

**Portland Downtown
BY-LAWS**

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DEFINITIONS:

- a. Board – the Board of Directors
- b. Chair – an elected Director serving as the presiding officer of the Board
- c. City – the City of Portland, Maine
- d. Cluster – a combination of specific Sectors
- e. Director – a member of the Board of Directors; Directors may be Elected Directors, or Appointed Directors if appointed by the Chair
- f. District – the geographic area designated as the Downtown Improvement District in the City of Portland, as amended from time to time
- g. Executive Director – the Chief Executive Officer of the Corporation
- h. Governance Committee – a committee comprised of Directors charged with overseeing certain aspects of the business of the organization
- i. Sector - a single group of voting Stakeholders
- j. Staff – employees of the Corporation
- k. Property Owner – those property owners in the District whose name and address appears on the City tax roles as of January 1st of a given year
- l. Stakeholder - everyone in the District

ARTICLE I – NAME AND LOCATION:

The name of this Corporation shall be Downtown Improvement District, Inc., dba Portland Downtown, and its location shall be at Portland, Maine.

ARTICLE II – PURPOSES:

Section 2.1 Within the District the purposes of this Corporation shall be:

- a. To represent the business, cultural and residential community in the on-going development and management of downtown Portland;
- b. To create a safer, cleaner, well-managed downtown area so that Portland can successfully compete as an environment in which to live, do business, invest, shop and visit;
- c. To stimulate commercial, retail, tourist and cultural activities through improved marketing and promotional initiatives which enhance the image of downtown Portland.

Section 2.2 In pursuit of these purposes, the Corporation shall have all of the specific, general, and incidental powers granted to it by the Maine Nonprofit Corporation Act. The Corporation is empowered to do all and everything necessary, suitable and proper for the accomplishment, attainment or furtherance of its purposes, subject to the limitations that:

- a. The Corporation shall be operated exclusively for the promotion of social welfare, as such term and purpose are used and defined in, or in connection with, Section 501 (c) (4) of the Internal Revenue Code of 1986, relating to tax exempt corporations (or in the corresponding provisions of any future United States Internal Revenue Law), and the regulations pertaining thereto as they

- now exist or hereafter may be amended;
- b. The Corporation shall not operate as a social club for the benefit, pleasure, or recreation of its members nor carry on a business with the general public in manner similar to organizations which are operated for profit;
 - c. No part of the net earnings of the Corporation shall inure to the benefit of any director, officer, or employee of the Corporation or any private individual or organization (except as reasonable compensation for services actually rendered to the Corporation in carrying out its exempt purposes) and no director, officer, or employee of the Corporation or any private individual or organization shall be entitled to share in the distribution of any of the corporate assets on dissolution of the Corporation except in furtherance of the Corporation's exempt purposes. In the event of the dissolution of the Corporation, all remaining assets, after making provision for payment of all lawful debts and liabilities, shall be distributed to such tax exempt organization under Internal Revenue Code Sections 501 (c) 3 or 501 (c) 4, or to such federal, state, or local government, as the Board of Directors shall determine will best carry out the exempt purposes of the Corporation.
 - d. No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate in or intervene in (including the publication or distribution of statements) any political campaign on behalf of or in opposition to any candidates for public office.

ARTICLE III – MEETINGS:

- Section 3.1 **Annual Meeting.** The Annual Meeting of the Corporation and its Property Owners shall be held once each year at such time and place as the Board may designate.
- Section 3.2 **Special Meetings.** Special meetings of the Board may be called by its Chair at any time and upon the request in writing of five (5) Directors.
- Section 3.3 **Board Meetings.** Meetings of the Board shall be held at least eleven (11) times per year, at such time and place as shall be stated in a notice by the Chair or Executive Director, by mail, telephone, or email at least two days prior to such meeting.
- Section 3.4 **Quorum.** At all meetings of the Board, the presence of at least 50% of the Directors shall constitute a quorum and the act of the majority of those participating and voting shall be the act of the Board. A Director may, no more than five (5) times per fiscal year, participate and vote from a remote location via conference call, or other Board approved method. Such participation shall be considered Attendance under section 4.7.
- Section 3.5 **Voting.** Each Director shall be entitled to one (1) vote on each matter submitted to a vote at a meeting of the Board. No voting by proxy shall be allowed. Upon request by any Director, the vote upon any question before the meeting shall be by written, secret ballot.
- Section 3.6 **Unanimous Consent.** Except as otherwise provided by Law, any action required or permitted to be taken at a Board meeting may be taken without a meeting and without a vote if a written consent is signed or electronically transmitted by each of the Directors, and such writings or electronic transmissions are filed with the records of the meetings of the Directors. Any such action taken shall have the same force and effect as if the action had been taken by the Directors at a meeting thereof.

ARTICLE IV – BOARD OF DIRECTORS:

- Section 4.1 **Elected Directors.**

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- a. The minimum number of Directors is 15 and the maximum number of Directors is 19.
- b. The Governance Committee shall be responsible for overseeing elections and determining qualifications under this section.
- c. A majority of Directors shall be elected by Property Owners (e.g. 10 of 18). This requirement may not be changed without amending the Articles of Incorporation.
- d. At least three (3) Directors shall be elected by the Property Owners in accordance with the “weighted voting” of Section 5.1f for the following Stakeholder Sector Cluster:
 - **Professional Services** (Legal/ Accounting/Financial/Insurance/Marketing/Technology/ Business Consulting);
- e. And one (1) Director from the following Stakeholder Sector:
 - Residential** (1, 2 or 3 units);
- f. One (1) Director shall be elected directly by qualified members of each of the following Stakeholder Sectors:
 - **Accommodations** (Hotels & B&Bs)
 - **Cultural** (Educational, Tax-Exempt/Non-Profit)
 - **Entertainment** (Class A Lounge, Class XI Rest/Lounge, Auditorium, Brewery/Winery/Distillery, Class X-Lounge; Class IV-Tavern)
 - **Retail**
 - **Restaurant** (FSE w/Prep, Class 1 FSE, Class II, Class III, Class IV, Class XI Rest/Lounge)
- g. Between four (4) and eight (8) “At Large” Directors shall be an owner, manager or principal officer who is elected by the Property Owners in accordance with the “weighted voting” of Section 5.1 (f) from **any** of the following Stakeholder Sectors:
 - Parking Lot;
 - Office Property;
 - Multi-unit Residential (4 or more units)

Section 4.2. Appointed Directors:

- a. There shall be one (1) Appointed Director representing the City of Portland, to be chosen annually by the City Manager.
- b. The Chair may, at their discretion, appoint, at any time during their term and subject to Sec. 4.7, up to two (2) additional Directors, which appointments shall terminate at the expiration of one year from appointment. Such Appointed Directors need not claim the District to be their principal place of business or residence. All such appointments must be affirmed by vote of the Board and such appointee(s) may be removed by majority vote of the Board. The limitation to two such appointees shall be considered a periodic limitation, not cumulative in nature, meaning that no more than two such appointees may sit as Directors at any given time, but may be replaced and reappointed from time to time.

Section 4.3

Restrictions. With the exception of Appointed Directors, all Directors shall claim the District to be their principal place of business or residence throughout their term. Co-working or other non-traditional locations may be considered a principal place of business if so identified in official business records.

Elected Directors whose principal place of business or residence changes and is no longer within the

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District are no longer qualified to hold their seat and must immediately resign from the Board by presenting a written resignation to the Chair or the Board. The Chair, at their discretion, may choose to appoint the Director to an open Appointed Director seat per Section 4.2.b for the remainder of the term, if one is available.

No business or property owner shall be represented by more than one Director.

Section 4.4 Term. All Elected Directors shall serve a three (3) year Term.

Section 4.5 Vacancies. Vacancies on the Board caused by resignation, disqualification, removal or non-election shall be filled by the appointment of duly qualified persons and approved by the Board at any duly called regular or special Board meeting at which a quorum is in attendance. Such Board-appointed Directors will serve until the next regularly scheduled election.

Effective 1/1/2020, election to openings caused by a vacancy for any reason shall be only for the length of time remaining in the vacant term.

This entire section shall be subject to Article XIII.

Section 4.6 Compensation. No Director shall receive any compensation or reimbursement of expenses for serving as a Director, provided that this section does not preclude any Director from serving the Corporation in any other capacity receiving compensation.

Section 4.7 Resignations and Removals. Any Director may resign by filing with the Chair or the Board a written resignation, which shall take effect on being so filed or at such later time as may be specified therein. Any Director who fails to participate in three (3) consecutive regularly scheduled Board meetings shall be deemed to have automatically submitted his or her resignation, which will be acted upon at the next meeting of the Board with notice to the affected Director. Any Director may be removed with or without cause by a two-thirds vote (2/3) vote of the Board at a properly convened meeting when a quorum is present.

ARTICLE V – ELECTION OF DIRECTORS:

Section 5.1 Property Owners. By April 15th, the Governance Committee shall broadcast by U.S. mail or another method to the Property Owners a listing of all vacancies and seeking the nomination of qualified individuals to the Governance Committee or its designee by April 30th.

- a. The Governance Committee shall confirm that the nomination complies with the requirements above and that each nominee accepts the nomination and its obligations.
- b. Thereafter, the Governance Committee shall develop the necessary ballot for Property Owners, for presentation at the May meeting of the Board.
- c. The ballot shall have arranged the candidates' names alphabetically with a seventy-five (75) word or less biography on each nominee
- d. After Board approval, the ballot shall be mailed to each Property Owner by May 31st.
- e. Each ballot shall contain voting instructions and shall have affixed the name of the Property Owner and the property address.
- f. Each Property Owner shall have one vote for each **\$1,000** or fractional portion thereof paid as of March 1st of the election year to the City of Portland as the annual Portland Downtown Assessment, per property owned and shall have that number of votes available to cast for each vacant seat as described in 4.1. No cumulative voting shall be allowed. [This section 5.1 f. shall

be effective July 1, 2017.]

- g. In the event a Property Owner, manager or representative can demonstrate to the reasonable satisfaction of the Governance Committee that ballots related to their property have been sent to a non-functional address, or have not been received, substitute ballots may be issued by the Governance Committee.
- h. Each Property Owner shall cast and return their ballot to the Governance Committee or its designee no later than 5 pm. June 15th or the next business day if the 15th is a Sunday.
- i. The Executive Director shall inform all nominees of the successful slate of Directors within fifteen (15) business days of the final election results.

Section 5.2

Sectors: Staff shall provide from time to time but no less than every five (5) years, as comprehensive a list of businesses in the District as reasonably possible, identifying them by industry segment or SIC, with the ability to separate the lists by sub-group. The Board, with the recommendation of the Governance Committee, shall establish no more than 5 groups that the Board believes warrant direct representation based on the most current list of District businesses, which groups are represented by the Stakeholder Sectors identified in section 4.1.f. above, as may be revised pursuant to this review. The Governance Committee shall develop an appropriate Nomination Form for each of those identified Stakeholder Sectors, seeking the nomination of appropriate individuals and the return of that form to the Governance Committee by April 30th.

- a. The confirmation of candidates, preparation and approval of ballots, and ballot processing under this section will follow the same process and timeline as in section 5.1.
- b. Ballots shall be physically or electronically mailed to each eligible voter in the Sector where a vacancy exists. Stakeholders shall receive one ballot (one vote) per location within the District.

Section 5.3

Ballot Processing and Term Inception. After voting closes the Governance Committee shall tally the votes cast. The nominees receiving the most votes in each category shall be declared elected and will take office effective July 1st. In the event of a tie, the winner shall be determined by a coin toss by the Chair of the Board. The ballots will be retained by the Governance Committee for 90 days in the event of a challenge to the election.

ARTICLE VI – OFFICERS:

Section 6.1

Composition. The officers of the Corporation shall consist of a Chair of the Board, Vice Chair, Treasurer, Executive Director and such other officers and agents as the Board may from time to time determine.

Section 6.2

Election. The Chair, Vice Chair and Treasurer shall be elected annually by a majority vote of the Board of Directors in attendance at its December meeting from among the elected Directors: and shall take office on April 1 for a one-year term. No elected officer shall serve more than two (2) years consecutively in the same capacity, except when no alternative Director is able to serve and with a majority vote of the Board of Directors in attendance.

Section 6.3

Treasurer. The Treasurer shall:

- a. Serve in an honorary capacity as representative to the public of the Corporation’s financial integrity;
- b. Take particular interest in assuring that the financial affairs of the Corporation as delegated to the Staff are conscientiously implemented, properly administered, and effectively carried out;

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- c. Reserve full power over the varied aspects of the Corporation's financial affairs that have been delegated in part to the Staff so as to respond immediately in time of need as determined by the Executive Committee or the Board, or should the functions delegated to the Staff be incapable of performance for any reason;
- d. Report no less than quarterly on the state of financial affairs of the Corporation. The report must be sufficiently detailed to allow Directors to perform their fiduciary duties, and must include descriptions of any substantial variances from budget;
- e. Direct prudent effort to insuring on behalf of the full Board and Stakeholders that the Financial Statements of the Corporation, though prepared by the staff, represent an accurate depiction of the affairs of the Corporation according to generally accepted accounting principles.

Section 6.4 Resignations and Removals. Any officer may resign by filing with the Chair, the Executive Director or the Board a written resignation, which shall take effect on being so filed or at such later time as may be specified therein. So far as permitted by law, the Board may at any meeting of the Board remove from office any officer elected or appointed by the Board by a two-thirds vote (2/3) vote of the Board at a properly convened meeting and when a quorum is present.

Section 6.5 Vacancies. A vacancy in any office may be filled by the Board from sitting Directors by a majority vote of the Directors present at any duly called regular or special Board meeting.

ARTICLE VII - POWERS AND DUTIES OF DIRECTORS AND OFFICERS:

Section 7.1 Directors. The Board shall have the entire control and management of the corporation, its property and affairs and of the carrying out of all or any of its purposes and may exercise all of its powers, subject only to the provisions of law as from time to time amended or these By-laws as from time to time amended. The Board shall employ an Executive Director and shall fix the Executive Director's salary and other consideration of employment. It may also, subject as aforesaid, (1) appoint such subordinate officers and agents as it from time to time deems necessary, determine their duties, and at its discretion remove or suspend the same; (2) fix and, from time to time as it deems necessary, change their salaries and other compensation; (3) appoint any officer, permanently or temporarily as it deems necessary, to have powers and perform duties of any other officer; (4) delegate any of the powers of the Board to any committee, officer or agent; (5) make grants and authorize contracts and otherwise determine the manner and extent of use of the funds and other property, real and/or personal, of the Corporation.

Section 7.2 The Chair. The Chair shall serve as the presiding officer of the Board and the Executive Committee and other meetings of the Corporation and in that capacity guide the deliberations and activities of the Board. The Chair shall have the general powers and duties usually vested in that office and such other powers and duties as may be designated by the Board. The Chair shall, with the advice and counsel of the Executive Director, assign responsibility to the Vice-Chair, subject to approval of the Board.

Section 7.3 Vice-Chair. The Vice-Chair shall exercise the powers and authority and perform the duties of the Chair when the Chair is absent or unable to exercise their duties. If for any reason there is a vacancy in the Chair position, the existing Vice-Chair shall succeed the Chair and assume all Chair roles and responsibilities for the remainder of the term.

Section 7.4 Executive Director. The Executive Director shall be the Chief Executive Officer of the corporation. The Executive Director shall:

- a. Be responsible for the administration of the programs in accordance with the policies and regulations established by the Board.

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- b. Assist the Chair in the development of corporate objectives and policies that cover operations, personnel, performance and growth. The Executive Director shall have general responsibility and authority to see that all orders and resolutions of the Board are carried into effect.
- c. Serve as advisor to the Chair and Vice-Chair. The Executive Director shall assemble information and data and cause to be prepared special reports as directed by the Chair.
- d. Serve as ex-officio member of all committees.
- e. Be responsible for hiring, discharging, directing and supervising all employees. All employees shall report directly to the Executive Director.
- f. With the cooperation of the Chair and Treasurer, the Executive Director shall be responsible for the preparation of an operating budget covering all activities of the Corporation, subject to approval of the Board.
- g. Be responsible for all expenditures within approved budget allocation. Unless otherwise voted by the Board, the Executive Director shall give a bond to the corporation honestly to perform the duties of the office of Executive Director, in such amount as the Board shall direct.

ARTICLE VIII – COMMITTEES:

Section 8.1 Appointments. Except for the Executive Committee, the Chair shall appoint the Chairperson(s) for all committees with the approval of the Board. The Chair may appoint such ad-hoc Committees and their Chairpersons as the Chair deems necessary to carry out the programs of the Corporation. Except for the Executive Committee, Committee appointments shall be at the will and pleasure of the Chair and shall extend for the duration of the then-current fiscal year.

Section 8.2 Discharge. Committees shall be discharged by the Chair when their work has been completed, or when, in the opinion of the Board, it is deemed wise to discontinue the Committee.

Section 8.3 Authority. It shall be the function of Committees to make investigations, conduct studies and hearings, make recommendations to the Board and to carry on such activities as may be delegated to them by the Board. No action by a Committee, Committee member, division, employee, Director or officer shall be binding upon, or constitute an expression of the policy of the Corporation unless it shall have been approved or ratified by the Board.

ARTICLE IX – THE EXECUTIVE COMMITTEE:

Section 9.1 Composition. The Executive Committee shall consist of: the three (3) elected officers (Chair, Vice Chair, Treasurer).

Section 9.2 Role. The Executive Committee will meet on an as needed basis to conduct the responsibilities listed in Section 9.4 below.

Section 9.3 Restrictive Powers. During the interval between meetings of the Board, the Executive Committee shall accept as delegated by the Board any or all powers of the Board in the management of the Corporation; provided, however, that nothing shall be construed to permit the Executive Committee the power to adopt, amend, repeal, suspend or otherwise modify the Articles, By-laws, Standing Resolutions or Policy Statements of the Corporation as established from time to time by the Board.

Section 9.4 Responsibilities. More particularly, the duties and responsibilities of the Executive Committee, in addition to whatever powers are delegated to it from time to time by the Board, shall include the following:

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- a. Review the established personnel policies and where necessary make recommendations for change to the Board;
- b. Make recommendations to the Board with regard to the hiring, level of compensation, and discharge of the Executive Director;
- c. Function as the grievance committee in disputes between Portland Downtown and its members and between Portland Downtown and the community;
- d. Advance Portland Downtown's Strategic Plan initiatives;
- e. Ensure that programs and activities undertaken by Portland Downtown are meeting the organization's mission and meeting their intended outcomes;
- f. Subject to the provisions of these By-laws, arrange its own rules of procedure, including the power to fill an Executive Committee vacancy with an alternate Director, but any Director so chosen shall serve as a member of the Executive Committee only until the next opportunity of the Board to name a permanent substitute;
- g. Notify the Board of its agenda prior to meetings so as to allow interested Directors to attend and listen, without the right to vote;
- h. Record its meetings with formal minutes and distribute to Directors with the next full Board packet.

ARTICLE X – FINANCES:

The fiscal year of the Corporation shall begin on the first day of July and end on the 30th day of June. Unless directed otherwise by a majority vote of the Board, the books and records of the Corporation shall be reviewed, not audited, annually as of the close of business on the 30th day of June by an independent certified public accountant. The review at all times shall be available at the Corporation's offices to Property Owners and businesses in the district.

ARTICLE XI – PARLIAMENTARY AUTHORITY:

In all questions of parliamentary procedure, the Chair may be guided by the most recent edition of Roberts Rules of Order, when such rules are not inconsistent with the Articles of Incorporation or By-laws of the Corporation.

ARTICLE XII – AMENDMENTS:

These By-laws may be amended, altered, or repealed by a two-thirds (2/3) vote of those present and voting at any regular or special meeting of the Board when a quorum is present, provided the notice for the meeting includes the proposals for amendment, alteration or repeal. Such action, however, shall not be taken within six months after a vote on the same or a substantially similar proposal. The Directors shall have no power to adopt any amendment to these By-Laws which would:

- a. Be inconsistent with its Articles of Incorporation or any contractual obligations of the Corporation; or
- b. Inconsistent with the requirements of Section 501 (c) (4) of the Internal Revenue Code of 1986 (or of the corresponding provisions of any future United States Internal Revenue Law) or the regulations pertaining thereto as they now exist or hereafter may be amended, or (c) might disqualify the Corporation from exemption from tax under that Section.

ARTICLE XIII – DISASTER PROVISIONS:

If at any time, for any reason, the Board is reduced to ten (10) or fewer Directors, then the remaining Directors shall be authorized to appoint as many Directors as required to establish a quorum. The Board shall conduct a special election to fill the unexpired term of existing vacancies. Such special election shall follow the procedure described in Article IV, Section 4.5.

ARTICLE XIV – INDEMNIFICATION:

Each Director and officer of the Corporation shall be indemnified by it against all expenses actually and necessarily incurred by such Director or officer in connection with the defense of any action, suit, or proceeding to which such Director or officer has been made a party by reason of being or having been such Director or officer except in relation to matters as to which such Director or officer shall be adjudicated in such action, suit, or proceeding to be liable for gross negligence or willful misconduct in the performance of duty.

ARTICLE XV – MULTIPLE INTERESTS:

Section 15.1 If the Board or Staff shall be called upon to consider a transaction involving the Corporation and

- a. any member of the Board or Staff;
- b. any member of the immediate family of either; or
- c. any organization with which any member of the Board or Staff is “affiliated” (see Section 15.3); then

In that event the Board or Staff member, as soon as they have knowledge of the transaction, shall;

- a. Disclose to the extent of their knowledge the precise nature of their interest or involvement in the transaction or the organization; and
- b. Refrain from further participation in the Corporation’s consideration of the proposed transaction; except that
- c. At the request of any Board member (or of the Executive Director, if the transaction involves a staff member) questions pertinent to the transaction or organization under consideration may be answered to assist the Board in their careful deliberations.

Section 15.2 All members of the Board or Staff shall also disclose to the Corporation annually (in a written conflict of interest statement) and on a continuing basis all of their relationships and business affiliations that reasonably could give rise to a conflict of interest involving the Corporation.

Section 15.3 For the purposes of this multiple interest policy, a Board and Staff member is “affiliated” with an organization if they or a member of their immediate family (i.e., their spouse, and their parents, children and their spouses, brothers and sisters and their spouses):

- a. is an officer, director, trustee, partner, employee or agent of such organization;
- b. is either the actual or beneficial owner of more than ten percent (10%) of the voting stock or control interest of such organization; or
- c. has any other direct or indirect dealings with such organization from which they knowingly are materially benefited. For purposes of this sub-paragraph, it shall be presumed that a person is “materially benefited” if they received directly or indirectly cash or other property (exclusive of dividends and interest) in excess of Five Hundred Dollars (\$500) in any year.

Section 15.4 All required disclosures to be made on a continuing basis must be directed in writing to the Chair of the Board, who, together with the Governance Committee, shall have responsibility for the administration of the multiple interests policy.

- a. All known violations, disputes and other issues arising out of the application of this policy to staff members shall be referred to the Executive Director for appropriate action.
- b. Matters under this policy concerning Directors shall be reported to the Chair of the Board for appropriate action, which might include, and in each case be preceded by oral disclosure:
 - i. Conditional Participation, preceded by verbal disclosure;
 - ii. Partial Exclusion, from either or both discussion or voting, and preceded by oral disclosure;

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iii. Total Exclusion from the entire meeting or process, and preceded by oral disclosure

Section 15.5 This policy shall be reviewed and a report submitted to the Board annually by the Governance Committee.

Section 15.6 Any new member of the Board or Staff shall be advised of the policy prior to engaging in their duties for the Corporation.

END