

## **Revision of the YMCA Constitution**

On March 28, 2017, the YMCA Board of Directors passed the following resolution:

***“Resolved, the Board approves the Certificate of Incorporation as presented, and recommends it to the members for consideration at the Annual Meeting on May 16, 2017. Upon approval by the membership, the Certificate of Incorporation will replace the existing Constitution, which will then be cancelled.”***

Little is known about the existing Constitution, including why or when it was created.

What is known is that it does not comply with current Connecticut nonprofit law.

Phil Lochner and Steve Russo led the process of writing Certificate of Incorporation. Phil is an attorney, Board member, and member of the Board’s Governance Committee. A Y member and local attorney, Steve is highly qualified and knowledgeable about the governance of nonprofit organizations, and he volunteered his expertise to the Y for this project.

With some minor exceptions, the proposed Certificate of Incorporation includes only statutorily mandated language; language designed to ensure the nonprofit status of the Greenwich Y under IRS rules; and language providing for indemnification of directors.

On March 28, the Board also approved new Bylaws, subject to the membership’s approval of the Certificate of Incorporation. These Bylaws will include some provisions of the current Constitution. Under this revision, the Board will establish the age of YMCA members, the classes and size of the Board, membership dues, employment of a President/Chief Executive Officer, rules related to calling special board meetings, and quorum requirements. The Board approves amendments to Bylaws by majority vote.

Approval of the Certificate of Incorporation requires 2/3 vote of the voting membership at the Annual Meeting. The quorum required to conduct business at any regular or special meeting of the members of the Association shall be either: (1) Fifty (50) of the voting members or (2) twenty-five (25) voting members, at least fifteen (15) of which shall also be members of the Board.

Members may read the recommended Certificate of Incorporation online. Members wishing more information may contact me directly at [SwimWaters@gmail.com](mailto:SwimWaters@gmail.com).

Best,

Sandy Waters  
Chairman  
YMCA Board of Directors

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF  
YOUNG MEN'S CHRISTIAN ASSOCIATION OF GREENWICH  
(A Nonstock Corporation)

ARTICLE I

The name of the corporation is Young Men's Christian Association of Greenwich (the "Corporation").

ARTICLE II

Section 1: The Corporation shall be nonprofit. It shall not have or issue shares of stock or make distributions. No part of the income or net earnings of the Corporation is distributable to, nor shall inure to the benefit of, any member, director or officer of the Corporation, or to any private individual (except that reasonable compensation may be paid for goods and/or services rendered to or for the Corporation), and no member, director or officer of the Corporation, or any private individual, shall be entitled to share in the distribution of any of the corporate assets upon its dissolution.

Section 2: The Corporation shall have one class of members. Members who are in good standing shall be entitled to vote on matters submitted to the members for consideration. The bylaws of the Corporation (the "Bylaws") shall prescribe the rules for admission, retention, standing, withdrawal and expulsion of members, and such provisions may be amended from time to time in such lawful manner as the Bylaws shall prescribe.

Section 3: The Corporation shall be organized and operated exclusively for religious, charitable, scientific, literary and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"). In furtherance thereof, the nature of the activities to be conducted and the purposes to be promoted or carried out by the Corporation are to provide opportunities for spiritual, mental and physical development and social fellowship provided, however, that the Corporation may engage in any lawful act or activity for which a corporation may be formed under the Connecticut Revised Nonstock Corporation Act (the "Act") that is not inconsistent with the express limitations contained above or elsewhere in this Amended and Restated Certificate of Incorporation.

Section 4: The Corporation shall have all powers granted by law, all powers that are or may hereafter be conferred by the laws of the State of Connecticut upon corporations without capital stock, and all legal powers necessary or convenient to effect any or all of the purposes stated in this Amended and Restated Certificate of Incorporation, whether or not such powers are set forth herein; provided, however, that no such powers and privileges may be exercised, nor shall any activities be conducted, by the Corporation, if the same are inconsistent with the express limitations contained in this Amended and Restated Certificate of Incorporation or with the Corporation's nonprofit purposes or are not permitted to be carried on (a) by a corporation exempt from federal income tax under Section 501(a) of the Code as an organization described in Section 501(c)(3) of the Code, or (b) by a

corporation contributions to which are deductible under Section 170(c)(2) of the Code; and provided further that no substantial part of the Corporation's activities shall consist of carrying on propaganda, or otherwise attempting, to influence legislation, and that the Corporation shall not participate in or intervene in (including the publication or distribution of statements) any political campaign on behalf of (or in opposition to) any candidate for public office.

#### ARTICLE III

Section 1: All corporate powers shall be exercised by or under the authority of, and the activities, property and affairs of the Corporation shall be managed by or under the direction of, its Board of Directors. Directors shall be elected by the members of the Corporation pursuant to the Bylaws. Should there be no members of the Corporation, the Board of Directors shall be self-perpetuating.

#### ARTICLE IV

Section 1: In the event of dissolution of the Corporation or the winding up of its affairs, subject to any restrictions on use or transfer that may exist, the assets of the Corporation remaining after all liabilities and obligations have been satisfied or provided for shall be paid over, transferred or conveyed, in accordance with a plan for distribution of assets adopted by the Board of Directors, and approved by the affirmative vote of at least two-thirds of the voting members of the Corporation present at a meeting at which a quorum is present, to one or more organizations that meet the following conditions:

- (a) The organization shall be organized and operated either (i) exclusively for the purposes set out in Section 3 of Article II above, or (ii) exclusively for purposes determined by the Board of Directors to be similar to or supportive of those set out in Section 3 Article II above; and
- (b) The organization shall either be: (i) an organization exempt from Federal income taxation under Section 501(a) of the Code as an organization described in Section 501(c)(3) of the Code that is not a private foundation as defined in Section 509(a) of the Code or, (ii) provided such assets will be used exclusively for one or more public purposes, the Federal or a state government or a political subdivision thereof.

Any such assets not so distributed shall be disposed of as determined by a court of competent jurisdiction, exclusively for such purposes, or to such organization or organizations, as said court shall determine, that are exempt from Federal taxation under Section 501(a) of the Code as organizations described in Section 501(c)(3) of the Code and are not private foundations as defined in Section 509(a) of the Code, or to the Federal or a state government or political subdivision thereof for a public purpose.

#### ARTICLE V

Section 1: No person who is or was a director of the Corporation shall be personally liable to the Corporation, or the members of the Corporation, for monetary damages for breach of duty as a director in an amount that exceeds the compensation, if any, received by the director for serving the

Corporation during the year of the violation if such breach did not (a) involve a knowing and culpable violation of law by the director, (b) enable the director or an associate, as defined in Section 33-840 of the Connecticut General Statutes, to receive an improper personal economic gain, (c) show a lack of good faith and a conscious disregard for the duty of the director to the Corporation under circumstances in which the director was aware that his or her conduct or omission created an unjustifiable risk of serious injury to the Corporation, or (d) constitute a sustained and unexcused pattern of inattention that amounted to an abdication of the director's duty to the Corporation. Any lawful repeal or modification of this Article or the adoption of any provision inconsistent herewith by the Board of Directors or members of the Corporation shall not, with respect to a person who is or was a director, adversely affect any limitation of liability, right or protection of such person existing at or prior to the effective date of such repeal, modification or adoption of a provision inconsistent herewith. The limitation of liability of any person who is or was a director provided for in this Article shall not be exclusive of any other limitation or elimination of liability contained in, or which may be provided to any person under, Connecticut law as in effect on the effective date of this Amended and Restated Certificate of Incorporation and as thereafter amended.

Section 2(a): (i) The Corporation shall, to the fullest extent permitted by law, indemnify its directors from and against any and all of the liabilities, expenses and other matters referred to in or covered by the Act. In furtherance and not in limitation thereof, the Corporation shall indemnify its directors against liability, as defined in subsection (4) of Section 33-1116 of the Connecticut General Statutes, to any person for any action taken, or any failure to take any action, as a director, except liability that (i) involved a knowing and culpable violation of law by the director, (ii) enabled the director or an associate, as defined in Section 33-840 of the Connecticut General Statutes, to receive an improper personal economic gain, (iii) showed a lack of good faith and a conscious disregard for the duty of the director to the Corporation under circumstances in which the director was aware that his or her conduct or omission created an unjustifiable risk of serious injury to the Corporation, or (iv) constituted a sustained and unexcused pattern of inattention that amounted to an abdication of the director's duty to the Corporation; provided that nothing in this sentence shall affect the indemnification of or advance of expenses to a director for any liability stemming from acts or omissions occurring prior to the effective date of this Article V.

(ii) The Corporation may indemnify each officer of the Corporation who is not a director, or who is a director but is made a party to a proceeding in his or her capacity solely as an officer, to the same extent as the Corporation is permitted to provide the same to a director, and may indemnify such persons to the extent permitted by Section 33-1122 of the Connecticut General Statutes.

(iii) The indemnification provided for herein shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any Bylaw, agreement, vote of members or disinterested directors or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director or officer and shall inure to the benefit of the heirs, executors and administrators of such person.

(b) Expenses incurred by a director or officer of the Corporation in defending a civil or criminal action, suit or proceeding shall be paid for or reimbursed by the Corporation to the fullest extent permitted by law in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if it shall be ultimately determined that such director or officer is not entitled to be indemnified by the Corporation.

(c) The Corporation may indemnify and pay for or reimburse the expenses of employees and agents not otherwise entitled to indemnification pursuant to this Article V on such terms and conditions as may be established by the Board of Directors.

(d) No amendment to or repeal of this Article shall apply to or have any effect on the indemnification of any director, officer, employee or agent of the Corporation for or with respect to any acts or omissions of such director, officer, employee or agent occurring prior to such amendment or repeal, nor shall any such amendment or repeal apply to or have any effect on the obligations of the Corporation to pay for or reimburse in advance expenses incurred by a director, officer, employee or agent of the Corporation in defending any action, suit or proceeding arising out of or with respect to any acts or omissions occurring prior to such amendment or repeal.

(e) Notwithstanding any provision hereof to the contrary, the Corporation shall not indemnify any director, officer, employee or agent against any penalty excise taxes assessed against such person under Section 4958 of the Code.

#### ARTICLE VI

This Amended and Restated Certificate of Incorporation may be amended by a resolution adopted by not less than two-thirds of the Board of Directors present at a meeting at which a quorum is present and not less than two-thirds of the voting members of the Corporation entitled to vote thereon present at a meeting at which a quorum is present, provided that the Amended and Restated Certificate of Incorporation shall not be amended to permit the Corporation to engage in any activity that would be inconsistent with its classification as an organization described in Section 501(c)(3) of the Code and as an organization contributions to which are deductible under Section 170(c)(2) of the Code.

#### ARTICLE VII

Reference in this Amended and Restated Certificate of Incorporation to a provision of the Code is to such provision of the Code or the corresponding provision(s) of any subsequent federal income tax law. Reference in this Amended and Restated Certificate of Incorporation to a provision of the Connecticut General Statutes, Revision of 1958, as amended, or the corresponding provision(s) of any subsequent Connecticut law. Reference in this Amended and Restated Certificate of Incorporation to a provision of the Connecticut Revised Nonstock Corporation Act is to such provision of the Connecticut Revised Nonstock Corporation Act, as amended, or the corresponding provision(s) of any subsequent Connecticut law.

ARTICLE VIII

Section 1: The Corporation's email address is \_\_\_\_\_.

6. *The amendments and restatement set forth above were duly approved by the Board of Directors of the Corporation on \_\_\_\_\_, and by the Members of the Corporation on \_\_\_\_\_, in the manner required by sections 33-1140 through 33-1147, inclusive, of the Act and by the Certificate of Incorporation.*

7. *This Amended and Restated Certificate of Incorporation of the Corporation shall become effective upon filing.*

Dated this \_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
By:  
Title: