

# Instruments and Articles

**BURNLEY COLLEGE**

**BUILDING FUTURES C HANGING LIVES**

*We are committed to Equality and Diversity and to selection on merit. We welcome applications from all sections of society.*



## SCHEDULE 1

### INSTRUMENT OF GOVERNMENT

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#### Interpretation

I In this Instrument of Government -

- (a) “this Instrument” means this Instrument of Government,
- (b) “the previous Instrument of Government” means the instrument of government relating to the institution which had effect immediately before 1st March 2012,
- (c) “the Corporation” means the Governing Body/Board of Burnley College;
- (d) any reference to “the Principal” shall include a person acting as Principal;
- (e) “the Clerk” means the Clerk to the Corporation
- (f) “meeting” includes a meeting at which the members attending are present in more than one room provided that, by the use of video-conferencing or similar facilities, it is possible for every person present at the meeting to communicate with each other,

- (g) “staff matters” means the remuneration conditions of service, promotion, conduct, suspension, dismissal or retirement of staff;
- (h) “the Secretary of State” means the Secretary of State for Business, Innovation and Skills (BIS) or any successor organisation from time to time;

### **Composition of the Corporation**

- 2 The Corporation shall consist of not less than 12 and up to 20 members who have the necessary skills, experience and personal characteristics to ensure that the Board carries out its business effectively.
- 3 The composition shall be:
  - (a) up to fifteen members \*who maintain the best possible balance on the Board in terms of relevant experience, background, strategic management and business skills. Following this ethnicity, age, gender and the public, private or voluntary sector mix will be taken into account.
  - (b) the Principal
  - (c) two members who are members of staff
  - (d) two members who are students
- 4 The Clerk will be responsible for advising the Corporation whether a person is eligible for nomination, election and appointment as a member of the Corporation under paragraph 2 (a).
- 5 The Corporation as the appointing authority will decide whether a person is eligible for nomination, election and appointment as a member under paragraph 3 (a).

### **Determination of membership numbers**

- 6 Subject to paragraphs (2) to (5) the number of members of the Corporation shall be that determined by the Corporation.
- 7 The Corporation may at any time vary the determination referred to in paragraph (3) provided that the number of business members shall be equal to one half of the total number of members. No variation will terminate the appointment of any individual who is already a member of the Corporation at the time determination is made.
- 8 A co-opted member will hold office for a term determined by the Corporation on appointment (normally 12 months) but co-opted members will be eligible for reappointment by the Board if required.

*\*as determined by the Corporation during the Strategic Review of Governance 2014*

### **Appointment of members of the Corporation**

- 9 If the number of members falls below the number needed for a quorum, the Secretary of State is the appointing authority in relation to the appointment of those members required for a quorum.

- 10 The appointing authority may decline to appoint a person as a member if the person does not have the specified required skills and experience.
- 11 The appointing authority may decline to appoint a person as a member if it is satisfied that the person is unfit or unable to discharge the functions of a member or that it is not in the best interests of the Corporation for the member to hold office. Note; Members of the Corporation are required to meet the requirements of a satisfactory Disclosure Barring Service criminal record check as part of their recruitment/induction procedure.

#### **Appointment of Chair and Vice-Chair**

- 12 The members shall appoint a Chair and a Vice-Chair from among their number but neither the Principal nor any staff or student member shall be eligible to be appointed Chair or Vice-Chair.
- 13 The Chair and Vice-Chair shall hold office for such a period as the Corporation may determine and may resign from office at any time by giving notice in writing to the Clerk of the Corporation.
- 14 If both the Chair and the Vice-Chair are absent from any meeting of the Corporation, the members present shall choose one of their number to act as Chair for that meeting, provided that the member chosen shall not be the Principal or a staff or student member.
- 15 If at any time the Corporation is satisfied that the Chair or Vice Chair is unable or unfit to discharge the functions of Chair or Vice Chair (as the case may be) the Corporation may by notice in writing to the Chair or Vice Chair remove him from his office and thereupon the office shall be vacant. The process for removal from office is outlined in Annex 3 of Standing Orders.
- 16 At the last meeting before the end of the term of office of the Chair or the Vice-Chair, or following the resignation or removal from office of the Chair or the Vice-Chair, the members shall appoint a replacement from among their number. The process for appointing the Chair or Vice Chair is laid out in Appendix 3 of Standing Orders.
- 17 At the expiry of their term of office the Chair or Vice-Chair shall be eligible for reappointment.

#### **Appointment of the Clerk to the Corporation**

- 18 The Corporation shall appoint a person to serve as Clerk to the Corporation. In the event of a temporary absence of the Clerk, the Corporation shall also appoint a person to serve as a temporary Clerk. Any reference in this Instrument to the Clerk to the Corporation shall include a temporary Clerk appointed.
- 19 Subject to paragraphs 49 and 50 the Clerk to the Corporation shall be entitled to attend all meetings of the Corporation (including all committee meetings).
- 20 The Principal shall be ineligible to be appointed as Clerk to the Corporation or as a temporary Clerk to the Corporation.

### **Persons ineligible to be members**

- 21 The following persons are ineligible to be appointed as a member of, or from continuing to be a member of the Corporation
- (a) anyone under the age of 18 years, except as a student member
  - (b) the Clerk
  - (c) Other than a student member, a person who is already a member shall not be required to resign if during their term of office they enrol on a part-time course at the College. If they enrol on a full-time course at the College they shall cease to be a member of the Corporation and thereupon their office shall become vacant.
  - (d) Further restrictions on eligibility are as laid down by the Charities Act 2011, the relevant section from the Act is available from the Clerk upon request.

### **Term of Office**

- 22 A member of the Corporation shall hold and vacate office in accordance with the terms of their appointment, and the length of their term of office shall not exceed 4 years.
- 23 Members retiring at the end of their term of office shall be eligible for reappointment, and paragraphs 9 to 11 shall apply to the reappointment of a member as it does to the appointment of a member.
- 24 At the end of a term of office, members will be eligible to be appointed for further terms, subject to a rigorous review of the member's contribution.

### **Termination of membership**

- 25 A member may resign his office at any time by giving notice in writing to the Clerk to the Corporation.
- 26 If at any time the Corporation is satisfied that any member -
- (a) has been absent from meetings of the Corporation for a period longer than 6 consecutive months without the permission of the Corporation; or
  - (b) is unable or unfit to discharge the functions of a member, or it is not in the best interests of the Corporation for the member to continue to hold office
- the Corporation may by notice in writing to that member suspend or remove them from office.
- 27 Any person who is a member of the Corporation by virtue of being a member of the staff (including the Principal) of the College, shall cease to hold office upon ceasing to be a member of the staff.

- 28 A student member shall cease to hold office in the following circumstances -
- (a) at the end of their term of office
  - (b) when they cease to be a student
  - (c) at such other time in the year as the Corporation may determine
  - (d) if they are expelled from the College.

#### **Members not to hold interests in matters relating to the College**

- 29 Where a member has an interest financial or otherwise in the supply of work or goods to or for the purposes of the College, any contract or proposed contract concerning the College, or any other matter relating to the College they shall
- (a) disclose to the Corporation the nature and extent of the interest; and
  - (b) if present at a meeting of the Corporation or its committees, at which such matters mentioned in paragraph 29 are to be considered, not take part in the consideration or vote on any question with respect to it, and
  - (c) withdraw from such meetings where required to do so by a majority of the members present at the meeting.
- 30 The above clauses shall not prevent the members of the Corporation considering and voting upon proposals for the Corporation to insure the members against liabilities incurred by them arising out of their office or the Corporation obtaining such insurance and paying the premium.
- 31 The Clerk to the Corporation shall maintain a register of the interests of the members of the Corporation which have been disclosed and the register shall be made available during normal office hours at the College to any person wishing to inspect it.

#### **Meetings**

- 32 The Corporation shall meet at least once in every term, and shall hold such other meetings as may be necessary.
- 33 Subject to paragraphs 34 to 36 all meetings shall be called by the Clerk, who will at least 7 calendar days before the date of the meeting, send to the members' written notice of the meeting and a copy of the proposed agenda.
- 34 If it is proposed to consider at any meeting the remuneration, conditions of service, conduct, suspension, dismissal or retirement of the Clerk to the Corporation, the Chair (and not the Clerk) shall, at least 7 calendar days before the date of the meeting, send to the members a copy of the agenda item concerned together with any relevant papers.
- 35 A special meeting of the Corporation may be called at any time by the Chair or at the request in writing of any 5 members, at least two of whom must be independent members, in writing to the Clerk.

- 36 Where the Chair or, in his absence, the Vice-Chair decides that there are matters requiring urgent consideration, the written notice convening the meeting and the proposed agenda may be given within less than seven calendar days.
- 37 Every member of the Corporation shall act in the best interests of the Corporation and accordingly will not be bound to speak or vote by mandates given by any other body or person.

#### **Quorum**

- 38 Meetings of the Corporation shall be quorate if the number of members present is at least 40% of the membership number
- 39 If the number of members attending a meeting of the Corporation does not constitute a quorum the following will apply:
- (a) The meeting may continue but no decisions will be taken, these being deferred either to the next meeting or to the next Board meeting or;
  - (b) The meeting will not take place and the Chair may call a special meeting as soon as it is convenient to do so.
- 40 If during the meeting the number of members present ceases to constitute a quorum, the meeting shall either be terminated or alternatively will continue but with no further decisions taking place as outlined in 39 (a) above.

#### **Proceedings of meetings**

- 41 Every question to be decided at a meeting of the Corporation and its Committees will be decided by a majority of the votes cast by members present who are entitled to vote on the question.
- 42 Where there is an equal division of votes the chair of the meeting shall have a second or casting vote.
- 43 A member may not vote by proxy or by way of postal or electronic vote. Views may be obtained by these means but formal decisions will only be taken at the next available meeting. Governors are encouraged to provide views or raise questions via email where they cannot attend the meeting, albeit responses to those questions will be provided at the meeting to those present.
- 44 No resolution of the members may be rescinded or varied or reconsidered at a subsequent meeting unless consideration of the rescission or variation is a specific item of business on the agenda for that meeting.
- 45 A member of the Corporation who is a member of staff of the College (including the Principal) shall withdraw -
- (a) from that part of any meeting of the Corporation or any committee of the Corporation at which staff matters relating solely to that member of the staff (as distinct from staff matters relating to all members of staff, or all members of staff in a particular class) are to be considered;

- (b) from that part of any meeting of the Corporation or any committee of the Corporation at which that member's reappointment or the appointment of that member's successor is to be considered; and
  - (c) if so required by a resolution of the other members present, from that part of any meeting of the Corporation or any of its committees at which staff matters relating to any member of staff holding a post senior to his own are to be considered, except that relating to the pay and conditions of all staff or all staff in a particular class.
- 46 A student member who is under the age of 18 shall not vote (whether at a meeting of the Corporation or at a meeting of any Committee of the Corporation) on any question concerning any proposal -
- (a) for the expenditure of money by the Corporation; or
  - (b) under which the Corporation, or any members of the Corporation, would enter into any contract, or would incur any debt or liability (whether immediate, contingent or otherwise).
- 47 A student member shall withdraw from that part of any meeting of the Corporation or any committee at which a student's conduct, suspension or expulsion is to be considered.
- 48 In any case where the Corporation, or any of its committees, is to discuss staff matters relating to a member or prospective member of staff at the College, a student member shall -
- (a) take no part in the consideration or discussion of the matter and not vote on any question with respect to it; and
  - (b) where required to do so by a majority of the members, other than student members, of the Corporation or committee present at the meeting, withdraw from the meeting.
- 49 The Clerk will withdraw from that part of any meeting of the Corporation or any of its Committees at which the Clerk's remuneration, conditions of service, conduct, suspension, dismissal or retirement are to be considered
- 50 If the Clerk withdraws from a meeting, or part of a meeting, of the Corporation, the Corporation shall appoint a person from among themselves (not including the Principal) to act as Clerk to the Committee during their absence.

## **Minutes**

- 51 Written minutes of every meeting of the Corporation will be prepared, and, subject to the following paragraph, at every meeting of the Corporation the minutes of the last meeting shall be taken as an agenda item.
- 52 Minutes of the last meeting of the Corporation will not be taken as an agenda item where the meeting called is a special meeting.
- 53 Where minutes of a meeting are taken as an agenda item and agreed to be accurate, those minutes shall be signed as a true record by the Chair of the meeting.
- 54 Separate minutes shall be taken of those parts of meetings from which staff, student members, the Principal, or the Clerk have withdrawn. Any such persons will not be entitled to see the minutes of that part of the meeting or any papers in relation to it, other than where the Corporation wish to record such matters in the minutes for such staff to view.

## **Public access to meetings**

- 55 Members of the public or persons who are not Corporation members are not allowed to attend meetings of the Governing Board or their sub committees unless this has previously been agreed. Occasionally officers external to the College are invited to attend meetings, but this is by prior arrangement. Such officers are likely to be members of the College's Funding Bodies, Internal and External Auditors and specialist consultants. This statement will be placed on the College web site.

## **Publication of minutes and papers**

- 56 Minutes and agendas of the Board and Search and Governance Committee meetings will be made publicly available on the College's website in line with the following arrangements:
- a) when agreed by the Board and signed by the Chair, and
  - b) once 12 months after the date of the meeting has elapsed, and
  - c) where information is financial then this will only be released when verified by the Colleges auditors ie signed off end of year accounts.
- 57 Where information has been deemed to be of a confidential nature in the minutes this will not be released until de-classified during the annual review undertaken by Governors usually in the summer term. All other minutes of meetings are placed on the College's intranet for Governors to view.
- 58 Minutes of Board and Search & Governance Committee meetings will be retained on the College's web site for a period of 12 months.
- 59 Where a request has been made through the Freedom of Information Act, minutes will be reviewed and redacted to remove confidential and personal information where appropriate. These will be then be forwarded to the person requesting the information.

- 60 Subject to paragraphs 56 and 60, the Clerk will ensure that a copy of the following will be made available to any person wishing to inspect them -
- (a) the agenda and the signed minutes for every meeting of the Corporation and its Committees;
  - (b) any report, document or other paper considered at any such meeting, unless the content is deemed confidential as indicated below,
- 61 There will be excluded from any item made available for inspection any material relating to
- (a) a named person employed at or proposed to be employed at the College;
  - (b) a named student at, or candidate for admission to, the College;
  - (c) the Clerk; or
  - (d) any matter which, by reason of its nature, the Corporation is satisfied should be dealt with on a confidential or commercial basis.

#### **Payment of allowances to members and co-opted members**

- 62 The Corporation may pay to the members and co-opted members, such travelling, subsistence or other allowances as it decides, but will not without the approval in writing of the Secretary of State and the Charity Commission, pay allowances which remunerate them for their services as members.

#### **Copies of Instrument of Government**

- 63 A copy of this Instrument shall be given to every member, and shall be available for inspection upon request during normal office hours to anyone free of charge.

#### **Change of name of the Corporation**

- 64 The Corporation may change its name with the approval of the Secretary of State.

#### **Application of the Seal**

- 65 The application of the seal of the Corporation shall be authenticated by the signature of either the Chair or Vice Chair or some other member authorised either generally or specially by the Corporation to act for that purpose.

## SCHEDULE 2

### ARTICLES OF GOVERNMENT

#### BURNLEY COLLEGE

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#### Interpretation of the terms used

1 In these Articles of Government -

- (a) any reference to `the Principal` will include a person acting as Principal.
- (b) `the Articles` means these Articles of Government;
- (c) `Chair` and `Vice Chair` mean respectively the Chair and Vice-Chair of the Corporation appointed under paragraphs 12 to 17 of the Instrument of Government.
- (d) the following have the same meaning as in the Instrument of Government;
  - `the Clerk`
  - `the Principal`
  - `the Corporation`
- (e) `the Secretary of State` means the Secretary of State for Business, Innovation and Skills (BIS) or any successor organisation to BIS from time to time;
- (f) `senior post` means the post of Principal and such other senior posts as the Corporation may decide for the purposes of these Articles;

- (g) `the staff` means all the staff who have a contract of employment with the College;
- (h) `the students` union` means any association of students formed to further the educational purposes of the College and the interests of students, as students, should such a body be formed.

### **Conduct of the College**

- 2 The College shall be conducted in accordance with the provisions of the Instrument of Government, these Articles, any rules or bye-laws made under these Articles and any trust deed regulating the College.
- 3 Business will also be conducted in accordance with the provisions of United Kingdom legislation, directives and case law as well as other regulatory requirements such as the Financial Memorandum and the Joint Audit Code of Practice.

### **Responsibilities of the Corporation, Principal and the Clerk**

- 4 The Corporation shall be responsible for -
  - (a) the determination of the educational character and purpose of the College and for the oversight of its activities
  - (b) approving the quality strategy
  - (c) the effective and efficient use of resources, the solvency of the College and for safeguarding assets
  - (d) approving annual estimates of income and expenditure
  - (e) the appointment, grading, suspension, dismissal and determination of the pay and conditions of service of the holders of senior posts
  - (f) for setting a framework for the pay and conditions of service of all other staff
  - (g) for monitoring the performance of the Principal, who shall be responsible for the day to day management of all aspects of the College
  - (h) for monitoring the performance of the Clerk to the Board, who shall ensure that the Board's proceedings are conducted in accordance with statutory provisions, and
  - (i) fostering good relations between the College and the community it serves, ensuring that the College aims and objectives are understood.
- 5 Subject to the responsibilities of the Corporation, the Principal shall be responsible for -
  - (a) making proposals to the Corporation about the educational character and purpose of the College, and for implementing the decisions of the Corporation;
  - (b) the organisation, direction and management of the College and leadership of the staff;

- (c) the appointment, assignment, grading, appraisal, suspension, dismissal, and determination, within the framework set by the Corporation, of the pay and conditions of service of staff other than the holders of senior posts or the clerk;
  - (d) the determination of the College's academic and other activities
  - (e) preparing annual estimates of income and expenditure for consideration and approval by the Corporation, and the management of budget and resources within the estimates approved by the Corporation;
  - (f) maintaining student discipline and, within the rules and procedures provided for within these Articles, suspending or expelling students on disciplinary grounds, or expelling students for academic reasons.
- 6 The Clerk will be responsible for advising the Corporation on the operation of its powers, procedural matters, the conduct of its business and matters of governance practice.

**The establishment of Committees and delegation of functions generally**

- 7 The Corporation may establish committees for any purpose or function, other than those assigned in these Articles to the Principal or Clerk and may delegate powers to -
- (a) such a committee;
  - (b) the Chair or, in his absence, the Vice Chair; or
  - (c) the Principal.
- 8 The number of members of a committee which may include co-opted members, and the terms on which they are to hold and to vacate office, shall be decided by the Corporation.
- 9 The Corporation may also establish committees under collaboration arrangements made with other further or higher education colleges or maintained schools (or with all), and such joint committees shall be subject to any statutory or regulatory requirements.

**The Audit Committee**

- 10 The Corporation shall establish a committee, to be known as the `audit committee` to advise on matters relating to the Corporation's audit arrangements and systems of internal control.
- 11 The Audit Committee shall consist of at least three persons and shall operate in accordance with any statutory or regulatory requirements and the College's Standing Orders.

**Delegable and non-delegable functions**

- 12 The Corporation will not delegate the following functions

- (a) determination of the educational character and mission of the College
- (b) the approval of the annual estimates of income and expenditure
- (c) responsibility for ensuring the solvency of the College and the Corporation and for safeguarding their assets
- (d) appointment of the Principal or holder of a senior post
- (e) appointment of the Clerk;
- (f) modification or revocation of these Articles.

### **Principal's delegation**

- 13 The Principal may delegate functions to the holder of any other senior post other than the management of budget and resources and any other functions that have been delegated specifically to the Principal by the Corporation.

### **Appointment and Promotion of Staff**

- 14 The Corporation will appoint the Principal, Senior Post-holders and the Clerk in accordance with its policies and procedures.
- 15 The Principal will be responsible for the appointment of all members of staff, other than senior post holders and the Clerk, in accordance with the Corporation's policies and procedures.
- 16 Where there is a vacancy or expected vacancy in a senior post the Corporation shall;
- (a) determine the arrangements for the advertisement, selection and appointment of a successor, in line with current employment legislation, the College equality policy and best practice
  - (b) appoint a selection panel consisting of at least five members of the Corporation, including the chair or Vice Chair or both, where the vacancy is for the post of Principal, or
  - (c) the Principal and at least three other members of the Corporation where the vacancy is for any other senior post, including the clerk.
- 17 The members of the selection panel will decide on the arrangements for selecting the applicants for interview, interview the applicants and where it is considered appropriate to do so, recommend to the Corporation for appointment one of the applicants they have interviewed.
- 18 If the Corporation approves the recommendation of the selection panel, that person shall be appointed.

- 19 Where the members of the selection panel are unable to agree on a person to recommend to the Corporation, or if the Corporation does not approve their recommendation, the Corporation may make an appointment itself of a person from amongst those interviewed, or it may require the panel to repeat the selection process identified above with or without first re-advertising the vacancy.
- 20 In the event of a senior post vacancy, or where the holder of a senior post is temporarily absent, until that post is filled or the post holder returns, a member of staff may:
- (a) be required to act as Principal or act in the place of any other senior post-holder including the Clerk; and
  - (b) if so required, shall have all the duties and responsibilities of the Principal or such other senior post holder during the period of the vacancy or temporary absence.

### **Codes of Conduct**

- 21 The Corporation will approve a Code of Conduct for Governors together with rules relating to the conduct of staff.
- 22 The Corporation shall have regard to the need to ensure that academic staff of the College have freedom within the law to question and test received wisdom, and to put forward new ideas and controversial or unpopular opinions, without putting themselves at risk of losing their jobs or any privileges which they may enjoy at the College.

### **Grievance, suspension and disciplinary procedures**

- 23 After consultation with staff, the Corporation will approve procedures to cover
- (a) grievance procedures for all staff
  - (b) disciplinary and dismissal procedures (including the suspension of staff) for
    - senior post-holders
    - staff other than senior post-holders

### **Conduct of Students**

- 24 Where a student's union has been formed they shall conduct and manage their own affairs and funds in accordance with a constitution approved by the Corporation and no amendment to, or rescission of, that constitution, in part or in whole shall be valid unless approved by the Corporation. The students union will present audited accounts annually to the Corporation.
- 25 After consultation with representatives of the students, the Corporation shall make rules concerning the conduct of students, including procedures for their suspension and expulsion (including expulsion for unsatisfactory standard of work or other academic reason).

## **Internal Audit**

- 26 The Corporation will, at such times as it considers appropriate, examine and evaluate its systems of internal financial and other controls to ensure that they contribute to the proper, economic, efficient and effective use of the Corporation's resources.
- 27 The Corporation may arrange for the examination and evaluation mentioned in paragraph 26 to be carried out on its behalf by internal auditors
- 28 The Corporation will not appoint persons as internal auditors to carry out the activities referred to in paragraph 27 if those persons are already appointed as external auditors.

## **Accounts and Audit of Accounts**

- 29 The Corporation shall -
- (a) keep proper accounts and proper records in relation to the accounts; and
  - (b) prepare a statement of accounts for each financial year of the Corporation
- 30 The statement shall -
- (a) give a true and fair account of the state of the Corporation's affairs at the end of the financial year and of its income and expenditure in the financial year; and
  - (b) comply with any directions given by any regularity or funding body as to the information to be contained in it, the manner in which the information is to be presented, the methods and principles according to which it is to be prepared and the time and manner of publication.
  - (c) The accounts and statement of accounts shall be audited by external auditors appointed by the Corporation in respect of each financial year.
  - (d) Auditors shall be appointed and other audit work conducted, in accordance with any legal or regularity requirements.
  - (e) The Corporation will not appoint persons as external auditors in respect of any financial year if those persons are already appointed as internal auditors.

## **Rules, Bye-Laws, policies and procedures**

- 31 The Corporation shall have the power to make rules and bye-laws, policies and procedures relating to the government and conduct of the College and these rules and bye-laws policies and procedures shall be subject to the provisions of the Instrument of Government and these Articles.

## **Copies of Articles of Government, Rules and Bye-Laws**

- 32 A copy of these Articles, and of any rules, by-laws, policies and procedures shall be given free of charge to every member of the Corporation. They will also be made available for inspection upon request during normal office hours at the College, to anyone free of charge.

### **Modification or replacement of the Instrument and Articles of Government**

- 33 The Corporation may amend or replace an Instrument or Article by a majority resolution at a Corporation meeting, providing that no changes result in the body ceasing to be a charity.

### **Dissolution of the Corporation**

- 34 The Corporation may by resolution dissolve itself and provide for the transfer of its property, rights and liabilities.
- 35 The Corporation will ensure that a copy of the resolution to dissolve the Corporation on a specified date shall be published at least one month before the proposed date of such resolution.

Owned by:	Clerk to the Corporation
Last Revised:	Oct 21
On College Website:	Oct 21