THE CITY UNIVERSITY OF NEW YORK

Amendments to the Bylaws of the Board of Trustees

RESOLVED, That the Bylaws of the Board of Trustees be amended, as explained below; and be it further

RESOLVED, That the Board of Trustees waive the requirement in Section 5.1 of Article V that amendments to the Bylaws be proposed at a meeting preceding the meeting at which a vote is taken to permit a vote at this meeting in connection with the amendments to the following Sections of the Bylaws: 3.2, 6.1, 6.6, 8.2, 8.12, 9.1, 11.1, 11.2, 11.7, 11.9, 11.36, 11.37, 11.43, 11.47-11.55, 12.2, 15.2, 15.6, Definitions

NOTE: A copy of the Amendments to the Bylaws of the Board of Trustees is on file in the Office of the Secretary of the Board.

EXPLANATION: The current Bylaws contain numerous provisions that are outdated, lack clarity, do not conform to longstanding University practice, or are duplicative of provisions contained in the Education Law or the University’s collective bargaining agreements. Following a careful review of the current Bylaws and consultation with other University administrators, the General Counsel and Senior Vice Chancellor for Legal Affairs has drafted revised Bylaws that rewrite or remove outdated provisions, delete unnecessary material and conform the Bylaws to current practice. The proposed Bylaws are clearer, easier to work with, and closer to the purpose of bylaws, which generally do not state policy, or work rules, but are a statement of the rules and regulations governing the management of an organization. In addition, there are several substantive changes for the reasons noted below, as well as the addition of definitions. The following is a description and explanation of the amendments, with the exception of those that consist solely of minor editing or removal of provisions that had been included solely for historical reasons.

Article I - Meetings of the Board. Sections 1.1 and 1.2 have been amended to add requirements necessary for Board of Trustees meetings to comply with the Open Meetings Law, Public Officers Law §§100 et seq. as well as Chapter 98 of the Laws of 2010, a recent statute requiring that CUNY and SUNY make board agendas and subsequent meeting records publicly available on their websites. Section 1.6 has been amended to provide that, in case neither the chairperson nor the vice chairperson is present at a meeting of the Board of Trustees, the chairperson shall designate another trustee to preside at the meeting.

Article II – Officers of the Board. Section 2.4 has been amended to explicitly provide that, if the position of chairperson of the Board of Trustees is vacant, the vice chairperson shall exercise all the duties of the chairperson. Section 2.5 has been amended to provide that designees of the general counsel may verify pleadings and sign affidavits in legal proceedings.
Article III – Committees of the Board. Sections 3.1 and 3.2 have been amended to update the names of the standing committees of the Board. Sections 3.1 and 3.2 have been amended to comply with Chapter 98 of the Laws of 2010 and the Open Meetings Law with respect to notice of meetings and availability of meeting agendas and subsequent meeting records. Section 3.2 has also been amended to make its provisions concerning the Executive Committee consistent with Education Law §226, subdivision 2.

Article IV – The Council of Presidents. The last sentence of Section 4.2 has been deleted to remove any ambiguity about the fact that the college presidents are responsible directly to the chancellor and through the chancellor to the board.

Article VI – Instructional Staff. Article VI has been amended as follows:

- Section 6.1 has been amended to add and delete instructional staff titles to conform to the titles currently being used by the University as well as adding the new titles Chancellor Emeritus, Graduate Assistant D, Adjunct Lecturer (Doctoral Student), Non-teaching Adjunct (Doctoral Student) and Affiliated Professional. The title Chancellor Emeritus was created to enable the Board, in its discretion, to appoint a departing Chancellor to five-year ECP appointment, just as departing Presidents may be appointed to the position University Professor. The title Graduate Assistant “D” is designed to give the Graduate Center another employment option for graduate students eligible for health insurance under the New York State Health Insurance Program (NYSHIP), in order to maximize doctoral student aid. The titles Adjunct Lecturer (Doctoral Student) and Non-teaching Adjunct (Doctoral Student) are titles available only to CUNY doctoral students who are assigned to teach part-time or perform related duties on a part-time basis and who are eligible for health insurance coverage under NYSHIP. The title Affiliated Professional was created to enable the University to establish a formal relationship with individuals who are engaged in professional activities within the University (such as a faculty member under an exchange program who is being paid by his/her home institution), but are not properly in other titles.

- Section 6.2 has been amended to delete old titles and to delete sections that are governed by the PSC-CUNY collective bargaining agreement or the New York State Education Law.

- The non-historical portion of Section 6.4, regarding administrative certificates of continuous employment, has been removed as it is governed by the PSC-CUNY collective bargaining agreement.

- Section 6.5 has been amended to delete the long list of titles that are not eligible for tenure, which must be updated whenever a new title is added, and instead to provide that no instructional staff titles other than those listed in Section 6.2 carry tenure.

- Section 6.6(a) has been amended to clarify that only full-time appointments to the instructional staff must be approved by the Board of Trustees. Section 6.6 (c) has been amended to conform to current University practice. Portions of Section 6.6(e), all of Section 6.6(f) and Section 6.7 have been deleted as the procedures for non-
reappointments in faculty titles are governed by the PSC-CUNY collective bargaining agreement. Section 6.6(f) has been amended to make clear that appointments and reappointments to full-time instructional staff positions (rather than all instructional staff positions) are final when approved by the Board.

- Section 6.8 (c) has been amended to delete duplicative material.

- Sections 6.9 through 6.14, which contain procedures for the discontinuation of instructional staff personnel mandated by fiscal exigency, have been deleted as this issue is governed by the University’s retrenchment guidelines as well as provisions of the New York State Education Law. Until these Bylaw provisions are incorporated into the University’s retrenchment guidelines, they will remain in effect.

Article VII – Academic Due Process. Article VII sets forth the grounds and procedures for removing or suspending members of the instructional staff. In the case of instructional staff covered by the PSC-CUNY agreement, this provision has been superseded by the three-step disciplinary process set forth in the collective bargaining agreement, which culminates in a binding arbitration. Accordingly, Article VII applies only to instructional staff excluded or not otherwise covered by the PSC-CUNY Agreement. The lengthy investigation and hearing process set forth in the current Article VII, with a final determination made by the Board of Trustees, is inappropriate and unnecessary in the case of excluded instructional staff. This provision has accordingly been rewritten to provide that instructional staff (other than members of the executive compensation plan) whose employment is not covered by a collective bargaining agreement, or who are represented by a union at such time that an expired collective bargaining agreement has not been continued by operation of law, shall be subject to such disciplinary procedures as may be adopted by the Chancellor or his/her designee. Until such disciplinary procedures are adopted by the Chancellor or his/her designee, this article shall continue to apply. The revised bylaw also states that, in the event no collective bargaining agreement is in effect, the provisions of Education Law § 6212, subdivision 9 will apply in the case of tenured faculty.

Article VIII – Organization and Duties of the Faculty. Article VIII has been amended as follows:

- Article VIII has been revised to remove provisions relating to the faculty, and duties of faculty, at City College, which are outdated and are set forth in its governance plan. In addition, references to the “Graduate School and University Center” have been revised to refer only to the “Graduate School”, as the University Center is not synonymous with the Graduate School but now encompasses other schools and programs.

- Sections 8.1 and 8.5 has been amended to clarify that administrators with underlying professorial appointments hold faculty rank.

- Section 8.1 and 8.2 have been amended to include the longstanding University practice that a faculty member who is on Travia leave does not retain his/her faculty voting rights. Section 8.2 has also been amended to provide that Distinguished Lecturers and Clinical
Professors will have faculty status, and to delete the requirement that Instructors and Lecturers not obtain faculty status until their third year.

- Section 8.7 has been amended to make the section on Faculty/Academic Councils generally applicable to all units of the University and to clarify the composition of the committee on faculty personnel and budget.

- Sections 8.9 and 8.11, relating to college committees on faculty personnel and budget, have been amended to delete college-specific language, to conform the provision regarding the membership of faculty personnel and budget committees to current practice, to clarify the titles as to which the committee makes personnel recommendations, and to delete language relating to the grievance procedure, which is set forth in the PSC-CUNY agreement.

- Section 8.12 has been amended to make clear that, in communicating the result of the college committee on faculty personnel and budget’s recommendation to the candidate, no reason is to be given for either a negative or positive recommendation and that a negative recommendation is final unless the employee files a successful appeal.

**Article IX – Organization and Duties of Faculty Departments.** Article IX has been amended as follows:

- Section 9.1(e), regarding departmental personnel and budget committees and appointment committees, has been amended to eliminate the distinction between Plan No. One and Plan No. Two, which are not meaningfully different. The section has also been amended to add a provision allowing the president to remove a member of a department personnel and budget committee, for good cause, at the written request of a majority of the members of such committee, with the challenged member having an opportunity to respond.

- Section 9.1(f) has been amended to make a minor change in the composition of the committees on personnel and budget in the Hunter College Campus Schools, in that the representative from the Education Department at Hunter College no longer has to be the chairperson of the department. This will give the Campus Schools greater flexibility.

- Section 9.3(a)(10) has been amended to provide that the department chairperson’s report to the president and the college committee on faculty personnel and budget, regarding a faculty member being recommended for tenure, shall be based on the criteria set forth in that provision, together with those set forth in University policies. The former version of this Bylaw did not include all the relevant University criteria for evaluating candidates for tenure.

- Sections 9.4 and 9.5, relating to Program Structure in the Graduate School and University Center and Duties of Executive Officer in the Graduate School and University Center, have been eliminated, as those topics are addressed in the Graduate School’s governance plan.
• Section 9.6, relating to recruitment, has been deleted as unnecessary.

• Section Sections 9.7 (a) and (b) have been amended to make clear that the appointment process therein is for full-time appointments, and does not apply to adjunct appointments.

• Section 9.8 has been reorganized to read more clearly, and to make clear that faculty members cannot vote on their own promotion.

• Section 9.10 has been deleted, as instructional staff grievances are governed by the PSC-CUNY collective bargaining agreement.

Article XI – Duties and Qualifications of the Administrative Officers and Members of the Instructional Staff. Article XI of the Bylaws has been amended as follows:

• Article XI generally sets forth the position descriptions for members of the instructional staff. Because position descriptions are generally not included in an institution’s bylaws, and because many of the position descriptions in the current bylaws are incomplete and out-of-date, Article XI has been amended to remove the descriptions for all titles other than those of Chancellor, Senior University Staff and President. Accordingly, Sections 11.5 through 11.7, 11.9 through 11.55, which contained the other position descriptions, have been deleted.

• Section 11.1 now provides that the minimum qualifications and duties for all other titles in the instructional staff shall be established by the Chancellor or his/her designee, except that any revisions to title descriptions for faculty rank titles shall be approved by the Board of Trustees as a policy item (until the Chancellor or his/her designee establishes such title descriptions, the descriptions these bylaw descriptions will remain in effect.) Section 11.1 further provides that the Chancellor or his designee shall establish procedures for waiving the minimum qualifications for instructional staff positions, except for faculty rank titles as to which waivers must be approved by the Board of Trustees. Section 11.1 has also been amended to provide that all title descriptions shall be deemed board policies solely for purposes of the collective bargaining agreement between the university and the union representing the instructional staff, and solely for the purpose of preserving the union’s right to grieve that an instructional staff member is being assigned duties substantially different from those stated in his/her job description.

• Section 11.2 has been amended to give the Chancellor the duty to recommend directly to the board the underlying academic appointment, with tenure, of any president, notwithstanding any other provisions in these Bylaws. The reason for this is to provide the Chancellor with the authority, in connection with the negotiations relating to the appointment of a president, to be able to include an academic appointment as part of the offer.

Article XII – Salary Schedule Conditions. Article XII has been updated to reflect current practice. Section 12.2 has been amended to give the Chancellor (rather than the Board of
Trustees) the authority to authorize compensation beyond salary paid to any staff member from enterprises connected with a college or the university, unless that compensation is being paid to the Chancellor, in which case it must be approved by the Board. Sections 12.4 and 12.5 have been deleted as unnecessary.

**Article XIII – Leaves.** Article XIII has been substantially shortened by deleting provisions that are contained in the PSC-CUNY collective bargaining agreement or are inconsistent with University practice.

**Article XIV – The Non-Instructional Staff.** Article XIV has been updated to include all titles in the classified civil service of the University and to delete the outdated disciplinary procedure for classified staff, which is now set forth in either the applicable collective bargaining agreement or in the CUNY Personnel Rules and Regulations.

**Article XV – Students.** Article XV has been revised to bring the student conduct and student organization sections into compliance with University practice and applicable law, and to clarify and address issues that have arisen concerning the University’s student disciplinary procedures.

- Section 15.0 has been amended to broaden the provision regarding freedom from discrimination to include all the grounds set forth in the University’s non-discrimination policy.
- Section 15.1 has been amended to clarify that the student conduct standard is that set by the Board, and cannot be added to by other bodies.
- Section 15.2(a) and (c) have been amended to ensure that the University does not prohibit speech protected by the First Amendment, while still setting forth the Board’s expectation that students should be respectful of diverse viewpoints. Section 15.2(b)(3) has been amended to revise the complaint procedure in the case where a person or organization believes that a student organization has violated the code of conduct standard, to provide for an investigation by the chief student affairs officer, rather than a fact-finding hearing under Section 15.3, and to include an appeal to the president. Section 15.2(d) has been amended to provide for an appeal from the student elections review committee to the college president or his/her designee.
- Section 15.3 has been amended to bring the student disciplinary procedures in line with the nomenclature now used in the higher education student affairs community, which uses terms like “responsible” instead of “guilty” and “mediation” instead of “conciliation”. In addition, the following substantive changes have been made to the student disciplinary process: (1) Section 15.3(c) has been added to provide a procedure to address student disciplinary charges where the student has withdrawn from a college before disciplinary charges have been adjudicated; (2) Sections 15.3(f)(12) and f(13) have been added to codify the University’s practice that a penalty of dismissal or suspension for one term or more is a university-wide penalty, and that disciplinary penalties are placed on student transcripts; (3) Section 15.4 has been amended to provide that students may appeal a disciplinary penalty of one term or more (rather than a penalty for more than one term) to the Board Committee on Student Affairs and Special
Programs; and (4) Section 15.5 has been amended to provide the Chairperson of the Faculty-Student Disciplinary Committee shall be a faculty member, and that a quorum must include one student member. (5) 15.6 has been amended to provide that, if a student is suspended because of emergency or extraordinary circumstances, the college has ten business days (rather than seven school days) to hold a hearing.

**Article XVII – Definitions.** Article XVII has been added to provide definitions for the key terms in these Bylaws.

As a result of extensive review and consultations since notice was provided concerning amendments to the bylaws in the minutes of the meetings of the Board of Trustees for May 2, 2011, June 27, 2011 and September 26, 2011, additional changes have been made. Accordingly, the Board is being requested to waive notice as to those changes in order to bring this process of revision to conclusion at this meeting.