

# **West Michigan Concert Winds**

## **By-laws**

### **Article I**

#### *Name*

The name of the corporation shall be West Michigan Concert Winds.

### **Article II**

#### *Purpose and Powers*

1. The purpose and Powers of this corporation shall be:
  - A. To organize and operate, not for profit, but exclusively for the purpose of cultural performances and related instruction and training which benefits the Community or Communities served by the Corporation. No part of the net earnings of the Corporation shall inure to the benefit of any member, Director or officer of the Corporation or any private individual except that reasonable compensation may be paid for services rendered to the Corporation. All persons in a position of trust shall comply with the Conflict of Interest Policy, attached as addendum A.
  - B. To solicit and receive grants, contributions and other property, to enter into contracts, to engage needed personnel and services, and to transfer, hold or invest such property as may be required to carry out the purposes of the Corporation.
2. Notwithstanding any other provisions of these by-laws, this corporation shall not carry on any activities not permitted to be carried on by a corporation exempt from federal income tax under Section 501 (c) (3) of the Internal Revenue Code of 1954 or by a Section 170(0)(2) of the internal Revenue Code of 1954 (or parallel sections as these codes may hereafter be amended).

### **Article III**

#### *Membership*

1. Membership is open to all those who demonstrate a level of musicianship deemed acceptable by the musical director.
2. Continuing membership shall be contingent upon satisfactory performance and attendance as determined by the musical director.
3. Membership in this organization shall be re-determined yearly based on the judgement of the musical director.

4. Membership in the corporation shall be annual, based upon the corporation's fiscal year. Members eligible to vote are those who participate in the musical organization and/or those who contribute financial assistance to the corporation. Each member shall have one vote on any matter before any membership meeting held during the fiscal year, provided that such person was a member entitled to notification of the meetings. The vote of a corporation shall be cast for it by a duly authorized representative. If a membership is in the name of a husband and wife, one vote shall be cast by either.

#### **Article IV** ***Board of Directors***

1. All the rights, powers, duties and responsibilities relative to the management and control of the corporations' property and affairs are vested in the Board of Directors. The members of the Board have a legal duty to exercise reasonable care in the administration of this corporation and are responsible for seeing that the funds and property received by the corporation are disbursed only for the purposes for which they are given.
2. The board shall consist of not more than fourteen (14) members. Each Director shall be elected to a term of two years. Half of the Directors shall be elected each year at the annual meeting of the Board. Of the initial members of the Board, one-half shall serve a term of only one-year. An Endowment Fund Representative, not otherwise serving as a member or ex-officio member of the board, shall be elected at the annual meeting to a two-year term. Following the annual election of the Board of Directors, a Muskegon Community College student representative to the Board shall be appointed by the Board to serve for one year. The student shall have played with the band for a period of at least six months prior to appointment. The board shall reserve the right not to appoint a student representative if there is not a qualified student who is willing to serve on the board.
3. The Annual Meeting shall be held prior to the end of the performing season on or before the third rehearsal in May. At this meeting new Directors shall be elected. The newly constituted board shall elect its officers for the next year within a period of thirty days following their election. Notice of the annual meeting shall be given at least twenty-one days before the day on which the meeting is to be held.
4. Besides the Annual Meeting, the Board shall meet at least quarterly at a time and place specified by the President. At least five days notice shall be given of each regular meeting.
5. The presence of a majority of the Directors, in person or by written proxy, shall be necessary at any meeting for the conduct of business. Except as otherwise provided by these by-laws or by statute, all matters before the Board shall be

decided by a majority of the Directors present. The presiding officer shall not vote unless there is a tie vote.

6. Vacancies on the board, for whatever reason, may be filled at any regular meeting of the Board for the remaining term of the vacated position.

## **Article V** *Officers*

1. The principal officers of the corporation shall be the President, Vice-President, Secretary and Treasurer of the Board. These officers must be members of the Board; the Board, however, may appoint from time to time such additional officers as it deems appropriate.
2. The officers shall be elected annually after the election of the new directors. Each officer shall hold office until his or her successor has been elected, or until the officer becomes incapacitated or resigns.
3. The President shall preside at all meetings of the Board and shall have such other powers and duties as assigned to him or her by the board, provided they are not inconsistent with the by-laws. The president shall also be the custodian of all the original records and documents of the corporation.
4. The Vice-President shall, in the absence of the President, have all the powers normally vested in the President.
5. The Secretary shall:
  - A. Keep the minutes of all meetings of the board.
  - B. Keep a current list of the Directors and their addresses.
  - C. Distribute minutes from board meetings to all members of the board and post on the band bulleting board within one week of the meeting.
  - D. Perform all other duties that are incident to the office of Secretary or that may be assigned by the Board or President and are not inconsistent with the by-laws.
6. The Treasurer shall:
  - A. Be accountable for the receipt and disbursement of funds and property of the corporation.
  - B. Enter or cause to be entered in the books of the corporation a complete account of all receipts and expenditures on behalf of the corporation.
  - C. Give a report of all accounts at each regular meeting of the board.
  - D. File all corporate, tax and other financial reports required in the corporation.
  - E. Perform all other duties that are incident to the office of Treasurer that

may be assigned by the President and are not inconsistent with the by-laws.

7. The board may appoint to hire a manager to administer its programs. If not otherwise a member of the Board, the Manager shall be a non-voting ex-officio member of the Board. He or she shall be responsible for the planning and daily management of the activities of the corporation in accordance with the policies of the Board.
8. The Endowment Fund Representative shall be a non-voting ex-officio member of the Board and shall serve as the head of the Endowment Fund Committee.

## **Article VI**

### ***Committees***

1. The Executive Committee shall consist of six Directors: The President (who shall be chairman thereof), Vice-President, Secretary, Treasurer, previous season's President, and one other Director appointed by the President. The Executive Committee shall manage and control the affairs of the corporation between Board meetings, and shall recommend to the Board action on major issues.
2. The Nominating Committee shall consist of three Directors appointed by the President. The nominating committee shall submit nominations to the Board of Directors for discussion prior to any action being taken to contact nominees. Upon approval of the Board, and prior to the election of Directors by the members, the nominations shall be included in the notice of the annual meeting. The nominating committee shall submit recommendations for officers to the Board of Directors for discussion prior to the annual election of officers.
3. The Endowment Fund Committee shall consist of the Endowment Fund Representative and two Directors, one appointed by the President and one appointed by the Endowment Fund Representative. The Endowment Fund Committee shall make an annual recommendation regarding distributions from the Endowment Fund, and shall make recommendations at other times upon request from the Board.
4. The President may appoint other committees, as it may appear necessary and proper.

## **Article VII**

### ***Financial Procedures***

1. The fiscal year of the corporation shall end on July 31. A summary of the corporation's receipts and disbursements and a balance sheet listing all its assets and liabilities shall be prepared shortly after the end of the fiscal year.

2. All funds of the corporation not otherwise employed shall be deposited in such banks, trust companies or other reliable depositories as the Board may direct. Any withdrawals of funds and checks issued must be authorized and signed by two officers of the Board. No payments in excess of one hundred dollars (\$100.00) may be made without budgetary or other authorization of the board. No contracts in excess of five hundred dollars (\$500.00) may be entered without budgetary or other authorization of the board.
3. The Endowment Fund Agreement with the Community Foundation for Muskegon County is incorporated by reference. Distributions from the Endowment Fund shall be made only upon resolution of the Board. The Board must request a recommendation from the Endowment Fund Committee at least 14 days before any such resolution. No distributions shall be made until the balance in the Endowment Fund exceeds \$50,000.

### **Article VIII** *Dissolution*

Upon dissolution of the corporation and after the provision for payment of all the liabilities of the corporation, the Board shall dispose of all the assets of the corporation to organizations that are then qualified as tax-exempt under Section 501 (c)(3) of the Internal Revenue code of 1954 (as it may be amended). Any assets not so disposed shall be disposed by a court of competent jurisdiction in the county in which the principal office of the corporation is then located.

### **Article IX** *Amendments*

These By-laws may be amended at any annual membership meeting or at a special meeting of the members called for that purpose.

### **Article X** *Musical Director*

1. The board shall engage a Musical Director who shall formulate and carry into effect musical and artistic policies submitted by him or her and approved by the Board.
2. The Musical Director shall perform all duties usually incident to the position of Music Director, including selection, training, supervision, and termination of musicians, and selection and musical programming of all concerts.
3. The Musical Director shall be an ex-officio member of all corporation committees.

### **Article XI**

### *Limits on Liability and Indemnification*

1. *Liability of Directors and Officers.* A volunteer director or volunteer officer of the corporation shall not be personally liable to the corporation or its members for monetary damages for a breach of the director's or officer's fiduciary duty. This provision does not eliminate or limit the liability of a director or officer for any of the following:
  - A. A breach of the director's or officer's duty of loyalty to the corporation or its members;
  - B. Acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;
  - C. A violation of section 551(1) of the Michigan Nonprofit Corporation Act, MCL 450.2551(1), which section relates to the making of unauthorized distributions or loans;
  - D. A transaction from which the director or officer derived an improper personal benefit; or
  - E. An act or omission that is grossly negligent.
  
2. *Assumption of Liabilities.* The corporation shall assume all liability to any person other than the corporation or its members for all acts or omissions of a volunteer director incurred in the good faith performance of the volunteer director's duties. In addition, the corporation shall assume the liability for all acts or omissions of a volunteer director, volunteer officer, or other volunteer, if all of the following are met:
  - A. The volunteer was acting or reasonably believed he or she was acting within the scope of his or her authority;
  - B. The volunteer was acting in good faith;
  - C. The volunteer's conduct did not amount to gross negligence or willful and wanton misconduct;
  - D. The volunteer's conduct was not an intentional tort; and
  - E. The volunteer's conduct was not a tort arising out of the ownership, maintenance, or use of a motor vehicle for which tort liability may be imposed as provided in section 3135 of the Michigan Insurance Code, MCL 500.3135.
  
3. *Indemnification—Third Party Action.* The corporation shall indemnify a person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal, other than an action by or in the right of the corporation, by reason of the fact that the person is or was a director, officer, employee, nondirector volunteer, or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, nondirector volunteer, or agent of another foreign or domestic corporation, business corporation, partnership, joint venture,

trust, or other enterprise, whether for profit or not for profit, against expenses, including attorneys' fees, judgments, penalties, fines, and amounts paid in settlement actually and reasonably incurred by the person in connection with the action, suit, or proceeding, if the person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the corporation or its members, and with respect to any criminal action or proceeding, if the person had no reasonable cause to believe that conduct was unlawful. The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent shall not of itself create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the corporation or its members and, with respect to any criminal action or proceeding, had reasonable cause to believe that the conduct was unlawful.

4. *Indemnification—Corporate Action.* The corporation shall indemnify a person who was or is a party to or is threatened to be made a party to a threatened, pending, or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that the person is or was a director, officer, employee, nondirector volunteer, or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, nondirector volunteer, or agent of another foreign or domestic corporation, business corporation, partnership, joint venture, trust, or other enterprise whether for profit or not against expenses, including actual and reasonable attorneys' fees, and amounts paid in settlement incurred by the person in connection with the action or suit if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation or its members. However, indemnification shall not be made for a claim, issue, or matter in which the person has been found liable to the corporation unless and only to the extent that the court in which the action or suit was brought has determined upon application that, despite the adjudication of liability but in view of all circumstances of the case, the person is fairly and reasonably entitled to indemnification for the expense which the court considers proper.

## 5. **Reimbursement.**

- A. *Successful Suit.* To the extent that a director, officer, employee, nondirector volunteer, or agent of a corporation has been successful on the merits or otherwise in defense of an action, suit, or proceeding referred to in this article, or in defense of a claim, issue, or matter in the action, suit, or proceeding, the successful party shall be indemnified against expenses, including actual and reasonable attorneys' fees, incurred in connection with the action, suit, or proceeding and in any action, suit, or proceeding brought to enforce the mandatory indemnification provided in this subsection.

- B. *Determination of Compliance with Standards.* An indemnification under this article, unless ordered by a court, shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee, nondirector volunteer, or agent is proper in the circumstances because the person has met the applicable standard of conduct as set forth in this article. This determination shall be made in any of the following ways:
- 1) By a majority vote of a quorum of the board consisting of directors who were not parties to the action, suit, or proceeding;
  - 2) If the quorum described in subsection (1) is not obtainable, then by a majority vote of a committee of directors who are not parties to the action. The committee shall consist of not less than two disinterested directors.
  - 3) By independent legal counsel in a written opinion.
  - 4) By the members.
- C. *Partial Indemnification.* If a person entitled to indemnification under this article for a portion of expenses including attorneys' fees, judgments, penalties, fines, and amounts paid in settlement but not for the total amount thereof, the corporation shall indemnify the person for the portion of the expenses, judgments, penalties, fines, or amounts paid in settlement for which the person is entitled to be indemnified.
6. *Advancement of Expenses.* Expenses incurred in defending a civil or criminal action, suit, or proceeding described in this article may be paid by the corporation in advance of the final disposition of the action, suit, or proceeding upon receipt of an undertaking by or on behalf of the director, officer, employee, nondirector volunteer, or agent to repay the expenses if it is ultimately determined that the person is not entitled to be indemnified by the corporation. The undertaking shall be by unlimited general obligation of the person on whose behalf advances are made but need not be secured.
7. *Rights not Limited.* The indemnification or advancement of expenses provided under this article is not exclusive of other rights to which a person seeking indemnification or advancement of expenses may be entitled under the articles of incorporation, bylaws, or a contractual agreement. However, the total amount of expenses advanced or indemnified from all sources combined shall not exceed the amount of actual expenses incurred by the person seeking indemnification or advancement of expenses. The indemnification provided in this article continues as to a person who ceases to be a director, officer, employee, nondirector volunteer, or agent and shall inure to the benefit of the heirs, executors, and administrators of the person.
8. *Insurance.* The corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, nondirector volunteer, or agent of the corporation, or is or was serving at the request of the corporation as a

director, officer, employee, nondirector volunteer, or agent of another corporation, business corporation, partnership, joint venture, trust, or other enterprise against any liability asserted against the person and incurred by the person in any such capacity or arising out of the person's status as such, whether or not the corporation would have power to indemnify the person against such liability under this article.

9. *Merger and Reorganization.* For purposes of this article, the corporation includes all constituent corporations absorbed in a consolidation or merger and the resulting or surviving corporation or business corporation, so that a person who is or was a director, officer, employee, nondirector volunteer, or agent of the constituent corporation or is or was serving at the request of the constituent corporation as a director, officer, partner, trustee, employee, nondirector volunteer, or agent of another foreign or domestic corporation, business corporation, partnership, joint venture, trust, or other enterprise whether for profit or not shall stand in the same position under the provisions of this section with respect to the resulting or surviving corporation or business corporation as the person would if the person had served the resulting or surviving corporation or business corporation in the same capacity.

**10. Amendment.**

- A. Provisions of this article added by amendment shall apply only to acts or omissions and to breaches of duty after the date the amended article was adopted. No amendment to or alteration, modification, or repeal of this article shall increase the liability or alleged liability of any volunteer director or officer of the corporation for or with respect to any acts or omissions of such director or officer occurring prior to such amendment, alteration, modification, or repeal. No amendment to or alteration, modification, or repeal of this article shall reduce the scope of the corporation's assumption of liability under this article for or with respect to any volunteer's acts or omissions that occur before such amendment, alteration, modification, or repeal.
- B. If the Michigan Nonprofit Corporation Act, MCL 450.2101 et seq., is amended to further eliminate or limit the liability of a volunteer director or officer, then a volunteer director or officer shall, to the fullest extent permitted by the Michigan Nonprofit Corporation Act as so amended, not be liable to the corporation.

**Amendments**

The West Michigan Concert Winds will always operate as a non-profit organization.