



ROCHESTER ZEN CENTER  
A BUDDHIST COMMUNITY

# Rochester Zen Center

## By-Laws

*adopted by the Center's Members at the  
May 25, 1991, Annual Corporate Meeting  
and*

*adopted February 1991 by unanimous written consent of the  
Center's Board of Trustees, effective May 25, 1991*

*As amended by the Board of Trustees on November 2, 1991;  
as amended by unanimous written consent of the Board, effective September 8, 1992;  
as amended by the Board May 4-5, 1996;  
as amended by the Board May 2-3, 1998;  
as amended by the Board October 21-22, 2000;  
as amended by the Board May 12-13, 2001;  
as amended by the Board October 20-21, 2001;  
as amended by the Board November 16-17, 2002;  
as amended by the Board November 15-16, 2003;  
as amended by the Board October 15-16, 2005;  
as amended by the Board May 2-3, 2009;  
as amended by the Center's Members at the May 23, 2009, Annual Corporate Meeting;  
as amended by the Board October 24-25, 2009;  
as amended by unanimous written consent of the Board, effective July 8, 2010;  
as amended by unanimous written consent of the Board, effective January 4, 2012;  
as amended by unanimous written consent of the Board, effective February 29, 2012;  
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*as amended by the Board October 20-21, 2017;*  
*as amended by the Board October 17-18, 2020;*  
*as amended by the Board October 23-24, 2021;*  
*as amended by the Board May 14-15, 2022;*  
*and as amended by the Board June 2-3, 2023*

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[The *draftsman's notes* appearing in brackets are for the convenience of the reader and are not part of the text of these By-laws. References are to the New York Religious Corporations Law (RCL) and the New York Not-for-Profit Corporation Law (NPCL).]

## ARTICLE I. PURPOSES

The purposes of the Rochester Zen Center (the "Center" or the "Corporation" ), which is incorporated as a Zen Buddhist religious organization under Article 10 of the New York Religious Corporations Law, are as follows:

- (1) to foster the teachings of Zen Buddhism, as adapted to Western cultural forms and traditions;
- (2) to provide training in the disciplines, practices, and devotions of Zen Buddhism;
- (3) to provide suitable surroundings, instruction, and support for the teaching and practice of Zen Buddhism; and
- (4) to train and develop instructors and fully qualified teachers of Zen Buddhism, both lay and ordained.

In consultation with the Spiritual Director, the Board of Trustees may, from time to time, adopt Mission Statements setting forth the Center's purposes in greater detail.

## ARTICLE II. THE SPIRITUAL DIRECTOR

### A. AUTHORITY AND DUTIES OF THE SPIRITUAL DIRECTOR; HEAD OF THE ZENDO; INSTRUCTORS

The Spiritual Director shall direct the spiritual affairs of the Center in furtherance of its stated purposes. The Spiritual Director is authorized to appoint a Head of the Zendo, who shall serve as the Spiritual Director's principal assistant for spiritual affairs. In addition, the Spiritual Director may, from time to time, appoint Instructors, each of whom shall have such teaching and other duties relating to the Center's spiritual affairs as the Spiritual Director may specify. For purposes of these By-laws, the term "Instructor" shall mean any person authorized to perform spiritual teaching functions, including the giving of dokusan, daisan, or group instruction. An Instructor or Head of the Zendo shall serve in that capacity at the Spiritual Director's pleasure, provided however that the Board of Trustees may suspend or remove an Instructor or Head of the Zendo pursuant to the grievance procedure of Article X of these By-laws. If the Spiritual Director is absent and has not left instructions indicating otherwise, the Head of the Zendo, or the Head of Zendo's designee, shall direct the spiritual affairs of the Center.

### B. SELECTION OF THE SPIRITUAL DIRECTOR

The Center hereby specifies the following as constituting its rules and regulations for the selection of the Spiritual Director: [*Draftsman's note*: Section 25 of the RCL states that no provision of the RCL "authorizes the calling, settlement, dismissal or removal of a minister."]

1. *Spiritual Director's Designation of Successor.* Before leaving office, whether by retirement, resignation, or death, the Spiritual Director may designate a successor. The Spiritual Director may change or revoke such a designation at any time before the Spiritual Director leaves office. However, no such designation, change, or revocation shall have any force or effect (1) if not in writing and signed by the Spiritual Director or (2) if made while the Spiritual Director is suspended from office. In addition, the Board of Trustees may void any such designation, change, or revocation (1) if it is not notarized and dated, (2) if it is made while the Spiritual Director is temporarily incapable of discharging the duties of office as determined in accordance with Article II(C) of these By-laws and the designation, change, or revocation was made after the occurrence of such incapacity, or (3) if the Spiritual Director is retired from office pursuant to Article II(D) of these By-laws by reason of permanent disability, and the designation, change, or revocation was made after the occurrence of such disability. As permitted under section 709(a) of the Not-for-Profit Corporation Law, action of the Board pursuant to the preceding sentence shall require the affirmative vote of four of the six Trustees. [Draftsman's note: Under section 709(b) of the NPCL, adoption, amendment, or repeal of the preceding sentence must be effected by a vote of two-thirds of the Center's entire membership. The preceding sentence was so adopted on May 25, 1991.] The Spiritual Director shall keep on deposit in a safe or safe deposit box a signed, dated, and notarized original of any designation, change, or revocation made pursuant to this paragraph.

2. *Selection by Succession Committee.* The Spiritual Director may designate a Succession Committee, the members of which shall serve at the Spiritual Director's pleasure. However, no appointment to or dismissal from the Succession Committee by the Spiritual Director shall have any force or effect if it is made while the Spiritual Director is suspended from office. In addition, the Board of Trustees may void any such appointment or dismissal (1) if it is made while the Spiritual Director is temporarily incapable of discharging the duties of office as determined in accordance with Article II(C) of these By-laws and the appointment or dismissal was made after the occurrence of such incapacity, or (2) if the Spiritual Director is retired from office pursuant to Article II(D) of these By-laws by reason of permanent disability and the appointment or dismissal was made after the occurrence of such disability. If the Spiritual Director designates a succession Committee, the Committee shall consist of three persons, an original signed and dated list of whose names the Spiritual Director shall keep on file with both the Chairman of the Board of Trustees and the Vice-president. Two members of the Committee shall constitute a quorum. Except as provided in Article II(B)(3) of these By-laws, the Succession Committee shall choose the Spiritual Director's successor if the Spiritual Director leaves office without having validly designated a successor pursuant to Article II(B)(1) of these By-laws or if no successor designated by the Spiritual Director is able or willing to serve.

3. *Selection by Committee of Delegates.* Neither shall any successor designated by the Spiritual Director take office nor shall the Succession Committee choose the Spiritual Director's successor (1) if the Spiritual Director is removed from office pursuant to Articles II(D) and X(D)(3) of these By-laws other than by reason of permanent disability, or (2) if the Board of Trustees determines that, but for the Spiritual Director's resignation, retirement, or death, the Spiritual Director would have been so removed from office. As permitted under section 709(a) of the Not-for-Profit Corporation Law, a determination by the Board pursuant to clause (2) of the preceding sentence shall require the affirmative vote of four of the

six Trustees. [*Draftsman's note:* Under section 709(b) of the NPCL, adoption, amendment, or repeal of the preceding sentence must be effected by a vote of two-thirds of the Center's entire membership. The preceding sentence was so adopted on May 25, 1991.] A Committee of Delegates comprising the Center's Trustees and Officers shall select the Spiritual Director's successor under the following circumstances: (1) in a case falling under the first sentence of this paragraph; or (2) (a) the Spiritual Director has not validly designated a Succession Committee or the Succession Committee is otherwise unable to act, and (b) the Spiritual Director leaves office without having validly designated a successor pursuant to Article II(B)(1) of these By-laws or no successor designated by the Spiritual Director is able or willing to serve. In doing so, the Committee of Delegates shall consult with any validly appointed members of the Succession Committee. The selection of the Spiritual Director's successor shall require the affirmative vote of six members of the Committee of Delegates.

4. *Action by Board of Trustees; Acting Spiritual Director.* No Spiritual Director shall take office except upon certification by the Board of Trustees that that person has been properly designated or selected in accordance with this Article II(B). As permitted under section 709(a) of the Not-for-Profit Corporation Law, certification by the Board pursuant to the preceding sentence shall require the affirmative vote of four of the six Trustees. [*Draftsman's note:* Under section 709(b) of the NPCL, adoption, amendment, or repeal of the preceding sentence must be effected by a vote of two-thirds of the Center's entire membership. The preceding sentence was so adopted on May 25, 1991.] The Board may appoint an Acting Spiritual Director pending selection of a Spiritual Director by the Succession Committee or Committee of Delegates or pending a Board determination pursuant to the first sentence of this paragraph. However, as specified in section 200 of the Religious Corporations Law, the Board shall have no power to appoint a Spiritual Director. An Acting Spiritual Director shall serve at the Board's pleasure and shall perform the functions of a Spiritual Director, other than the functions of (1) designating a successor or changing or revoking such a designation, (2) appointing or removing members of the Succession Committee, and (3) appointing or removing the Trustee and Alternate Trustee elected by the Spiritual Director pursuant to Article III of these By-laws.

5. *Committee Vacancies.* If the Spiritual Director has validly designated a Succession Committee, a vacancy on the Succession Committee occurring while the office of Spiritual Director is also vacant shall be filled by the Board of Trustees.

### C. TEMPORARY INCAPACITY OF THE SPIRITUAL DIRECTOR

If the Spiritual Director or the Board of Trustees determines that the Spiritual Director is temporarily incapable of discharging the duties of office and the Spiritual Director has not given instructions indicating otherwise before the occurrence of such incapacity, the Board of Trustees shall have the authority to appoint an Acting Spiritual Director pursuant to the provisions of Article II(B)(4) of these By-laws. As permitted by section 709(a) of the Not-for-Profit Corporation Law, the affirmative vote of four of the six Trustees shall be required for the Board of Trustees to determine that the Spiritual Director is temporarily incapable of discharging the duties of office. [*Draftsman's note:* Under section 709(b) of the NPCL, adoption, amendment, or repeal of the preceding sentence must be effected by a vote of two-thirds of the Center's entire membership. The preceding sentence was so adopted on May 25, 1991.] Whether the Spiritual Director or the Board

of Trustees has determined the Spiritual Director to be temporarily incapacitated, a vote of the Board of Trustees shall be required to determine that the Spiritual Director's temporary incapacity has ended.

#### D. REMOVAL OR SUSPENSION OF THE SPIRITUAL DIRECTOR FROM OFFICE

In accordance with section 25 of the Religious Corporations Law, the Center hereby specifies the following as constituting its rules and regulations for the removal of the Spiritual Director:

1. *Action by Board of Trustees; Corporate Meeting; Retirement for Disability.* Except as provided in the following paragraph, the Spiritual Director may be removed from office only by a corporate meeting of the Members acting upon the recommendation of the Board of Trustees, made pursuant to Article X of these By-laws, that the Spiritual Director be removed; no other vote of a corporate meeting purporting to remove the Spiritual Director shall have any force or effect. Notwithstanding the provisions of section 195 of the Religious Corporations Law, the Spiritual Director shall in no event preside at such a meeting. Rather, consistent with section 195, the eldest Officer present, other than the Spiritual Director, shall preside.

2. *Removal of the Spiritual Director Because of Permanent Disability.* Notwithstanding the provisions of the preceding paragraph, the Spiritual Director may be removed from office in accordance with this paragraph if the Spiritual Director is unable to perform the duties of the office because of permanent physical or mental disability. Removal of the Spiritual Director from office pursuant to this paragraph shall require the vote of six members of a Committee of Delegates comprising the Center's Trustees and Officers, with the exclusion of the Spiritual Director and the Trustee appointed by the Spiritual Director. The Committee of Delegates shall meet upon the request of a majority of the Board of Trustees. If the Spiritual Director's physical and mental condition so permits, the Spiritual Director shall be afforded the opportunity to meet with the Committee. If the Spiritual Director is removed from office by reason of permanent disability, the Spiritual Director shall be deemed to have retired from office.

3. *Suspension of the Spiritual Director from Office.* The Board of Trustees shall have the authority to suspend the Spiritual Director from office, subject to action of the Ethics and Advisory Committee or the Board regarding the Spiritual Director pursuant to Article X of these By-laws, and subject to any vote of a subsequent corporate meeting regarding the Spiritual Director's continuance in office. The Board's authority under the preceding sentence is in addition to the Board's authority to suspend the Spiritual Director as a sanction pursuant to Article X of these By-laws. If the Spiritual Director is suspended from office for any reason, the Board shall have the authority to appoint an Acting Spiritual Director pursuant to the provisions of Article II(B)(4) of these By-laws. As permitted by section 709(a) of the Not-for-Profit Corporation Law, the affirmative vote of four of the six Trustees shall be required to suspend the Spiritual Director from office pursuant to this paragraph. [Draftsman's note: Under section 709(b) of the NPCL, adoption, amendment, or repeal of the preceding sentence must be effected by a vote of two-thirds of the Center's entire membership. The preceding sentence was so adopted on May 25, 1991.] However, as specified in section 200 of the Religious Corporations Law, the Board of Trustees shall have no power to remove the Spiritual Director from office.

## E. THE SPIRITUAL DIRECTOR'S SALARY

In accordance with section 25 of the Religious Corporations Law, the Center hereby specifies the following as constituting its rules and regulations for fixing the Spiritual Director's salary: The Spiritual Director's salary shall be determined from time to time by a Compensation Committee comprising the Center's Officers and the Chairman of the Board of Trustees (excluding the Spiritual Director, should the Spiritual Director be an Officer or the Chairman). Any proposed change in the Spiritual Director's salary shall require the approval of all but one of the total number of Committee members. However, no change in the Spiritual Director's salary proposed by the Committee shall take effect until such change has been ratified in accordance with the procedure specified in the following paragraph.

The Compensation Committee shall forward any proposed change in the Spiritual Director's salary to the Board of Trustees. If the Board does not acquiesce in the proposed change, the Board shall place the proposed change on the agenda of a special or annual corporate meeting of the Center's members, unless the Compensation Committee reconsiders and rescinds the proposed change before the meeting takes place. If the proposed change is rejected by the meeting of members, the Spiritual Director's salary shall continue unchanged. In accordance with section 200 of the Religious Corporations Law, the Board of Trustees shall have no power to fix the Spiritual Director's salary.

## F. OPTION FOR SPIRITUAL CO-DIRECTORS

1. Selection of Option and of Co-Director. The Board of Trustees may, from time to time, determine that the position of Spiritual Director be held jointly by two Spiritual Co-Directors. In such a case, the person already serving as Spiritual Director shall appoint the other Co-Director.

2. Lack of Agreement between Spiritual Co-Directors. If the Spiritual Co-Directors are unable to agree regarding a matter, the Chair of the Board of Trustees shall mediate the disagreement. If mediation is unsuccessful, the Board of Trustees shall decide the question.

3. Reversion to Single Spiritual Director. If either Spiritual Co-Director leaves office, whether by retirement, resignation, death, removal, or suspension from office, the other shall then serve as sole Spiritual Director, unless the Board of Trustees again determines that the position of Spiritual Director be held jointly by two Spiritual Co-Directors

4. References to the Spiritual Director. At all times during which Spiritual Co-Directors shall serve in office, all references herein to the Spiritual Director shall apply equally to both Spiritual Co-Directors.

## ARTICLE III. THE BOARD OF TRUSTEES

### A. AUTHORITY AND DUTIES OF THE BOARD OF TRUSTEES; BUSINESS MANAGER

1. *Functions; Board To Be Kept Informed; Chairman.* The Board of Trustees (the “Board”) shall set administrative policy for the Center and shall ensure that the Center is administered in a fiscally responsible manner that effectively furthers the Center’s stated purposes. As specified in section 701 of the Not-for-Profit Corporation Law, the Board shall manage the Center; as specified in section 5 of the Religious Corporations Law, the Board shall have custody and control of all temporalities and property of the Center and of the revenues therefrom, and shall administer them in accordance with the disciplines, rules, and usages of the Center and in accordance with applicable provisions of law relating thereto. The Spiritual Director, Officers, and staff of the Center shall keep the Board informed of all significant activities of the Center and of all matters significantly affecting the administration, management, or activities of the Center. The Board shall elect a Chairman from among its members; however in accordance with section 713(f) of the Not-for-Profit Corporation Law, no employee of the Center shall serve as Chairman of the Board.

2. *Powers; Interpretation of Certificate and By-laws; Staff.* The Board shall have all powers implicitly or explicitly vested in it by law, by the Center’s Certificate of Incorporation, or by these By-laws, and shall have authority to take any action that the Board may consider necessary or desirable in the management of the Center’s affairs. The Board shall have authority to resolve any question regarding the interpretation of the Certificate of Incorporation or these By-laws. The Board, in consultation with the Spiritual Director, may appoint or authorize the appointment of such staff as will further the stated purposes of the Center.

3. *Business Manager.* The Board of Trustees shall appoint a Business Manager, who shall report to the Board and who shall serve at the Board’s pleasure. The Business Manager shall administer the day-to-day financial affairs of the Center under the Board’s direction and under the oversight of the Treasurer. The Business Manager shall also perform such other duties as may be prescribed by the Board or required by these By-laws. The Business Manager shall ensure that the financial affairs of the Center are conducted in a responsible manner and that financial records are maintained as required by law. Unless excused by the Board, the Business Manager shall attend the meetings of the Board. If the Business Manager is absent and has not left instructions indicating otherwise, the Vice-president shall administer the Center’s financial affairs; if the Business Manager and the Vice-president are both absent and have not left instructions indicating otherwise, the Secretary shall administer the Center’s financial affairs; if the Business Manager, the Vice-president, and the Secretary are all absent and have not left instructions indicating otherwise, the Treasurer or the Treasurer’s designee shall administer the Center’s financial affairs.

4. *Committees of the Board and the Corporation.* Consistent with section 712(a) of the Not-for-Profit Corporation Law, the Board, by resolution adopted by a majority of the entire Board (that is, four of the six Trustees), may designate from among its members committees, each consisting of three or more Trustees. As specified in section 712(d), each committee of the Board shall serve at the Board’s

pleasure. As provided in section 712(e), committees, other than committees of the Board, whether created by the Board or by the Members, shall be committees of the Corporation, but no such committee shall have the authority to bind the Board. The members of each such committee shall be selected as provided by the Board. As provided in section 712(e), provisions of the Not-for-Profit Corporation Law applicable to Officers generally shall apply to members of such Committees.

5. *Real Property; Limitation on Debt; Judicial Approval.* Through adoption of this paragraph, the Members of the Center hereby authorize the Board to purchase, sell, mortgage, or lease real property and hereby expressly consent to any such purchase, sale, mortgage, or lease that shall be or heretofore has been authorized by the Board in conformity with section 509 of the Not-for-Profit Corporation Law. [Draftsman's note: See By-laws, Article III(E)(1). The first sentence of this paragraph was adopted by vote of the Center's Members on May 25, 1991.] Acting pursuant to section 200 of the Religious Corporations Law, the Members also hereby authorize the Board to incur debts beyond those necessary for the care of the Center's property when, in the judgment of the Board, incurring such debts is prudent and would aid in the administration of the Center's financial affairs. The Center shall not purchase real property, or sell, mortgage, or lease any of its real property without complying with the applicable provisions of Article III(E)(1) of these By-laws, section 509 of the Not-for-Profit Corporation Law, and section 12 of the Religious Corporations Law. [Draftsman's note: The second and third sentences of this paragraph were adopted by vote of the Center's Members on May 23, 2009.]

## B. TERM AND QUALIFICATIONS

1. *Number of Trustees; Term; Computation of Time.* Consistent with sections 195 and 197 of the Religious Corporations Law, sections 703 and 704 of the Not-for-Profit Corporation Law, and the Center's Certificate of Incorporation, the Board of Trustees consists of six Trustees, who serve for three-year terms, the terms of two Trustees expiring each year. The term of one of the three Trustees elected by the Center's Members pursuant to Article III(C)(1) of these By-laws shall expire each year when a successor is chosen at the Center's annual corporate meeting. The term of one of the three Trustees elected by the Board or the Spiritual Director pursuant to each of Articles III(C)(2) and III(C)(3) shall expire at that time, as well, and that Trustee's successor shall then take office. For purposes of determining (1) the terms of office of Trustees, (2) the waiting period under Article III(B)(2) of these By-laws during which a Trustee who has served three terms on the Board may not again serve, and (3) whether, for purposes of Article III(B)(2), a Trustee has served more than two years of a term, the time between the Center's annual corporate meetings shall be reckoned as one year. [Draftsman's note: Cf. RCL section 196.]

2. *Qualifications; Term Limitation; Anti-Nepotism Rule; Employees Disqualified.* Consistent with section 701 of the Not-for-Profit Corporation Law, sections 195 and 199 of the Religious Corporations Law, and Article VI(D) of these By-laws, a Trustee must be at least eighteen years old and must be a Member of the Center. As permitted by section 701 of the Not-for-Profit Corporation Law, the following additional qualifications are prescribed for Trustees: (1) Except for the Trustee elected by the Spiritual Director, a Trustee is limited to serving three consecutive three-year terms, after which that person may not again serve on the Board of Trustees for one year. A term of which a Trustee serves two years or less shall not be counted in determining whether a Trustee has served three consecutive terms; however, a

term of which a Trustee serves more than two years shall be counted. (2) Neither (a) the Spiritual Director's, the Business Manager's, nor any Trustee's parent, child, husband, wife, brother, or sister, nor (b) the parent, child, husband, wife, brother, or sister of any person specified in clause (a) of this sentence may be elected as a Trustee or Alternate Trustee by the Board or the Spiritual Director pursuant to Article III(C)(2) or III(C)(3) of these By-laws; however, a person specified in clause (a) or (b) of this sentence may be elected as a Trustee by the Center's Members pursuant to Article III(C)(1) of these By-laws and may complete a term to which the person has been previously elected by the Board or the Spiritual Director pursuant to Article III(C)(2) or III(C)(3). (3) No employee or long-term trainee of the Center may serve as a Trustee or Alternate Trustee; however, a person who becomes a Center employee or long-term trainee while already serving as a Trustee, as well as any employee or long-term trainee who was serving as a Trustee on October 22, 2023, may complete the term to which that person was previously elected.

### C. ELECTION OF TRUSTEES

In accordance with section 195 of the Religious Corporations Law and section 703 of the Not-for-Profit Corporation Law, at each annual corporate meeting of the Center successors to those Trustees whose terms then expire shall be elected pursuant to the following procedures:

1. *Trustees Elected by the Center's Members.* Three of the Center's six Trustees shall be elected by ballot of the Center's Members. Members shall be entitled to cast a number of votes equal to the number of Trustees then to be elected by vote of the Members. Trustees elected pursuant to this paragraph shall be elected from among candidates nominated by a five-or-six member Nominating Committee comprising (1) the Spiritual Director or Co-Directors, (2) an Officer of the Center designated by the Board of Trustees, (3) a Trustee designated by the Board of Trustees, and (4) two Members of the Center designated by the Board of Trustees, neither of whom is a Spiritual Director, an Officer, or a Trustee of the Center. Prior to the annual corporate meeting, the Nominating Committee shall nominate a number of candidates equal to twice the number of Trustees to be elected by vote of the Center's Members. Consistent with section 195 of the Religious Corporations Law, Trustees shall be elected by ballot in accordance with the provisions of Article VII of these By-laws. In case more than one Trustee is to be elected pursuant to this paragraph at an annual corporate meeting, the number of votes received by a candidate shall determine the seat on the Board to which that candidate is elected, with the candidate receiving the most votes being elected to a full three-year term. Consistent with section 199 of the Religious Corporations Law, if a Board seat filled under this paragraph becomes vacant, the Board shall elect a successor Trustee to fill the vacancy until the next annual corporate meeting; the anti-nepotism rule of Article III(B)(2) of these By-laws shall apply to the election of a successor Trustee by the Board under this sentence.

2. *Trustees Elected by the Board of Trustees.* As permitted under section 703(a) of the Not-for-Profit Corporation Law, two Trustees shall be elected by a membership section consisting of the Center's Board of Trustees. If the term of office of a Trustee elected pursuant to this paragraph is to expire at an annual corporate meeting, the Board may, by ballot, elect a successor Trustee pursuant to the preceding sentence at any Board meeting occurring within the six months preceding the annual meeting, or may



elect such a successor by unanimous written consent during that six-month period in accordance with Article III(E)(3) of these By-laws. Election pursuant to the preceding sentence shall be deemed to take place, *nunc pro tunc*, as of the time of the annual meeting. The Board shall have the authority to reconsider and rescind its election of a Trustee pursuant to this paragraph at any time before the annual meeting. Consistent with section 705(b) of the Not-for-Profit Corporation Law, a vacancy in the office of Trustee under this paragraph shall be filled by action of the Board of Trustees. The proxy voting provisions of Article VII of these By-laws shall not apply to actions taken pursuant to this paragraph; however, if an absent Trustee is participating in a meeting of the Board by conference telephone or similar communications equipment, as permitted under Article III(E)(3), the absent Trustee may instruct one of the Trustees physically present at the meeting to mark the absent Trustee's ballot on the absent Trustee's behalf.

3. *Trustee Elected by the Spiritual Director.* As permitted under section 703(a) of the Not-for-Profit Corporation Law, the sixth Trustee shall be elected by a membership section consisting solely of the Spiritual Director. Consistent with section 703(d) of the Not-for-Profit Corporation Law, the Spiritual Director may also elect an Alternate Trustee, who may, if the Trustee elected by the Spiritual Director is absent from a meeting of the Board, participate in such meeting in place of the absent Trustee upon written notice to the Secretary of the Corporation. Notwithstanding the provisions of Article III(B)(2) of these By-laws, a Spiritual Director may serve as the Trustee or Alternate Trustee elected by the Spiritual Director(s). Consistent with section 705(b) of the Not-for-Profit Corporation Law, a vacancy in the office of Trustee or Alternate Trustee under this paragraph shall be filled by action of the Spiritual Director, provided that, notwithstanding anything to the contrary in this paragraph, the Board of Trustees shall fill such a vacancy if the office of Spiritual Director is vacant, if the Spiritual Director has been suspended from office, or if a determination has been made pursuant to Article II(C) of these By-laws that the Spiritual Director is temporarily incapacitated.

4. *Gender of Trustees.* In electing or nominating Trustees, the Board, the Spiritual Director, and the Nominating Committee established by Article III(C)(1) of these By-laws shall endeavor to ensure that no more than four of the six Trustees are of the same gender.

#### D. REMOVAL OF TRUSTEES

1. *Removal by Members, Board of Trustees, or Spiritual Director.* Consistent with section 706(a) of the Not-for-Profit Corporation Law, those Trustees elected by the Center's Members pursuant to Article III(C)(1) of these By-laws may be removed either by vote of the Members or by vote of the Board of Trustees. Consistent with section 706(c)(2), a Trustee elected by the Board of Trustees pursuant to Article III(C)(2) may be removed only by vote of the Board of Trustees. Consistent with section 706(c)(2), a Trustee or Alternate Trustee elected by the Spiritual Director pursuant to Article III(C)(3) may be removed only by the Spiritual Director. However, notwithstanding the preceding sentence, the Board of Trustees may remove a Trustee or Alternate Trustee elected by the Spiritual Director if the office of Spiritual Director is vacant, if the Spiritual Director has been suspended from office, or if a determination has been made pursuant to Article II(C) of these By-laws that the Spiritual Director is temporarily

incapacitated. In accordance with section 706(b), it is hereby specified that only the Trustee and Alternate Trustee elected by the Spiritual Director may be removed without cause; all other Trustees may be removed only for cause and only in accordance with the procedures specified in Article III(D)(2) of these By-laws.

2. *Removal Procedure.* In any proceeding to remove, by vote of the Board of Trustees, a Trustee elected by the Members or the Board pursuant to Article III(C)(1) or III(C)(2) of these By-laws, the Board shall follow the procedures of Article X of these By-laws. Any proceeding to remove, by vote of the Members, a Trustee elected by the Members pursuant to Article III(C)(1) shall be conducted in accordance with the procedures of Article VII of these By-laws.

3. *Membership Requirement.* Consistent with section 199 of the Religious Corporations Law and Article VI(D) of these By-laws, if a Trustee ceases to be a Member of the Center that Trustee's office shall thereby become vacant without need for removal pursuant to the provisions this Article III(D).

#### E. MEETINGS OF THE BOARD OF TRUSTEES; QUORUM; NOTICE

1. *Quorum; Presiding Officer; Tie Votes; Majorities; Real Property.* As specified in section 198 of the Religious Corporations Law, a majority (that is, four) of the Trustees lawfully convened shall constitute a quorum for the transaction of business. The Chairman of the Board shall preside; in the Chairman's absence, those Trustees present shall designate a presiding officer. As specified in section 198, in case of a tie vote, the presiding officer shall have an additional vote. Consistent with section 708(d) of the Not-for-Profit Corporation Law, unless otherwise provided by law or in these By-laws, the vote of the majority of the Trustees present shall be the act of the Board. As required by section 509(a) of the Not-for-Profit Corporation Law, the Center shall not purchase real property, unless such purchase is authorized by the vote of a majority of Trustees of the Board or of a majority of a committee authorized by the Board, provided that if such property would, upon purchase thereof, constitute all, or substantially all, of the assets of the Center, then the vote of two-thirds of the entire Board shall be required. Furthermore, as required by section 509(b), the Center shall not sell, mortgage, lease, exchange or otherwise dispose of its real property unless authorized by the vote of a majority of Trustees of the Board or of a majority of a committee authorized by the Board; provided that if such property constitutes all, or substantially all, of the assets of the Center, then the vote of two-thirds of the entire Board shall be required. As required by section 509(c), if the Center authorizes a committee to act pursuant to sections 509(a) and 509(b), the committee shall promptly report any actions taken to the Board, and in no event after the next regularly scheduled meeting of the Board. In addition, the Center shall not sell, mortgage, or lease for a term exceeding five years any of its real property without applying for and obtaining leave of the court, as required under section 12 of the Religious Corporations Law.

2. *Regular Meetings; Special Meetings; Notice; Waiver.* The Board shall hold at least two regular meetings each year at times and places fixed by the Board. Consistent with section 198 of the Religious Corporations Law and section 711(b) of the Not-for-Profit Corporation Law, any two of the Trustees may call a special meeting of the Board by giving three days' notice to the other Trustees; however, if such notice is neither personal nor by mail, additional notice shall be given personally or by mail at least

twenty-four hours before the meeting. In addition, consistent with section 710(c) of the Not-for-Profit Corporation Law, the President or the Vice-president may call a special meeting of the Board upon three days' notice to the Trustees. Pursuant to section 711(c) of the Not-for-Profit Corporation Law, any Trustee may waive lack of notice by written or electronic waiver or by attending the meeting without protesting, prior thereto or at its commencement, the lack of notice. As permitted under section 711(d), notice of any adjournment of a meeting of the Board to another time or place shall be given to the Trustees who were not present at the time of the adjournment and, unless such time and place are announced at the meeting, to the other Trustees. However, the preceding sentence shall not apply if (1) a Board meeting is adjourned to a time no later than the end of the second day following the day on which the meeting is adjourned and (2) the time and place to which the meeting are adjourned are announced at the meeting.

3. *Action without Meeting; Participation by Conference Telephone or Electronic Video Screen.* As specified in section 708(b) of the Not-for-Profit Corporation Law, any action required or permitted to be taken by the Board of Trustees or any committee thereof may be taken without a meeting if all members of the Board or committee consent to the adoption of a resolution authorizing the action. Such consent may be written or electronic. If written, the consent must be executed by each Trustee by signing such consent or causing that Trustee's signature to be affixed to such consent by any reasonable means including, but not limited to, facsimile signature. If electronic, the transmission of the consent must be sent by electronic mail and set forth, or be submitted with, information from which it can reasonably be determined that the transmission was authorized by the Trustee. The resolution and the consents thereto shall be filed with the Board's minutes. As permitted by section 708(c), any one or more members of the Board or of any committee thereof who is not physically present at a meeting of the Board or a committee may participate by means of a conference telephone or similar communications equipment or by electronic video screen communication. Participation by such means shall constitute presence in person at a meeting as long as all persons participating in the meeting can hear each other at the same time and each Trustee can participate in all matters before the Board, including, without limitation, the ability to propose, object to, and vote upon a specific action to be taken by the Board or committee.

## F. HONORARY TRUSTEES

The Board may, from time to time, designate one or more Honorary Trustees, to hold such position at the Board's pleasure. Unless otherwise specified by the Board, Honorary Trustees shall serve for a term of one year. An Honorary Trustee shall be entitled to participate in meetings of the Board as an advisor, but shall not be entitled to vote or otherwise to exercise the authority or powers of a Trustee.

Notwithstanding anything to the contrary in the foregoing, if the Spiritual Director is not a Trustee, the Spiritual Director shall serve, ex officio, as an Honorary Trustee.

## ARTICLE IV. OFFICERS

### A. OFFICES; ELECTION OF OFFICERS; TERMS

The Center's Officers shall be as follows: (1) a President or two Co-Presidents, (2) a Vice-president, (3) a Secretary, and (4) a Treasurer; there shall also be such Assistant Officers as the Board of Trustees may find necessary. As provided by section 713(a) of the Not-for-Profit Corporation Law, any two or more offices may be held by the same person, except the offices of President and Secretary. Consistent with section 713(a), the Board of Trustees shall elect the Officers and any Assistant Officers. Consistent with section 713(c), Officers shall be elected annually.

### B. DUTIES OF OFFICERS

Unless excused by the Board of Trustees, the Center's Officers shall attend the meetings of the Board.

1. *The President or Co-Presidents.* The President or Co-Presidents shall have such duties as are prescribed by the Board. It is contemplated that the Board of Trustees will normally elect the Spiritual Director or Co-Directors as President or Co-Presidents, but the Board shall not be required to do so. For purposes of these By-laws, the term "President" shall refer to either or both of two Co-Presidents.

2. *The Vice-president.* The Vice-president shall report to the Board of Trustees and shall perform such duties as may be prescribed by the Board or required by these By-laws.

3. *The Secretary.* The Secretary shall report to the Board and shall be responsible for maintaining the corporate records of the Center, including the By-laws and the Certificate of Incorporation. The Secretary shall be responsible for taking and maintaining the minutes of Board meetings and corporate meetings of Members, and shall perform such other duties as may be prescribed by the Board or required by these By-laws. The Secretary shall make such minutes, as well as the By-laws, the Certificate of Incorporation, and the Board's report presented at the Center's annual corporate meeting, available for inspection and copying by Members and trial members of the Center. The Secretary shall ensure that every certificate required to be signed and delivered to the office of the County Clerk under the Not-for-Profit Corporation Law, as modified by section 2-b(d) of the Religious Corporations Law, shall conform to the requirements of section 104 of the Not-for-Profit Corporation Law.

4. *The Treasurer; Finance Committee.* The Treasurer shall report to the Board and shall be responsible for oversight of all financial affairs of the Center, including the maintenance of financial records and the preparation of financial reports, and shall perform such other duties as may be prescribed by the Board or required by these By-laws. A Finance Committee comprising the Treasurer, the Business Manager and such other members as the Board may appoint, shall, consistent with any instructions or policies adopted by the Board, manage the investment of the Center's funds, including the purchase, sale, or transfer of securities on behalf of the Center. The Business Manager and any subordinates shall keep the Treasurer fully informed of the Center's financial affairs and shall ensure the Treasurer access to all records and information pertaining to such affairs. The Treasurer shall, with the cooperation the Business Manager, assist the Board in the preparation and presentation of the report that

the Board must submit to the annual corporate meeting of Members pursuant to section 519 of the Not-for-Profit Corporation Law. In addition, the Treasurer, with the assistance of the Business Manager, shall submit quarterly written financial reports to the Board containing at least the information required to be included in the Board's report to the annual corporate meeting.

5. *Assistant Officers.* An Assistant Officer shall report to the Officer whom the Assistant Officer assists and shall perform such duties as may be prescribed by that Officer or by the Board of Trustees.

### C. REMOVAL OF OFFICERS

Consistent with section 714(a) of the Not-for-Profit Corporation Law, any Officer or Assistant Officer may be removed by the Board at any time with or without cause.

## ARTICLE V. INDEMNIFICATION AND COMPENSATION OF TRUSTEES AND OFFICERS

### A. INDEMNIFICATION

The Center shall indemnify to the full extent permitted by Article 7 of the Not-for-Profit Corporation Law and other applicable provisions of law any person made or threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether criminal, civil, administrative, or investigative, by reason of the fact that such person, or the person's testator or intestate is or was a Trustee or Officer of the Center. In addition to other indemnification, the Center shall, subject only to any limitation imposed by law, pay and indemnify each such person – in advance of the final disposition of any criminal, civil, administrative, or investigative action, suit, or proceeding – for all reasonable expenses incurred by such person in defending such action, suit, or proceeding. The Center shall make such payment upon receipt of a written undertaking by or on behalf of the person to repay such amount if it is ultimately determined that the person is not entitled to be indemnified by the Center. In determining whether such a person is entitled to indemnification under this Article, the Not-for-Profit Corporation Law, or otherwise, the burden of proof shall fall upon the Center or any person who takes the position that indemnification is not authorized. Indemnification rights provided under this Article shall constitute contractual rights that cannot be denied retroactively without the consent of the person benefited thereby.

### B. COMPENSATION

Consistent with section 515(b) of the Not-for-Profit Corporation Law, the Center may pay compensation in a reasonable amount to members, Trustees, or Officers, for services rendered. As provided in section 515(b), "No person who may benefit from such compensation may be present at or otherwise participate in any board or committee deliberation or vote concerning such person's compensation; provided that nothing in this section shall prohibit the board or authorized committee from requesting that a person who may benefit from such compensation present information as background or answer questions at a committee or board meeting prior to the commencement of deliberations or voting relating thereto."

Unless otherwise specified by the Board of Trustees, all compensation paid by the Center to any person who both (1) is a Trustee or Officer of the Center and (2) is employed by the Center in a capacity other than as a Trustee or Officer shall be deemed paid to that person solely as compensation for the person's services rendered to the Center in the capacity other than as a Trustee or Officer. [*Draftsman's note:* Section 720-a of the NPCL provides partial immunity from liability for *uncompensated* trustees and officers of corporations, such as the Center, which qualify under section 501(c)(3) of the United States Internal Revenue Code.]

## C. DEFINITIONS

For purposes of this Article V, the term "Officer" includes an Assistant Officer, and the term "Trustee" includes an Alternate Trustee or Honorary Trustee.

## ARTICLE VI. MEMBERSHIP

### A. MEMBERS

In consultation with the Board of Trustees and subject to the Board's approval, the Spiritual Director shall specify the requirements and procedures whereby a person may become a Member of the Center. As permitted by section 601 of the Not-for-Profit Corporation Law, such requirements and procedures may provide for one or more classes of Members. The Spiritual Director shall specify the privileges and obligations of each class of membership as they pertain to spiritual matters; the Board of Trustees shall specify such privileges and obligations as they pertain to financial and other secular matters. Persons admitted to membership in accordance with this paragraph, and no others, shall constitute the "members" of the Center within the meaning of section 601 of the Not-for-Profit Corporation Law and of section 195 of the Religious Corporations Law. All persons who are full voting Members of the Center as of the date of adoption of this paragraph shall be deemed to have been admitted to membership in accordance with this paragraph. [*Draftsman's note:* This paragraph was adopted on May 25, 1991.] The Center's Secretary, or the Secretary's designee, shall maintain a current list of the Center's Members. The Secretary shall make available for inspection and copying by Members and trial members of the Center a written copy of the requirements, procedures, privileges, and obligations mentioned in this paragraph.

### B. SUSPENSION OF MEMBERSHIP

1. *Suspension by Spiritual Director and Vice-president.* The Spiritual Director or a designee and the Vice-president or a designee may, acting jointly, totally or partially suspend the membership of any person, if necessary to protect the safety of persons or property or to prevent disruption of the Center's activities. However, such suspension of membership shall not affect the suspended Member's right to vote by proxy at any special or annual corporate meeting of the Center, and, if the Member is a Trustee, shall not affect the Member's right to act in that capacity. A suspension pursuant to this paragraph shall not extend past the next meeting of the Board of Trustees.

2. *Suspension by Board of Trustees.* While the Board of Trustees has under consideration whether to terminate a person's membership pursuant to section VI(C) of these By-laws, the Board may suspend that person's membership in the Center. However, any such suspension shall be subject to the limitations, other than the limitation regarding duration, specified in the preceding paragraph.

### C. LOSS OF MEMBERSHIP

1. *By Action of Spiritual Director.* The Spiritual Director, acting in consultation with the Business Manager and the Head of the Zendo, shall have the authority to terminate a person's membership in the Center, in accordance with Article VI(E) of these By-laws, by reason of non-payment of sums owed the Center. However, the Board of Trustees shall have the authority to rescind any such termination for good cause shown.

2. *By Action of Spiritual Director and Board of Trustees.* If the Spiritual Director determines that a Member is acting contrary to the best interests of the Center or is not fulfilling the obligations and requirements of membership, the Spiritual Director may recommend that the Board of Trustees terminate the person's membership. The Board shall have the authority to act upon the Spiritual Director's recommendation after affording the person reasonable notice and opportunity to be heard. As permitted under section 709(a) of the Not-for-Profit Corporation Law, termination of a person's membership pursuant to this paragraph shall require the affirmative vote of four of the six Trustees. [Draftsman's note: Under section 709(b) of the NPCL, adoption, amendment, or repeal of the preceding sentence must be effected by a vote of two-thirds of the Center's entire membership. The preceding sentence was so adopted on May 25, 1991.]

3. *Through Disaffiliation of Affiliate.* If a group that is affiliated with the Center pursuant to Article IX of these By-laws becomes disaffiliated from the Center, unless otherwise provided by the Board of Trustees the members of the former affiliate shall be offered the option of continuing their membership in the Rochester Zen Center with the same rights and responsibilities as members who do not hold their membership in the Center in consequence of their membership in one of its affiliates.

### D. QUALIFICATION TO VOTE; MEMBERSHIP AND AGE LIMITATIONS

The right to vote at any annual or special corporate meeting of the Center – or with respect to any other matter required or permitted by law, by the Center's Certificate of Incorporation, or by these By-laws to be voted upon by the Center's Members – shall, as permitted under section 195 of the Religious Corporations Law, be vested solely in those persons who are Members of the Center in good and regular standing by admission into membership pursuant to Article VI(A) of these By-laws. [Draftsman's note: In accordance with section 195 of the RCL, the preceding sentence – which restricts the right to vote to Members of the Center, thus excluding “those who have been stated attendants on divine worship in such church and have regularly contributed to the financial support thereof during the year next preceding” – was adopted by the Center's qualified voters on May 25, 1991.] As permitted under section 4-a of the Religious Corporations Law, all members sixteen years of age or older may vote. [Draftsman's note: In accordance with section 4-a of the RCL, the preceding sentence, which permits Members between the ages of sixteen and eighteen to vote, was adopted by the Center's qualified voters on May 25, 1991.]

## E. DUES; LOSS OF MEMBERSHIP FOR NON-PAYMENT

As permitted by section 507 of the Not-for-Profit Corporation Law, the Center – in accordance with policies adopted by the Board of Trustees – may levy initiation fees, dues, and assessments upon its Members and may impose reasonable fines or other penalties upon its Members for violations of its rules and regulations. As permitted by section 507(c), the Spiritual Director, acting in consultation with the Business Manager and the Head of the Zendo, may, in conformity with policies adopted by the Board of Trustees and upon reasonable notice and opportunity to pay the sum owed, terminate a person's membership in the Center for non-payment of fees, dues, assessments, fines, or other penalties. For purposes of this paragraph, membership pledges shall be deemed to constitute “dues,” and “fees” shall include, without limitation, fees for sesshin and training programs, as well as any sums owed to the Center for goods or services. In addition, a Member's failure to respond to communications from the Center regarding financial matters may be deemed to constitute “non-payment” for purposes of this paragraph.

## F. TRIAL MEMBERS

In consultation with the Board of Trustees and subject to the Board's approval, the Spiritual Director may establish requirements and procedures whereby a person may become a trial member of the Center. Such requirements and procedures may provide that a person shall not remain a trial member for more than a specified period of time and may provide for one or more classes of trial members. If the Spiritual Director determines that a trial member is acting contrary to the best interests of the Center or is not fulfilling the obligations and requirements of trial membership, the Spiritual Director or a designee may revoke the person's status as a trial member. Trial members are persons who are not yet Members of the Center, but who may apply for membership after satisfactory completion of a period of trial membership; in particular, trial members are not “members” of the Center within the meaning of section 601 of the Not-for-Profit Corporation Law or of section 195 of the Religious Corporations Law. The Spiritual Director shall specify the privileges and obligations of trial membership as they pertain to spiritual matters; the Board of Trustees shall specify such privileges and obligations as they pertain to financial and other secular matters. The Center's Secretary, or the Secretary's designee, shall maintain a current list of trial members. The Secretary shall make available for inspection and copying by Members and trial members of the Center a written copy of the requirements, procedures, privileges, and obligations mentioned in this paragraph.

## ARTICLE VII. CORPORATE MEETINGS OF MEMBERS

### A. ANNUAL CORPORATE MEETING

1. *Date, Time, and Place.* An annual corporate meeting of the Center's Members shall be held as required by section 603(b) of the Not-for-Profit Corporation Law and section 194 of the Religious Corporations Law. Unless otherwise determined for a particular year by the Board of Trustees, the annual meeting shall be held over the Memorial Day weekend, in conjunction with the Center's



celebration of the Buddha's birth, the exact time, date, and place of the meeting to be fixed each year by the Board of Trustees as permitted under sections 603(b) and 194.

2. *Notice; Ballots.* The Board of Trustees shall cause notice to be given of the time, date, and place of each year's annual meeting, specifying the names of any Trustees whose successors are to be elected, in the manner required by section 194 of the Religious Corporations Law; in addition, the Center's Secretary, or the Secretary's designee, shall give notice and provide ballots to the Center's Members in accordance with the provisions of Article VII(D) of these By-laws.

3. *Agenda.* The annual meeting shall elect Trustees pursuant to Article III(C) of these By-laws, and the Board of Trustees shall present a properly verified report as required by section 519 of the Not-for-Profit Corporation Law. In addition, the Spiritual Director and the Treasurer (or their designees) shall report to the annual meeting regarding the spiritual and the financial affairs of the Center, respectively. The annual meeting shall also vote upon any other matters properly before the meeting under the provisions of Articles VII(C)(1) and VII(F) of these By-laws.

## B. SPECIAL CORPORATE MEETINGS

1. *Call by Board of Trustees.* As provided by section 194 of the Religious Corporation Law and section 603(c) of the Not-for-Profit Corporation Law, a special corporate meeting of the Center's Members may be called by the Board of Trustees, either on its own motion or on the written request of at least ten members.

2. *Call by Members; Demand; Notice; Place.* In addition, as provided by section 603(c) of the Not-for-Profit Corporation Law, a special corporate meeting may be convened by the Members entitled to cast ten percent of the total number of votes entitled to be cast at such meeting, who may, in writing, demand the call of a special meeting specifying the date and month thereof, which shall not be less than two nor more than three months from the date of such written demand. No matter or question shall be placed on the ballot for a special meeting convened pursuant to this paragraph, as required under Article VII(C)(1) of these By-laws, unless such matter or question was explicitly stated in the written demand that the meeting be called. The Secretary of the Center upon receiving the written demand shall promptly give notice of such meeting, or if the Secretary fails to do so within five business days thereafter, any Member signing such demand may give such notice in the Secretary's stead. Any meeting convened pursuant to this paragraph shall be held at the Center.

3. *Notice; Ballots.* The Trustees shall cause notice to be given of the time, date, place, and business to be transacted at any special corporate meeting in the manner required by section 194 of the Religious Corporations Law; in addition, the Center's Secretary shall give notice and provide ballots to the Center's Members in accordance with the provisions of Article VII(D) of these By-laws. In the case of a special meeting called by Members of the Center pursuant to Article VII(B)(2) of these By-laws and section 603(c) of the Not-for-Profit Corporation Law, such notice and provision of ballots shall be in addition to the notice required by Article VII(B)(2) and section 603(c).

## C. CONDUCT OF CORPORATE MEETINGS

1. *Ballots Required; Majorities; Tie Votes; Duration of Voting.* No action taken with regard to any matter or question by an annual or special corporate meeting of the Center, other than adjournment of the meeting, shall have any force or effect unless the matter or question is voted upon by written ballot provided in advance to the Members of the Center in conformity with the notice and proxy voting provisions of Article VII(D) of these By-laws. However, the Members present in person at a meeting may adjourn the meeting without regard to the requirements of the preceding sentence. [*Draftsman's note: Cf. NPCL section 608(d); By-laws Article VII(E).*] Consistent with section 195 of the Religious Corporations Law and section 613 of the Not-for-Profit Corporation Law, the action of a corporate meeting upon any matter or question shall be decided by a majority of the Members voting thereon, a quorum being present in person or by proxy with respect to the matter or question. However, consistent with section 5 of the Religious Corporations Law, the adoption or amendment of By-laws by a corporate meeting shall require a two-thirds vote of the Members voting. In case of a tie vote, the matter or question proposed shall fail to pass; a tie vote as between two proposed alternatives shall be decided by the presiding officer's toss of a coin. [*Draftsman's note: The coin-toss provision would apply, for example, if there were a tie vote in a Trustee election.*] As specified in section 611(e) of the Not-for-Profit Corporation Law, each Member shall have one, and only one, vote. As required by section 195 of the Religious Corporations Law, the polls of an annual corporate meeting shall continue open for at least one hour.

2. *Presiding Officer; Duties.* Consistent with section 195 of the Religious Corporations Law, the first named of the following persons who is present at an annual or special corporate meeting shall preside: the Spiritual Director; the Officers of the Center in order of their age, beginning with the oldest; any Members elected to preside at the meeting. However, consistent with section 205 of the Religious Corporations Law, the Members present in person or by proxy at a corporate meeting may choose a person to preside at the meeting other than the person designated in the preceding sentence. As provided in section 195, the presiding officer of the meeting shall receive the votes, be the judge of qualifications of voters, and declare the result of votes cast on any matter.

## D. NOTICE AND BALLOT; WAIVER OF NOTICE; RECORD DATE; PROXY VOTING

1. *Notice and Ballot.* [*Draftsman's note: The notice provisions of section 605 of the NPCL are made inapplicable to religious corporations by section 2-b(1)(c) of the RCL.*] Not more than fifty nor less than twenty days before the date of any corporate meeting, the Center's Secretary, or the Secretary's designee, shall mail to each Member of the Center, at the last address provided by the Member, notice of the time, date, and place of the meeting, accompanied by a ballot form stating each matter or question to be voted upon at the meeting pursuant to Article VII(F) of these By-laws and allowing the Member to designate the Secretary or the Secretary's designee as the Member's proxy for purposes of casting the Member's vote at the meeting with respect to each matter or question in the manner marked by the Member on the ballot. However, in the case of failure to comply with the twenty-day deadline specified in the preceding sentence, actual delivery of the notice and ballot at least one week before the meeting to a Member personally or to a Member's address as specified in the preceding sentence shall be deemed to satisfy the requirements of the preceding sentence. [*Draftsman's note: See By-laws Article VII(D)(3) (Record Date).*] Although

NPCL section 611 allows a record date not more than fifty nor less than ten days before the meeting, the minimum specified here ensures that ballots will be mailed to Members at least twenty days before the meeting (or actually delivered at least a week beforehand), thus affording Members the opportunity to return their ballots to the Secretary by mail in time for the meeting.] If a Member returns the ballot to the Secretary or the Secretary's designee before the meeting, but is not present at the meeting, the Secretary or the Secretary's designee shall, in accordance with Article VII(D)(5) of these By-laws, cast the Member's votes by proxy at the meeting in the manner marked on the Member's ballot. If a Member (1) returns the ballot to the Secretary or the Secretary's designee before the meeting and is present at the meeting or (2) returns the ballot to the presiding officer or the presiding officer's designee at the meeting before the polls close, the ballot shall constitute the Member's votes in person with respect to each matter or question marked thereon. In addition to the notice specified in this paragraph, notice shall also be given as may be required under section 194 of the Religious Corporations Law and Articles VII(A)(2), VII(B)(2), and VII(B)(3) of these By-laws.

2. *Waiver of Notice.* As specified in section 606 of the Not-for-Profit Corporation Law, notice of a corporate meeting need not be given to any Member who submits a signed waiver of notice, in person or by proxy, whether before or after the meeting. As further specified in section 606, the attendance of any Member at a meeting, in person or by proxy, without protesting prior to the conclusion of the meeting the lack of notice of such meeting, shall constitute a waiver of notice by that Member. However, a proxy vote cast by default pursuant to Article VII(D)(5) of these By-laws shall not constitute attendance at a meeting by proxy for purposes of the preceding sentence. In addition, any Member who receives actual notice and a ballot, in conformity with the provisions of Article VII(D)(1), shall be deemed to have waived any other notice of an annual or special corporate meeting, whether required by law or under these By-laws.

3. *Record Date.* As permitted under section 611 of the Not-for-Profit Corporation Law, unless otherwise specified by the Board of Trustees, the date on which the Center's Secretary or the Secretary's designee begins the mailing of notice and ballots to the Center's Members pursuant to Article VII(D)(1) of these By-laws shall constitute the record date (1) for determining who is entitled to notice of a corporate meeting or any adjournment thereof, (2) for determining who is entitled to vote at any such meeting or adjournment thereof, (3) and for any other purpose specified in section 611. The Secretary shall enter the record date for each meeting in the minutes thereof.

4. *Proxy Voting Permitted.* [Draftsman's note: The proxy voting provisions of section 609 of the NPCL are made inapplicable to religious corporations by section 2-b(1)(c) of the RCL.] Members of the Center may elect to vote or be present by proxy ballot in accordance with the provisions of Article VII(D)(1) of these By-laws with respect to any matter or question to be voted upon or considered at an annual or special corporate meeting, including without limitation the following: (1) election of Trustees, (2) amendment of the Center's By-laws or Certificate of Incorporation, and (3) presence at a "previous meeting" for the purpose of receiving the written notice required by section 5 of the Religious Corporations Law to be "openly given at a previous meeting," in the case of adoption or amendment of By-laws by a corporate meeting.

5. *Proxy Voting Procedures; Proxy Vote by Default.* No vote by proxy shall be counted at a corporate meeting unless (1) cast by returning to the Center's Secretary or the Secretary's designee the proxy ballot form provided to the Member pursuant to Article VII(D)(1) of these By-laws or (2) cast by

default under the provisions of this paragraph. The Board of Trustees shall determine any procedures for proxy voting in addition to those specified in these By-laws. Such procedures may include, with respect to a question or matter, the provision that if a Member neither attends a corporate meeting nor, prior to the meeting, specifies otherwise by returning to the Center's Secretary or the Secretary's designee a ballot provided to the Member pursuant to Article VII(D)(1) of these By-laws, the Member shall be deemed to have appointed the Secretary, or the Secretary's designee, as the Member's proxy for the purpose (1) of casting the Member's vote with respect to the question or matter in a manner specified by the Board, or (2) of being present at the meeting to receive notices and reports. However, the preceding sentence shall not apply in the following cases: (1) election of Trustees pursuant to Article III(C)(1) of these By-laws; (2) removal of the Spiritual Director pursuant to Article II(D) of these By-laws; and (3) removal of a Trustee by vote of the Members pursuant to Article III(D) of these By-laws.

#### E. QUORUM

Consistent with section 608(a) of the Not-for-Profit Corporation Law, and section 195 of the Religious Corporations Law, for purposes of taking action with regard to a matter or question at any annual or special corporate meeting, a quorum shall consist of a majority of the Center's Members present in person or by proxy, but in no event fewer than six. However, consistent with section 608(b) of the Not-for-Profit Corporation Law, and section 195 of the Religious Corporations Law, the presence in person or by proxy of 100 Members or one-tenth of the Center's Members, whichever is fewer, but in no event fewer than six, shall constitute a quorum for the following purposes: (1) election of Trustees pursuant to Article III(C)(1) of these By-laws; (2) election of a presiding officer pursuant to Article II(D)(1) of these By-laws; and (3) presence at a "previous meeting" for the purpose of receiving the written notice required by section 5 of the Religious Corporations Law to be "openly given at a previous meeting," in the case of adoption or amendment of By-laws by a corporate meeting. In addition, notwithstanding any provision of these By-laws to the contrary, the quorum provisions of the preceding sentence shall also apply for the purpose of acting upon any matter or question placed upon the agenda of an annual or special corporate meeting by action of the Center's Board of Trustees. In determining whether a quorum is present with respect to a particular matter or question at any annual or special corporate meeting, ballots that have been returned, but which are unmarked or spoiled with respect to that matter or question, shall be counted. Consistent with section 608(d) of the Not-for-Profit Corporation Law, the Members present in person may adjourn a corporate meeting, despite the absence of a quorum.

#### F. AGENDA

Those and only those matters or questions that have been properly placed on the agenda of an annual or special corporate meeting pursuant to this paragraph shall be included on the ballots provided to Members pursuant to Article VII(D)(1) of these By-laws; no other matters or questions, except adjournment of the meeting, shall be in order at any corporate meeting, and no vote of a corporate meeting regarding any other matter or question shall have any force or effect. The Board of Trustees may place a matter or question on the agenda for a corporate meeting. However, as permitted under section 709(a) of the Not-for-Profit Corporation Law, the affirmative vote of four of the six Trustees shall be

required to place the adoption, amendment, or repeal of any By-law on the agenda for a corporate meeting. [*Draftsman's note:* Under section 709(b) of the NPCL, adoption, amendment, or repeal of the preceding sentence must be effected by a vote of two-thirds of the Center's entire membership. The preceding sentence was so adopted on May 25, 1991.] In addition, the Members entitled to cast ten percent of the total number of votes entitled to be cast at such a meeting may place a matter or question on the agenda by written demand made upon the Center's Secretary at least two months before the date of the meeting. However, notwithstanding the preceding sentence, only the Board of Trustees may place on the agenda of a corporate meeting any amendment, change, or restatement of the Center's Certificate of Incorporation or any amendment or repeal of this sentence. As permitted under section 709(a) of the Not-for-Profit Corporation Law, action of the Board of Trustees pursuant to the preceding sentence shall require the affirmative vote of four of the six Trustees. [*Draftsman's note:* Under section 709(b) of the NPCL, adoption, amendment, or repeal of the preceding sentence must be effected by a vote of two-thirds of the Center's entire membership. The preceding sentence was so adopted on May 25, 1991.]

#### G. APPROVAL OF MINUTES

The Board of Trustees shall have the authority to approve the minutes of any corporate meeting.

#### H. ELECTRONIC OR ONLINE VOTING

For purposes of this Article VII, (1) the terms "ballot," "written ballot," and "ballot form" shall include electronic or online methods of recording votes, (2) to "return" a ballot shall include registering votes electronically or online, (3) the term "mail" shall include electronic mail (e-mail), and (4) the term "address" shall include an e-mail address.

### ARTICLE VIII. NON-DISCRIMINATION

The Center shall not discriminate in any manner on the basis of race or ethnic or national origin. The Center shall not discriminate unreasonably on the basis of nationality, age, marital status, gender, disability, or sexual orientation or identification. [*Draftsman's note:* Examples of reasonable discriminations include the requirement that only United States citizens and those aliens with proper visas may become regular staff members (i.e., employees) of the Center and By-law Article III(B)(2), providing that a Trustee must be at least 18 years old.]

### ARTICLE IX. AFFILIATES OF THE CENTER

#### A. AFFILIATION

1. *Requirements, Privileges, and Obligations.* The Spiritual Director and the Board of Trustees shall specify the requirements for an incorporated Zen Buddhist group's becoming affiliated with the Center: The Spiritual Director shall specify the privileges and obligations of affiliate groups and the requirements pertaining to the organization and operation of such groups as they pertain to spiritual matters; the

Board shall specify such privileges, obligations, and requirements as they pertain to financial and other secular matters. A group shall become affiliated with the Center only upon the recommendation of the Spiritual Director and the approval of the Board. Such approval may be contingent upon, without limitation, the group's adoption, rescission, or amendment of provisions of its by-laws or certificate of incorporation as specified by the Board. The Center's Secretary shall maintain a list of the Center's affiliate groups. The Secretary shall make available for inspection and copying by Members and trial members of the Center a written copy of the requirements, privileges, and obligations mentioned in this paragraph.

2. *Affiliate Leader; By-laws and Certificate of Incorporation.* The spiritual leader of each affiliate group (herein referred to as the "Affiliate Leader") shall be appointed by the Spiritual Director and shall serve at the Spiritual Director's pleasure; however, the Board of Trustees may also suspend or remove an Affiliate Leader pursuant to Article X of these By-laws. The Certificate of Incorporation or the By-laws of an affiliate group shall contain the following provision, or a substantially equivalent provision approved by the Center's Board of Trustees:

[Name under which the affiliate group is incorporated] is an affiliate of the Rochester Zen Center, a not-for-profit corporation incorporated under the New York Religious Corporations Law, and will comply with the provisions of the Rochester Zen Center's by-laws and guidelines relating to affiliates. However, as an independently incorporated entity managed by its own Board of Trustees [Directors], [Name of affiliate group] acknowledges full and sole legal responsibility for its acts and omissions, and no legal obligation therefor is assumed by the Rochester Zen Center.

No affiliate group shall adopt, rescind, or amend any by-law or any provision of its certificate of incorporation without first having obtained the approval of the Center's Board of Trustees. Upon request of the Center's Secretary or Board of Trustees, an affiliate group shall provide a current copy of the group's by-laws and certificate of incorporation.

3. *Grandfather Clause.* Each of the Center's affiliate groups as of the date of adoption of this paragraph shall be deemed to have become affiliated with the Center in accordance with this Article IX(A), provided that such group brings itself into conformity with the requirements of this Article IX(A) within one year of the adoption of this paragraph. [*Draftsman's note:* This paragraph was adopted on May 25, 1991.] However, the Board of Trustees may grant an extension of time under the preceding sentence for good cause shown.

## B. SUSPENSION OF AFFILIATION

The Spiritual Director or the Spiritual Director's designee may totally or partially suspend the affiliation of any affiliate group, if necessary to protect the safety of persons or property, to prevent disruption of the Center's activities, or if the continuation of such affiliation is, in the Spiritual Director's or the designee's judgment, contrary to the best interests of the Center. However, such suspension of affiliation shall not affect the Center membership of any member of the suspended affiliate group. The Spiritual Director shall have the authority to rescind any suspension of affiliation pursuant to this paragraph.

## C. TERMINATION OF AFFILIATION

1. *Termination by Affiliate Group.* An affiliate group may terminate its affiliation with the Center in accordance with applicable provisions of law and of the group's certificate of incorporation and by-laws.

2. *Termination by Spiritual Director.* If the Spiritual Director determines that an affiliate group's continued affiliation with the Center is contrary to the best interests of the Center or that an affiliate group is not fulfilling the obligations and requirements of affiliation with the Center, the Spiritual Director may, acting in consultation with the Board of Trustees, terminate the group's affiliation after affording the group reasonable notice and opportunity to be heard.

## ARTICLE X. ETHICS AND ADVISORY COMMITTEE; CONCERNS AND COMPLAINTS

### A. COMPOSITION; QUORUM

The Board of Trustees shall designate a standing Ethics and Advisory Committee consisting of at least four (4) members with an equal number of men and women, including at least one Trustee, one Center Member who lives more than fifty (50) miles from Rochester, New York, and such other Center Members as the Board deems appropriate. Committee members shall serve at the pleasure of the Board. Alternate Committee members may be designated by the Board from time to time as needed. A quorum of the Committee shall consist of a majority of its members, including at least one Trustee.

### B. JURISDICTION AND FUNCTIONS OF COMMITTEE

The Committee shall (1) consider complaints against an Spiritual Director or Acting Spiritual Director, an Instructor [*Draftsman's note:* Under Article II(A) of these By-laws, "the term 'Instructor' shall mean any person authorized to perform spiritual teaching functions, including the giving of dokusan, daisan, or group instruction.'], a Priest, a Novice preparing for ordination as a Priest (hereinafter "Novice"), a Trustee or Alternate Trustee, an Officer or Assistant Officer, a Head of Zendo, a Business Manager, or an Affiliate Leader; (2) consider concerns and complaints regarding ethical or other material issues involving the Center, including allegations of sexual harassment or any other harmful or unethical behavior; (3) give advice and make determinations regarding dual relationships as addressed in Article XI below; and (4) from time to time review and, to the extent it deems appropriate, propose to the Board changes to the Center's Ethical Guidelines and Ethical Standards. The Ethics and Advisory Committee shall meet as requested by the Spiritual Director(s), the Board, or any of its own members in response to matters within its jurisdiction.

### C. PROCEDURE FOR RAISING CONCERNS AND MAKING COMPLAINTS

A Member with a concern or complaint is ordinarily expected first to raise the matter with an appropriate person in authority, such as the Spiritual Director, the Head of Zendo, the Chairman of the Board, the Business Manager, or a Corporate Officer, before approaching the Ethics and Advisory Committee or the Board of Trustees. For example, concerns or complaints about a Priest would ordinarily first be discussed

with the Spiritual Director or Head of Zendo, concerns about the Center's finances would ordinarily first be discussed with the Business Manager or Treasurer, and concerns about a Trustee or corporate Officer would ordinarily first be discussed with the Chairman of the Board. A Member with a concern or complaint may also discuss the matter informally with a member of the Ethics and Advisory Committee or with a Trustee. If such initial discussions either do not resolve the matter or would not, in the view of the Member raising the concern or complaint, be appropriate, the Member may submit a statement of concern or a complaint to the Committee. Moreover, if a Member believes that a concern or complaint could most effectively be addressed by raising the matter directly with the Board of Trustees, the Member may do so. If the matter is initially raised with the Board of Trustees, the Board may, in its discretion, either refer the matter to the Ethics and Advisory Committee for consideration or may consider the matter itself without preliminary action by the Committee. If the matter constitutes a complaint described in Article X(B)(1), the procedures set forth in Article X(D) shall apply. The procedures set forth in Article X(E) shall apply to other concerns and complaints, as described in Article X(B)(2).

#### D. CONSIDERATION OF COMPLAINTS AGAINST PERSONS SPECIFIED IN ARTICLE X(B)(1)

1. *Applicability.* The procedures specified in this Article X(D) shall apply to complaints against specified persons, as described in Article X(B)(1).

2. *Action by Ethics and Advisory Committee.* The Committee shall afford the complainant and the person complained of the opportunity to meet with the Committee. The Committee may also consider such additional evidence and conduct such additional investigation as it deems warranted under the circumstances. The Committee may dismiss the complaint without further action if it determines either (a) that there is insufficient evidence of the truth of the allegations in the complaint to warrant its referral to the full Board of Trustees for consideration pursuant to Article X(D)(3) of these By-laws or (b) that even accepting as true the allegations in the complaint, no sanction against the person complained of would be appropriate. Otherwise, the Committee shall refer the complaint to the Board, together with its findings and any recommendations, without determining its merits.

3. *Action by Board of Trustees.* Upon referral of a complaint to the Board of Trustees by the Ethics and Advisory Committee pursuant to Article X(D)(2) of these By-laws, or upon the Board's determination to consider a complaint pursuant to Article X(C) of these By-laws or this paragraph, the Board shall meet to consider the complaint. The complainant and the person complained of shall be afforded the opportunity to meet with the Board. The Board may also consider such additional evidence and conduct such additional investigation as it deems warranted under the circumstances. The Board shall then determine the merits of the complaint. If the Board finds that a complaint has merit and that sanctions against the person complained of are appropriate, the Board shall have the authority to impose the following sanctions: (a) private reprimand; (b) public reprimand or censure; (c) suspension from duties or office for up to one year; or (d)(i) in the case of a person other than the Spiritual Director, the Trustee or Alternate Trustee elected by the Spiritual Director, a Priest or a Novice, removal from office, (ii) in the case of the Trustee or Alternate Trustee elected by the Spiritual Director, a Priest or a Novice, recommendation that the Spiritual Director remove such Trustee, Alternate Trustee, Priest or Novice from office, or (iii) in the case of the Spiritual Director, (A) recommendation that a corporate meeting of Members remove the



Spiritual Director from office pursuant to Article II(D) of these By-laws and (B) suspension of the Spiritual Director from office pursuant to that Article pending a vote of the Members regarding removal. As permitted under section 709(a) of the Not-for-Profit Corporation Law, the affirmative vote of four of the six Trustees shall be required to suspend or remove a person from office, or to put the question of removing the Spiritual Director from office to a vote of the Members at a corporate meeting. [*Draftsman's note:* Under section 709(b) of the NPCL, adoption, amendment, or repeal of the preceding sentence must be effected by a vote of two-thirds of the Center's entire membership. The preceding sentence was so adopted on May 25, 1991.] Notwithstanding any provisions of this Article to the contrary, the Board may consider a complaint either (a) without preliminary action by the Ethics and Advisory Committee pursuant to Article X(D)(2) or (b) despite the Committee's prior dismissal of the complaint pursuant to Article X(D)(2). In addition, the Board may, on its own motion, investigate the conduct of any person to whom this Article applies and act pursuant to this paragraph without the submission of a complaint. Nothing contained in this Article shall limit the authority of the Board to remove an Officer, Assistant Officer, Acting Spiritual Director, Business Manager, or Trustee pursuant to any other provision of these By-laws or the authority of the Spiritual Director to remove the Trustee or Alternate Trustee elected by the Spiritual Director, an Affiliate Leader, Head of Zendo, Instructor, Priest or Novice pursuant to any other provision of these By-laws.

4. *Disqualification for Interest.* No person shall participate, as a member of the Ethics and Advisory Committee or as a member of the Board of Trustees, in a proceeding under this Article if (1) such person is the complainant or the individual complained of, (2) if the person's personal relationship with the complainant or the individual complained of would significantly affect the person's judgment regarding the matter, or (3) if for any other reason the person would not be able to render an impartial judgment regarding the matter. A person shall disqualify himself or herself if the provisions of the preceding sentence apply; provided that the Board (acting without the participation of the person in question, if that person is a Trustee), shall have the right to determine whether the person is qualified to participate in a proceeding under this Article. However, the provisions of this paragraph shall not apply if such application would result in there being an insufficient number of Trustees qualified to act under this Article.

#### E. CONSIDERATION OF OTHER CONCERNS AND COMPLAINTS UNDER ARTICLE X(B)(2)

In the case of concerns and complaints raised under Article X(B)(2) of these By-laws, the Ethics and Advisory Committee may consider such evidence and conduct such investigation as it considers warranted under the circumstances, including meeting with the person raising the concern or complaint. After considering the concern or complaint, the Committee may, as it finds warranted, refer the matter to the Board of Trustees or to an appropriate person in authority, with or without recommendations. If the person raising the concern or complaint is not satisfied by the resolution of the matter or believes that raising the matter with the Committee would not be appropriate, the complainant may raise the matter with the Board of Trustees, which may take such action as it considers appropriate. In any event, the Board may, in its discretion, consider a matter either (1) without preliminary action by the Ethics and Advisory Committee or (2) despite the Committee's prior determination that no further action is warranted.

## F. MATTERS INVOLVING POTENTIAL LEGAL LIABILITY

Notwithstanding anything to the contrary in this Article, the Ethics and Advisory Committee, any member thereof, any Trustee, Officer, resident or staff member, and any Member of the Center shall promptly notify the Spiritual Director, the Head of Zendo and the Board of Trustees of any allegation which comes to the Committee's or the person's attention and which carries the potential of legal liability on the part of the Center, including allegations involving unlawful activity, sexual harassment, financial impropriety, or discrimination based on race, gender, ethnic or national origin, age, disability, or sexual orientation.

## ARTICLE XI. DUAL RELATIONSHIPS

### A. STATEMENT OF PRINCIPLE

For the purposes of these By-laws, a dual relationship exists when the Spiritual Director, an Instructor, the Head of the Zendo, or an Affiliate Leader engages with that person's student in one or more additional relationships, including without limitation relationships of employer/employee (outside the Center), therapist/client, counselor/counselee, and sexual relationships. [*Draftsman's note:* Under Article II(A) of these By-laws, "the term 'Instructor' shall mean any person authorized to perform spiritual teaching functions, including the giving of dokusan, daisan, or group instruction" and may therefore include an Affiliate Leader or Head of the Zendo.] Although certain dual relationships are appropriate, dual relationships generally involve a disparity of power and authority, and many of them carry potentially serious risks for the student, including the violation of personal boundaries, increased emotional and psychological vulnerability, exploitation in various forms, loss of autonomy, and confusion of roles. Among other problems, certain dual relationships can undermine the teacher/student relationship and the value of the student's Zen training. Accordingly, such dual relationships are, to the extent practicable, to be avoided or, at the least, undertaken with serious consideration as to the best interests of the student, as more fully set forth below. While each of the parties may have some responsibility for the dual relationship, the teacher, as the more powerful party, bears the primary responsibility for the protection of the student through avoiding such relationships or keeping them within appropriate bounds.

### B. APPROPRIATE DUAL RELATIONSHIPS

It is acknowledged that certain dual relationships may be appropriate, as well as unavoidable. For example, the Spiritual Director and the Head of the Zendo are responsible for supervision of the work of members of the Center's Staff. Additionally, casual social relationships on the part of the Spiritual Director or an Instructor with their students are generally natural and healthy, as are casual or close friendships between the Spiritual Director, an Instructor, or the Head of the Zendo and Members of the Center who are not their students. Such dual relationships are not prohibited or discouraged. Close personal friendships between the Spiritual Director or an Instructor and their students may, however, interfere with the teacher/student relationship, and should be undertaken with caution and with serious consideration as to the best interests of the student. The Spiritual Director and any Instructor should avoid behavior that would be construed by a reasonable person as indicating an exclusive or special relationship.

### C. SPIRITUAL COUNSELING

It is acknowledged that from time to time the Spiritual Director, an Instructor, the Head of the Zendo, and/or an Affiliate Leader may appropriately be called upon to provide spiritual counseling to a student. While spiritual counseling may often involve consideration of emotional and psychological issues, it differs from psychotherapy in a number of respects: it is usually more short-term in nature; it does not purport to deal with emotional or psychological issues in as much depth as does psychotherapy; it often deals with problems in the nature of an immediate crisis; the counselor is not necessarily professionally qualified to offer psychotherapy; and no fee is charged for such services. In the event that longer term counseling or psychotherapy is needed, that a deeper examination of emotional or psychological issues appears necessary or appropriate, or that the student appears to be in immediate physical or psychological danger because of the acuity of a crisis, the person providing the counseling services should with due promptness recommend that the student seek psychotherapy or other appropriate intervention and, if practicable, aid the student in obtaining a referral for such services.

### D. LIMITATIONS ON CERTAIN DUAL RELATIONSHIPS

1. *Employment Relations.* It is recommended that the Spiritual Director, an Instructor, the Head of the Zendo, or an Affiliate Leader does not, on that person's own behalf (as distinguished from on behalf of the Center), (a) employ or be employed by, (b) provide services for which monetary payment would ordinarily be charged to, or (c) receive or accept such services from, any person so long as such person is a student of the Spiritual Director, Instructor, Head of the Zendo, or Affiliate Leader or continues to receive formal instruction (dokusan, daisan, or group instruction) from the Spiritual Director, Instructor, Head of the Zendo, or Affiliate Leader.

2. *Psychotherapy.* In the event that the Spiritual Director, an Instructor, the Head of the Zendo, or an Affiliate Leader also acts professionally as a psychotherapist, that person shall not provide psychotherapeutic services to any person so long as such person is their student or from time to time receives formal instruction (dokusan, daisan, or group instruction) from them.

3. *Sexual Relations.* Harm and confusion can result when persons of unequal status or authority enter into a sexual relationship. For example, because of the inherent disparity in power between a Zen Teacher and the Teacher's students, it is irresponsible and a misuse of authority for a Teacher to engage in sexual behavior with a student. Similarly, certain sexual relationships involving Teachers, Instructors, Priests, Heads of Zendo, Affiliate Leaders, or Zen Center staff members or residents create such a risk of harm that they should be prohibited; other such sexual relationships create a sufficient risk of harm that approval of the Spiritual Director, the Ethics and Advisory Committee, or the Board of Trustees should be sought. The appended document entitled "Rochester Zen Center Standards for Sexual Conduct," which is incorporated into these By-laws and made a part hereof, sets forth the prohibitions and restrictions regarding sexual relationships involving the persons listed above.

## E. CONSULTATION WITH THE SPIRITUAL DIRECTOR OR ETHICS AND ADVISORY COMMITTEE

Because the variety and possible complexity of dual relationships is so great, this Article XI does not purport to be an exhaustive discussion of such relationships or to offer clear guidance in all cases involving them. If the appropriateness of an existing or potential dual relationship involving an Instructor, Priest, Head of Zendo, Affiliate Leader, or Zen Center staff member or resident might reasonably be questioned, that person is encouraged to consult with and seek the advice of the Spiritual Director. If the appropriateness of an existing or potential dual relationship involving the Spiritual Director or other Center Teacher might reasonably be questioned, the Director or other Teacher is encouraged to consult with and seek the formal or informal advice of the Ethics and Advisory Committee, one or more of the Trustees, other senior Members, and fellow Zen Teachers, as may be appropriate. In addition, if the Spiritual Director has any concerns regarding the appropriateness of a dual relationship that involves himself or herself, another Center Teacher, an Instructor, Priest, Head of Zendo, Affiliate Leader, or a Zen Center staff member or resident, the Spiritual Director is likewise encouraged to seek such consultation and advice.

## ARTICLE XII. RELATED-PARTY TRANSACTIONS, CONFLICTS OF INTEREST, LOANS, AND FINANCIAL POLICY

### A. PRIVATE BENEFIT PROHIBITED

The assets of the Center shall be used only to advance the purposes of the Center, and shall not otherwise be used for the private benefit of any person. Moreover, no income of the Center shall inure to any individual other than as reasonable compensation for services rendered.

### B. RELATED PARTY TRANSACTIONS

The Center shall comply with the requirements of sections 102(a)(22)-(25) and sections 715(a)-(c) and (g) of the Not-for-Profit Corporations Law, which provide as follows:

§ 102(a)(22) “Relative” of an individual means his or her (i) spouse, ancestors, brothers and sisters (whether whole or half blood), children (whether natural or adopted), grandchildren, great-grandchildren, and spouses of brothers, sisters, children, grandchildren, and great-grandchildren; or (ii) domestic partner as defined in section 2994-a of the public health law.

§ 102(a)(23) “Related party” means (i) any [Trustee], officer or key employee of the corporation or any affiliate of the corporation; (ii) any relative of any [Trustee], officer or key employee of the corporation or any affiliate of the corporation; or (iii) any entity in which any individual described in clauses (i) and (ii) of this subparagraph has a thirty-five percent or greater ownership or beneficial interest or, in the case of a partnership or professional corporation, a direct or indirect ownership interest in excess of five percent.

§ 102(a)(24) “Related party transaction” means any transaction, agreement or any other arrangement in which a related party has a financial interest and in which the corporation or any affiliate of the corporation is a participant.

§ 102(a)(25) “Key employee” means any person who is in a position to exercise substantial influence over the affairs of the corporation, as referenced in 26 U.S.C. § 4958(f)(1)(A) and further specified in 26 CFR § 53.4958-3(c), (d) and (e), or succeeding provisions.

§ 715(a) No corporation shall enter into any related party transaction unless the transaction is determined by the board to be fair, reasonable and in the corporation’s best interest at the time of such determination. Any [Trustee], officer or key employee who has an interest in a related party transaction shall disclose in good faith to the board, or an authorized committee thereof, the material facts concerning such interest.

§ 715 (b) With respect to any related party transaction involving a [religious] corporation and in which a related party has a substantial financial interest, the board of such corporation, or an authorized committee thereof, shall: (1) prior to entering into the transaction, consider alternative transactions to the extent available; (2) approve the transaction by not less than a majority vote of the [Trustees] or committee members present at the meeting; and (3) contemporaneously document in writing the basis for the board or authorized committee’s approval, including its consideration of any alternative transactions.

§ 715 (c) The certificate of incorporation, by-laws or any policy adopted by the board may contain additional restrictions on related party transactions and additional procedures necessary for the review and approval of such transactions, or provide that any transaction in violation of such restrictions shall be void or voidable.

§ 715 (g) No related party may participate in deliberations or voting relating to matters set forth in this section; provided that nothing in this section shall prohibit the board or authorized committee from requesting that a related party present information concerning a related party transaction at a board or committee meeting prior to the commencement of deliberations or voting relating thereto.

## C. CONFLICTS OF INTEREST

As required by section 715-A of the Not-for-Profit Corporations Law, the Center adopts the following conflict-of-interest policy to ensure that its Trustees, Officers, and key employees act in the Center’s best interest and comply with applicable legal requirements, including, but not limited to, the requirements set forth in section 715 of the Act.

1. *Definition of Circumstances That Constitute a Conflict of Interest.* A Trustee, Officer, or key employee has a conflict of interest when such a person has a material financial or personal interest in a matter coming before the Board of Trustees or a committee thereof.

2. *Procedures for Disclosing a Conflict of Interest to the Board.* When, in advance of a Board or committee meeting, a Trustee, Officer, or key employee recognizes that they have a conflict of interest, they shall inform the Chairman of the Board and the Corporate Secretary in writing of the circumstances

constituting the conflict. When, in the course of a Board or committee meeting, a Trustee, Officer, or key employee attending the meeting recognizes that they have a conflict of interest, they shall orally inform those attending the meeting of the circumstances constituting the conflict.

3. *Prohibition against Presence or Participation.* A person with a conflict of interest shall not be present at or participate in Board or committee deliberation or voting on the matter giving rise to such conflict.

4. *Prohibition against Improper Influence.* No person with a conflict of interest shall attempt to influence improperly the deliberation or voting of the matter giving rise to such conflict.

5. *Documentation of Conflict of Interest.* The existence and resolution of a conflict of interest shall be documented in the Center's records, including in the minutes of any meeting at which the conflict was discussed or voted upon.

6. *Related-Party Transactions.* Related-party transactions shall be disclosed, addressed, and documented in accordance with Articles XII(B), XII(C)(2), and XII(C)(5) of these By-laws.

7. *Trustees' Disclosure.* As required by section 715-a(c) of the Not-for-Profit Corporation Law, prior to the initial election of any Trustee, and annually thereafter, such Trustee shall complete, sign and submit to the Center's corporate Secretary a written statement identifying, to the best of the Trustee's knowledge, any entity of which such Trustee is an officer, director, trustee, member, owner (either as a sole proprietor or a partner), or employee and with which the Center has a relationship, and any transaction in which the Center is a participant and in which the Trustee might have a conflicting interest. Each Trustee shall annually resubmit such written statement. The Center's corporate Secretary shall provide a copy of all completed statements to the chair of the audit committee or, if there is no audit committee, to the chair of the Board.

#### D. LOANS

In accordance with section 716 of the Not-for-Profit Corporation Law, no loans, other than through the purchase of bonds, debentures, or similar obligations of the type customarily sold in public offerings, or through ordinary deposit of funds in a bank, shall be made by the Center to its Trustees or Officers, or to any other corporation, firm, association or other entity in which one or more of its Trustees or Officers are directors or officers or hold a substantial financial interest, except a loan by the Center to another charitable corporation.

#### E. PURCHASES, CONTRACTS, CHARITABLE CONTRIBUTIONS, AND GIFTS

1. The Business Manager and such other persons as may be designated by the Board of Trustees or the Business Manager are authorized to make purchases and to enter into contractual agreements on behalf of the Center in such respective amounts as may be specified from time to time by the Board of Trustees. However, the Board's approval shall be required for any purchase or contract (1) involving the Center's payment of more than an amount specified pursuant to the preceding sentence or the disposal of Center assets worth more than such a specified amount, or (2) that substantially exceeds a budget item

approved by the Board. Unless otherwise expressly authorized by the Board, all purchases made and contracts entered into on behalf of the Center shall conform to the requirements of this paragraph and to the budgets, policies, and procedures adopted by the Board.

2. The Business Manager, the Spiritual Director, and such other persons as may be designated by the Board of Trustees or the Business Manager are authorized to make charitable contributions and other gifts on behalf of the Center in accordance with the budgets, policies, and procedures adopted by the Board. No person is authorized to make any gift of assets belonging to the Center except as authorized pursuant to this paragraph or as otherwise expressly authorized by the Board. Any gift of assets belonging to the Center shall conform to the restrictions contained in Article XII(A) of these By-laws.

### ARTICLE XIII. AMENDMENTS TO CERTIFICATE OF INCORPORATION OR BY-LAWS

#### A. CERTIFICATE OF INCORPORATION

Any amendment, change, or restatement of the Center's Certificate of Incorporation shall conform in substance and procedure to the applicable requirements of Article VII(F) of these By-laws, Article 8 of the Not-for-Profit Corporation Law, and other applicable provisions of law.

#### B. BY-LAWS

1. *By Board of Trustees.* Pursuant to section 602(b) of the Not-for-Profit Corporation Law, By-laws may be adopted, amended, or repealed by the Board of Trustees. As permitted under section 709(a) of the Not-for-Profit Corporation Law, the affirmative vote of four of the six Trustees shall be required to adopt, amend, or repeal a By-law. [*Draftsman's note:* Under section 709(b) of the NPCL, adoption, amendment, or repeal of the preceding sentence must be effected by a vote of two-thirds of the Center's entire membership. The preceding sentence was so adopted on May 25, 1991.] As specified in section 602(e), if any By-law regulating an impending Trustee election is adopted, amended, or repealed by the Board, there shall be set forth in the notice of the next meeting of the Members for the election of Trustees the By-law so adopted, amended, or repealed, together with a concise statement of the changes made.

2. *By Members.* Pursuant to section 602(b) of the Not-for-Profit Corporation Law, By-laws may be adopted, amended, or repealed by the Members. However, consistent with section 5 of the Religious Corporations Law, adoption or amendment of By-laws by the Members shall be by a two-thirds vote of the Members present and voting in person or by proxy, after written notice, embodying such By-laws or amendment, has been openly given at a previous meeting, and also in the notices of the meeting at which such proposed By-laws or amendment is to be acted upon. The notice specified in the preceding sentence shall be in addition to any other notice required by law or under these By-laws.

3. *Amendment or Repeal.* Consistent with section 602(c) of the Not-for-Profit Corporation Law, a By-law adopted by the Board of Trustees may be amended or repealed by the Members, and a By-law adopted by the Members may be amended or repealed by the Board.

4. *Form of Amendment.* Any adoption, amendment, or repeal of a By-law shall state the exact language to be added, deleted, or changed and the Article, paragraph, and sentence of the By-laws to which the addition, deletion, or change pertains.

5. *Substance of Amendment.* As provided in section 602(f) of the Not-for-Profit Corporation Law, the Center's By-laws may contain any provision relating to the business of the Center, the conduct of its affairs, its rights or powers, or the rights or powers of its Members, Trustees, or Officers, not inconsistent with the Not-for-Profit Corporation Law, any other New York statute, or the Center's Certificate of Incorporation.



## Rochester Zen Center Standards for Sexual Conduct

<b>Who</b>	<b>What</b>	<b>Approval process</b>
All Sangha members	Those who have been members for more than 6 months should act with “special consideration” before forming a sexual relationship with anyone who has been a member less than 6 months.	Not applicable
Instructors, priests, Heads of Zendo, residents, and staff members	May not form a sexual relationship with anyone who has been a member less than 6 months.	Not applicable: prohibited.
Residents and staff members	May not form a sexual relationship with another resident or staff member unless approval is obtained.	Must consult with and obtain approval of the Spiritual Director.
Spiritual Directors and other RZC teachers	May not form a sexual relationship (a) with anyone to whom they have given dokusan, (b) with any current member, or (c) with anyone who has been a member within the past year.	Not applicable: prohibited.
Spiritual Directors and other RZC teachers	May not form a sexual relationship with any former member to whom they have <i>not</i> given dokusan unless (a) one year has passed since termination of the person’s membership and (b) approval is obtained.	Must consult with and obtain approval of the Ethics and Advisory Committee. May appeal non-approval by the Committee to the Board of Trustees.
Instructor	May not form a sexual relationship with any member or former member to whom they have given daisan unless approval is obtained.	Must consult with and obtain approval of both the Spiritual Director and the Ethics and Advisory Committee. May appeal non-approval by the Committee to the Board of Trustees.
Head of Zendo	May not form a sexual relationship with any member unless approval is obtained.	Must consult with and obtain approval of both the Spiritual Director and the Ethics and Advisory Committee. May appeal non-approval by the Committee to the Board of Trustees.
Priest	May not form a sexual relationship with any member unless approval is obtained.	Must consult with and obtain approval of the Spiritual Director, who shall consult with the Ethics and Advisory Committee in making a decision. However, even if the Spiritual Director gives approval, the relationship is not permitted if the Committee is unanimously opposed. In such a case, non-approval by the Committee may be appealed to the Board of Trustees.
Affiliate group leader	May not form a sexual relationship with any member of the leader’s group unless approval is obtained.	Must consult with and obtain approval of both the Spiritual Director and the affiliate group’s Board of Trustees.

Notes: (1) Under Article II(A) of the Center’s By-laws, “the term ‘Instructor’ shall mean any person authorized to perform spiritual teaching functions, including the giving of dokusan, daisan, or group instruction.” (2) For purposes of these Standards, “Member” means a full member, a person in the pre-membership trial period, or a Friend of the Center. (3) These Standards apply to sexual relationships first begun or first made known to an approving authority after October 23, 2011. (4) Sexual relationships formed before one becomes an Instructor, Priest, Head of Zendo, Affiliate group leader, resident, or staff member are not subject to the restrictions set forth in these Standards.