

BY-LAWS
OF
APPALACHIAN THEATRE OF THE HIGH COUNTRY, INC.

ARTICLE I.

NAME

The name of the Corporation is Appalachian Theatre of the High Country.

ARTICLE II.

PRINCIPAL OFFICE

The principal office of the corporation shall be in the County of Watauga, Town of Boone at a location that shall be determined by the Board of Trustees.

ARTICLE III.

MEMBERS

The Corporation shall have no members.

ARTICLE IV.

PURPOSE

The corporation is organized to operate exclusively for charitable, cultural, artistic, historic or educational non-profit purposes within the meaning of section 501(c)(3) of the Internal Revenue Code of 1986 and, more specifically, to renovate, restore, preserve, operate, program and manage the Appalachian Theatre for the benefit and enjoyment of both residents and visitors to the High Country region of North Carolina.

ARTICLE V.

BOARD OF TRUSTEES

Section 1: Number and Qualifications. The business and affairs of the Corporation shall be under the management and control of the Board of Trustees, which shall be composed of no fewer than fifteen (15) members, **nor more than twenty-four (24) members.** In addition to the number of regular Board members, a representative from each of the following stakeholder organizations shall be a non-voting ex officio member of the Board: Appalachian State University, Boone Area Chamber of Commerce, Boone Tourism Development Authority, Boone Town Council, Downtown Boone Development Association, High Country Host, Town of Boone Cultural Resources Board, Watauga County Arts Council, Watauga County Commission, the Western Arts Agencies of North Carolina, and other organizations as the Board of Trustees may deem appropriate. Furthermore, the president of each of the Board approved auxiliary support organizations of the Corporation shall be a non-voting ex officio member of the Board. The Board members, other than ex officio members, shall be categorized into three classes of from **five (5) to eight (8) persons**, each class to serve for a period of three years with the term of one class to expire each year. There shall be a limit of two consecutive elected terms for each board member **a policy that will begin with the fiscal year immediately following the re-opening of the Theatre.** The Board may, upon the recommendation of the Nominating Committee at any time and from time to time, name certain Board members to be "Trustees Emeriti" of the Board. Trustees Emeriti shall be those individuals who have distinguished themselves in their service to and support of the Corporation over a significant period of years, with selection criteria to be determined by the Executive Committee. Each Trustee Emeritus shall be an honorary non-voting member of all of the Committees of the Board established under Article VII below.

Section 2. Annual Meeting. The annual meeting of the Board of Trustees shall be held during the month of May of each year or at such time and date as may be specified in the notice of such meeting. The meeting shall be held at the Appalachian Theatre or at the registered office of the Corporation or at such other place as may be designated in the notice of the meeting.

Section 3. Elections. The election of Board Members, other than ex officio members, shall take place at the annual meeting of the Board of Trustees. In addition, the Nominating Committee at any time may recommend for Board approval the names of persons to fill vacancies within any class. Such persons, once elected to the Board, shall serve the term of the class to which they are elected.

Section 4. Resignations or Vacancy. Any vacancy occurring in the Board of Directors (other than a vacancy resulting from the normal expiration of a term of office) may be filled, for the unexpired term of the vacant position, by the affirmative vote of a majority of the current members of the Board of Trustees. Any Trustees may resign by submitting written notice of resignation to the Secretary, which will be presented for action by the Executive Committee and Board of Directors.

Section 5. Removal from Office. While it is the intent that the members of the Board of Trustees will contribute to the overall well-being of the Appalachian Theatre through their attendance at meetings, participation in programs, and service on committees, there may be such times when the removal from the Board may be considered.

- a. A Trustee may be removed from the office at any time for cause by the affirmative vote of two-thirds of the Board of Trustees in office.
- b. Any member of the Board of Trustees who is absent from three consecutive regular meetings without just cause shall be removed as a member of the Board of Trustees unless action is taken by the Board to retain the member.

Section 6. Regular Meetings. Regular meetings of the Board of Trustees shall be held at least once each calendar quarter at such times and places as it shall designate, or in the absence of designation by the Board, at such times and places as shall be designated in the notice of the meeting.

Section 7. Special Meetings. Special meetings of the Board of Trustees may be called at any time by the Chair or by any five Trustees with a minimum forty-eight (48) hours advance notice and stated purpose for such meeting, and shall be held at such times and places as shall be designated in the notice of the special meeting.

Section 8. Notice. No less than five (5) days prior notice of the time and place of each regular meeting of the Board shall be given to all Trustees by the Secretary personally, or by facsimile, electronic mail, standard mail, or by telephone, provided, however, that this notice requirement may be waived in writing by any Trustee with respect to his or her non-receipt of proper notice. A Trustee who attends a meeting is deemed to have had timely and proper notice of the meeting unless he or she attends for the express purpose of objection to the transaction of any business, or that the meeting is not lawfully called or convened.

Section 9. Waiver of Notice. In the event of unusual or extenuating circumstances, the notice of meeting provision in Section 8 of these by-laws may be waived by a two-thirds vote of the Trustees.

Section 10. Quorum. One-half of the duly elected, serving and voting Trustees at the time of any given meeting shall constitute a quorum at any meeting of the Board. If a quorum is present, the affirmative vote of a majority of the Trustees present shall be the act of the Board of Trustees. In person attendance (or live remote participation by any electronic means by which all participating members may simultaneously hear the meeting) are eligible for quorum, but proxy participation shall not be considered for the purposes of quorum.

Section 11. Board Actions without Meetings. Any necessary action, which might be taken at a meeting, may be taken without a meeting if requested by the chair and authorized by writing or via electronic mail. At least nine members must respond, and the vote on the issue at hand must pass with a two-thirds vote. Such action must be inserted in the minutes of the next regularly scheduled Board meeting. Actions handled in this manner shall involve a single issue and must have a closing date stated. Any writings associated with such action will be presented with the minutes of the next regularly scheduled board meeting.

Section 12. Responsibilities. In addition to the inherent powers granted by the laws of the State of North Carolina, the Board of Trustees shall have the following duties: to be in charge of and administer the property, funds, and financial affairs of the Corporation; to make any and all necessary expenditures; to collect, through the officers all accounts, monies, and properties owed to the Corporation; to purchase or otherwise acquire for the Corporation any property, right or privilege that it is authorized to acquire at such price or consideration and upon such terms as they deem appropriate; to approve the acceptance of all gifts of real or personal property to the Corporation; and to authorize individuals to countersign checks.

In addition, election to the Board of Trustees of the Appalachian Theatre is an honor with attendant privileges. It calls upon the person elected for the dedication of time, energy, and financial support towards the viability and support of the arts. In addition, each member of the Board shall have the following responsibilities:

- a. On the basis of advance study and innovative thought, to be involved fully in all deliberations and decisions affecting the ongoing philosophy and strategic planning of the Appalachian Theatre;
- b. To vote on the ratification of the nomination of the Executive Committee and the Officers by slate by the Nominating Committee and on such other matters as may be brought to the Board by the Executive Committee;
- c. To give all meetings of the Board and other activities pertaining to the Appalachian Theatre high priority on his or her calendar of commitments;
- d. To actively serve on at least one Committee of the Board as requested by the Chair and to attend committee meetings as regularly as possible;
- e. To be familiar with and stay current with all the facts upon which Board trustees must base their collective opinions and decisions, and to seek answers when they seem to be lacking;

- f. To provide support for the interests of the Corporation in the community and to act as an unqualified advocate and ambassador for the Corporation;
- g. To recognize that that an essential function of the Board is fundraising and to cooperate fully in achieving the Appalachian Theatre's financial goals by making his or her own gifts as generous as possible, and by participating in annual fundraising and special event efforts;
- h. To support artistic and programming endeavors by personally attending selected performances at the Appalachian Theatre as time permits; and
- i. To actively recruit new audience members, subscribers and contributors.

Article VI.

OFFICERS

Section 1. Officers. The Executive Officers of the Corporation shall be a Chair of the Board, one or more Vice-Chairs, a Secretary, and a Treasurer, all of whom shall be nominated by the Nominating Committee and ratified, by slate, by the Board of Trustees at its annual meeting, and such other officers or assistant officers as may from time to time be nominated by the nominating Committee and ratified by the Board. Every officer except the Treasurer shall have served as a member of the Board for a minimum of one year prior to his or her election as an officer. The Executive Committee may appoint persons to fill vacancies in unexpired terms of any Officer.

Section 2. Chair of the Board. The Chair shall attend and preside at all meetings of the Board of Trustees and Executive Committee, shall exercise general supervision over the property, business and affairs of the Corporation and shall discharge all duties generally pertaining to his or her office as the executive head of a corporation of this character, subject to the Articles of Incorporation of the Corporation, the laws of the State of North Carolina, these By-laws and the control of the Board of Trustees. At each annual meeting of the Board, he or she shall render a general report of the Corporation's condition and business.

Section 3. Vice Chair(s). The Vice Chair(s) of the Board shall assist the Chair in the management of the Corporation, shall represent the Corporation and its positions on issues, in community and arts organizations and public forums and shall actively seek public and private support for the Corporation and its interests. At the request of the Chair, the Vice Chair(s) shall preside at meetings of the Board of Trustees and of the Executive Committee.

In the case of the absence of the Chair, or his or her inability to act, his or her duties shall be performed by the Vice-Chair(s) as may be directed by the Board, who in that event shall have and exercise all the above specified powers of the Chair. The Vice-Chair(s) shall perform such other duties as may be prescribed by these By-Laws, or the Board.

In the absence of both the Chair and the Vice-Chair(s), the Executive Committee may designate some other one of its number to discharge such executive duties as may be required for the time being.

Section 4. Secretary. The Secretary shall keep a book containing the names and addresses of all persons who are now or may hereafter become Trustees of the Corporation; shall keep a record of the proceedings of the meetings of the Trustees of the Corporation and the Executive Committee, with a signed copy housed for the public record at the principal office; shall have charge of the seal of the Corporation and shall perform such other duties as pertain to said office and as the Chair of the Board of Trustees may from time to time direct.

Section 5. Treasurer. The Treasurer shall have charge and custody of the funds, securities, and other like property of the Corporation, and shall have such powers and perform such duties as the Chair or Board of Trustees may from time to time direct. The Treasurer maintains the financial records of the Corporation in accordance with generally accepted accounting procedures, has authority to receive and disburse funds in order to satisfy authorized expenditures, and is responsible to the Board of Trustees for all financial transactions of the Board of Trustees.

Section 6. Term of Office. Each officer shall be elected to hold office for a term of one year and until a successor shall have been elected and qualified.

Section 7. Checks, Drafts, and Notes. All checks, drafts, and other orders for payment of money given by the Corporation in the course of its business shall be signed in such a manner as may be designated by the Executive Committee from time to time.

Article VII.

COMMITTEES

Section 1. Executive Committee. The Executive Committee shall consist of the Chair of the Board, the Vice Chair(s), the Secretary, the Treasurer, and the Chair of the Capital Campaign (if any). Such Committee shall meet at least four (4) times a year on the call of the Chair or any two (2) members of the Committee, and it shall be empowered to exercise all authority of the Board of Trustees, except to approve an amendment to the Articles of Incorporation or of the By-Laws or fill vacancies on the Board or any chair of the Committees.

Section 2. Nominating Committee. The Chair, Immediate Past Chair and the Secretary shall together appoint a Nominating Committee consisting of no fewer than three (3) nor more than five (5) members, each of whom shall be a member of the Board of Trustees. At least three (3) members of the Nominating Committee shall not be an officer of the Corporation. The Nominating Committee shall recommend to the Board by slate the names of persons to be elected as officers and Board members at the annual meeting of the Board and the names of persons to fill vacancies within any class.

Section 3. Other Committees. The Chair may appoint an Archives and History Committee, a Budget and Finance Committee, a Design and Construction Committee, a Marketing and Public Relations Committee, an Operations and Programming Committee, one or more fundraising committees and such other committees as he or she may deem appropriate. At least two (2) Trustees shall be members of each such committee. The Chair shall be an ex officio member of each committee. Each Trustee Emeritus shall be an honorary member of each committee. Each such committee shall have and exercise such powers as shall be authorized by the Executive Committee.

Section 4. Quorum. A majority of any committee shall constitute a quorum and may determine its actions and may fix the time and place of its meetings, unless provided otherwise by the Board. Each such committee shall keep a written record of its actions and proceedings, and the Chair shall have the power at any time to fill vacancies in any such committee.

ARTICLE VIII

FISCAL YEAR

The fiscal year of the Corporation shall consist of twelve (12) months, beginning on July 1st and ending on the 30th day of June in each calendar year.

ARTICLE IX

FINANCES

Section 1. Except as the Board of Trustees may generally or in particular cases authorize the execution thereof in some other manner, all checks, drafts and other instruments for the payment of money and all instruments of transfer of securities shall be signed in the name and on behalf of the Appalachian Theatre by the treasurer or another officer so designated by the Board of Trustees.

Section 2. All funds of the Appalachian Theatre shall deposit from time to time to the credit of the Appalachian Theatre in such banks, trust companies or other depositories as the Board of Trustees may select.

Section 3. The Board of Trustees may accept on behalf of the Appalachian Theatre any contribution, gift, bequest or devise for the general purposes or for any special purpose of the Appalachian Theatre.

Section 4. Not later than three (3) months after the close of each fiscal year, the Appalachian Theatre shall prepare a balance sheet showing in reasonable detail the financial condition of the Corporation at the close of the fiscal year and a statement of the source and application of funds showing the results of the operation of the Appalachian Theatre during the fiscal year.

Section 5. The Chair, Treasurer, Executive Committee members serving as account signatories, and others deemed necessary by the Board of Trustees should be bonded with regard to their activities on behalf of the Appalachian Theatre.

Article X

NON-DISCRIMINATION

It is the policy of Appalachian Theatre to provide equal employment opportunities to all people without regard to race, color, creed, religion, gender, disability, sexual orientation, age, or national origin and to make reasonable accommodations for the employment of persons with disabilities and disabled veterans. Appalachian Theatre is committed to assuring equal opportunity and full consideration to all applicants and employees in personnel matters, including recruitment and hiring, promotion, salaries, and other compensation, as well as termination of employment.

Article XI

CORPORATE SEAL

The Corporate Seal of the Corporation shall consist of two concentric circles, between the circumferences of which shall be engraved the words "APPALACHIAN THEATRE" and across the center thereof the word "SEAL".

Article XII

INDEMNIFICATION OF TRUSTEES AND OFFICERS

Section 1. The Corporation shall indemnify 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 (including an 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 is or was a Trustee, Officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as Trustee, Officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against judgments, fines, amounts paid in settlement, and expenses (including attorney's fees) actually and reasonably believed to be in or not opposed to the best interests of the Corporation. The termination of any action, suit or proceeding by the judgment order or settlement shall not of itself create a presumption that the person did not act in good faith and in a manner he reasonably believed to be in or not in the interests of the Corporation.

Section 2. Notwithstanding the provisions of Section 1 of this Article, no indemnification shall be made in an action or suit by or in the right of the Corporation to procure a judgment in its favor in respect to any claim, issue or matter as to which such person shall have been finally adjudged to be liable for gross negligence or willful misconduct in the performance of his or her duty to the Corporation unless and only to the extent that 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 circumstances of the case, such person is fairly and reasonably entitled to indemnification.

Section 3. To the extent that a Trustee or Officer, employee or agent of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 1 and 2 of this Article, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorney's fees) actually and reasonably incurred by him in connection therewith.

Section 4. Any indemnification under Section 1 and 2 of 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 Trustee, Officer, employee or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in such Sections 1 and 2. Such determination shall be made either (i) by the Board of Trustees by majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or (ii) if such a quorum is not obtainable, or even if obtainable a quorum of disinterested directors as directs, by independent counsel in a written opinion. If the determination is to be made by the Board of Trustees, it may rely, as to all question of law, on the advice of independent counsel.

Section 5. Expenses incurred in defending an action, suit or proceeding, whether civil, administrative or investigative, may be paid by the Corporation in advance of the final disposition of such action, suit or proceeding as authorized in the manner provided in Section 4 of this Article, upon receipt of an undertaking by or on behalf of the Trustee or Officer, employee or agent to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the Corporation as authorized in this section.

Section 6. Every reference herein to Trustee or Officer, employee or agent shall include former Trustees or Officers, employees or agents, and their respective heirs, executors and administrators. The right of indemnification hereby provided shall not be exclusive of any other rights to which any Trustee or Officer, employee or agent may be entitled, including any right under policies or policies of insurance that may be purchased and maintained by the Corporation or others, with respect to claims, issues or matters in relation to which the Corporation would not have the power to indemnify such Trustee, Officer, employee or agent under the provision of this Article.

Section 7. The corporation shall have the option to obtain liability insurance to cover the personal liability of the trustees and officers resulting from their actions and status as trustees and officers of the corporation and to obtain liability coverage for the obligation of the corporation to indemnify the trustees and officers as set forth in this Article. The decision as to whether or not the insurance will be obtained shall be determined by a vote of the trustees after consideration of the costs of the coverage.

Article XIII.

DISSOLUTION

In the unlikely event that the corporation dissolves at a future date, the assets of the corporation will be distributed to a cultural, artistic, historic, or educational non-profit organization for a public purpose in the Town of Boone, such organization as described in the Internal Revenue Code Section 501(c)(3).

Article XIV.

PARLIAMENTARY AUTHORITY

Robert's Rules of Order, Newly Revised, shall govern the parliamentary procedures of the Appalachian Theatre when not in conflict with these Bylaws. The order of business may be altered or suspended at any meeting by a majority vote of the members present.

Article XV.

AMENDMENTS

Section 1: The Board of Trustees shall have the power to alter, amend or repeal the Bylaws or adopt new Bylaws by a two-thirds vote of the Trustees present at any duly called meeting of the Board, provided that no such action be taken if it would in any way adversely affect the Appalachian Theatre's qualifications under section 501(c) (3) of the Internal Revenue Code of 1986 or corresponding sections of any prior or future law.

Section 2: These Bylaws and the Articles of Incorporation may be amended only by a two-thirds vote of the Board of Trustees. No amendment shall be in order at any meeting unless at least thirty (30) days notice of the nature of the proposed amendment shall have been given in person, writing, or by email, phone or facsimile to all members of the Board.

KM/JD/km

11/21/12

Amended 9/24/14 (to include the expansion in the size of the board)
Amended 5/24/17 (to clarify beginning date of the board rotation policy)

/km