

September 7, 2018

2018 By-Law Committee

Summary of Proposed Amendments to the DMDA By-Laws as last adopted September 9, 2009

List of **significant** Amendments to the current By-Laws:

*Red indicates change since 8/15/18

1. Removal of Sub tenants as members and voters (2.04)
2. **Reduced the number of elected Board Directors from 15 to *10 (3.02)**
3. Of the (4) Ex-Officio Board Members, only the Township Committee Liaison is a voting Board Member (3.02)
4. Revised the requirements for the Composition of the Board and included Term Limits (3.02)
5. Nominations for Board Members shall come from the entire membership and not only the Board. (3.03)(c)
6. The Township Clerk will tally the election ballots (3.03)(d)
7. Meeting Attendance requirement for Board Directors (3.04)
8. Removal of Board Directors not satisfying attendance requirements (3.05)
9. **Clarify the number for a meeting quorum to *(7) (3.09)**
10. ***Eliminate vote by proxy (3.11)**
11. Code of Conduct for Board Directors and Members (3.14)
12. Removal of the Executive Committee (Article IV)
13. Removal of the Nominating Committee (Article IV)
14. Annual audit to be completed by 4/30 following fiscal year (6.02)
15. Revise limits on allowable service contracts to be voted by the Board (6.05)
16. By-Laws Review no less than once every (5) years (9.03)

AMENDED AND RESTATED BY-LAWS
OF THE
DOWNTOWN MILBURN DEVELOPMENT ALLIANCE, INC.

Adopted October 6, 2004
Amended and Adopted September 9, 2009
Amended and Adopted September 12?, 2018

ARTICLE I
Offices and Name

- 1.01 Offices.
The principal office of the Corporation shall be located in the State of New Jersey, Essex County, Millburn, at such location in Downtown Millburn as the Board of Directors may hereafter designate.
- 1.02 Name.
The name of the Corporation shall be Downtown Millburn Development Alliance, Inc., hereafter referred to as the DMDA, and its duration will be perpetual.
- 1.03 Physical Extents.
The location and physical extents of the Downtown Millburn District, “The District”, shall be as described on Page 5 of Township Ordinance 12-92, adopted May19, 1992.

ARTICLE II
Purposes and Permitted Activities; Distribution of Assets
Upon Dissolution; Membership

- 2.01 Purposes.
The corporation is organized exclusively for charitable, educational, religious or scientific purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code (or corresponding section of any future Federal tax code.).
The mission of the Special Improvement District (“the District”) is to promote and enhance the economic vitality and improve the visual appearance of the “District”.
To fulfill this mission the Corporation shall:
- (a) Serve the “the District” in the Township of Millburn;
 - (b) Mobilize available public and private resources for this purpose;
 - (c) Provide a mechanism by which relevant business interests, service firms, restaurants, retail establishments, property owners, employers, lenders, and others can cooperate to expand business opportunities, sales, employment, consumer choices and shopper’s facilities; and
 - (d) Formulate, promote and implement events, programs and physical improvements to the Special Improvement District.
 - (e) Recruit complementary businesses to the District.
- 2.02 Earnings and Allowable Activities.
- (a) No part of the net earnings of the corporation shall inure to the benefit of, or be distributable to its members, directors, officers or other private persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of Section 501(c)(3) purposes. No substantial part of the activities of the corporation shall be the carrying on of propaganda, or otherwise attempting to

influence legislation (other than Township or State-wide legislation to improve the District or to enable the Corporation more effectively to achieve its purposes); and the Corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office.

- (b) Notwithstanding any other provision of these articles, the Corporation shall not carry on any other activities not permitted to be carried on (1) by a corporation exempt corresponding section of any future Federal tax code) or (2) by a corporation, contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code (or corresponding section of any future Federal tax code).

2.03 Distribution of the Corporation's Assets Upon Dissolution.

Upon dissolution of this corporation assets shall be distributed for one or more exempt purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, i.e. charitable, educational, religious or scientific, or corresponding section of any future federal tax code, or shall be distributed to the Federal government, or to a state or local government for a public purpose.

2.04 Membership.

The Membership of the Corporation shall be unlimited and be composed of the following:

- (a) All of non-residential property owners within the District ("District Non-Residential Property Owners") which may be corporate, individual, or partnership or other entity. District Non-Residential Property Owners shall have one vote per separate parcel of real property, as evidenced by tax lots, owned and taxed within the District.
- (a) All business, commercial, and professional tenants, excluding residential tenants, occupying space within the District ("District Non-Residential Tenants") who have newly registered with the Corporation no later than September 30th, or have registered in previous years, or are known to, and have been registered by the staff of the Corporation. Once registered, registration remains viable until the subject business relocates from the District, or if relocated within the District, notifies the Secretary or staff of changes to its address. District Non-Residential Tenants shall have one vote for each separate store, office or suite.
- (b) The Secretary and the staff shall maintain a data base of the membership consisting of (1) previously registered members, (2) District Non-Residential Property Owners appearing on the Township's Tax Rolls as of September 30th of each year, (3) District Non-Residential Tenants who newly registered as of September 30th of each year, and (4) District Non-Residential Tenants whose names and addresses are known to the staff of the Corporation.
- (c) No later than the 1st Monday of October of each year the Secretary with the assistance of the staff, shall announce by a press release sent to the local print and on-line newspapers, and local social media outlets, and notify the membership through email, the voting registration process and availability of membership in the Corporation. This information shall be posted on the Corporation's website.

2.05 Voting Rights of Members.

A member's only right to vote is the right to vote for the election of Directors, which vote is to be exercised by written ballot pursuant to Section 3.03 hereof.

ARTICLE III

Directors

3.01 Function of the Board of Directors.

The Board of Directors of the corporation (the "Board") shall manage the business and affairs of the corporation. Further function and responsibility of the Board shall be as described in Paragraph 4.01 hereof.

3.02 Composition of the Board; Term of Office.

The Board shall consist of (14) fourteen members with (11) eleven voting members as follows:

- (a) The Board of Directors shall have (10) ten elected voting members, consisting as follows:
 - (1) At least (2) one person engaged in professional or financial occupations in the District;
 - (2) At least (2) one person engaged in retail or service occupations in the District;
 - (3) At least (3) two people who own, or whose entity owns, real estate in the District;
 - (4) Not more than (1) one person who is a resident of the Township but not necessarily within the District, and is also not a person as described in (1), (2) or (3) of this Paragraph 3.02(a);

- (b) In addition to the elected Board, the following (4) four persons shall be designated as *Ex-Officio* members of the Board:
 - (1) One (1) person who is an officer, Director or full time employee of the Paper Mill Playhouse specifically designated by that organization for a calendar year term or until replaced; This person is a non-voting Director of the Board.
 - (2) One (1) person who is a member of the Township Committee; This person is a voting Director of the Board.
 - (3) The Township Business Administrator or other officer of the Township designated by the Township Business Administrator to be the liaison on his/her behalf to the Corporation; This person is a non-voting Director of the Board
 - (4) One (1) person who is an officer, member or employee of the Millburn/Short Hills Chamber of Commerce specifically designated by that organization for a calendar year term or until replaced; This person is a non-voting Director of the Board.

- (c) Term of Office and Term Limits of Elected Directors
 - (1) The terms of all Elected Directors shall commence on January 1st of each year following the election, and continue for a term of three (3) years. The designated terms shall be evidenced on the ballots for those nominees.
 - (2) Any resignations or filling of vacancies shall be pursuant to Section 3.05 hereof.
 - (3) No elected Director shall be on the Board for more than (6) six consecutive years. A person previously elected to the Board and having served the term limit may be re-elected to the Board following a (1) year hiatus from their last completed term in office.

3.03 Method of Election of Directors other than *Ex Officio* Directors.

- (a) No later than the 1st Monday of November of each year, the Executive

Director, under the supervision of the Secretary, shall send by e-mail, regular mail or fax, if an e-mail address is not provided, a written ballot (a "Ballot") to all known and registered Non-Residential District Property Owners and all known and registered Non-Residential District Tenants, each Ballot to be numbered and a record kept of the addressee of each Ballot.

- (b) The Ballot shall contain the names of persons selected by the Board, via the nomination process herein, to be Elected Directors and shall provide that a vote of the member will be counted only if the Ballot is received by the Secretary by the specified record date. Ballots may be voted either by e-mail, ordinary mail or hand delivery to the Corporation's office and recorded by the Secretary.
- (c) Nominations shall be made by the third Monday in October; and shall come from the Board and/or the membership via mail or e-mail per instructions designated by the Board. Candidates must meet the criteria as provided in Paragraph 3.02(a).
- (d) The Township Clerk, under the supervision of the Executive Director or an Executive Officer so designated, shall act as the inspector of election and shall tally the Ballot votes; and nominees receiving a plurality of Ballot votes shall be reported as elected.

3.04 Removal of Directors.

- (a) At any meeting of the Directors, duly called and at which a quorum is present, the Directors may, by a majority vote of those present and voting, remove with cause, as per Section 3.14 hereof, any Elected Director from the office, and as to an Elected Director, may elect a successor to serve until the next general election as provided in Section 3.02(a).
- (b) Except for reasons of health or personal matter where prior notice has been given to the Board Officers and said Officers have acknowledged and granted an excused absence, Directors may be removed, without further cause, for missing three (3) consecutive Regular Board meetings, or failure to attend a minimum of eight (8) meetings within a calendar year when a Regular Board or Special Meeting is called.
- (c) A motion to remove may be introduced, considered and discussed, but not voted on, unless at least three (3) calendar days prior to such a meeting, a statement indicating that a removal motion will be introduced has been forwarded to every member of the Board of Directors by e-mail, regular mail or fax.
- (d) If the motion is made without prior written notice, it shall be carried to the next meeting, which may be a 'special meeting,' upon not less than three (3) days from the date the motion was introduced.

3.05 Resignations and Filling of Vacancies.

- (a) A resignation of a Director shall not become effective until a Director delivers a written resignation via e-mail or regular mail to the President or the Secretary.
- (b) A vacancy of an Elected Director occurring for any reason, including death, resignation, or failing to meet attendance, may be filled by a vote of a majority of the Directors then in office.
- (c) The vacancy shall be filled and a replacement person so elected shall hold office only until the next succeeding annual election when the Members shall elect a Director for the remainder of the unexpired term, if any, of the person being replaced. The ballot at the next succeeding annual election shall specify

the expiration date of the candidate so selected as nominee to fill the unexpired term.

- (d) A vacancy, however caused, with respect to an *Ex-Officio* Director, shall be filled accordingly by the Paper Mill Playhouse, the Township Committee, the Township Business Administrator or the Chamber of Commerce.

3.06 Regular Meetings of the Board.

- (a) Regular meetings of the Board shall be held at least once per month.
- (b) Notice of meeting place, day and hour shall be announced by email and posting on the Corporation's website not less than one (1) week prior to a scheduled meeting.

3.07 Annual Meeting of the Board.

An annual meeting of the Board shall take place immediately following the Annual Meeting of Members. At the annual meeting of the Board the officers shall be elected.

3.08 Special Meetings of the Board.

- (a) Special meetings may be called by the President or by any two other officers.
- (b) Notice of the place, day and hour of such special meeting shall be given to each member at least three (3) days before the meeting, by e-mail, regular mail or fax.
- (c) Any notice of a special meeting shall state the business to be transacted.

3.09 Quorum for Board Meetings.

- (a) A majority of (7) seven Voting Directors of the Board shall constitute a quorum for the transaction of business.
- (b) In the absence of a quorum, the Directors present by a majority vote and without notice other than by announcement may adjourn from the meeting to another time until a quorum shall attend.
- (c) At any such adjourned meeting at which a quorum shall be present, any business may be transacted which might have been transacted at the meeting as originally notified.

3.10 Action by Consent: Meetings by Conference Call or E-Mail.

- (a) Any action required or permitted to be taken at any meeting of the Board of Directors may be taken without an in-person meeting, if prior or subsequent to such action, an e-mail or written consent to such action, is signed by all Directors and such written consent is filed with the minutes of the proceedings of the Board of Directors.
- (b) Meetings by telephone conference or by any means of communication by which all persons are able to hear each other at the same time shall be permitted, upon proper notice, provided that a quorum participates in any such conference call for the entire duration thereof.

3.11 Voting at Board Meetings.

- (e) Except in cases in which it is by statute, by the Articles of Incorporation, or by the by-laws otherwise provided, the vote of a majority of Elected Directors and the Township Committee Liaison of such quorum at a duly constituted meeting shall be sufficient to pass any measure.

3.12 Compensation and Reimbursement for Expenditures.

- (a) Directors shall not receive any compensation for their services.
- (b) By resolution of the Executive Committee, individual Directors may be reimbursed for any actual expenditures which may be incurred while engaged in the corporation's business outside the Township of Millburn, New Jersey.

3.13 Transactions between the Corporation and Directors.

- (a) Directors are not disqualified from rendering professional services on behalf of the corporation, or selling supplies to the corporation.
- (b) The Director whose professional service is involved or who seeks to sell supplies shall be ineligible to vote on his/her contract.
- (c) Contracts and vendor services shall be pursuant to Section 6.05 hereof.

3.14 Code of Conduct

- (a) Any Member or Board Director of the Corporation shall not commit any act which might be considered:
 - (2) To be immoral, deceitful, or obscene; or
 - (3) To falsely damage, or otherwise negatively affect the reputation and good will of any member of the Corporation or of the Corporation.
- (b) Any violation of the Code of Conduct shall proceed with a Removal of the Director as provided in Section 3.04.

ARTICLE IV

The Board of Directors and Committees

4.01 The Board of Directors:

- (a) The Board shall be comprised of all its elected Directors including the Corporation's officers and *Ex-Officio* Directors.
- (b) The Board shall, in general, perform the specific functions set forth in 4.01(c) hereof;
- (c) The Board, among other things, shall:
 - (1) Review and approve the annual budget which is prepared by the Executive Director and the Board, including compensation for the Executive Director and recommended staff positions;
 - (2) Recommend to the Board persons to be hired as an Executive Director;
 - (3) Provide input to the President for the President's annual review of the performance of the Executive Director;
 - (4) Monitor the spending and budget of the corporation to insure that Committees stay within the parameters of their budgets;
 - (5) Perform the function of a personnel committee as needed;
 - (6) Recommend persons to be nominated for election or recommend persons to fill vacancies on the Board;
 - (7) Recommend and initiate new programs and procedures for the operation of the Corporation as needed;
- (d) Board meetings may take place via telephone conference call, polled inquiries via e-mail or facsimile transmission, or in-person meetings.
- (e) In the event any decision is to be taken at other than an in-person meeting, all members of the Board shall be contacted at the same time with respect to the matter, which is to be decided.
- (f) A majority of the voting members of the Board shall constitute a quorum for the transaction of business.
- (g) The vote of a majority of those present shall be required for any affirmative action by the Board, except as provided in Section 5.01 hereof.

4.02 Special or Standing Committees

- (a) By resolution, the Board may provide for such other standing or special committees with such powers and duties as it deems desirable and may discontinue the same at its pleasure.
- (b) The members of all such committees shall be appointed and the committee chairman named by the President.
- (c) Not less than one (1) member of each standing or special committee shall be a member of the Board. The remaining members of such committees may, but need not, be members of the Board.
- (d) The Executive Director, or a Corporation staff member, or a committee member shall keep full and fair accounts of its transactions and accurate minutes of its meetings. Vacancies on any committee shall be filled by the President, if so required.
- (e) The Board may establish Ad-Hoc committees to advise the Board on issues.
- (f) Any "project" or activity proposed by a committee shall secure the approval of the Board before its implementation.

4.03 Meetings of Committees.

Each committee shall meet on dates selected by the Committee chairperson. A special meeting of a committee may be called by the chairman of the committee, or any two (2) members of the committee, or by the President.

4.04 Participation in Committees.

In selecting members of committees, the Board shall encourage widespread participation among members of the business community within the District, and others concerned about the economic vitality and visual appearance of the District.

4.05 Committee Reports.

All recommendations by a committee shall be reported to the Board. Reports shall be retained and shall be available for review by any interested person.

ARTICLE V **Officers**

5.01 Executive Officers.

- (b) The Board of Directors shall recommend the names of persons to serve as the Executive Officers at its Annual Meeting. The Board, providing there is a quorum, by a vote of a majority of those present, shall elect a President, a Vice President, a Secretary and a Treasurer from among the elected directors, to serve for one-year terms.
- (c) No officer shall hold dual Executive positions.

5.02 President.

- (a) The President shall preside at all meetings of the Board of Directors at which he or she shall be present.
- (b) The President shall be the chief executive officer of the corporation. He or she shall have general charge and supervision of the activities and affairs of the corporation, shall perform all duties incident to the office of a chief executive of a non-profit corporation, and shall perform such other duties as, from time to time, may be assigned by the Board.

5.03 Vice President.

- (a) The Vice President, in the absence of the President, shall perform the duties

and exercise the functions of the President, and when so acting shall have the powers of the President. The Vice President shall have such other duties as may be assigned to him or to her by the President.

5.04 Secretary.

The Secretary shall be responsible or supervise:

- (a) the keeping of minutes during the meetings of the Board of Directors as a permanent record;
- (b) ensure that all notices are duly given in accordance with the provisions of the by-laws or as required by law;
- (c) be the custodian of the records of the Corporation;
- (d) ensure that the corporate seal is affixed to all documents which require said seal and which he or she has been authorized to execute on behalf of the Corporation and when so affixing may attest to the same;
- (e) in general, perform all duties as, from time to time, may be assigned to him or to her by the Board or the President.

5.05 Treasurer.

- (a) The Treasurer shall have charge and custody of and be responsible for all funds and securities, inclusive of the disbursement and deposit of said funds.
- (b) Whenever requested, the Treasurer shall provide an account of the financial condition of the corporation, and, in general, shall perform all duties incident to the office of a treasurer of a non-profit corporation and, such other duties as may be assigned to him or to her by the Board or the President.

5.06 Subordinate Officers.

The Board may from time to time appoint such subordinate officers, as it may deem desirable. Each such officer shall perform such duties as the Board or the President may prescribe.

5.07 Executive Director.

- (a) The Board, following a recommendation of a Committee, may select and appoint an Executive Director.
- (b) The Executive Director shall be responsible for the day-to-day management of the office and all duties that have been outlined in a Board approved job description or contract.
- (c) The Executive Director will also be responsible for attendance at Committee meetings; serving as liaison with Township officials and with the Press; and perform such other functions as shall be delegated to the Executive Director by resolution of the Board.

5.08 Bonding of Officers, Agents and Employees.

The Board may require that the Executive Director and/or the Treasurer be bonded by a surety company in such amount as may be satisfactory to the Board of Directors, the premium to be paid by the corporation.

ARTICLE VI

Checks, Financial Reports, Fiscal Year, Contracts, Vendor Services

6.01 Checks, Drafts, Etc.

All checks, drafts, and orders for the payment of money, notes and other evidence of indebtedness, issued in the name of the corporation, shall be signed by (2) two officers.

6.02 Annual Audit.

There shall be prepared annually a full and correct statement of the affairs of the corporation, including a balance sheet and statement of the financial affairs of the corporation, including a balance sheet and statement of operations for the preceding fiscal year audited and certified by an independent Certified Public Accountant, as required by law. The audit shall be submitted at a regular meeting of the Directors and filed immediately thereafter at the principal office of the corporation. The audit shall be completed by the April 30th following the end of the fiscal year. A copy of the audit shall also be filed with the Township Clerk of the Township of Millburn. A copy of the audit shall be made available to the membership upon request, no less than one month before the date of the upcoming year's proposed budget review presentation to the Township Committee.

6.03 Fiscal Year.

The fiscal year of the corporation shall be the year ending December 31st, unless otherwise provided by resolution of the Board.

6.04 Annual Report of Activities

The Executive Director shall prepare and submit a written annual report of the District's programs and activities for the previous year to the Board of Directors. This report shall be submitted within sixty (60) days after the close of the calendar year. A copy shall also be filed with the Township Clerk of the Township of Millburn.

6.05 Contracts and Vendor Services

- (a) Any contract below \$10,000 must be approved by a majority vote of the Board at a meeting at which time the subject contract is on the agenda.
- (b) For any contract in excess of \$10,000, attempt must be made to obtain (3) three price quotes for goods or services. If they are unable to obtain (3) three quotes, then proof must be shown that an attempt to reach vendors was made. Approval shall be by a majority vote of the Board at a meeting at which time the subject contract is on the agenda.

ARTICLE VII

Corporate Seal

The Board of Directors shall provide a suitable seal, bearing the name of the corporation, which shall be in the custody and charge of the Secretary.

ARTICLE VIII

Indemnification

Indemnification of any person who is a Director, officer, employee or corporate agent of the corporation shall be provided to the fullest extent permitted by N.J.S.A. 15A:3-4 or any other applicable provision of law.

ARTICLE IX

Amendment of the By-Laws

9.01 In General

These By-Laws may be amended only by the Board pursuant to a motion made by a Director and adopted by the Board pursuant to Section 9.02.

9.02 Procedure

- (a) A motion to amend, alter, repeal, or enact a new by-law may be introduced by a Director, considered and discussed, but not voted on, at any meeting of the Board, provided that at least seven (7) days prior to such a meeting a full written statement of the exact language of the motion and the time, place and date of the meeting when the motions will be introduced has been forwarded by e-mail, to every member of the Board.
- (e) Provided the above said motion is duly seconded, the President shall fix and announce a subsequent meeting date within a reasonable number of days when the motion shall be brought to a vote by the Board.
- (f) An affirmative vote of a majority of the Voting Directors then serving on Board shall be required to carry said motion.

9.03 By-Laws Review

A By-Laws Committee must be created to review and discuss the existing By-Laws, for appropriateness and fairness to its members, and for the successful operation of the Corporation, and as follows:

- (d) Starting in 2018, a complete review of the By-Laws must be completed in each successive five (5) year period, to update and amend the By-Laws as required.
- (e) Any proposed amendments shall follow the procedure in 9.02 herein.