

**Potbelly Corporation**

**Corporate Governance Guidelines**

**August 2017**

# **CORPORATE GOVERNANCE GUIDELINES**

These corporate Governance Guidelines were adopted by the Board of Directors (the “Board”) of Potbelly Corporation (“Potbelly”), effective as of February 18, 2016.

## **Introduction**

The following Corporate Governance Guidelines have been adopted by the Board of Potbelly to assist the Board in the exercise of its responsibilities. These guidelines reflect the Board’s commitment to monitor the effectiveness of policy and decision-making at both the Board and management levels, with the objective of enhancing stockholder value over the long term. The Board intends that these guidelines serve as a flexible framework, not as a set of binding legal obligations, and should be interpreted in the context of all applicable laws and regulations, Potbelly’s by-laws (the “By-Laws”), certificate of incorporation (the “Certificate of Incorporation”) and other governing documents. The guidelines are subject to future refinement or changes as the Board may find necessary or advisable for Potbelly in order to achieve these objectives.

## **Board Composition and Selection; Independent directors**

### *Board Size*

The Certificate of Incorporation provides that the Board shall consist of not more than twelve (12) directors, with the exact number being determined from time to time by resolution of the Board. The Board believes that a desirable target number of directors is seven (7) to nine (9). The Board periodically evaluates whether a larger or smaller slate of directors would be preferable.

### *Selection of Board Members*

Each year at Potbelly’s annual meeting, the Board recommends a slate of directors for the class being elected. The Nominating and Corporate Governance Committee is responsible for recommending to the Board director candidates for nomination and election at the annual shareholder meeting or for appointment to fill vacancies. In making its recommendations to the Board, the Nominating and Corporate Governance Committee considers the suitability of each individual, and the slate as a whole, to serve as directors of Potbelly, taking into account the membership criteria discussed below. The Nominating and Corporate Governance Committee may use a variety of sources, including executive search firms, to identify director candidates. The Nominating and Corporate Governance Committee will also consider candidates recommended by stockholders. Stockholders wishing to suggest director candidates should submit their suggestions in writing to the attention of Potbelly’s Corporate Secretary, providing the candidate’s name and qualifications for service as a Board member, a document signed by the candidate indicating the candidate’s willingness to serve, if elected, and evidence of the stockholder’s ownership of Potbelly stock. A stockholder wishing to nominate a candidate must do so formally by following the procedures described in the By-Laws. The Nominating and Corporate Governance Committee will evaluate nominations by stockholders in the same manner as nominations from any of the other sources described above.

The Board nominates director candidates for election by the stockholder and fills any Board vacancies that occur between shareholder elections pursuant to the By-Laws.

### ***Board Membership Criteria***

The Nominating and Corporate Governance Committee works with the Board on an annual basis to determine the appropriate characteristics, skills and experience for the Board as a whole and its individual members. In evaluating the suitability of individual Board members, the Board and the Nominating and Corporate Governance Committee will take into account factors such as the individual's general understanding of disciplines relevant to the success of a publicly traded company; understanding of Potbelly's business; education and professional background, including current employment and other Board memberships; reputation for integrity; and any other factors they consider to be relevant. The Board evaluates each individual in the context of the Board as a whole, with the objective of recommending a group that can best perpetuate the success of the business and represent stockholder interests through the exercise of sound judgment, using its diversity of experience. Furthermore, the Board will endeavor to reflect the diversity of Potbelly's stockholders, employees and customers and the communities it serves. In determining whether to recommend a director for re-election, the Nominating and Corporate Governance Committee also considers the director's past attendance at meetings and participation in and contributions to the activities of the Board.

### ***Director Responsibilities***

The basic responsibility of the directors is to exercise, directly and through committees of the Board, their business judgment to act in what they reasonably believe to be in the best interests of Potbelly and its stockholders, and to conduct themselves in accordance with their duties of care and loyalty. Directors are expected to attend Board meetings and meetings of the committees on which they serve, and to spend the time needed to carry out their responsibilities as directors, including meeting as frequently as necessary to properly discharge those responsibilities. Directors are also expected to review in advance all materials for the meetings of the Board and the committees on which they serve.

### ***Board Composition - Mix of Management and Independent Directors***

The Board believes that, except during periods of temporary vacancies, a substantial majority of its directors must be independent of Potbelly and Potbelly's management. In determining the independence of a director, the Board will apply the definition of "independent director" in the rules of The NASDAQ Stock Market LLC ("Nasdaq") and applicable laws and regulations.

The Board undertakes an annual review of the independence of all non-employee directors. In advance of the meeting at which this review occurs, each non-employee director is asked to provide the Board with complete information regarding the director's business and other relationships with Potbelly and its affiliates and with senior management and their affiliates to enable the Board to evaluate the director's independence.

Directors have an affirmative obligation to inform the Board of any material changes in their circumstances or relationships that may impact their designation by the Board as

“independent.” This obligation includes all business relationships between, on the one hand, directors or members of their immediate family, and, on the other hand, Potbelly and its affiliates or members of senior management and their affiliates, whether or not such business relationships are subject to the approval requirement of Potbelly’s Related Party Transactions Policy.

### ***Term Limits***

Non-employee directors will not be nominated for election to the Board after they have completed 12 years of Board service, although the full Board may nominate candidates who have completed 12 years of Board service in special circumstances. Time served on the Board prior to the completion of Potbelly’s initial public offering will not be counted against a non-employee director’s limit of 12 years.

### ***Age Limits***

Directors will not be nominated for election to the Board after their 75th birthday, although the full Board may nominate candidates over 75 in special circumstances.

### ***Directors with Significant Job Changes***

Any director who retires from his or her present employment, or who materially changes his or her position, should promptly tender a written resignation to the Board. The Nominating and Corporate Governance Committee will promptly consider the tendered resignation and will recommend to the Board whether to accept the tendered resignation based on a review of whether the director continues to satisfy the Board’s membership criteria in light of his or her changed status. The Board will act on the Nominating and Corporate Governance Committee’s recommendation no later than at its first regularly scheduled meeting following the tendering of the resignation, but in any case, no later than 120 days following such tender.

### ***Majority Voting Policy***

Any nominee for director in an uncontested election (*i.e.*, an election where the only nominees are those recommended by the Board) who receives a greater number of votes “withheld” from his or her election than votes “for” such election (a “Majority Withheld Vote”) shall promptly tender his or her resignation following certification of the stockholder vote.

The Nominating and Corporate Governance Committee will promptly consider the tendered resignation and will recommend to the Board whether to accept the tendered resignation or to take some other action including to:

- allow the incumbent director to remain on the Board but not be nominated for re-election to the Board at the next election of directors;
- defer acceptance of the resignation until the vacancy can be filled by the Board in accordance with the By-Laws with a replacement director with certain necessary qualifications held by the subject incumbent director (*e.g.*, audit committee financial expertise); or

- defer acceptance of the resignation if the incumbent director can address the underlying cause (if ascertainable) of the Majority Withheld Vote within a specified period of time (e.g., if the withheld votes were due to another board directorship, by resigning from that other board).

In making this recommendation, the Nominating and Corporate Governance Committee will consider all factors deemed relevant by its members including, without limitation, the underlying reasons why stockholders “withheld” votes for election from such director (if ascertainable), the length of service and qualifications of the director whose resignation has been tendered, the director’s contributions to Potbelly, whether by accepting such resignation Potbelly will no longer be in compliance with any applicable law, rule, regulation or governing document, and whether or not accepting the resignation is in the best interests of Potbelly’s stockholders.

The Board will act on the Nominating and Corporate Governance Committee’s recommendation no later than at its first regularly scheduled meeting following the certification of the stockholder vote, but in any case, no later than 120 days following the certification of the stockholder vote. In considering the Nominating and Corporate Governance Committee’s recommendation, the Board will consider the factors considered by the Nominating and Corporate Governance Committee and such additional information and factors the Board believes to be relevant.

The Board’s decision will be disclosed in a Current Report on Form 8-K furnished by Potbelly to the Securities and Exchange Commission (the “SEC”) within four business days of the decision. If the Board has decided to turn down the tendered resignation, or to pursue any additional action (as described above or otherwise), then the Form 8-K will fully disclose the Board’s reasons for doing so.

Any director who tenders his or her resignation pursuant to this provision may not participate in the Nominating and Corporate Governance Committee recommendation or Board consideration regarding whether or not to accept the tendered resignation. However, such director shall remain active and engaged in all other committee and Board activities, deliberations and decisions during this Nominating and Corporate Governance Committee and Board process.

If enough members of the Nominating and Corporate Governance Committee received a Majority Withheld Vote at the same election so that a quorum of the Nominating and Corporate Governance Committee cannot be attained, then the independent directors who are on the Board who did not receive a Majority Withheld Vote will appoint a Board committee amongst themselves solely for the purpose of considering the tendered resignations and will recommend to the Board whether to accept or reject them. This Board committee may, but need not, consist of all of the independent directors who did not receive a Majority Withheld Vote. If the only directors who did not receive a Majority Withheld Vote in the same election constitute four or fewer directors, then all directors may participate in the Board consideration regarding whether or not to accept the tendered resignations.

### ***Board Leadership***

The Board shall annually elect one of its members to be the chairman of the Board and shall fill any vacancy in the position of chairman of the Board. The chairman of the Nominating and Corporate Governance Committee will serve as the “lead director.” If the chairman of the Board is not an independent member of the Board, the lead director will lead meetings of the non-management directors, call additional meetings of the non-management directors as deemed appropriate, serve as a liaison on board-related issues between the chairman and the non-management directors, and perform such other functions as the Board may direct, including (1) advising committee chairs with respect to agendas and information needs relating to committee meetings; (2) approving the agenda, schedule and information sent to the directors for board meetings, (3) working with the chairman to propose an annual schedule of major discussion items for the Board’s approval and (4) providing leadership to the Board if circumstances arise in which the role of the chairman may be, or may be perceived to be, in conflict, and otherwise act as chairman of Board meetings when the chairman is not in attendance. If the chairman of the Board is not an independent member of the Board, the lead director will also be available for consultation and direct communication with Potbelly’s stockholders on significant issues.

### ***Limitation on Other Board Service***

Directors may serve on a total of no more than three other public company boards.

### ***Stockownership Guidelines***

The Board believes that all directors and executive officers should hold a significant equity interest in Potbelly. Toward this end, the Board has established these stockownership guidelines for members of the Board of Directors and employees of Potbelly who are executive officers.

The Board expects that all directors own, or acquire within the later of (i) five years of first becoming a director and (ii) five years after Potbelly’s initial public offering, shares of Potbelly common stock (including restricted shares, but not options, under Potbelly’s equity-linked incentive plans) having a market value of at least four (4) times the amount of annual cash compensation (excluding any additional retainer received for service as Lead Director or as chair of any Board committee) offered to directors (regardless of whether the director elects to receive such compensation in cash). Shares owned by investment funds of which a director is an executive officer or general partner will count towards the foregoing ownership guidelines.

The Board expects that all executive officers own, or acquire within the later of (i) five years after the adoption of these guidelines, and (ii) five years of first becoming an executive officer, shares of Potbelly common stock (including restricted shares, but not options, under Potbelly’s equity-linked incentive plans) having a market value of a multiple of such executive officer's annual base salary. For the Chief Executive Officer, the multiple shall be four (4) times annual base salary and for all other executive officers the multiple shall be one and one-half (1.5) times annual base salary.

The Board recognizes that exceptions to this policy may be necessary or appropriate in individual cases, and may approve such exceptions from time to time as it deems appropriate in the interest of Potbelly’s stockholders.

### ***Conflicts of Interest***

All directors must comply with the applicable provisions of Potbelly's Code of Business Conduct and Ethics. If an actual or potential conflict of interest develops for any reason, including, without limitation, because of a change in the business operations of Potbelly or a subsidiary, or in a director's circumstances, the director should immediately report such matter to the General Counsel of Potbelly for evaluation. The General Counsel will have the discretion to report any or all such actual or potential conflicts to the Chair of the Nominating and Corporate Governance Committee for review and determination, but is required to report to the Chair of the Nominating and Corporate Governance Committee all such conflicts that are material. For purposes of this policy, an actual or potential conflict of interest is considered to be material if it would require proxy statement disclosure as a related party transaction or if it involves a relationship with a competitor of Potbelly. If a significant conflict cannot be resolved, the director may be required to resign.

If a director has a personal interest in a matter before the Board, the director must disclose the interest to the Board, excuse himself or herself from participation in the discussion, and not vote on the matter.

## **Board Meetings; Involvement of Senior Management**

### ***Board Meetings - Agenda***

The lead director will work with the chairman to set the agenda for each Board meeting, and will distribute this agenda in advance to each director. The chairman will, as appropriate, solicit suggestions from other directors as to agenda items for Board meetings. Directors may suggest to the lead director the inclusion of items on the agenda, request the presence of or a report by any member of Potbelly's senior management, or at any Board meeting raise subjects that are not on the agenda for that meeting.

### ***Advance Distribution of Materials***

All information relevant to the Board's understanding of matters to be discussed at an upcoming Board meeting should be distributed in writing or electronically to all members in advance, whenever feasible and appropriate. This will help facilitate the efficient use of meeting time. In preparing this information, management should ensure that the materials distributed are as concise as possible, yet give directors sufficient information to make informed decisions. The Board acknowledges that certain items to be discussed at Board meetings are of an extremely sensitive nature and that the distribution of materials on these matters prior to Board meetings may not be appropriate.

### ***Meeting Attendance***

It is expected that each director will make every effort to attend each board meeting and each meeting of any committee on which he or she sits. Attendance in person is preferred but attendance by teleconference or similar communications equipment is permitted if necessary.

### ***Access to Employees***

The Board should have access to Potbelly employees in order to ensure that directors can ask all questions and ascertain all information necessary to fulfill their duties. Management is encouraged to invite Potbelly personnel to any Board meeting at which their presence and expertise would help the Board have a full understanding of matters being considered.

### ***Executive Sessions of Independent Directors***

The independent directors of Potbelly will meet regularly in executive session (*i.e.*, with no management directors or management present), but in any event no less than once per year. These executive session discussions may include such topics as the independent directors determine. During these executive sessions, the independent directors will have access to members of management and other guests as the independent directors determine. The Board will not take formal actions at such sessions, although the participating Directors may make recommendations for consideration by the full Board.

## **Performance Evaluation; Succession Planning; Compensation**

### ***Annual Chief Executive Officer Evaluation***

The Nominating and Corporate Governance Committee will lead a review at least annually of the performance of the chief executive officer. The results of this review are communicated to the chief executive officer.

### ***Succession Planning***

As part of the annual officer evaluation process, the Nominating and Corporate Governance Committee will lead the Board's annual review of, and make recommendations to the Board regarding, chief executive officer succession, as well as to develop plans for interim succession for the chief executive officer in the event of an unexpected occurrence. Succession planning may be reviewed more frequently by the Board as it deems warranted.

The chief executive officer shall also have in place at all times a confidential written procedure for the timely and efficient transfer of his or her responsibilities in the event of his or her sudden incapacitation or departure. The chief executive officer shall review this procedure periodically with the Nominating and Corporate Governance Committee. The chief executive officer shall also review periodically with the Compensation Committee the performance of key members of the senior management of Potbelly, as well as potential succession arrangements for such management members.

### ***Board Self-Evaluation***

The Nominating and Corporate Governance Committee is responsible for facilitating an annual evaluation of the performance of the full Board and reports its conclusions to the Board. The Nominating and Corporate Governance Committee's report should generally include an assessment of the Board's compliance with the principles set forth in these guidelines, as well as identification of areas in which the Board could improve its performance.



### ***Director Compensation***

Potbelly's management should report to the Compensation Committee or the full Board periodically as to how Potbelly's director compensation practices compare with those of comparable public corporations. The Compensation Committee will lead the Board, as necessary, in reviewing its director compensation practices and considering whether changes to such practices are appropriate. No non-management director will receive any compensation from Potbelly other than his or her compensation as a director.

## **Committees**

### ***Number and Type of Committees***

The Board has three committees - an Audit Committee, a Compensation Committee and a Nominating and Corporate Governance Committee. The Board may add new committees or remove existing committees as it deems advisable in the fulfillment of its primary responsibilities. Each committee operates according to a written charter, which is approved by the Board. Each committee will perform its duties as assigned by the Board in compliance with the By-Laws, the Certificate of Incorporation, and each respective committee's charter. Committee duties are described briefly as follows:

- **Audit Committee.** The Audit Committee oversees Potbelly's accounting and audit processes. The committee is directly responsible for the appointment, compensation, retention, and oversight of Potbelly's independent auditors.
- **Compensation Committee.** The Compensation Committee (i) discharges the Board's responsibilities relating to compensation of Potbelly's executive officers other than the chief executive officer and makes recommendations to the Board concerning chief executive officer compensation and (ii) reviews and recommends to the Board compensation plans, policies, and programs intended to attract, retain and appropriately reward employees.
- **Nominating and Corporate Governance Committee.** The Nominating and Corporate Governance Committee is responsible for identifying, evaluating and recommending to the Board individuals qualified to be directors of Potbelly and developing and recommending to the Board policies and practices with respect to corporate governance.

### ***Composition of Committees; Committee Chairs***

The Audit Committee, the Compensation Committee and the Nominating and Corporate Governance Committee are composed solely of independent directors except in extraordinary circumstances as permitted by applicable rules. The Board is responsible for the appointment of committee members and committee chairs according to criteria that it determines to be in the best interest of Potbelly and its stockholders.

### ***Committee Meetings and Agenda***

The chair of each committee is responsible for developing, together with relevant Potbelly

managers, the committee's general agenda and objectives and for setting the specific agenda for committee meetings. The chair and committee members will determine the frequency and length of committee meetings consistent with the committee's charter. The agendas and meeting minutes of each committee are made available to the full Board, and other Board members may attend committee meetings.

### ***Annual Performance Evaluation***

Each of the Audit Committee, the Compensation Committee and the Nominating and Corporate Governance Committee separately conducts an annual self-evaluation of its performance relative to the requirements of its charter and reports its conclusions to the Board.

## **Miscellaneous**

### ***Ability to Retain Outside Advisors***

The Board will have all resources and authority necessary to discharge its duties, including the authority to retain outside counsel or other experts or consultants, as it deems appropriate.

### ***Orientation for New Board Members***

Potbelly's management, in conjunction with the Nominating and Corporate Governance Committee, will develop, implement and regularly review and update an orientation program for new directors so that they can quickly become sufficiently knowledgeable about Potbelly in order to contribute meaningfully to Board discussions and decision making. This program will include cultural orientation, background material on strategies, competition, and financial history, meetings with senior management, and visits to Potbelly facilities.

### ***Director Education***

Potbelly will, as appropriate, make available educational programs for directors.

### ***Review of Governance Guidelines***

The Board will periodically review these guidelines, as well as consider other corporate governance principles that may, from time to time, merit consideration by the Board.

### ***Stockholder Communications Process***

The Board, based on the recommendation of the Nominating and Corporate Governance Committee, will provide a process for Potbelly's stockholders to send communications to the Board. Such communications process, along with the identity of the directors to whom stockholders can send communications and other relevant information, will be described in the proxy statement relating to Potbelly's annual meeting of stockholders. The Board will review such stockholder communications process from time to time and implement such changes, if any, as it deems appropriate.

### ***Political Contributions Policy***

While employees may participate as individual citizens in the political process, decisions to do so are entirely personal and voluntary. Employees engaging in political campaign activities are expected to do so as private citizens, and must at all times make clear that their views and actions are their own, and not those of Potbelly. Employees must not use their position with Potbelly to coerce or pressure other employees to make contributions to or support or oppose any political candidates, elections or ballot initiatives.

### ***Public Disclosure of Corporate Governance Guidelines***

Potbelly posts on its website copies of the current version of these guidelines, Potbelly's Code of Business Conduct and Ethics (and any other code of ethics required by the SEC or Nasdaq) and the charters of the Audit Committee, the Compensation Committee and the Nominating and Corporate Governance Committee, and discloses in its annual report that such information is available on its website or in print to any stockholder that requests it.

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