



Delta Gamma

1873

April 6, 2023

Dear Voting Members of the Delta Gamma Foundation:

The voting members of the Delta Gamma Foundation will convene for the Annual Meeting on Thursday, June 29, 2023 at 9 a.m. Eastern time at the Peabody Hotel, Memphis, Tennessee.

The attached proposed amendment to the Delta Gamma Foundation Constitution will be presented at the annual meeting and considered by the voting members of the Delta Gamma Foundation.

According to the provisions of Article XII. Amendments, Section 2 of the Delta Gamma Foundation Constitution, any proposed amendments to the amendments must be sent by **June 1, 2023**, to the Constitution Chairman, Delta Gamma Foundation, Susan R. Cornell, at srcornell115@gmail.com or FoundationConstitution@deltagamma.org or 400 Barlow Road, Gettysburg, PA 17325.

If you have any questions, please contact me by email or phone (301-325-7128).

In the Bonds,

Susan R. Cornell, J.D.
Epsilon Delta-Washington and Jefferson
Constitution Chairman
Delta Gamma Foundation



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Proposed Foundation Constitutional Amendment

ARTICLE III. MEMBERSHIP

Current Language:

Section 3. Annual Meeting The annual meeting of the members shall be held as follows: in the even numbered years during the biennial meeting of the Delta Gamma Fraternity which is known as Convention and in the odd numbered years during the biennial Delta Gamma Fraternity Officers' Training Seminar.

Proposed Language:

Section 3. Annual Meeting The Foundation shall meet at least annually at a date, place, and time designated by the Board of Trustees. The Board of Trustees will schedule the Annual Meeting during even-numbered years in conjunction with the biennial meeting of the Delta Gamma Fraternity, which is known as Convention, and in odd numbered years in conjunction with the Delta Gamma Fraternity training for leadership volunteers, if those events are held.

Notice of the annual meeting shall be provided to the members of the Foundation no later than thirty (30) days prior to the designated date.

Condensed Rationale:

The proposed language clarifies that the Board of Trustees is responsible for scheduling the Foundation Annual Meeting. This ensures that the Foundation is in compliance with the Restated Articles of Incorporation which require that the Board of Trustees exercise the Foundation's "corporate powers" and protects the Foundation's status as a tax-exempt organization which requires that the BOT make such decisions. At the same time, the proposed language recognizes that the relationship between the Foundation and the Fraternity is well-served by holding the Annual Meeting in conjunction with relevant Fraternity events.

Expanded Rationale:

The Restated Articles of Incorporation, which establish the Foundation, state that "The corporate powers of the Foundation shall be exercised, its property controlled, and its affairs conducted by a Board of Directors which shall be known as the Board of Trustees" (Art. of Incorp. para. 4). The Delta Gamma Foundation is incorporated as an Ohio nonprofit corporation and an Internal Revenue Code section 501(c)(3) public-charity. In order for the Foundation to maintain that tax-exempt status, there must be appropriate separation between the Fraternity and the Foundation so that the Fraternity is not controlling



the Foundation. This need for legal separation was the basis for creating the current Foundation board structure in 2002 and for creating the weighted vote in 2013.

The current Constitutional language mandates that the Annual Meeting be held during Convention in even-numbered years and at Officer Training Seminar in odd-numbered years. Both of these events are determined by the Fraternity. The Fraternity Constitution provides for a convention to be held biennially at a time and place designated by the previous Convention or by the Fraternity Council (see Frat. Const. Art III Section 1). However, the Fraternity Constitution authorizes the Fraternity Council to postpone or cancel Convention under certain circumstances. There is no Fraternity Constitutional requirement to hold Officer Training Seminar or similar event. Therefore, the current language puts the authority to schedule the Foundation's Annual Meeting with the Fraternity, specifically the Fraternity Council, which is contrary to the Articles of Incorporation and jeopardizes the Foundation's tax- exempt status.

The Foundation Constitution mandates that trustees be elected at the Annual Meeting. Therefore, the Foundation must hold an annual meeting for the election of trustees and to conduct other business. By mandating that the Annual Meeting be held during an event designated and set by the Fraternity, the current language gives control over the time and place where the Foundation conducts its business and elects its trustees. Such Fraternity control over the Foundation is in direct conflict with the Articles of Incorporation placing that authority with the Board of Trustees and, consequently, jeopardizes the Foundation's 501(c)(3) status.

Such a mandate jeopardizes the Foundation's tax-exempt status in a second way. The Foundation Constitution provides that the term of each elected trustee is three years and, with two trustees elected each year, two trustee terms expire every year. Not holding an Annual Meeting would result in two vacancies and thereby reduce the number of elected trustees from six to four. This could jeopardize the Foundation's 501(c)(3) status as a tax-exempt organization, because the Fraternity would in effect be controlling the number of elected trustees.

The proposed language brings this Constitutional provision into compliance with the Articles of Incorporation requirement that the Foundation's corporate powers be exercised and its affairs be conducted by the Board of Trustees, while recognizing the special relationship between the Foundation and the Fraternity. The Foundation Articles of Incorporation also provide that: "the purposes of the Foundation shall be to provide a means by which the members of the Delta Gamma Fraternity may act in concert with each other in the furtherance of exclusively charitable scientific, literary and educational objectives . . ." The Relationship Agreement between the Foundation and the Fraternity provides that the two entities will work together to leverage the strengths and limitations of each to enhance and grow Delta Gamma. The proposed amendment will not change the relationship between the Foundation and the Fraternity but will ensure that the Foundation is complying with the Articles of Incorporation and provides the necessary legal separation between the two organizations so that the Foundation's tax-exempt status is not threatened and it can continue to support the Fraternity.

BOT Position: *The Board of Trustees approved this proposed amendment.*

