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FORWARD

The Citizen Support Organization Corporate Governance Manual seeks to provide a framework for strong corporate governance. A Citizen Support Organization (CSO) is defined in Florida Statutes 258.015 as a not for profit organization, organized and operated to provide direct or indirect benefits to the state park system or to an individual state park unit.

The incorporation process provides a vehicle for the park manager to articulate the parks needs to the organizing citizens. The park needs are translated into short term and long term goals for the organization. Once the Division of Recreation and Parks approves these goals, the citizen group organizes into an incorporated body. The incorporators establish a not for profit corporation. That not for profit provides the structure necessary to obtain the funds, resources and manpower needed to achieve the expressed goals.

Incorporators first experience governance through the drafting of the Articles of Incorporation. The bylaws expand the articles, establishing the board management framework. The bylaws guide the board through its day to day management, administration and operations.

With the drafting of bylaws, CSO governance is in its infancy. In many cases, this is where governance is forgotten. The reasons vary. The breakdown could have happened during the drafting of the bylaws. The incorporators did not fully understand the purpose of the organizational bylaws. Through implementation and use, a board may find that the document is not useful to the organization's needs. And, finally, a not for profit's long-standing established traditions and procedures often interfere with the board's use of their bylaws.

The CSO Corporate Governance Manual addresses common not-for-profit CSO board management issues. The Manual gives the board guidance on conducting its annual meeting, provides a sample bylaws template and includes an abridged copy of Robert's Rules of Order, useful in the conduct of meetings. The goal is to show the fluid and applicable nature of the bylaws.

The CSO Corporate Governance Manual, Governance Workshops and ongoing participation of Citizen Support Organizations will develop stronger boards. Stronger Citizen Support Organization boards will have the ability and tools to focus on program needs while at the same time having the structure to sustain organizational growth, changes and challenges.

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INTRODUCTION

When creating and running a Citizen Support Organization (CSO), it is important to remember that the CSO is a corporation. Because a CSO is a corporation, the state of Florida requires a CSO to create articles of incorporation and bylaws. The bylaws serve an important function for your corporation. Bylaws are more than just a corporate formality. Bylaws provide the governance structure for your corporation. The bylaws are the guide on how to properly accomplish the goals the corporation wishes to pursue. The bylaws sets forth the proper decision making process for the corporation.

Your corporation should not simply adopt a previously drafted set of bylaws to serve as the bylaws for the corporation. The bylaws should be tailored to serve the needs of your corporation. The corporation should consider what procedures and provisions to adopt. Your bylaws will govern how your corporation will operate. This manual is not designed to serve as a pre-written set of bylaws. This manual is designed to explain the Florida law, legal issues and possible solutions for your corporation. A bylaws template for a membership CSO with comments is included in Appendix A.

DISCLAIMER

The CSO Corporate Governance Manual is intended to serve a guide to the development and use of bylaws of corporate not-for-profit entities established under Florida law to support the Florida Park Service. Legal and administrative issues arising in CSO governance can be complex and specific to individual CSOs. In addition, Florida corporations law is subject to change by the Florida legislature and by the courts of the United States and Florida. This manual should not be used as a substitute for professional advice by qualified legal counsel. CSO's should seek the advice of counsel concerning issues related to corporate governance.

CSO GOVERNANCE HIERARCHY

The governance structure of a corporation is limited by statutes, articles of incorporation and bylaws. The Florida Not For Profit statute sets forth the basic requirements of governance for non-profit corporations. In the event your bylaws do not address an issue of corporate governance the Florida Not For Profit statute may control that issue.

The corporate existence begins when the articles of incorporation are filed. The articles must include the name of the corporation, addresses of the principle and registered office, the name of the registered agent, names and addresses of the incorporators and the purpose of the corporation.¹ The articles serve as the foundation for the corporation. The bylaws implement the articles of incorporation and serve as the guide to corporate governance. The Florida Not For Profit Corporation Statute allows for most corporate governance matters to be addressed in the bylaws.² This is a useful option for your CSO, because, unlike the articles, the bylaws are a flexible governing tool that does not need to be submitted to the State when adopted or amended.³ This manual will focus on how to properly create and use bylaws in your corporation.

CORPORATE BYLAWS

I. PURPOSE

One of the first provisions in the bylaws is the purpose of the corporation. Often in the purpose provision, the corporation will state that the corporation is created for the purposes within the meaning of Section 501(3) of the Internal Revenue Code. The provision will often include a list of actions the corporation can take.

Including such statements in the purpose is appropriate. But the purpose provision is the statement that defines the goals for your corporation. It may be more appropriate to include language that members can understand. Include the real goals that the corporation has for working with its park. For example, your corporation may wish to refer to your CSO application and project priorities form. This section should serve as the guide for the development of the policies for your corporation and provide notice to members and others of what the corporation wishes to accomplish. It should be revisited from time to time and amended as necessary.

II. MEMBERSHIP

A. Membership Or Non-Membership Corporation

The first issue is to determine whether your corporation should have members. Under Florida law, a non-profit corporation is not required to have members.⁴ In a non-membership corporation the Board of Directors (Board) has the sole responsibility and authority over the corporation. In a membership corporation, members may be voting or non-voting.⁵ The corporation may also choose to have supporters, people who donate money and time to the corporation but receive no voting privileges, instead of members who belong to the corporation.

The issues which the corporation should consider in making this decision are the cost and complexity of operations when there are members, the desirability in having a body to which the directors are ultimately responsible and the democratic nature of the corporation.

<p>Recommendation: Since the goal of a CSO is to provide support to the parks through human and financial resources, making the corporation a membership corporation may be a more appropriate approach.</p>
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B. Defining Membership

If the CSO chooses to be a membership corporation the corporation should define the requirements for being a member, so the corporation and those interested in being members know who is and who is not a member. This definition should be included in the bylaws. One common approach to determining member status is by whether the minimum dues have been paid. An alternative method to paying dues, could be providing a specified number of volunteer hours to the corporation. By using this latter method, it may be difficult in determining whether an individual is a member.

C. Membership Book

Assuming your corporation is a membership corporation, voting or non-voting, you must keep track of the members. Florida law requires that membership corporations keep a membership book containing, in alphabetical order, the name and address of each member.⁶ Having a member defined by paying the yearly dues makes it easy to determine membership. The membership book should be maintained by the Secretary. The corporation could have any officer maintain the book, but the corporation should designate one person in the bylaws, so that it is clear who has the responsibility.

D. Membership Categories

If the corporation chooses to have members, the corporation will need to determine the categories or classes of members. A corporation may have one or more classes of members.⁷ In both cases, Florida law requires that the qualifications and rights of the members of each class be set forth in the articles or bylaws.⁸ Among the various category options are individuals, families, corporations, students, lifetime and honorary. The corporation may also have a category of associate members or non-voting members.

Citizen Support Organization Membership Categories and Dues	
Membership Categories	Frequently Request Due Amounts
Student/Youth/Associate	\$10
Individual	\$15
Individual Life	\$100
Family	\$25
Merchant/Patron	\$100
Sustaining	\$200
Organization/Group	\$50
Corporate Friend	\$100/\$250
Corporate Sponsor	\$500/\$1,000
Founder Benefactor	\$1,000
Source: Analysis of Citizen Support Organizations in District 2. By Tricia Bacon. May 2001.	

E. Member Voting Rights

If a multiple category membership corporation is desired, it is important to establish the voting rights for each category of members in the bylaws. Corporation members have no voting rights unless provided in the articles or bylaws.⁹ There are several voting issues the corporation may wish to consider. The first is the issue of proxy voting. The Florida statute allows a member who is entitled to vote to vote by proxy unless prohibited by the articles or bylaws.¹⁰ All the member is required by law to do is put the vote in writing.¹¹ The Florida statute even allows members to vote for directors by mail.¹²

The second issue is whether the corporation wishes to have cumulative voting for directors, which is allowed under Florida statutes.¹³ In cumulative voting, the number of votes each member has is equal to the number of directors to be elected. So if there are five directors to be elected, each member would get five votes. A member could put all five votes with one person or spread them between candidates.

Another voting issue is whether members should be allowed to vote on corporate policy matters or just for directors. One option is to have members vote for the directors and have the directors responsible for setting the policies of the corporation. In this way power is concentrated in the Board. This can make decision-making more efficient. If members disagree with the policy decisions of the Board, the members can vote out directors at the annual meeting. Furthermore, if the Board wants to add a director, the Board may simply choose to add that member as a director, subject to the number of directors specified in the bylaws.

The other option is to grant the right to members to vote on all matters at all meetings, including Board meetings. This way members may be encouraged to attend Board meetings and participate in the corporation. But this may expose the corporation to problems. The members may have the ability to overrule the Board at a meeting or dilute the power of the Board to set policy and govern the corporation.

F. Removal Of Member

The corporation should also deal with the issue of removing a member in its bylaws. It may be necessary at some point to do this. Florida law states that a member may be terminated in the manner provided by law, articles or the bylaws.¹⁴ The reasons for removing a member should be explained in the bylaws along with the proper procedure to remove a member. The corporation may wish to have the Board vote on the matter or have a separate committee regulate such issues. Generally speaking, corporations do not need to observe due process standards in disciplining member. Termination must be recorded in the membership book.¹⁵ An example of a provision is provided in Article IV Section 4 of the bylaws template.

<p>Recommendation: If the corporation decides to remove a member, the member should receive written notice of a proceeding and be given an opportunity to be heard by those making the decision.</p>
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III. MEMBERSHIP MEETINGS

The frequency of all meetings of members, manner of notice of meetings, the conduct and adjournment of meetings, and quorum requirements shall be established in the articles or the bylaws.¹⁶ The corporation does not have to hold regular membership meetings.¹⁷ If the bylaws state the corporation will hold regular meetings then the corporation must hold such meetings. The place and time of all meetings may be determined by the Board.¹⁸ A provision pertaining to general meetings is found in Article V Section 2 of the bylaws template.

The statute allows for special meetings to be called by the president, chairperson, the Board or other officers or persons as are provided for in the articles or the bylaws.²⁰ If your corporation wishes to limit or expand the types or number of members who can call a special meeting, the bylaws should establish which members can call a special meeting. The bylaws should include the notice requirement and procedure for calling a special meeting.

A. Annual Meeting

Unlike for profit corporations, non-profit corporations are not required to hold an annual meeting.¹⁹ However, the annual meeting is useful. Some of the goals of the annual meeting include electing directors and having a formal address by the chairperson of the corporation. An annual meeting provision is found in Article V Section 1 of the bylaws template.

Recommendation: It may also be good to have a “state of the park address” by the park manager, so each year members are aware of the status of the park’s policy direction.

B. Notice

Notice of meetings must be in writing unless oral notice is authorized in the articles or bylaws.²¹ If your corporation wants to allow for oral notice it should do so in the bylaws.²² The notice could then be given in person or by telephone, electronic communication, fax or email.²³ A provision for a notice requirement may be found in Article V Section 5 of the bylaws template in Appendix A.

C. Quorum

A quorum is the number of members required to be present at a meeting before business can be transacted. The corporation should set the quorum requirement for membership meetings in the bylaws. It may be the majority of members. It is generally advisable to have a limited quorum requirement consistent with the size of the corporation. It may be advisable to set the quorum of the Board as the quorum requirement of a membership meeting. This allows the corporation to have a quorum which can easily be determined.

Sample Annual Meeting Agenda

1. Welcome
2. Presentation of Board
3. Year in Review – the Annual Special Report
4. Accomplishments for Past Year
5. Goals for Next Year
6. State of the Park Address
7. Recognition
8. Voting [if applicable]
9. Adjourn

IV. BOARD OF DIRECTORS

Florida statutes require that the corporation be managed by a Board.²⁴ The only statutory qualification is that a director must be a natural person, 18 years or older.²⁵ The person does not need to be a resident of the state or even a member of the corporation.²⁶ The corporation may choose to have additional qualifications for the directors included in the bylaws.²⁷

The statute requires at least three directors to serve on the Board.²⁸ The number of directors should be specified in the articles or bylaws.²⁹ However, the most flexible approach would place this provision in the bylaws. An example of a provision is Article VI Section 1 of the bylaws template. The number of directors can change either by amendment to the articles or bylaws or by a manner provided in the articles or bylaws.³⁰ For example, the bylaws may have a provision which automatically increases the size of the Board if the corporation grows to a designated level. It may be appropriate to specify the manner in which a new director can be appointed.

A. Terms

A corporation may have non-staggered terms for directors. This means that all directors would be selected at the same time and the duration for a term would be the same for all directors. If a corporation has non-staggered terms, the corporation may be subject to a more rapid change in power and may have less continuity in the membership of Board from year to year.

The statute allows a corporation to have staggered terms for directors.³¹ The directors can be divided into classes and the terms of the classes do not need to be the same.³² The simple option is to provide for equal terms for all directors. One possible way to set up a staggered Board is to have two, two-year classes. This provides some continuity, as prior directors will serve on the Board along with new directors.

Another issue your corporation should consider is whether to have term limits for directors and officers. Having term limits may bring new members onto the Board or to serve as

officers. Rotating members as directors and officers may increase membership participation in your corporation. However, term limits may prevent your corporation from maintaining continuity, expertise and experience on the Board. If your corporation chooses to include term limits in the bylaws, you might consider limiting the number of consecutive terms the directors or officers may serve, but allow people to return after a hiatus in service. In deciding whether to have term limits your corporation should consider the number of members in your corporation. A smaller corporation may not have a large enough base to support term limits.

B. Vacancies

A director can resign at any time.³³ The statute requires the director to deliver written notice to the Board or to the chairman of the corporation.³⁴ A director may also be removed, but removal must be done pursuant to procedures provided in the articles or bylaws.³⁵ In a membership corporation, the Florida statute requires that a director be removed by a majority of the membership entitled to vote, either by vote or in a written agreement.³⁶ If the members wish to remove a director at a meeting, notice of the meeting to remove a director shall state the specific director to be removed.³⁷ If the removal occurs at a meeting, any vacancy must be filled at the meeting.³⁸ If more than one director is to be removed, the members must do so in a separate vote or agreement for each.³⁹ Your corporation may wish to have more protections for directors. An example of a procedure provision is found in Article VI Section 5 of the bylaws template.

Any vacancy on the Board can be filled by the an affirmative vote of the majority of remaining directors, even if they do not constitute a quorum of the former Board.⁴⁰ In deed, the vacancy can even be filled if there is one director left.⁴¹ In the event there are no remaining directors, and the corporation is a membership corporation, the members can fill the position.⁴² The director who fills the vacancy finishes the unexpired term.⁴³ If a director is added in order to increase the number of directors, that director will serve a term until the next election of directors.⁴⁴

C. Compensation Of Directors

The Florida statute allows for compensation of directors, unless prohibited by the bylaws.⁴⁵ Your corporation may wish to pay a director a consulting fee to perform work for the corporation. Any concern with a conflict of interest may be dealt with under the section of the bylaws on conflicts.

D. Conflict of Interest

The first principle of conflicts of interest is disclosure. Under Florida Statutes, no transaction between a corporation and a director is void or voidable because of a financial interest if the interest is disclosed to those who authorize the transaction.⁴⁶ The director with the interest can still vote on the transaction, if the director would normally vote on such matters.⁴⁷ Your corporation may wish to prohibit the director from voting on the matter. The transaction may be valid without disclosure if the transaction is fair and reasonable to the corporation at the time authorized.⁴⁸ A provision on conflicts of interest is provided in Article VI Section 14 of the bylaws template.

V. BOARD MEETINGS

The Florida statute states the Board may hold meetings in or out of the state.⁴⁹ It also provides that the chairperson or the president may call a meeting, unless the articles or bylaws provide otherwise.⁵⁰ In its bylaws, the corporation may wish to extend this ability to others. The Board can act without a meeting, if the action is unanimous and done in writing, signed by all the directors.⁵¹ A provision articulating this statute is found in Article VI Section 11 of the bylaws template.

The Florida statute states that a Board meeting may be held without notice of time or place, unless the articles or bylaws require notice.⁵² If your corporation wishes to make the Board provide notice of meetings, the bylaws should contain notice requirements, such as in Article VI Section 6. The statute states that at least two days notice of time and place for special meetings shall be provided.⁵³ However, the statute authorizes the corporation to offer more or less notice of special meetings in its bylaws.⁵⁴

The quorum requirement in the statute is a majority of the Board.⁵⁵ If your corporation wishes to set the quorum at less than a majority, then it must do so in the articles.⁵⁶ A corporation can set the quorum as low as one-third of the directors.⁵⁷ If a corporation wishes to act with less than a majority of the board present, then the corporation may wish to set the quorum requirement below fifty-one percent. But if the corporation does, then it is possible that a minority of the board would be making decisions at board meetings. The quorum requirement for Board meetings may be found in Article VI Section 8 of the bylaws template.

Sample Board Meeting Agenda

1. Quorum
2. Secretary's Report
3. Treasurer's Report
4. President's Report
5. Park Manager's Report
6. Committees
7. Old Business
8. New Business
9. Adjourn

A. Conference Call Meetings/Board Actions By Email

Unless the articles or bylaws provide otherwise, the Board may authorize directors to participate in meetings through the use of any means of communication in which the participants

can simultaneously hear each other during the meeting.⁵⁸ Notice requirements still apply. Conducting a meeting by conference call would be acceptable. Using a chat room on the Internet in which directors write to each other would not be very effective. Individual actions by the Board between meetings by email may be appropriate, but must be unanimous, written and signed as mandated by statute.⁵⁹ Electronic signatures are authorized. The action does not become effective until signed.

B. Procedure For Adopting Resolutions

The proper procedure for adopting resolutions at meetings should conform with The New Robert's Rules of Order. Formally adopted resolutions should be reduced to writing, which can be accomplished by including resolutions in the minutes.

VI. OFFICERS

The Florida statute does not require specific officer positions.⁶⁰ The duties of each officer should be set forth in the bylaws, such as in Article VII Section 5. One person can hold more than one office at the same time.⁶¹ The statute does require that one officer should have the responsibility of preparing minutes of the meetings.⁶² Typically the secretary of the corporation has this responsibility. It may be best to also give the secretary responsibility to provide notice of meetings.

An officer may resign at any time by delivering notice to the corporation.⁶³ The Board may remove an officer at any time with or without cause.⁶⁴

Your corporation may wish to authorize one or more officers to make expenditures without the approval of the Board. If an officer is authorized to make expenditures, your corporation may wish to include a spending limit. An example of a provision may be found in Article IX Section 2 of the bylaws template.

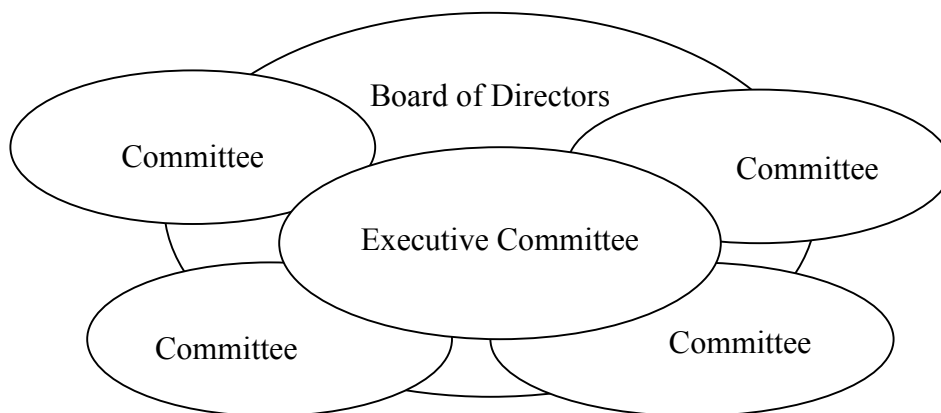
VII. COMMITTEE GOVERNANCE

The Florida statute provides for corporate governance utilizing committees, including an executive committee, that may conduct corporate business.⁶⁵ Unless the bylaws of articles provide otherwise, the Board may set up a committee which can exercise all the authority of the Board, except it can not a) fill vacancies on the Board or any committee b) change the bylaws or c) approve or recommend to members actions or proposals required to be approved by the members.⁶⁶ The powers of a committee should be set forth in the resolution establishing the committee, the articles or the bylaws.

Unless the bylaws provide otherwise, all the notice, quorum and voting requirements of the Board also apply to the committees.⁶⁷ Each committee must have at least two members.⁶⁸

As with the Board, a committee can act without a meeting, if the action is unanimous and done in writing, signed by all the members of the committee.⁶⁹

Committee Organizational Chart



A. Considerations In Establishing A Committee

A corporation could require in the bylaws that the committee get approval from the Board before taking action or spending money. The Board may allow the committee to use funds at its own discretion, but require that the committee notify the Board, at least, or the treasurer. This may become important in having the treasurer understand the complete financial situation of the corporation. If the committee has such spending power, it may be best to have the committee chairperson report at each Board meeting on any committee actions.

B. Executive Committee

The corporation may have an executive committee.⁷⁰ If your corporation has an executive committee, the powers of the committee should be specified in the bylaws. The powers may include the authorization of expenditures along with appropriate spending limits. Your corporation may wish to grant the executive committee the ability to create policies.⁷¹ An executive committee is set forth in Article VIII Section 2 of the bylaws template.

C. Other Committees

The corporation may wish to establish a committee to consider the long-term objectives of the corporation. Typically the Board may be focused on short-term goals. By establishing a long-term goals committee, people in the corporation will be considering future possibilities for the corporation and will be able to make suggestions to the Board. A provision in the bylaws

specifying a long list of committees is probably not very helpful. It may be better to state the Board can set up committees as needed. If the corporation wants specific committees to exist then it may be more appropriate to create the committee in the bylaws.

VIII. CORPORATE POWERS

The corporation should act to further the purposes and goals set out in the purpose section of the articles or bylaws or mission statement. Florida statutes allows a member of a non-profit corporation to challenge an act of the corporation which is outside the scope of power conferred on the corporation by the laws of the organization or the statute authorizing its existence.⁷² The concept is called *ultra vires*, which means beyond the power. If a member challenges an act, a court may enjoin the act and even award damages for losses suffered by the corporation as a result of an *ultra vires* action.⁷³ The corporation itself may bring the suit against an incumbent or former officer, employee or agent.⁷⁴