

From: Elena A. Cappella, chair of Ad Hoc Committee on the Bylaws

Date: January 31, 2021

Re: Bylaw Issues for the Board meeting on February 9, 2021

Below are some Bylaw issues for discussion at your upcoming meeting. Once again, I ask that you read the memo in advance to save time at the meeting. The recommendations below have the unanimous support of our committee, which includes Jeff B., Matt S., Rick S, and Maggie.

A. Member nomination of Director candidates on Annual Meeting floor. Following your thoughtful discussion of this matter last month and the Board’s “straw vote” demonstrating strong support for retaining CCRA’s long-standing rule, the committee has reconsidered and now reversed the earlier recommendation.

New Recommendation: Retain in the Bylaw the right of CCRA members to nominate from the floor of the annual meeting (if duly seconded) candidates for election to the Board who are qualified to serve, are present at the meeting, and there state their willingness to serve if elected. Any such candidates are in addition to those on the slate presented by the Nominating Committee.

B. New technologies. Clearly our Bylaws need updating to permit the use of current and future technologies for remote attendance at meetings, for approving expenditures and contracts, for submitting, signing, and approving “written” documents and instruments, and for sending notices.

Recommendations on remote participation in meetings:

1. Membership meetings: In the sole discretion of the Board, annual and other membership meetings may be virtual, in-person with no remote attendance allowed, or in-person but with members allowed to attend remotely.
2. Board and Executive Committee meetings: Directors, when feasible, should attend in-person meetings in person; when not feasible, they may attend by remote means.
3. Remote methods of attendance must allow all those with a right to vote at the meeting to hear or otherwise perceive, as well as to participate in, all proceedings.
4. Actions taken at a virtual meeting (or a hybrid meeting with some in-person and some virtual participants) are valid even if some of those attending virtually lose their ability to participate due to technical or power issues not affecting all participants. If the meeting’s chair is aware that one or more remote participants have lost access, the meeting may proceed (assuming a quorum had been attained) or the chair may take any of several other reasonable options.

Recommendations on writings, approvals, and signatures:

1. These may all be effectuated by the use of current and emerging technologies, such as email or online fax, that allow text to be read or otherwise perceived by natural persons and to be reduced to print.

2. Signatures may be affixed by hand, pen, and ink, or by programs and technologies whereby the signature is under the sole control of the signer, can be verified, and can be attached to a document so that the document cannot be altered without invalidating the signature.

Approvals of financial commitments and expenditures must be given using a method that provides transparency and generates records sufficient to create an audit trail. However, the Bylaws themselves will no longer include dollar amounts, or list the officers or other persons with authority to approve, or the details of policy and procedure. Rather, they will be spelled out in written policies and procedures approved by the Board, which will make them easier to amend with time, experience, and innovations.

C. **Voting issues.** Two issues related to voting may be unfamiliar and thus worth describing here.

Recommendations:

1. **Voting on a matter:** For all meetings (Board, membership, Committees), we recommend that only those members who are present “and voting on a matter” count in the vote tally. In that way, anyone present but abstaining will not count to defeat actions; otherwise, an abstention effectively becomes a “no” vote. This is not typically the intent of someone who abstains and should not be permitted as a “backdoor” method of voting “no.” Under the proposal, voters can still abstain (for any reason), but abstentions do not count in the vote totals. (Note: In most cases, a meeting chair need not ask for abstentions when taking a vote. Persons wanting their abstentions recorded can request that, but abstentions should not affect the results.) Two examples to demonstrate this Bylaw change:
 - (a) Suppose 20 Directors are at a Board meeting when a vote is taken on a resolution that needs a majority vote for approval. If all 20 vote and the tally is at least 11 ayes, it passes. But if the vote is 10 ayes and 6 nays, with 4 Directors abstaining, it fails unless the Bylaws provide that a majority of those voting is needed to pass the resolution; if so, then abstentions are not votes and would not count. If abstainers need more time to study the matter, they could move to table it until the next meeting, but they should not be able to defeat it by abstaining.
 - (b) Suppose 60 members attend a CCRA annual meeting at which something detailed and complex, like Bylaw amendments, are up for approval. Of them, 20 came mainly to hear the speaker and paid little attention to the proposed amendments sent out in advance or the discussion at the meeting. The 20 members all decide to abstain on the Bylaw votes, content to trust the Board and other CCRA members to do a good job. Bylaw amendments currently need 2/3 of the members at the meeting to approve. That means all 40 who actually vote must vote aye (2/3 of 60); in other words, a vote of 39 ayes to 1 nay defeats the amendment. Our proposal would change that: the 20 abstainers would not count so the amendment would be adopted so long as it gets 27 ayes (2/3 of 40). We think that is a better result.
2. **Actions after loss of a quorum.** At all meetings at which a required quorum is attained, we recommend that actions may be taken even after the quorum is lost if the necessary proportion of aye votes is obtained (usually a majority vote is needed, though on a very few matters, like Bylaw amendments, a 2/3 vote is required), but we propose that the required proportion apply, not to the number of people left in the room and voting, but to the number required for the quorum. Again, examples will help illustrate the reasons for our proposal and how it would work.

- (a) The quorum for Board meetings is 16. Assume 20 Directors attend and vote at a meeting; a typical motion then needs at least 11 ayes to pass. Now suppose that 5 of the 20 Directors leave the meeting before a resolution is presented for a vote. The quorum has been “lost” but we want to allow the remaining Directors to act in the matter so that CCRA’s business isn’t needlessly delayed. It seems reasonable and right that to do so should require more than a majority of those left to vote. Our proposal means that 9 ayes will be needed to act on the resolution, 9 being a majority of the quorum number of 16. Now suppose that 7 more Directors leave the meeting and there is still another resolution on the agenda; with only 8 Directors remaining, no action can be taken on the matter. Again, we think that is a right and reasonable result.
- (b) Suppose 60 CCRA members attend the annual meeting, thus achieving a quorum, which for membership meetings is 50. If all 60 vote on a Bylaw amendment, at least 40 (i.e., 2/3 of 60) must vote aye for it to be adopted. But suppose that 20 members leave after the exciting annual program ends but before the Bylaw amendments are taken up. Our recommendation would have the Bylaws clearly permit action on the proposed amendments despite the loss of the quorum. This issue is unaddressed in our current Bylaws and under our proposed change, the Bylaw amendments in this hypothetical would need the approval, not of 27 (2/3 of the remaining 40 members), but of 34 (2/3 of 50, the quorum number). If fewer than 34 members had remained at the meeting, no action could be taken on them. Again, we think this is a fair and reasonable method for allowing most of the business to proceed despite the loss of the quorum.

D. Zoning Committee.

Recommendations:

1. Zoning Committee Co-chairs should not be ex-officio Directors.
2. At least two Directors (excluding the President) must serve on the Committee.

Reasons: All nonprofit board members – including ex-officio ones like CCRA’s Zoning co-chairs – have the same legal duties, including duties to attend Board meetings and to give due care to financial, governance, and other important matters. The Zoning Co-chairs give a huge amount of volunteer time to CCRA on zoning matters, and don’t necessarily want the added obligations of Board members. Indeed, Zoning Co-chairs who aren’t also CCRA Directors historically have rarely attended Board meetings or “performed” as Directors. (And, in case you’re wondering, yes, the current Co-chairs would welcome being relieved of their Director status.) But because Zoning Committee decisions on how to advise government agencies can influence an agency’s action – potentially with significant effect on interested individuals in CCRA’s district (and therefore also with considerable consequence to CCRA) – we believe that two Directors should serve at all times on the Zoning Committee (in addition to the CCRA President, should she or he choose to serve ex officio on the Committee). Those Directors would then be readily able to keep the Board informed of Zoning Committee matters as well as to advise the Committee, along with CCRA’s zoning counsel, when certain matters should be brought to the Board for consultation or decision.