts with any such depository, such funds, including, without limitation, cash and cash equivalents, of the Corporation as such officers deem necessary or advisable, and to designate or change the designation of the officer or officers and agent or agents of the Corporation who will be authorized to make such deposits and to endorse checks, drafts, or other instruments for such deposits;
- d) From time to time designate or change the designation of the officer or officers and agent or agents of the Corporation who will be authorized to sign or countersign checks, drafts, or other orders for the payment of money issued in the name of the Corporation against any funds deposited in any of such accounts, and to revoke any such designation;
- e) Authorize the use of facsimile signatures for the signing or countersigning of checks, drafts, or other orders for the payment of money, and to enter into such agreements as banks and trust companies customarily require as a condition for permitting the use of facsimile signatures;
- f) Make such general and special rules and regulations with respect to such accounts as they may deem necessary or advisable; and
- g) Complete, execute, and/or certify any customary printed bank signature card forms to exercise the authority granted by this resolution;

RESOLVED, FURTHER, that any form resolutions required by any such depository, which relate to the establishment of such accounts and the authorization of signatories with respect thereto and substantially incorporate the authorizations contained in these resolutions, are adopted and approved; and

RESOLVED, FURTHER, that any such depository is entitled to rely on these resolutions, if they are certified by an officer of the Corporation, for all purposes until it shall have received written

¹⁸ This is an example of an internal control a nonprofit corporation may wish to adopt with respect to its financial assets. A depository will often require the board to approve its own additional form of authorizing resolutions and signature procedures before opening any corporate account.

notice of the revocation or amendment of these resolutions by the board of directors of the Corporation.

Consent to Electronic Notification¹⁹

WHEREAS, the bylaws of the Corporation state that notice may be given to each director in electronic form, specifically via fax or e-mail; and section 20 of the California Corporations Code requires each director to provide an unrevoked consent to the use of such means of transmission prior to receiving notice via such means.

RESOLVED, that the Secretary of the Corporation is directed to collect an executed Consent to Electronic Transmission (the “Consent”) in the form attached hereto from each director and place such executed Consent in the Corporation’s minute book; and

FURTHER RESOLVED that meeting notices may not be sent via fax or e-mail to any director that has not signed the Consent.

Obtain Exemptions from Federal and State Taxes

RESOLVED, that the officers of the Corporation are authorized to consult with legal counsel to ascertain the availability of exemptions from taxation under federal and state tax codes and, if such exemptions are available, the officers of the Corporation are authorized and directed to execute and file all necessary applications for exemptions from such taxes with the appropriate state and federal tax authorities, and to pay the necessary filing fees.

Authorization for Filings with State Attorney General²⁰

RESOLVED, that the officers of the Corporation are authorized and directed to make periodic filings as required by the California Attorney General describing the financial activity of the Corporation and the distribution of the assets held for charitable purposes.

¹⁹ If the corporation intends to give notice via fax or email, it must obtain the director’s consent to receive notice in this manner. [Cal. Corp. Code § 20]. A Sample Consent to Electronic Information can be found in Appendix A.

²⁰ Most nonprofit organizations holding assets for charitable purposes in California must register with the California Attorney General’s Registry of Charitable Trusts by filing Form CT-1 within thirty days of first receiving any property or assets. [Cal. Gov’t. Code § 12585]. A nonprofit subject to this requirement needs to register before it may legally continue to hold or raise charitable funds. For every year after initial registration, such a nonprofit must file a financial and activity update report, Form RRF-1, along with a copy of its IRS Form 990 or 990-EZ return. [Cal. Gov’t Code § 12586; 11 Cal. Code Reg. § 301]. Religious organizations, educational institutions, hospitals, and health care service plans are exempt from the requirement to register with the Registry of Charitable Trusts. [Cal. Gov’t. Code § 12583].

Authorization for Other Filings²¹

RESOLVED, that each of the officers of the Corporation are authorized and directed to make any filings and applications, including the statement required by Section 6210 of the California Corporations Code, and to do such acts as such officer deems necessary in order to obtain licenses, authorizations, and permits as necessary to complete the organization of the Corporation and to lawfully conduct business.

Designation of Principal Office²²

RESOLVED, that the principal office of the Corporation shall be located at [address], in [city or town], California.

Accounting Year²³

RESOLVED, that the first accounting year of the Corporation shall be from the date of incorporation to the last day of [month] of [year] and thereafter the accounting year of the Corporation is to end on the last day of [month] of each year.

Submittal of Employer Identification Number Application

RESOLVED, that the officers of the Corporation are authorized, directed, and empowered to prepare and file appropriate applications to obtain an employer identification number with the IRS and any other identification numbers, permits, or licenses required by law or deemed necessary or advisable for the conduct of the business of the Corporation.

Adoption of Conflict of Interest Policy²⁴

RESOLVED, that the Conflict of Interest Policy attached hereto is adopted as the Conflict of Interest Policy of the Corporation (the “Conflict of Interest Policy”).

RESOLVED, FURTHER, that each director and officer of the Corporation shall be provided a copy of the Conflict of Interest Policy and shall be directed to provide the completed Conflict of

²¹ A nonprofit corporation incorporated or authorized to do business in California must file Form SI-100 with the California Secretary of State within ninety days of incorporating and every two years thereafter. [Cal. Corp. Code § 6210].

²² The law does not require a corporation to state its principal office in the bylaws. However, the corporation is required to designate a principal office and list the street address in the biennial statement of information filed with the Secretary of State. [Cal. Corp. Code § 6210(a)].

²³ Determination of the accounting year is an important financial decision that should be based on a variety of operational considerations such as the timing of programmatic activities, the grant-making cycle of funders, and the period that allows for best matching of income and expenses. The accounting year selected will be reported on the application for an employer identification number (EIN), the application for federal and state tax exemption, and various other registrations. It will trigger the due dates of a variety of reports required of tax exempt nonprofit organizations, including the IRS 990 series.

²⁴ Public Counsel has prepared a sample Conflict of Interest Policy for use by California nonprofit public benefit corporations (http://www.publiccounsel.org/tools/publications/files/coi_policy.pdf). This sample is annotated with explanatory endnotes, including citations to applicable laws, alternatives, and recommended practices.

Interest Disclosure Form (contained therein) to [*name of director to whom reports must be made*]; and

RESOLVED, FURTHER, that [*name of director to whom reports must be made*] shall report any conflict of interest reported to [him/her], or of which [he/she] becomes aware, at the next Meeting of the Board of Directors.

Ratification

RESOLVED, that any and all acts taken and any and all agreements or other instruments executed on behalf of the Corporation by any officer or director of the Corporation prior to the execution hereof with regard to any of the transactions or agreements authorized or approved by any or all of the foregoing resolutions are ratified, confirmed, adopted, and approved.

Adjournment

There being no further business to come before the board of directors, the first meeting was adjourned.

Dated: _____

[*Name of secretary*], Secretary

Section 1.4

**UNANIMOUS WRITTEN CONSENT
IN LIEU OF THE FIRST MEETING OF BOARD OF DIRECTORS²⁵
OF
[NAME OF CORPORATION]**

We, the undersigned, being all the members of the board of directors of [name of corporation] (the “Corporation”), acting pursuant to section 5211(b) of the California Corporations Code and desiring to complete the organization of the Corporation, hereby consent to the adoption of the following resolutions and actions, all of which resolutions and actions shall be as valid and legal and of the same force and effect as though adopted at a meeting duly and validly noticed and held:

[Insert appropriate actions and resolutions from minutes of first meeting of board of directors]

This Unanimous Written Consent shall be filed in the minute book of the Corporation and become a part of the records of the Corporation.

This Unanimous Written Consent may be executed by facsimile (or PDF copy delivered by electronic mail) in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the undersigned have executed this Unanimous Written Consent dated as of the ___ day of _____, 20__.

[Director’s name], Director

[Director’s name], Director

[Director’s name], Director

[Director’s name], Director

²⁵ This Unanimous Written Consent of the Board of Directors may be used in lieu of holding an actual first meeting of the board of directors. The unanimous written consent holds the same legal force and effect of an actual board meeting. The secretary or, if no secretary has been named, the incorporator, should distribute this Unanimous Written Consent to every board member, each of whom must sign it and return it.

Section 2: Sample Minutes of Subsequent Meeting of Board of Directors and Forms of Common Board Resolutions

This section provides sample minutes and resolutions for subsequent meetings of a board of directors of a nonprofit organization. Section 2.1 provides a general template for board meetings: time and place, list of attendees, presence or absence of a quorum, waiver of notice (if used), approval of minutes of prior meeting, discussion of matters and actions taken/resolutions adopted, and adjournment.

Sections 2.2-2.8 provide resolution language to be incorporated in minute entries for actions commonly taken by a board of directors. In recording matters discussed and actions taken, minutes should include the name of individuals making presentations, a list of materials presented, and confirmation of actions taken, including adoption of resolutions. Although simply recording the action taken and the resolution adopted is often appropriate, depending on the nature of the action taken, the person taking minutes may also include notes of the board's discussion of the matter if it is useful to establish that protocols were followed and board members were acting within their fiduciary duties. For example, a board's decision to appoint a new agent for service of process would likely not require any additional information other than the text of the resolution passed. On the other hand, minutes recording a board's decision setting the salary of a chief executive officer would require more information.

All of these resolutions also can be incorporated into unanimous written consents by inserting the sample resolution language into the consent template Section 1.4.

Section 2.1

**MINUTES OF [Regular/Special]²⁶ MEETING OF BOARD OF DIRECTORS
OF
[NAME OF CORPORATION]**

Time and Place²⁷

The board of directors (each individually a “director”) of [name of corporation] (the “Corporation”) held a [regular/special] meeting on [month, date, year] at [time], at [city or town], California.

Notice

[Alternative 1: The time and date of the meeting was set pursuant to [describe how time and date were set, e.g., by resolution or by provision in bylaws.]]

OR

[Alternative 2: Notice was given by [describe means of notice, e.g., email] with [number of hours’ or days’ notice given.]]²⁸

Directors Present²⁹

The following directors were present at the meeting:

The following directors were absent:

--

²⁶ If the time and place of a meeting is set by bylaws or by resolution, then the meeting is referred to as a “regular meeting.” A corporation should have at least one regular meeting every year (sometimes referred to as the “annual meeting”) in order to elect directors, appoint officers, review and approve the budget, and transact other business. Any meetings in addition to the regular meetings are referred to as “special meetings.” Notice for these meetings must be given pursuant to an organization’s notice requirements as described in its bylaws.

²⁷ It is not necessary to have a heading for each topic discussed at a meeting. This sample of board meeting minutes includes it for ease of reading.

²⁸ The minutes should state how notice was given. Choose Alternative 1 for a regular meeting (i.e., if time and place were set by bylaws or resolution). Choose Alternative 2 for special meeting (i.e., where directors receive notice of time and place through procedures in bylaws).

²⁹ The minutes should note if any directors participated telephonically or through electronic video screen and whether all participants were able to communicate with one another. The law permits the use of conference telephone and video screen communication at a board meeting only if all participating members can hear one another. [Cal. Corp. Code § 5211(a)(6)].

A quorum [was/was not] present.

[Optional: Waiver of Notice]

[Alternative 1: The meeting was held pursuant to written waiver of notice signed by each of the directors. The waiver was made a part of the records of the meeting; it now precedes the minutes of this meeting in the Corporation's minute book.]

OR

[Alternative 2: Each of the directors has waived notice for the meeting.]]³⁰

[Optional: Others Present]

Also in attendance were the following individuals: [*names and titles of non-directors present at meeting.*]]

Approval of Minutes of Meeting Held on [insert date of last meeting]

The minutes of the meeting of the board of directors held on [insert date of last meeting] were read and approved.

[Topic of Discussion]

[*Name and position of presenter*] presented to the board of directors on [insert subject of presentation]. [*Describe written materials distributed*] was distributed to the board of directors, attached hereto.³¹

The following resolution was adopted:

[*Insert text of resolution*]

³⁰ As discussed in Note 6, if a meeting were held without proper notice (e.g., with a shorter notice period than required by the bylaws), any corporate actions taken might be subject to later challenge. Therefore, at a meeting held without proper notice, directors should affirmatively waive notice of the meeting either by signing a waiver of notice or by verbally stating that he or she has waived notice. Although not required, it is also advisable for directors to waive notice even if the meeting was held pursuant to proper notice if major actions (e.g., merger, hiring of executive director, etc.) will be approved at the meeting. If the directors waived notice, the minutes should then reflect how notice was waived. If the directors signed a waiver of notice (recommended if notice was improper or if major actions have been approved), use Alternative 1. If the directors verbally waived notice, use Alternative 2.

³¹ The minutes should include the name of an individual making a specific presentation, materials distributed to the directors, and the confirmation of any action taken. Any additional information on the content of the information presented or any discussion by the board of directors may be included if such information helps establish that the board of directors was acting consistently with its fiduciary duties. If no action was taken on a matter, a simple description of the topic discussed and materials distributed is sufficient.

The following directors voted for the resolution: [*names of directors voting in favor*].

The following directors voted against the resolution: [*names of directors voting against*].

The following directors abstained from voting on the resolution: [*names of abstaining directors*].

[Optional: Director [*insert name*] was excused from participating in both the discussion of, and vote on, the matter.]³²

Adjournment

There being no further business to come before the board of directors, the [regular/special] meeting was adjourned.

Dated: _____

[*Name of Secretary*], Secretary

³² In order to reflect that a board action was disinterested, the minutes should identify a director who refrains from voting or participating in the discussion due to a conflict of interest.

Section 2.2

Sample Minute Entries for Common Board Resolutions: Changes to Governing Documents

Amendment to Articles of Incorporation

WHEREAS, the board of directors of the Corporation desires to amend the articles of incorporation of the Corporation to [*summary of amendment*]

RESOLVED, the articles of incorporation shall be amended in the form attached hereto as Exhibit A

FURTHER RESOLVED, that the Secretary of the Corporation shall prepare the appropriate certificate of amendment of the articles of incorporation and file it with the California Secretary of State.

RESOLVED, FURTHER, that the officers of the Corporation take such further actions as they deem necessary to notify the IRS and other appropriate regulatory bodies that the articles of incorporation of the Corporation have been amended.³³

Amendment to Bylaws

The board of directors considered an amendment to the bylaws that would [*summary of amendment*] (“the Amendment”).

RESOLVED, that the Amendment has been adopted

FURTHER RESOLVED, that the Secretary of the Corporation shall prepare a Certificate of Adoption of Bylaws and attach it to the amended bylaws.³⁴

FURTHER RESOLVED, take such further actions as they deem necessary to notify the IRS and other appropriate regulatory bodies that the bylaws have been amended.³⁵

³³ For information on requirements for notifying regulatory bodies of changes to articles of incorporation, see Public Counsel, *Notification Requirements for California Public Benefit Corporations: Change of Address, Name, Mission or Specific Purpose, or Scope of Activities*, at <http://www.publiccounsel.org/tools/publications/files/0239.pdf> [hereinafter Public Counsel, *Notification Requirements*].

³⁴ A sample Certificate of Adoption of Bylaws is included in Appendix B.

³⁵ For information on notification requirements for changes to bylaws, see Public Counsel, *Notification Requirements*, supra Note 33.

Section 2.3

Sample Minute Entries for Common Board Resolutions: Directors

Setting Fixed Number of Directors³⁶

WHEREAS, the bylaws of the Corporation state that the number of authorized directors of the Corporation shall not be less than *[insert number]* or more than *[insert number]*, with the exact number to be fixed, within these limits by resolution of the board of directors, it is

RESOLVED, that the authorized number of directors shall be *[insert number]*.

Removing Director for Cause³⁷

The board of directors considered a resolution to remove for cause, *[name of director to be removed]*, from the board of directors. *[Describe basis for removal and/or summary of discussion]*.³⁸ The resolution was considered and discussed, and it was:

RESOLVED, that the board of directors declares that *[name of removed director]* is removed from the board of directors for cause and that the seat of *[name of removed director]* on the board of directors is vacant.

Removing Director without Cause

The board of directors considered a resolution to remove without cause, *[name of director to be removed]*, from the board of directors. The resolution was considered and discussed, and it was:

RESOLVED, by a majority of all directors then in office, that *[name of removed director]* is removed from the board of directors without cause.

The following directors, constituting a majority of all directors in office, voted in favor of the above resolution: *[names of directors voting in favor]*.³⁹

³⁶ If the bylaws of the corporation allow for a range of authorized directors, this resolution can be used to fix the number of authorized directors.

³⁷ Removal of a director for “cause” requires only the regular vote of a majority of directors present at a meeting where there is a quorum, which is the same vote required for other board actions. The law limits the items that can constitute “cause” and give the board a reason to remove a director with a regular board vote (e.g., convicted of a felony or declared by a court to be of unsound mind). If at the time the director is elected, the bylaws state that missing a certain number of board meetings will be cause for removal, then a director may be removed for “cause” if that director misses the specified number of meetings. If the bylaws do not contain such a provision, the director could be removed for missing those meetings only by the higher level of vote required for removal without cause. [Cal. Corp. Code § 5221].

³⁸ The individual taking minutes should note the basis for the removal to establish that it was done properly. For example: “Section 7.4.2 of the corporation’s bylaws provides that any director who fails to attend four consecutive board meetings in a calendar year may be removed for cause. Director failed to attend the board meetings on April 5, 2015, June 6, 2015, August 10, 2015, and October 9, 2015, and therefore may be removed for cause.”

Electing Director to Fill Vacancy⁴⁰

[*Name and position of presenter, e.g., chair of nominating committee*] recommended that [*incoming director's name*] be appointed to fill the vacancy on the board of directors left by [*departing director's name*].

RESOLVED, that [*incoming director's name*] is appointed to fill the vacancy on the board of directors left by [*departing director's name*] for [*term length*] and until the election and qualification of a successor, or until [*incoming director's name*]'s earlier resignation or removal in accordance with the bylaws.

(...continued)

³⁹ Removal of a director without cause requires a vote of the majority of all directors then in office, rather than majority of a quorum. [Cal. Corp. Code § 5222(a)(3)]. In order to establish that a majority of directors voted for removal without cause, the minutes should state which directors voted in favor of the resolution. An organization may decide in its bylaws to require an even greater threshold than a majority of directors in office to remove a director without cause (e.g., requiring approval by 2/3 of directors in office). If so, the minutes should reflect that the higher threshold was met.

⁴⁰ The bylaws should be consulted for required procedures for filling vacancies caused by the removal or resignation of a director. Most often, vacancies are filled in the same manner as regular appointments (except that a vacancy is filled as it occurs rather than when a director's term is over).

Section 2.4

Sample Minute Entries for Common Board Resolutions: Officers

Election of Required Officers⁴¹

RESOLVED, that the board of directors elects [*name of officer to be elected*] as Chairperson, [*name of officer to be elected*] as Treasurer, and [*name of officer to be elected*] as Secretary to serve for [*length of term*] or until his or her earlier resignation or removal.⁴²

Election of Additional Officer

RESOLVED, that the board of directors elects [*name of officer to be elected*] as [*office to be held*] to serve for [*length of term*] or until [*his/her*] earlier resignation or removal.

Empower [Chairperson/President/Chief Executive] to Appoint an Additional Officer⁴³

RESOLVED, that the board of directors empowers the [Chairperson/President/Chief Executive] to select and appoint and, in [his/her] discretion, remove, a [*insert additional officer*].

RESOLVED FURTHER that the [*additional officer*] will be an officer of the Corporation with the following responsibilities: [*describe responsibilities of additional officer*].

RESOLVED FURTHER that the board of directors also retains the right to remove, in its discretion, the [*additional officer*] from his or her position as an officer of the Corporation.

⁴¹ See Note 17 for discussion of required officers.

⁴² In addition to the required biennial filing, a corporation may also file a statement of information with the California Secretary of State when the chairperson/president, chief financial officer, or secretary changes. [Cal. Corp. Code § 6210(d)]. Although filing a new statement of information is optional, third parties with whom a corporation is contracting (for example, a financial institution) may not accept an authorization signed by an officer that is not currently listed with the Secretary of State.

⁴³ Although the default rule is for officers to be chosen by the board, the bylaws may provide for the appointment and removal of an officer through other means, such as allowing the board of directors to empower the chairperson, president, or chief executive to appoint or remove officers. [See Cal. Corp. Code § 5213(b)]. For example, if an organization has decided to hire a chief financial officer, the board may by resolution empower the chief executive (an employee and officer) to hire a chief financial officer, who will be an officer of the corporation in addition to an employee. Once the board has delegated this power, it should generally not interfere in the hiring and firing decisions made by the chief executive officer. However, it is recommended that the board retain the right to remove any officer from the position as a statutory corporate officer (with the resulting ability to bind the corporation to contracts) so that the board can exercise its duties to safeguard the corporation's assets, even if the board then leaves to the discretion of the chief executive officer whether to terminate that individual's employment with the corporation.

Removal of Officer⁴⁴

The board of directors considered a resolution to remove [for/without] cause, [*name of officer*], from the position of [*name of position*]. [*Insert basis of removal, if applicable, and summary of discussion*]. The resolution was considered and discussed, and it was:

RESOLVED, that the board of directors declares that [*name of removed officer*] is removed from the position of [*name of position*] [for/without] cause.

Fill Any Vacancies Caused by the Removal or Resignation of Any Officer⁴⁵

RESOLVED, that [*incoming officer's name*] is appointed to fill the vacancy of [*departing officer's name*] as [*office to be held*] for [*term length*] and until the election and qualification of a successor, or until [*incoming officer's name*]'s earlier resignation or removal in accordance with the bylaws.

⁴⁴ Officers are selected by the board and may be removed by the board at any time, unless the bylaws provide otherwise or the board has altered this by contract with the individual officer. [*See* Cal. Corp. Code §5213(b)].

⁴⁵ The bylaws should be consulted for required procedures for filling vacancies caused by the removal or resignation of an officer. Most often, vacancies are filled in the same manner as regular appointments to the office (except that a vacancy is filled as it occurs rather than when an officer's term is over).

Section 2.5

Sample Minute Entries for Common Board Resolutions: Managers and Key Employees

Hiring of Executive Director/Chief Executive Officer⁴⁶

[*Name and position of presenter*] presented to the board of directors the recommendation of the Search Committee for a new [executive director/chief executive officer] of the Corporation. The Search Committee recommended that [*name of person to be hired*] be hired for the position of [executive director/chief executive officer].

[*Describe and attach any material distributed to the board and/or key recommendations of presenter*].⁴⁷ After discussion, it was:

RESOLVED, that the board of directors authorizes the hiring of [*name of individual*] as [executive director/chief executive officer].

[If hiring a chief executive officer:

RESOLVED FURTHER, that [*name of individual*] shall be an officer of the Corporation.]

⁴⁶ A board may wish to appoint a chief executive to oversee the corporation under the ultimate supervision of the board. Such person is generally given the title of “executive director” if the board does not wish to grant this individual the legal rights and duties of a corporate officer, or “chief executive officer” if the board wishes that this person have the legal duties of a corporate officer. An officer may act on behalf of the nonprofit, so long as that specific authority (for example, signing contracts or opening bank accounts) has been delegated to that officer position. The board may then can give this chief executive the authority to select and supervise all other employees.

⁴⁷ For example, if the candidate’s *curriculum vitae* had been distributed to the board, that should be noted in the minutes and attached. In order to establish that the board acted with care in choosing the chief executive, the minutes can also include a brief summary of the search committee’s recommendations, e.g., “The candidate has ten years of nonprofit management and fundraising experience and has excellent recommendations.”

Determining Compensation for Officer or High-Level Employee⁴⁸

[*Name of presenter*] presented to the board of directors on the proposed compensation for [*name and title of key employee*]. The board of directors reviewed comparability data which documented the compensation of employees holding similar positions in similar organizations. [*Describe how comparability data was obtained, e.g., by reviewing reported compensation of executive directors in the annual IRS filings of twelve tax-exempt organizations in the same geographic area, comparable to the corporation with regard to mission, budget, and size of staff*]. A report summarizing the comparability data is attached as Exhibit A to these minutes. [*Summarize major findings of report, e.g., the annual compensation of executive directors in the report ranged from \$100,000 to \$200,000*]. [*Discuss other factors, if any, relevant to determining compensation, e.g., experience of employee, results of performance review, special expertise*]. Based on the comparability data and the qualifications of [*name of key employee*],

⁴⁸ Approving a fair, reasonable, non-excessive, compensation arrangement for employees is one of the fiduciary duties of a nonprofit organization's board of directors. The IRS may impose an excise tax on certain individuals, including board members, who engage in excess benefit transactions with a charitable organization. [IRC § 4958]. An excess benefit transaction is a transaction where an economic benefit is provided by the organization to a person who meets the definition of a disqualified person (e.g., board members, officers, executive directors), and the value of the benefit exceeds the value of the consideration (goods or services) received in exchange for the benefit. [IRC § 4958(c)(1); Treas. Reg. § 53.4958-4(a)]. When preparing compensation arrangements for officers and high-level employees, if the organization follows specific IRS procedures, the actions may provide a rebuttable presumption that the compensation is reasonable, and the organization has not engaged in an excess benefit transaction. The burden of proof then switches to the IRS to show that the compensation was not reasonable. [Treas. Reg. § 53.4958-6].

The following conditions are required in order for a nonprofit organization to avail itself of the rebuttable presumption of reasonableness: (1) the compensation was approved in advance by the board of directors or a committee authorized to act on behalf of the board of directors, excluding any individual with a conflict of interest; (2) the board or committee obtained and relied upon comparability data prior to making its decision that the compensation was reasonable (i.e., what is ordinarily paid for like service at like enterprises under like circumstances); and (3) the board or committee adequately documented the basis for its determination concurrently with making that determination. [Treas. Reg. §§ 53.4958-6 and 53.4958-4(b)(1)(ii)]. The documentation of the decision must note the terms of the transaction that was approved, the date it was approved, the members of the board or committee who were present during debate and those who voted on it, the comparability data obtained and relied upon, how the comparability data was obtained, and any actions taken with respect to a director who had a conflict of interest related to the approval of compensation. [Treas. Reg. § 53.4958-6(c)(3)]. In addition to the Treasury Regulations and IRS guidelines, the California Nonprofit Integrity Act requires the board of directors or an authorized committee to review and approve compensation for the chief executive officer/president, chief financial officer/treasurer, and individuals with similar powers, duties, and responsibilities to ensure compensation is just and reasonable. [Cal. Govt. Code § 12586(g)].

The sample minute entry for approving compensation is designed to conform to the requirements necessary to take advantage of the rebuttable presumption of reasonableness in the Treasury Regulations as well as the California Nonprofit Integrity Act. The sample minutes assume that the compensation was approved by the entire board; the resolution can also be adapted for compensation approved by a committee of the board authorized to act on behalf of the board. A resolution creating a compensation committee authorized to act on behalf of the board can be found in Section 2.6. Public Counsel has prepared a sample annotated Executive Compensation Policy, available at <http://www.publiccounsel.org/publications?id=0249>.

[*name of presenter*] recommended that compensation be set at [*describe salary and any benefits, e.g., annual salary of \$150,000 in addition to health and retirement benefits offered to all employees at the corporation*].

RESOLVED, that the annual compensation of [*name of employee*] for services as [*title*] be set at [*describe salary and any benefits*].

RESOLVED FURTHER, that the annual compensation of [*name of employee*] for services as [*title*] is reasonable to the Corporation based upon information sufficient to determine that the value of services is the amount that would ordinarily be paid for like services by like enterprises under like circumstances.

RESOLVED FURTHER, that the annual compensation of [*name of employee*] for services as [*title*] is just and reasonable as required by the California Nonprofit Integrity Act.

The following directors voted in favor of the above resolution: [*names of directors voting in favor*]

The following directors voted against the above resolution: [*names of directors opposing*]

[Optional (if a director excused him or herself due to a conflict of interest): [*Insert name of conflicted director*] did not participate in the discussion or vote approving the compensation of [*name of employee*] for services as [*title*] due to a conflict of interest. [*Describe conflict of interest*]].

All [other] directors present at the meeting were present during the debate on this matter and voted for it.

Section 2.6

Sample Minute Entries for Common Board Resolutions: Organizational Tasks

Change Principal Office Location⁴⁹

RESOLVED, that the principal office of the Corporation shall be changed to *[address]*, in *[city or town]*, California.

Change Agent for Service or Process⁵⁰

RESOLVED, that the agent for service of process of the Corporation shall be changed to *[name of agent]* at *[address for agent]*.

RESOLVED FURTHER, that the Officers of the Corporation are directed to file with the California Secretary of State a Statement of Information designating the agent of service of process.

Place and Time of Annual Meeting of Board of Directors⁵¹

RESOLVED, that the annual meeting of the board of directors of the Corporation shall be at *[place of meeting]* on *[date of meeting]*.

Place and Time of Annual Meeting of Committee of the Board of Directors⁵²

RESOLVED, that the annual meeting of the *[name of committee]* Committee of the board of directors of the Corporation shall be at *[place of meeting]* on *[date of meeting]*.

⁴⁹ A corporation is required to designate a principal office and list the street address in the biennial statement of information filed with the Secretary of State. [Cal. Corp. Code § 6210(a)]. A corporation may file an amended statement of information if the address for the principal office changes. [Cal. Corp. Code § 6210(d)].

⁵⁰ In order to change the agent for service of process or the address of an agent, a corporation must file an amended statement of information with the Secretary of State. [Cal. Corp. Code § 6210(d)].

⁵¹ The date, time, and place of the annual meeting may be set in the bylaws or by resolution of the board. Directors' fiduciary duties generally require that the board meet at a minimum of once a year to elect directors, approve the budget, and discuss the overall activities of the corporation. The board may need to meet more frequently to satisfy its fiduciary duties, e.g., quarterly. If the board does not meet regularly, it is recommended to have an executive and/or finance committee meet regularly to oversee the corporation's activities.

⁵² The notice requirements for board of directors' meetings apply to committee meetings as well. [See Cal. Corp. § 5211(d)].

Establish Executive Committee of the Board of Directors⁵³

RESOLVED, by affirmative vote of a majority of all directors of this Corporation in office, that the board of directors establishes an executive committee (the “Executive Committee”) as authorized by section 5212(a) of the California Corporations Code, consisting of [*officer designated as chairperson, e.g. the President*] as Chair and [*insert other designated officers, e.g. Vice President, Secretary, etc.*] as members.

FURTHER RESOLVED, that the Executive Committee shall act in place of the board of directors in between regular meetings of the board of directors when immediate action is required, and shall report on any action taken at the next board of directors meeting; and when a decision can be deferred until the next board of directors meeting, the Executive Committee will not act on the matter.

FURTHER RESOLVED, that the Executive Committee shall have all the authority of the board of directors at times when the board of directors is not in session, except that the committee may not:

- (a) approve any action for which the California Nonprofit Corporation Law also requires approval of the members or approval of a majority of all members;
- (b) fill vacancies on the board of directors or in any committee which has the authority of the board or directors;
- (c) fix compensation of the directors for serving on the board or directors or on any committee;
- (d) amend or repeal bylaws or adopt new bylaws;
- (e) amend or repeal any resolution of the board of directors which by its express terms is not so amendable or repealable;
- (f) appoint any other committees or the members of these committees;

⁵³ The law permits a board to appoint committees made up of two or more directors which can be delegated the authority to act on behalf of the board by a resolution by a majority of the directors in office. [Cal. Corp. Code § 5212]. This voting requirement cannot be lowered and committees exercising the authority of the board are expressly prohibited from having members that are not directors. [Cal. Corp. Code § 5212(a), (b)]. A duly authorized and appointed committee can act with the same authority as the board to handle functions that the board delegates to it that would otherwise be left to the entire board, except for certain actions which must be approved by the board. The limitations in the sample resolution as to what may be delegated to committees are consistent with the limitations found in the law. [See Cal. Corp. Code § 5212(a)(1)-(8)]. One common example of a committee with the power to act on behalf of the board is an executive committee, which is usually composed of the corporation’s officers and acts in place of the board in between meetings. A governance structure which relies on an executive committee made up of officers to act on behalf of the board may be appropriate for a corporation with a large board where it would be difficult to enact business with the full board. In addition to or in lieu of committees with the power of the board, a nonprofit can also create advisory committees (which can include non-board members). An example of a resolution establishing an advisory committee can be found further in this Section 2.6.

- (g) expend corporate funds to support a nominee for director after more persons have been nominated than can be elected; or
- (h) approve any transaction (i) between the Corporation and one or more of its directors or (ii) between the Corporation and any entity in which one or more of its directors have a material financial interest.

FURTHER RESOLVED, that the Executive Committee shall make a [regular/periodic] report to the board of directors at the annual meeting and every [*insert frequency, e.g. three months*] thereafter.

The following directors, constituting a majority of all directors in office, voted in favor of the above resolution: [*Names of directors voting in favor*].

Establish Executive Compensation Committee of Board of Directors⁵⁴

RESOLVED, by affirmative vote of a majority of all directors of this Corporation in office, that the board of directors establishes an executive compensation committee (the “Executive Compensation Committee”) as authorized by Section 5212(a) of the California Corporations Code, consisting of [*name of chairperson*] as Chair and [*names of members*] as Members.

FURTHER RESOLVED, that the Executive Compensation Committee shall have the authority to act on behalf of the Board of Directors with regard to approving the compensation of [*titles of employees whose compensation the committee is authorized to approve, e.g. the Chief Executive Officer, Chief Financial Officer, General Counsel, and any other officer or disqualified person defined in Internal Revenue Code Section 4958*].

FURTHER RESOLVED, that in approving compensation, the Executive Compensation Committee shall ensure that the compensation is just and reasonable as required by the California Nonprofit Integrity Act and shall follow the procedures described in IRS Treasury Regulations sections 53.4958-4 and 53.4958-6 to create a rebuttable presumption that the approved compensation is reasonable and does not constitute an excess benefit transaction;

FURTHER RESOLVED, that the Executive Compensation Committee shall make a report to the board of directors at the next board meeting following the approval of compensation.

⁵⁴ As discussed in Note 48, in order to take advantage of the rebuttable presumption of reasonableness in the Treasury Regulations with regard to executive compensation, compensation must be approved by the board of directors or a committee authorized under state law to act on behalf of the board of directors. This resolution creates a committee authorized to act on behalf of the board with regard to setting compensation of certain employees and directs the committee to approve compensation according to the requirements of the Treasury Regulations and the California Nonprofit Integrity Act. Note that if the board of directors wishes to retain the ultimate approval of executive compensation based on the recommendation of a committee, this resolution would not be applicable. Instead, the board itself must review the comparability data and affirmatively determine that the proposed compensation was reasonable. A resolution approving executive compensation is in Section 2.5.

The following directors, constituting a majority of all directors in office, voted in favor of the above resolution: [*names of directors voting in favor*].

Establish Finance Committee of the Board of Directors⁵⁵

RESOLVED, that the board of directors establishes a finance committee (the “Finance Committee”), consisting of [*name of treasurer*] as Chair and [*names of other members*] as members.⁵⁶

RESOLVED FURTHER, that the Finance Committee shall act as financial advisor to the board of directors in all financial affairs of the Corporation, including, but not limited to: overseeing the preparation of the annual operating budget, considering and making recommendations on matters of financial interest with respect to which the board may request its consideration and action, recommending the adoption of policies for financial management practices, and long-range financial planning.

RESOLVED, that the Finance Committee shall make a [regular/periodic] report to the board of directors at the Annual Meeting and every [*insert frequency, e.g. three months*] thereafter.

Establish Audit Committee of the Board of Directors⁵⁷

WHEREAS, the Nonprofit Integrity Act requires that the board of directors, in any fiscal year in which it receives or accrues gross revenues of two million dollars or more to (i) prepare annual

⁵⁵ Section 5212(c) of the California Corporations Code allows the board to create advisory committees which do not have the authority of the full board such as, in this example, a finance committee. Such a committee may also include members who are not directors. The board of directors must ratify all actions and recommendations of an advisory committee before such recommendations can be given effect. This resolution establishing a finance committee can be modified for other advisory committees, such as a nominating committee, development committee, strategic planning committee, etc.

⁵⁶ The chair of the finance committee is usually the treasurer of the corporation. See Note 58 for rules regarding cross-membership between finance and audit committees.

⁵⁷ The Nonprofit Integrity Act requires corporations with gross revenues of two million dollars or more to conduct an audit and have an audit committee. Subject to the supervision of the board of directors, the audit committee is responsible for recommending to the board of directors the retention and termination of the independent auditor and negotiating the auditor’s compensation. [Cal. Gov. Code § 12586(e)(2)]. Therefore, with respect to those functions, the audit committee does not have the authority to act on behalf of the board. (See Note 53 for discussion of committees with the power to act on behalf of the board under section 5212(a) of California Corporations Code). However, with regard to other functions of the audit committee (conferring with the auditor to satisfy committee members that the financial affairs of the corporation are in order; reviewing and determining whether to accept the audit; and approving non-audit services), the committee may act without board approval if all members of the committee are directors and the delegation of authority was approved by a vote of a majority of all members as required by section 5212(a). [See California Office of the Attorney General, Frequently Asked Questions, Charities – Nonprofit Integrity Act of 2004, at <https://oag.ca.gov/charities/faq#n11>]. This sample resolution does not give the audit committee the power to act on behalf of the board. If an organization desires to grant such authority to the audit committee (with the exception of hiring and terminating an auditor and negotiating his or her compensation), the resolution must conform to the requirements of California Corporations Code section 5212(a).

financial statements using generally accepted accounting principles that are audited by an independent certified public accountant (“CPA”) in conformity with generally accepted auditing standards; (ii) make the audit available to the Attorney General and to the public on the same basis that the Internal Revenue Service Form 990 is required to be made available; and (iii) appoint an Audit Committee.

WHEREAS, the Corporation has accrued over two million dollars in the fiscal year beginning [*start date of fiscal year*].

RESOLVED, that the board of directors establishes an Audit Committee, consisting of [*name of committee chairperson*] as Chair and [*names of other members*] as Members.⁵⁸

FURTHER RESOLVED, that the Audit Committee shall:

- (a) make recommendations to the board of directors on the hiring and firing of the CPA, subject to the supervision of the board of directors;
- (b) negotiate the CPA’s compensation, subject to the supervision of the board of directors
- (c) confer with the CPA to satisfy Audit Committee members that the financial affairs of the Corporation are in order;
- (d) review and determine whether to accept the audit; and
- (e) approve non-audit services by the CPA and ensure such services conform to standards in the Yellow Book issued by the United States Comptroller General.

⁵⁸ The audit committee may consist of board members and non-board members, but may not include any staff members. Members of a separate finance committee of the board may also serve on the audit committee. However, finance committee members must constitute less than half of the audit committee membership. Additionally, the chairperson of the audit committee may not be a member of the finance committee. An audit committee member cannot receive any compensation from the corporation in excess of the compensation, if any, received by members of the board for service on the board. Because most boards serve on a voluntary basis, in practice the rule that audit committee members cannot be paid more than directors are paid to serve on the board means most audit committee members cannot be paid. Likewise, an audit committee member cannot have a material financial interest in any entity doing business with the corporation. [*See Cal. Gov. Code § 12586(e)(2)*].

Section 2.7

Sample Minute Entries for Common Board Resolutions: Operational Tasks

Adoption of Annual Budget⁵⁹

[*Name and position of presenter*] presented to the board of directors proposed annual budget for Fiscal Year [*insert dates of fiscal year*]. A document entitled, “[*Title of proposed budget*],” attached hereto as Exhibit ___, was distributed to the directors. [*Insert any additional information regarding presentation*]. After discussion, it was

RESOLVED, that the board of directors approves and adopts the Annual Budget for Fiscal Year [*insert dates*], attached hereto as Exhibit ___.

Authorize Retention of Counsel

RESOLVED, that the board of directors authorizes the [*insert title of officer, e.g., chairperson*] [optional: or his/her designee] to retain [*name of attorney or law firm*] to [*insert description of scope of engagement*].

Change Accounting Year⁶⁰

RESOLVED, that the Corporation adopt an accounting year ending on the last day of [*insert month*] of each year.

Adoption of Policy⁶¹

⁵⁹ The duty of care requires a director to act in an informed manner when participating in a board decision, such as the adoption of a budget. Corporate minutes should demonstrate directors’ compliance with their fiduciary duties. Given the importance of a well-thought out budget to the health of a corporation, the minute-taker may wish to include information on the specific factors that were material to the board’s decision and to note the length of the discussion.

⁶⁰ An organization may change its accounting period by filing a return for the short tax period that results from the change. It should write “Change in Accounting Period” at the top of the return for the short tax period. If an organization has already changed its accounting period within the last ten calendar years, it must use Form 1128, *Application to Adopt, Change, or Retain a Tax Year*, to change its accounting period (available at <https://www.irs.gov/pub/irs-pdf/f1128.pdf>). Please note that an organization may not change its accounting period by filing a Form 990-N for the short tax period. The organization must either file a Form 990-EZ or Form 990, or use Form 1128.

⁶¹ Public Counsel has prepared sample policies for use by California nonprofit public benefit corporations exempt from taxation under section 501(c)(3): Whistleblower Policy (<http://www.publiccounsel.org/publications?id=0063>); Conflict of Interest Policy (<http://www.publiccounsel.org/publications?id=0061>); Records Management and Retention Policy (<http://www.publiccounsel.org/publications?id=0062>); Executive Compensation Policy (<http://www.publiccounsel.org/publications?id=0249>); and Gift Acceptance Policy (<http://www.publiccounsel.org/publications?id=0254>). These samples are annotated with explanatory endnotes, including citations to applicable laws, alternatives and recommended practices.

RESOLVED, that the [*insert type of policy*] policy attached hereto as Exhibit __ is adopted as the [*insert type of policy*] policy of the Corporation (the “[*insert name of policy*]”); and

[Optional: RESOLVED, FURTHER, that each director and officer [and employee/volunteer] of the Corporation shall be provided a copy of the [*insert name of policy*] and shall be directed to sign an acknowledgement confirming their receipt].⁶²

Amend Policy

The board of directors considered an amendment to the [*insert name of policy*] that would [*describe amendment*]. The amendment was considered and discussed, and it was:

RESOLVED, that the amendment to the [*insert name of policy*] presented to the board of directors at this meeting, and attached hereto as Exhibit __, is adopted as the Amended [*insert name of policy*] of the Corporation.

Accept Grant⁶³

RESOLVED, that the board of directors accepts the [*name of grant*] and authorizes the Corporation to do all acts necessary or advisable in connection with [*name of grant*].

⁶² Depending on the policy, the board may decide to require that the individuals covered by the policy acknowledge that they have received it – if so, this provision should be included in the resolution. For example, requiring that employees and volunteers acknowledge that they have received a whistleblower policy may be useful in the event an organization needs to defend a lawsuit alleging violations of whistleblower protection laws.

⁶³ Board approval of accepting a grant may not be necessary. However, an organization may have a gift acceptance policy which requires board approval of grants in certain circumstances. For more information on gift acceptance policies, see Public Counsel’s annotated Sample Gift Acceptance Policy, at <http://www.publiccounsel.org/publications?id=0254>.

Section 2.8

Sample Minute Entries for Common Board Resolutions: Transactional Tasks

Authorization of Specific Individual to Enter into Contracts up to a Certain Dollar Amount⁶⁴

RESOLVED, that the board of directors authorizes the [*insert title of individual, e.g., president*] to enter into contracts for the benefit of the corporation in amounts not to exceed [*insert dollar amount*] in the aggregate for any single transaction or series of related transactions.

Approval of a Contract

[*Name and title of presenter*] presented to the board a proposed agreement entitled [*insert title of agreement*] between the Corporation and [*insert name of other party/parties*], dated [*date*], attached hereto. Upon discussion, it was

RESOLVED, that the Corporation adopts the [*insert title of agreement*], dated [*date*], attached hereto as Exhibit ____.

RESOLVED FURTHER, that the officers of the Corporation are authorized to execute the agreement on behalf of the Corporation and that upon execution of the agreement, the Officers are authorized and directed to take all steps necessary and appropriate to carry out the terms of the agreement.

Approval of a Lease

[*Insert name and title of presenter*] presented to the board a proposed lease agreement between the Corporation and [*name of other party*], dated [*date*], attached hereto. Upon discussion, it was

RESOLVED, that the Corporation agrees to enter into the lease agreement, dated [*date*], attached hereto as Exhibit ____.

RESOLVED FURTHER, that the officers of the Corporation are authorized to execute the lease agreement on behalf of the Corporation.

⁶⁴ While the day-to-day running of the nonprofit corporation may be delegated to a single individual or group of individuals (e.g., the chief executive), a board member's duty of care requires that he or she participates in the approval of major obligations of the corporation. Therefore, the board of directors may grant high level employees the authority to approve contracts up to a certain dollar amount while retaining the power to approve larger transactions.

Approve Transaction with Interested Director⁶⁵

[*Name and title of presenter*] presented to the board a proposed transaction involving [*describe proposed transaction, including facts indicating that transaction is for the benefit of the nonprofit and fair and reasonable*].⁶⁶ [*Indicate and attach any material distributed to the board regarding the transaction, e.g. a term sheet*].

[*Name of interested director*] has a material financial interest in the proposed transaction. [*Describe nature of financial interest*].

[*Name of presenter*] presented possible alternatives to the proposed transaction. [*Summarize possible alternatives, if applicable*].

After discussion and a vote by the majority of the directors in office, without counting the vote of [*name of interested director*], the board of directors adopted the following resolution:

WHEREAS, the board of directors is satisfied that the proposed transaction to [*description of transaction*] will benefit the Corporation and is fair and reasonable to the Corporation;

WHEREAS, the board of directors is satisfied that it has received full disclosure of all material facts of the proposed transaction to [*description of transaction*] and all material facts regarding [*name of interested director*]'s interest in the proposed transaction; and that the board of directors has conducted a reasonable investigation and adequately considered the possible alternatives to the proposed transaction.

⁶⁵ California Corporations Code section 5233 requires that certain procedures are followed before approving a self-dealing transaction, i.e., a transaction to which the corporation is a party and in which one or more directors has a material financial interest. Specifically, the transaction has to be for the nonprofit's own benefit and fair and reasonable to the nonprofit. The transaction must be approved by a majority of the directors in office (rather than a majority of a quorum), without counting the vote of the interested director, and with knowledge of the material facts of the transaction and the director's financial interest. Last, the corporation must not have been able to obtain a more advantageous arrangement with reasonable effort under the circumstances, or the board must conclude after reasonable investigation that a more advantageous arrangement is not possible. This sample resolution includes language reflecting that these required procedures were followed.

The following are excluded from the definition of self-dealing transaction: (1) an action of the board fixing the compensation of a director as a director or officer of the corporation; (2) a transaction that is part of a public or charitable program of the nonprofit that (a) is approved or authorized by the organization in good faith and without unjustified favoritism, and (b) results in a benefit to one or more directors or their families only because they are in the class of persons intended to be benefited by the program; and (3) a transaction, of which the interested director has no knowledge and which does not exceed the lesser of 1% of the gross receipts of the corporation or \$100,000. If the nonprofit has a conflict of interest policy, the minutes and resolution should also reflect compliance with the policy.

⁶⁶ The minutes should reflect that the transaction is for the benefit of the nonprofit and is fair and reasonable to the nonprofit. For example, "The office space that is the subject of the proposed lease is in a neighborhood that is accessible to the clients served by the organization. The monthly rent is on the low end of rent for comparable properties in the neighborhood."

RESOLVED, that the [*description of transaction*] is approved; and the officers of the Corporation are authorized to execute all related documents and take all actions necessary and appropriate on behalf of the Corporation to enable the Corporation to enter into such transaction.

The following directors voted in favor: [*names of directors*].

The following directors voted against: [*names of directors*].

The following directors abstained: [*names of directors*].

Section 2.9

**UNANIMOUS WRITTEN CONSENT
IN LIEU OF A MEETING OF BOARD OF DIRECTORS⁶⁷
OF
*[NAME OF CORPORATION],***

We, the undersigned, being all the members of the board of directors of *[name of corporation]* (the “Corporation”), acting pursuant to section 5211(b) of the California Corporations Code, hereby consent to the adoption of the following resolutions and actions, all of which resolutions and actions shall be as valid and legal and of the same force and effect as though adopted at a meeting duly and validly noticed and held:

[Insert appropriate resolutions]

This Unanimous Written Consent shall be filed in the minute book of the Corporation and become a part of the records of the Corporation.

This Unanimous Written Consent may be executed by facsimile (or PDF copy delivered by electronic mail) in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the undersigned have executed this Unanimous Written Consent dated as of the ___ day of _____, 20__.

[Director's name], Director

[Director's name], Director

[Director's name], Director

[Director's name], Director

⁶⁷ A unanimous written consent of the board of directors may be used in lieu of holding an actual meeting of the board of directors.

Appendix A

CONSENT TO ELECTRONIC TRANSMISSION

As a director of the Corporation, you must provide an unrevoked consent in order to receive official communications from the Corporation via electronic transmission (fax or e-mail), as permitted by Article [___], Section [___] of the Corporation's bylaws. This "Consent to Electronic Transmission" will allow the Corporation to send you Meeting notices and handle other official business that requires Director approval via fax or e-mail.

Before signing this Consent to Electronic Transmission, please review and be aware of the following:

1. You are **not** required to sign this form. You may request that Meeting notices and other matters of official business be sent to you via regular mail, telephone, or any other method permitted by Article [___], Section [___] of the Corporation's Bylaws.
2. You have the right to withdraw your consent at any time after signing this Consent to Electronic Transmission by providing the Corporation with written notice that you are withdrawing this Consent to Electronic Transmission.
3. This Consent to Electronic Transmission is broad, and may include transmission of Meeting notices and other important information regarding the Corporation. This consent form represents consent under Section 20 of the California Corporations Code.
4. Consenting to electronic transmission via fax requires that you have access to a fax machine and have a current fax number on file with the Corporation.
5. Consenting to electronic transmission via e-mail requires that you have access to a computer, have a current e-mail account in your name, and have provided your current e-mail address to the Corporation.

[signature page to follow]

The undersigned director has read and understands the foregoing, and provides this unrevoked consent to receive and send information, including, but not necessarily limited to, Meeting notices and other information regarding the Corporation, via electronic transmission (fax or e-mail), until such time as this consent is revoked in writing.

Name: _____

Signature: _____

Date: _____

Fax number: _____

E-mail: _____

PLEASE RETURN SIGNED ORIGINAL OR COPY OF THIS CONSENT TO ELECTRONIC TRANSMISSION TO:

[Name and address of the secretary]

Appendix B

Certificate of Secretary

I certify that I am the duly elected and acting secretary of [*corporation name*], a California nonprofit public benefit corporation; that these bylaws, consisting of [##] pages, are the bylaws of this Corporation as adopted by the board of directors on [*insert date*] _____ and that these bylaws have not been amended or modified since that date.

Executed on _____ at _____, California.

[*Name of Secretary*]
Secretary