

ANIMAL CARE AND CONTROL TEAM OF PHILADELPHIA

A Pennsylvania Nonprofit Corporation

Amended and Restated By-Laws

Adopted September 23, 2019

ARTICLE I – PURPOSE AND ORGANIZATION

Purpose. The Corporation, also known as ACCT Philly, is hereby organized to take such actions, and engage in such activities, as would be appropriate and proper for the City of Philadelphia to take or engage in as part of its effort to provide shelter and life-saving services for homeless, abandoned, and abused animals and to protect the health, safety and welfare of the citizens of Philadelphia. The Corporation will work to lessen the burdens of the City and provide a benefit to all the citizens of the City regardless of race or economic status. To this end, the Corporation will only engage in private commercial activities when doing so will help the Corporation further its purpose and thereby support the City.

Organization. The Corporation is hereby organized as a Pennsylvania non-profit corporation and shall be operated exclusively for charitable purposes within the meaning of Section 501 (c) (3) of the Internal Revenue Code.

ARTICLE II – OFFICES

Registered Office. The registered office of the Corporation shall be 111 W. Hunting Park Avenue, Philadelphia, Pennsylvania 19140, or such other location as the Board may designate.

ARTICLE III – MEMBERS

Non-Membership Corporation. The Corporation shall have no members.

ARTICLE IV – DIRECTORS

Powers and Responsibilities. The Directors shall oversee the affairs of the Corporation and have the power to set policies, to make rules and regulations for its governance and for the governance of its committees, and to make rules and regulations for the conduct of the business of the Corporation. In addition to the powers and authorities expressly conferred by these By-Laws, the Directors may exercise all such powers of the Corporation and do all such lawful acts and things not prohibited by statute or by the Articles of Incorporation or these By-Laws.

Number of Directors. The Board of Directors shall consist of at least 6 and no more than 15 Directors.

Composition of the Board of Directors. The Directors shall consist of:

- 1) Six At-Large Directors appointed by the Mayor of Philadelphia
- 2) A member of the Mayor's Animal Advisory Committee
- 3) The Managing Director of the City of Philadelphia or his/her designee
- 4) The President of the City Council of Philadelphia or his/her designee
- 5) Six Directors elected by the Board of the Corporation. In its consideration of Directors, the Board shall consider community representation and stakeholders' interests.

An Ex-Officio Director, by notice in writing to the Corporation, may designate an alternate who can act in his/her place and stead as a Director or as a member of any Committee of the Board. In the absence of the Ex-Officio Director from a meeting of the Board of Directors, his/her designated alternate may attend such meeting and exercise at the meeting the powers of the absent Director.

Appointment of Directors by the Mayor. The Board of Directors shall nominate candidates for all mayoral Director appointments, and the Animal Advisory Committee ("AAC"), which was established consistent with provisions of Section 10-102(3) of the Philadelphia Code, shall review such nominations and provide guidance to the Mayor in determining those appointments.

Election of Directors by the Board of the Corporation. Board-elected Directors may be elected at any board meeting by majority vote. The Board of Directors may at any time fill a vacancy in a Board-elected Director position due to the expiration of a director's term, resignation, death or removal, or may elect new directors to fill a previously-unfilled Board-elected position.

Removal of a Director. A Board-elected Director may be removed by a two-thirds vote of the Board of Directors then in office if he or she is absent and unexcused from three or more consecutive meetings of the Board. Any Director may be removed by a two-thirds vote of the Board of Directors then in office for gross or willful misconduct.

Resignations. Any Director may resign such position at any time, such resignation to be made in writing and to take effect at the time of its receipt by the Corporation, unless some later time may be fixed in the resignation, and then from that date. The acceptance of the resignation shall not be required to make it effective.

Terms. Directors shall be appointed or elected, as the case may be, to serve a three-year term. Elected Directors may serve up to four terms in succession. Appointed Directors serve at the pleasure of the Mayor, the Managing Director, and the President of City Council, as the case may be.

ARTICLE V – OFFICERS

Positions, Election, Term. The officers of the Corporation shall include an Elected Co-Chair, Appointed Co-Chair, Vice Chair, Executive Director, Treasurer, and Secretary. A person may hold more than one office except no person may be both Co-Chair and Treasurer, or Executive

Director and Treasurer. Only Directors may hold the position of Co-Chair and Vice Chair. The Executive Director shall be an employee of the Corporation and shall not be a member of the Board of Directors.

The duties of the officers shall include the following:

- 1) Elected Co-chair. The Elected Co-Chair shall preside at all meetings of the Board of Directors and be responsible for external stakeholder engagement.
- 2) Appointed Co-chair. The Appointed Co-chair shall be the City's primary interface between the Board and the Executive Director and will be responsible for ensuring that the City's operational interests are met.
- 3) Vice Chair. The Vice Chair shall have such powers and perform such duties as the Board of Directors may prescribe or as the Co-Chairs may delegate.
- 4) Executive Director. The Executive Director shall be the Chief Executive Officer of the Corporation and shall exercise the powers and have the duties as the Board of Directors may from time to time delegate.
- 5) Treasurer. The Treasurer shall manage the Board's review of, and actions related to, the board's financial responsibilities; shall review and ensure appropriate financial reports are made available to the Board; shall assist the chair of the Finance Committee in preparing agendas and materials for meetings; shall meet annually with the auditor in conjunction with the Finance Committee; shall assist, as needed, in the preparation of the annual audit of the Corporation; and shall ensure, through the Finance Committee, sound financial management and maximization of cash and investments.
- 6) Secretary. The Secretary shall be the secretary of the Board of Directors; shall attend all meetings of the Board of Directors; shall record all votes and the minutes of all proceedings; shall give or cause to be given notice of all meetings to the Directors; and shall perform such other duties as may be incident to his or her office or prescribed by the Directors or the Co-Chairs.

Election, Terms of Officers. The Elected Co-Chair, Vice Chair, Secretary and Treasurer shall be elected by majority vote and shall serve for a term of one year, or until his/her successor is appointed and qualified. The Board of Directors shall appoint the Executive Director of the Corporation.

Officers may be elected for consecutive terms.

Removal of Officers. Officers may be removed by a two-thirds vote of the Board. Any such removal shall be without prejudice to the contract rights of any person so removed.

Resignations. Any officer may resign such position at any time, such resignation to be made in writing and to take effect at the time of its receipt by the Corporation, unless some later time may be fixed in the resignation, and then from that date. The acceptance of the resignation shall not be required to make it effective.

Vacancies. If the position of any office becomes vacant because of an increase in the number of offices or by reason of death, resignation, disqualification or otherwise, the Board may elect a person who shall hold that office for the remaining term.

ARTICLE VI – COMMITTEES

Committees. The Board of Directors may, by majority vote, establish committees consisting of two or more Directors of the Corporation. Committees shall include, but are not limited to, Nominating, Development, and Finance. Subject to confirmation by majority vote, the Co-Chairs may also appoint individuals who are not Directors to serve on a committee.

Confirmation of Committee Members. The Co-Chairs shall recommend Directors to serve on each committee, subject to confirmation by majority vote. The Chair of each committee shall be elected by majority vote of committee members.

ARTICLE VII – MEETINGS AND NOTICE

Place of Meetings. Meetings may be held at such place as the Board of Directors or Board Committees may from time to time determine.

Notice. Whenever written notice is required to be given to any person, it may be given to such person either personally by the Secretary or by sending a copy thereof by first class mail, facsimile, or electronic mail, to that person's address appearing on the books of the Corporation, or in the case of Directors, supplied by that person to the Corporation for the purpose of notice. Such notice shall be given five days in advance of the day named for the meeting and specify the place, day and hour of the meeting. If the purpose of the meeting is to consider a fundamental change under Chapter 59 of the Nonprofit Corporation Law, then written notice shall be provided at least ten days in advance of the day named for the meeting.

Waiver of Notice. Any required notice may be waived by the written consent of the person entitled to such notice either before or after the time for giving of notice, and attendance of a person at a meeting shall constitute a waiver of notice, except where a person attends a meeting for the express purpose of objecting to the transaction of any business because the meeting was not properly noticed or lawfully called or convened.

Quorum. A majority of the Directors then in office shall constitute a quorum of the Board of Directors. The acts of a majority of the Directors present at a meeting at which a quorum is present shall be the acts of the Board of Directors, unless a greater number is required by the Articles of Incorporation or these By-Laws.

Action by Written Consent. Any action which may be taken at a meeting of the Board of Directors may be taken without a meeting, if a consent or consents in writing setting forth the action so taken shall be signed by all voting members of the Board of Directors and filed with the Secretary of the Corporation.

Vote. Each Director shall be entitled to one vote.

Annual Meeting. The annual meeting of the Directors shall be held on the date that the Board of Directors designates. At least five days' prior notice stating the time and place of the annual meeting shall be given to the members of the Board of Directors.

Regular Meetings. Regular meetings shall be held at least four times per year on the dates that the Board of Directors designates.

Special Meetings. Special meetings of the Directors may be called by the Chair or by any four Directors. At least five days' prior notice stating the time, place and purpose of any special meeting shall be given to the members of the Board of Directors.

Teleconference Attendance. One or more Directors may participate in a meeting of the Board of Directors or any committee thereof by means of any communications equipment by which all persons participating in the meeting can hear each other. Participation by such means constitutes "presence" and "presence in person" for all purposes of these By-Laws.

ARTICLE VIII – LIABILITY

Liability of Directors. Liability of Directors shall be limited as follows:

- 1) A Director of this Corporation shall not be personally liable for monetary damages for any action taken, or any failure to take any action, unless:
 - a. The Director has breached or failed to perform the duties of his/her office under Subchapter B of Chapter 57 of the Nonprofit Corporation Law (15 Pa. C.S. §§5711-5717, or any future act or provision relating to standard of care and justifiable reliance); and
 - b. The breach or failure to perform constitutes self-dealing, willful misconduct or recklessness.
- 2) This Section of the By-Laws shall not apply to:
 - a. The responsibility or liability of a Director pursuant to any criminal statute; or
 - b. The liability of a Director to pay taxes pursuant to federal, state or local law.

Standard of Care and Justifiable Reliance.

- 1) A Director of this Corporation shall stand in a fiduciary relation to the Corporation and shall perform his/her duties as a Director, including duties as a member of any committee of the Board of Directors upon which the Director may serve, in good faith, in a manner the Director reasonably believes to be in the best interests of the Corporation and with such care, including reasonable inquiry, skill and diligence, as a person of ordinary prudence would use under similar circumstances. In performing his/her duties, a Director shall be entitled to rely in good faith on information, opinions, reports or statements, including, without limitation, financial statements and other financial data, in each case prepared or presented by any of the following:
 - a. One or more officers or employees of the Corporation whom the Director reasonably believes to be reliable and competent in the matters presented;
 - b. Counsel, public accountants or other professionals or experts who the Director reasonably believes to be reliable and competent; and
 - c. A committee of the Board of Directors upon which the Director does not serve, duly designated in accordance with law, as to matters within its designated authority, which committee the Director reasonably believes to merit confidence.
- 2) A Director shall not be considered to be acting in good faith if the Director has knowledge concerning the matter in question that would cause his/her reliance to be unwarranted.
- 3) An officer shall perform his/her duties as an officer in good faith, in a manner he/she reasonably believes to be in the best interests of the Corporation and with such care, including reasonable inquiry, skill and diligence, as a person of ordinary prudence would use under similar circumstances. A person who so performs his/her duties shall not be liable by reason of having been an officer of the Corporation.

Consideration of Factors. In discharging the duties of their respective positions, the Board of Directors, committees of the Board of Directors and individual Directors may, in considering the best interests of the Corporation, consider to the extent they deem appropriate:

- 1) The effects of any action upon any or all groups affected by such action, including employees, suppliers, customers and creditors of the Corporation, and upon communities in which offices or other establishments of the Corporation are located;
- 2) The short-term and long-term interests of the Corporation, including benefits that may accrue to the Corporation from its long-term plans and the possibility that these interests may be best served by the continued independence of the Corporation;
- 3) The resources, intent and conduct (past, stated and potential) of any person seeking to acquire control of the Corporation; and
- 4) All other pertinent factors.

The Board of Directors, committees of the Board of Directors and individual Directors

shall not be required, in considering the best interests of the Corporation or the effects of any action, to regard any corporate interest or the interests of any particular group affected by such action as a dominant or controlling interest or factor. The consideration of interests and factors in the manner described in this Section shall not constitute a violation of the Section of these By-Laws dealing with Standard of Care and Justifiable Reliance

Presumption. Absent breach of fiduciary duty, lack of good faith or self-dealing, actions taken by the Board of Directors, a committee of the Board of Directors or an individual Director or any failure to take any action shall be presumed to be in the best interests of the Corporation.

Notation of Dissent. A Director who is present at a meeting of the Board of Directors, or of a committee of the Board of Directors, at which action on any corporate matters is taken shall be presumed to have assented to the action taken unless his/her dissent is entered in the minutes of the meeting or unless the Director files a written dissent to the action with the Secretary of the meeting before the adjournment thereof or transmits the dissent in writing to the Secretary of the Corporation immediately after the adjournment of the meeting. The right to dissent shall not apply to a Director who voted in favor of the action. Nothing in this section shall bar a Director from asserting that minutes of the meeting incorrectly omitted his/her dissent if, promptly upon receipt of a copy of such minutes, the Director notifies the Secretary, in writing, of the asserted omission or inaccuracy.

ARTICLE IX – INDEMNIFICATION

Indemnification Against Third Party Actions. Any 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 (other than an action by or in the right of the Corporation) by reason of the fact that he/she is or was a Director, officer, employee, or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall be indemnified by the Corporation against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him/her in connection with such action, suit or proceeding if he/she acted in good faith and in a manner he/she reasonably believed to be in, or not opposed to, the best interests of the Corporation, and, with respect to any criminal action or proceedings, had no reasonable cause to believe his/her 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/she reasonably believed to be in, or not opposed to, the best interests of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his/her conduct was unlawful.

Indemnification Against Derivative Actions. Any person who was or is a party, or is threatened to be made a party to any 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 he/she is or was a Director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall be indemnified by the Corporation against expenses (including attorneys' fees) actually and reasonably incurred by him/her in connection with the defense or settlement of such action or suit if he/she acted in good faith and in a manner he/she

reasonably believed to be in, or not opposed to, the best interests of the Corporation; except, however, that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Corporation unless and only to the extent that the Court of Common Pleas of the county in which the registered office of the Corporation is located or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Common Pleas or such other court shall deem proper.

Mandatory Indemnification. To the extent that a Director, officer, employee or agent as above-described has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in the previous two sections of these By-Laws or in defense of any claim, issue or matter therein, he/she shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him/her in connection therewith.

Procedure for Effecting Indemnification. Any indemnification under these By-Laws (unless ordered by a court) shall be made only as authorized in the specific case upon a determination that indemnification of the Director, officer, employee or agent is proper in the circumstances because he/she has met the applicable standard of conduct set forth in these By-Laws. Such determination shall be made:

- 1) By the Board of Directors by a majority vote of a quorum consisting of Directors who were not parties to the action or proceeding; or
- 2) If such a quorum is not obtainable or if obtainable and a majority vote of a quorum of disinterested Directors so directs, by independent legal counsel in a written opinion.

Advancing Expenses. Expenses (including attorneys' fees) incurred in defending any action or proceeding referred to in this Article IX may be paid by the Corporation in advance of the final disposition of the action or proceeding upon receipt of an undertaking by or on behalf of the representative to repay the amount if it is ultimately determined that he/she is not entitled to be indemnified by the Corporation as authorized in this Article IX or otherwise. Advancement of expenses shall be authorized by the Board of Directors.

Supplementary Coverage. The indemnification provided by these By-Laws shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any by-law, agreement, vote of disinterested Directors or otherwise, both as to action in his/her 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, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

When Indemnification Not Made. Indemnification pursuant to these By-Laws shall not be made in any case where the act or failure to act giving rise to the claim for indemnification is determined by a court to have constituted willful misconduct or recklessness.

Grounds. Indemnification pursuant to these By-Laws, under any by-law, agreement, vote of Directors or otherwise, may be granted for any action taken or any failure to take any action and may be made whether or not the Corporation would have the power to indemnify the person under any provision of law except as provided in this Article IX and whether or not the

indemnified liability arises or arose from any threatened, pending or completed action by or in the right of this Corporation. Such indemnification is declared to be consistent with the public policy of the Commonwealth of Pennsylvania.

Power to Purchase Insurance. The Corporation may purchase and maintain insurance on behalf of any person who is or was a Director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him/her and incurred by him/her in any such capacity, or arising out of his/her status as such, whether or not the Corporation would have the power to indemnify him/her against such liability under the provisions of this Article IX.

Creation of a Fund to Secure or Insure Indemnification. The Corporation may create a fund of any nature, which may, but need not be, under the control of a trustee, or otherwise secure or insure in any matter its indemnification obligations, whether arising under or pursuant to this Article IX or otherwise.

ARTICLE X – MISCELLANEOUS

Fiscal Year. The fiscal year of the Corporation shall begin on the first day of July and end on the last day of June.

Annual Report. At least once per year, the Board of Directors shall cause an audited statement to be prepared setting forth the finances pertaining to the Corporation for the previous fiscal year as well as a statement of assets and liabilities of the Corporation.

Real Property Transactions – Supermajority Vote. The Corporation shall not purchase, sell, mortgage, lease in, lease away or otherwise dispose of real property, unless authorized by the vote of two-thirds of the Directors then in office.

Headings. In interpreting these By-Laws, the headings of articles shall not be controlling.

Bond. If required by the Board of Directors, any person shall give bond for the faithful discharges of his or her duty in such sums and with such surety as the Board of Directors shall determine.

Subventions. The Corporation shall be authorized, by resolution of the Directors, to accept subventions on terms and conditions not inconsistent with the Pennsylvania Nonprofit Corporation Law and to issue certificates therefor.

Corporate Seal. The corporate seal of the Corporation shall bear the name of the Corporation and the words “Corporate Seal.”

Interested Directors. No contract or transaction between the Corporation and one or more of its Directors or officers or between the Corporation and any other corporation, partnership, association, or other organization in which one or more of its Directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for such reason, or solely because the Director or officer is present at or participates in the meeting of the Board of

Directors which authorizes the contract or transaction, or solely because their votes are counted for such purpose, if:

- 1) The material facts as to the relationship or interest and as to the contract or transaction are disclosed or are known to the Board of Directors and the Board of Directors in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested Directors even though the disinterested Directors are less than a quorum;
- 2) The material facts as to the Director's relationship or interest and as to the contract or transaction are disclosed or are known to the Directors entitled to vote thereon, if any, and the contract or transaction is specifically approved in good faith by vote of such Directors; or
- 3) The contract or transaction is fair as to the Corporation as of the time it is authorized, approved or ratified by the Board of Directors or the members.

Interested Directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors which authorizes such a contract or transaction.

Ethics Policy and Conflict of Interest Policy. The Board of Directors may develop an ethics policy and conflict of interest policy in the best interests of the Corporation which may be more restrictive than those policies set for in these By-Laws or those policies set forth in the Pennsylvania Nonprofit Corporation Law of 1988.

Amendments. The Board of Directors, by a vote of a majority of those present at a meeting at which a quorum is present, shall have the power to make, alter, amend or repeal these By-Laws in a manner not inconsistent with the Articles of Incorporation or with the law. A copy of the proposed amendment or a summary of the changes to be effected thereby shall be provided to each Director in advance of the meeting at which action thereon is to be taken.