

## BY-LAWS

### BATH DEVELOPMENT CORPORATION

#### ARTICLE I NAME AND LOCATION

The name of this corporation shall be the Bath Development Corporation. It shall be located, with its principal offices and place of business, in Bath, in the County of Sagadahoc, and State of Maine.

#### ARTICLE II PURPOSES

The purpose of this corporation shall be to foster, encourage and assist the settlement or resettlement of industrial, manufacturing, fishing, agricultural, recreational and other business and commercial enterprises within the City of Bath, to acquire by purchase, grant, lease, mortgage, assignment or any other method, real and personal property of all kinds and descriptions and to use sell, transfer, lease, mortgage, pledge, assign or otherwise dispose of or deal in or with said real or personal property, buildings, easements, franchises, rights, powers and privileges, at the direction of the members, to encourage the expansion and development of existing businesses, to provide, where possible, financial support through appropriate revolving loan programs and other available financing sources, to provide timely aid, assistance and response to those interested in developing or expanding business in the City of Bath and to provide network support in so doing, and to do any and all things incidental, auxiliary, related, pertaining, necessary, proper to or connected with any one or all of the purposes and kinds of businesses herein before mentioned, and legal under the laws of the State of Maine or of the United States, as now or hereafter amended.

It is further recognized, and is the intent of these By-Laws, to allow all non-profit activity as permitted under Title 13-B of the Maine Revised Statutes Annotated and the foregoing statement of purpose and mission, is not intended in any way to limit or otherwise circumscribe the broad scope of powers which Title 13-B allows non-profit corporations to exercise.

#### ARTICLE III FISCAL YEAR

The fiscal year of this corporation shall begin on July 1st of each and every year and continue until June 30th of the ensuing year.

ARTICLE IV  
CORPORATE SEAL

The corporation shall have a corporate seal in a design approved by the Board of Directors, which shall be circular in form and have inscribed thereon the name of the corporation, the state of incorporation, the year and the words "Corporate Seal".

ARTICLE V  
LOCATION OF PRINCIPAL AND OTHER OFFICES OF THE CORPORATION

The initial location of the principal office of the corporation shall be in Bath, Maine, at Bath City Hall, 55 Front Street. Other locations as necessary and appropriate may be established by the Board of Directors.

ARTICLE VI  
MEMBERS

Section 1. Members. The members of this corporation shall consist of the Councilors of the City of Bath, during their tenure in office, the City Manager of the City of Bath, and the City Planner of the City of Bath.

Section 2. Meetings. Meetings of the members of the corporation may be called by the Chairman of the Bath City Council, the Chairman of the Board of this corporation, the City Manager, or a majority of the members. The members shall not be required to hold meetings on any annual or other basis but shall be expected to convene special meetings as requested in order to deal with the business of the corporation as required in a timely and efficient manner. Meetings shall consider appointment of the Board of Directors, consideration and approval of management plans of the corporation, financial plans of the corporation, acquisition and disposal of real and personal property, and capital expenditure items.

Section 3. Place and Notice of Meetings. The members may designate any place, within or without the State of Maine, as the location of a meeting. Written or printed notice stating the place, date, hour and the agenda for the meeting shall be mailed or delivered to the members in the same manner as notices for City Council meetings.

Section 4. Quorum. At any meeting of the members, seventy-five (75%) of the total number of members shall constitute a quorum at that meeting. If less than the said number of members are in attendance at a meeting, a majority of the members at that meeting may adjourn the meeting from time to time without further notice.

Section 5. Informal Action By Members. Unless otherwise provided by law, any action required to be taken at a meeting of the members or any other action which may be taken at a meeting of the members, may be taken without a meeting if consent in writing setting forth the action so taken shall be signed by eight (8) of the members then composing the Board.

Section 6. Override Authority. Any provision of these By-Laws not withstanding, the members reserve the specific right, by vote of two-thirds (2/3) of the members, to override any action taken by the Board of Directors.

## ARTICLE VII BOARD OF DIRECTORS

Section 1. General Powers. The overall business affairs of this corporation shall be managed by its Board of Directors. The Directors shall in all cases, act as a Board and they may adopt such rules and regulations for the conduct of their meetings and management of the corporation as they may deem proper, not inconsistent with these By-Laws and the laws of the State of Maine. The Board of Directors shall have general charge management and control of the affairs, finances, and property of the corporation subject to ratification by the City Council of the City of Bath on those items of corporate affairs noted by these By-Laws. The Board of Directors shall have the further authority to make rules and regulations for the management of the corporation and use of the corporate property.

Section 2. Number and Tenure. The Board of Directors shall consist of no less than seven (7) members nor more than fifteen (15) members, excluding ex-officio members. Members shall be appointed by the members for staggered two (2) year terms. The initial appointment of the Board of Directors, however, shall provide for the appointment of eight (8) Directors to serve two (2) year terms, and seven (7) Directors to serve a one (1) year term. Each Director may succeed himself in office for two (2) additional two (2) year terms and may be eligible for membership to the Board of Directors after a two (2) year hiatus.

Section 3. Board Composition. The Board of Directors shall have the following representation: Two (2) members of the City Council of the City of Bath, One (1) member of the Bath Planning Board, the Bath City Planner or his designee, the Bath City Manager or his designee, and up to ten (10) representatives of the Bath business community or businesses involved in promoting the purposes of this corporation or citizens genuinely interested in the economic development of the City of Bath.

Section 4. Ex-Officio Members of the Board of Directors. Staff of the City of Bath may be designated as ex-officio members of the Board of Directors but without voting rights, at

the request of the Chairman of the Board and with the approval of the City Manager and, if appropriate, the Department Manager.

Section 5. Removal of Directors. The City Council of the City of Bath may remove any Director at any time, with or without cause, by a two-thirds (2/3) vote of the entire Council meeting at any regular or special session.

Section 6. Resignation. A Director may resign at any time by giving written notice to the Board of Directors or the Executive Director of the corporation. Unless otherwise specified in the notice, the resignation shall take effect upon receipt thereof by the Board or Officer and acceptance of the resignation shall not be necessary in order to make it effective.

Section 7. Vacancies to the Board. In the event that a vacancy on the Board of Directors is created due to death, disability, resignation or removal, or should the Bath City Council wish to increase membership of the Board, the Council may, by a two-thirds (2/3) vote, elect a new Director to fill any such vacancy or to be an additional Director.

#### ARTICLE VIII MEETINGS

Section 1. Meetings of the Board of Directors. Regular meetings of the Board of Directors shall be held at least four (4) times per year on the first Monday of February, May, August and November or at any other such times during those months at the call of the Chairman or where three (3) of the Directors call for such a meeting; if so determined. Notice of the meeting, including time and place, shall be given by the Secretary of the Board. Notice of said meeting shall be posted in the City Clerk's Office. All meetings of the Corporation shall be run in accordance with appropriate Maine State Statute related to a quasi-public organization.

Section 2. Quorum of the Board of Directors. Five (5) Directors holding office shall constitute a quorum for the transaction of business. When a quorum is present at any meeting of adjournment, a majority of the Directors in attendance there shall decide any question brought before such meeting, except as otherwise provided in the Charter and in these By-Laws.

Section 3. Action by Consent. Any action by the Board of Directors may be taken without a meeting if a written consent thereto is signed by all the Directors and filed with the records of the Director's meetings. Such consent shall be treated as a vote of the Board of Directors for all purposes.

Section 4. Minutes. Minutes of all regular and special meetings shall be kept in a book provided for that purpose by a person designated by the Board. Copies of the Minutes will be provided to the members within fourteen (14) days of the date of the meeting.

#### ARTICLE IX OFFICERS

Section 1. Designation of Officers. The Officers of this organization shall be Executive Director, Treasurer and such other Officers as the Board of Directors may, from time to time, determine. There may also be a senior staff member of the Board who, while hired by the Planning Department with the guidance of the Board, will provide support services for the Corporation.

Section 2. Election of Term of Office and Resignation. The Officers shall be chosen by the Board of Directors at its first meeting in August. The Board may choose Officers or fill vacancies among the Officers at any regular or special meeting as the need may arise. Subject to an earlier determination of office, each Officer shall hold office for one (1) year, or until his successor shall have been duly chosen and qualified. Any Officer may resign at any time by giving written notice to the Board of Directors or to the Executive Director of the Corporation. Any such resignation shall take effect as of the date of the receipt of such notice, or any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation by the corporation shall not be necessary in order to make said resignation effective.

Section 3. Removal. Any Officer may be removed by the Directors, when in their judgment the best interests of the corporation would be served thereby, with such removal to be voted on and approved by four (4) of the members of the Board of Directors.

Section 4. Executive Director. The Executive Director shall be the Chief Executive Officer of the corporation, and shall in general supervise and control all the business affairs of the corporation, and shall preside at all meetings of the Board of Directors. He/she may sign any deeds, mortgages, bonds, contracts, leases or other instruments which the Board of Directors may have from time to time authorized to be executed, subject to final approval to do so by the Bath City Council. The Executive Director shall be a member of the Board of Directors.

Section 5. Treasurer. The Treasurer shall have charge of all receipts and disbursements of the corporation and shall have or provide for the custody of its funds and securities, working in conjunction with the City Treasurer/Finance Director. He/she shall have full authority to receive and give receipts for all monies due and payable to the corporation, and

to endorse checks, drafts and warrants in its name, or on its behalf, and to give full discharge of same. He/she shall deposit all funds of the corporation except as may be required by current use in such banks or other places of deposit as the Board of Directors may from time to time designate, and in general he/she or those persons to whom he/she shall delegate authority, shall perform all duties incident to the office of the Treasurer and other such duties that shall from time to time be assigned by the Board. In addition, the Treasurer shall establish and maintain a system of accounting consistent with the accounting principles prescribed by the City Manager of Bath. He/she shall cause the books and accounts of the corporation to be audited and at the close of the report the audit transmitted to the City Council of the City of Bath. He/she shall further be required to give a bond for the faithful discharge of his/her duties in such sum and with such surety or sureties as the City Council of the City of Bath shall determine. The Treasurer shall be a member of the Board of Directors.

#### ARTICLE X MANAGEMENT AND STAFFING

The corporation recognizes the necessity of professional management of the affairs of the corporation. To this end, the Board of Directors may select an Executive Director who shall be responsible for the management of all corporation activities. The Executive Director may be a member of the Board of Directors but is not necessarily required to be a member of the Board of Directors. Additionally, the Executive Director, with the advice and consent of the Board of Directors, shall assume those duties and exercise those powers specifically delegated to the position in order to facilitate the effective management of the corporation.

It is contemplated that during the start-up of corporate activities and in the initial phases of corporate business, staffing will be provided primarily by City of Bath staff. Once the corporation has been established as a viable entity, and has developed adequate funding for staff, then such staff may be provided with funding approved as part of the annual Budget. City staff will remain available to provide necessary services on an as-needed basis and to the extent that there are staff resources available.

#### ARTICLE XI WAIVER OF NOTICE

Whenever any notice is required under the terms of these By-Laws, a waiver thereof in writing, signed by the person or persons entitled to receive any such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of said notice.

ARTICLE XII  
COMPENSATION OF DIRECTORS

The Bath City Council shall determine annually whether or not the Board of Directors shall serve with or without compensation. If there is to be compensation, then the rate of that compensation and method of payment shall be determined by the Bath City Council. Any award of compensation shall not be deemed a contract of employment or give rise to any other contractual relationship; nor shall an award of compensation bind the City Council to continuing compensation in subsequent years.

ARTICLE XIII  
FINANCIAL PROVISIONS

Section 1. Budget. The corporation shall prepare an annual Budget and shall submit the Budget to the members at least forty-five (45) days prior to the commencement of the fiscal year during which the Budget will be in effect. The Budget shall contain estimates of revenues sufficient to fund the appropriations in the Budget, listing the various sources of revenue anticipated. The Budget shall also contain a list of expenditures by cost centers, which is defined as a set of appropriated expenditures having a general commonality of purpose. The Budget will be primarily the ongoing administrative and corporate expenses involved in doing the corporation's business. Grant funds for specific purposes shall not be included, except to the extent that funds are available out of Grant monies to cover ongoing administrative and operational expenses of the corporation. The members shall review the Budget and approve it, with or without amendment. Should the members fail to approve a new Budget prior to the commencement of the fiscal year in which the Budget is to be in effect, then the previous year's Budget will be carried forward on a month to month basis until a new Budget is adopted. Any such carry forward, however, shall be limited to, and not exceed, available revenues.

Section 2. Budget Administration. The corporation's annual Budget shall be administered as a City of Bath special purpose fund. Revenues received by the corporation shall be deposited in the account through the Bath Treasurer's Office. Expenditures shall be through a voucher system with vouchers approved by the appropriate corporate official and forwarded to the Treasurer for payment.

Section 3. Grant Administration. It is contemplated that from time to time the corporation will apply for and receive Grant funds for particular purposes. To the extent appropriate, such Grant funds shall be administered through an additional special purpose fund(s) with separate accounting. The procedures, however, shall be the same as with respect to the special purpose fund administering the annual Budget.

Section 4. Budget Amendments. From time to time it may become necessary or appropriate to adjust expenditures or provide for unanticipated obligations that may arise during a Budget period. Such adjustments shall be proposed by the Board of Directors to the members for their approval. Under circumstances where additional expenditures are required, the Board of Directors shall propose those additional expenditures which they deem appropriate to the members for their approval and under such circumstances shall identify the source of additional revenue funding the additional expenditure.

Section 5. Audit. The members may require an audit of all corporation funds including all budgeted amounts and Grant funds. The audit may be conducted as part of the City of Bath's annual audit or may be done separately as an independent audit upon request of a majority of the members.

Section 6. Financial Reports. The Board of Directors shall provide to the members at least quarterly a report on the status of the finances of the corporation. The report shall track expenditures and revenues for the period, highlight any significant information or anomalies in the financial status and records of the corporation, and may include any additional information deemed relevant and appropriate by the Board of Directors.

ARTICLE XIV  
BORROWING, CONTRACTS, CHECKS, DEPOSITS  
INVESTMENTS AND GIFTS

Section 1. Borrowing. No officer, agent or employee of the corporation shall have any power or authority to borrow money on its behalf, to pledge its credit or to mortgage or pledge its real or personal property, except within the scope and to the extent of the authority delegated by resolution of the Board of Directors and, where necessary, approved by the members. Authority may be given by the Board of Directors for any of the above purposes and may be general or limited to specific instances and may be in the nature of standing resolutions.

Section 2. Contracts. No officer, agent or employee of the corporation shall have any power or authority to enter into a contract on behalf of said corporation except as within the scope and to the extent of the authority delegated by the resolution of the Board of Directors and, where necessary, approved by the members. Authority may be given by the Board of Directors for any of the above purposes and may be general or limited to specific instances and may be in the nature of standing resolutions.

Section 3. Checks and Deposits. All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued by the Bath Treasurer's Office in the



name of the corporation shall be signed by such officer or officers, agent or agents of the corporation and in such manner as shall from time to time be determined by resolution of the Board of Directors. All funds of the organization shall be deposited from time to time to the credit of the organization in a special purpose account established by the City of Bath Treasurer and may be withdrawn only upon the furnishing of appropriate voucher documentation signed by one or more of the officers as the Board shall from time to time determine.

Section 4. Gifts. The organization shall have the power to accept contributions of cash or property from public bodies, corporations, individuals, foundations, trusts and others for one or more of its purposes and limited in any manner consistent therewith provided by the donor.

Section 5. Investments. All funds available for investment may be invested in such securities or other property as the Board of Directors, or its duly authorized officers, may direct, with approval of the members.

ARTICLE XV  
EFFECTIVE DATE AND  
AMENDMENTS TO THE BY-LAWS

These By-Laws shall become effective upon approval of the incorporation by the Secretary of State's Office and these By-Laws may be amended by a two-thirds (2/3) vote of the Bath City Council present and voting at any regular or Special Meeting of the Bath City Council. Proposed amendments shall be mailed to each Councilor at least seven (7) days before the meeting at which the amendment(s) is to be considered.

ARTICLE XVI  
TAX PROVISIONS

At all times, and notwithstanding merger, consolidation, reorganization, termination, dissolution or winding up of the corporation, voluntary or involuntary or by operation of law, or any other provisions hereof:

A. The corporation shall not possess or exercise any power or authority, whether expressly, by interpretation, or by operation of law, that will or might prevent it at any time from qualifying and continuing to qualify as a non-profit tax exempt corporation described in Section 501(c) (3) or other appropriate Section of the Internal Revenue Code (hereinafter referred to as "the Code"), contributions to which are deductible for federal income tax purposes; nor shall the corporation engage directly or indirectly in any activity that might cause the loss of such qualification under Section 501(c) of the Code.

B. The corporation shall never be operated for the primary purpose of carrying on a trade or business for profit.

C. No substantial part, and during such time or times that the corporation is a private foundation within the meaning of Section 509 of the Code, no part of the activities of the corporation shall consist of attempting to influence legislation (including action by Congress, any State Legislature, and Local Council or similar governing body, or the public in referendum, initiative, constitutional amendment, or similar procedure) through propaganda or otherwise (including contacting, or urging the public to contact, members of the legislative body for the purpose of proposing, supporting or opposing legislation or advocating the adoption or rejection of legislation). Nor shall the corporation, directly or indirectly, participate in or intervene in (including the publishing or distributing of statements) any political campaign on behalf of or in opposition to any candidate for public office.

D. At no time shall the corporation engage in any activities that are unlawful under the laws of the United States or the State of Maine.

E. No solicitation of contributions to the corporation shall be made, and no gift, bequest, or devise to the corporation shall be accepted, upon any condition or limitation that in the opinion of the corporation may cause the corporation to lose its federal income tax exemption.

F. Pursuant to the prohibition contained in Section 501 (c) (7) of the Code, no part of the net earnings, current or accumulated, of the corporation shall ever inure to the benefit of any private individual.

G. Notwithstanding any other provision of these by-laws if at any time or times the corporation is a private foundation within the meaning of Section 509 of the Code; then during such time or times

(1) The corporation shall distribute its income for each taxable year at such time and in such manner as not to subject the corporation to tax under Section 4942 of the Code;

(2) The corporation shall not engage in any acts of self-dealing, as defined in Section 4941 (d) of the Code;

(3) The corporation shall not retain any excess business holdings, as defined in Section 4943 (d) of the Code;

(4) The corporation shall not make any investments in such a manner as to subject the corporation to tax under Section 4944 of the Code; and,

(5) The corporation shall not make any taxable expenditures as defined in Section 4545 (d) of the Code.

ARTICLE XVII  
EQUAL OPPORTUNITY-AFFIRMATIVE ACTION

The corporation shall be an equal opportunity and affirmative action employer, and it shall not discriminate on the basis of age, race, religion, color, creed, sex, sexual preference, handicap, financial status, or national origin:

- (1) In the persons served or in the manner of services;  
or
- (2) In the hiring, assignment, promotion, salary determination, or other conditions of staff employment; or
- (3) In the members of the Board of Directors.

ARTICLE XVIII  
INDEMNIFICATION

The corporation shall indemnify any board member or officer or former board member or officer of the corporation, whether for profit or not for profit, against expenses actually and necessarily incurred by him in connection with the defense of any action, suit or proceeding in which he is made a party by reason of being or having been such member or officer, except in relation to matters as to which he shall be adjudged in such action, suit, or proceeding to be liable for negligence or misconduct in the performance of a duty. The indemnification provided by this Article shall not be deemed exclusive of any other rights to which such member or officer may be entitled under any by-laws, agreement, vote of the Board of Directors or otherwise. In no case, however, shall the corporation indemnify or reimburse any person for any federal excise taxes imposed on such individual under Chapter 42 of the Code. Further, if at any time or times the corporation is a private foundation within the meaning of Section 509 of the Code, then, during such time or times, no payment shall be made under this Article if such payment would constitute an act of self-dealing (as defined in Section 4941 (d) of the Code), or a taxable expenditure (as defined in Section 4945 (d) of the Code). This indemnification is in accordance with the provisions of 13-B M.R.S.A. Section 714.

ARTICLE XIX  
DISSOLUTION CLAUSE

Upon dissolution of this corporation, the corporation after paying and making provisions for the payment of all of the

liabilities of the corporation, dispose of all of the assets of the corporation by providing for transfer of all remaining assets to the City of Bath a Maine municipal corporation, in the alternative, and with the approval of the Bath City Council, the corporation may dispose of all of its remaining assets exclusively for the purposes of the corporation in such manner, or to such organization or organizations organized and operated exclusively for charitable, educational or scientific purposes as shall at the time qualify as an exempt organization or organizations under Section 501 (c) of the Internal Revenue Code of 1954 (or the corresponding provision of any future United States Internal Revenue Law), as the Board of Directors shall determine. Any such assets not so disposed of shall be disposed of by the Court of Common Pleas of the County in which the principal office of the corporation is then located, exclusively for such purposes or to such organization or organizations as said Court shall determine, which are organized and operated exclusively for such purposes.

Adopted by Resoulution of the Bath City Council on June 18, 1997