

## **BYLAWS**

### **OF THE**

## **MILLBURN SHORT HILLS BUSINESS ORGANIZATION, INC.** **A NEW JERSEY NONPROFIT CORPORATION**

### **Article I**

#### **Name and Offices**

1.01. Name.

The name of this corporation shall be the Millburn Short Hills Business Organization, Inc. (hereinafter referred to as the “Corporation”).

1.02. Offices.

The principal office of the Corporation shall be initially located in the Millburn Town Hall. Thereafter, it may be located in such location or locations in downtown Millburn as the Board of Trustees may hereinafter designate with the consent of the Township Committee.

### **Article II**

#### **Purposes and Power**

2.01 Purposes.

- (a) 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 the corresponding section of any future federal tax code.
- (b) The Corporation shall fulfill and promote the mission of Millburn Special Improvement District (the “District”), which is to promote and enhance the economic and general welfare of the District and the Township of Millburn (the “Township”), as further described in Ordinance 12-92. In order to fulfill and promote the District’s mission, the Corporation shall:

- (1) Serve the District, as identified and defined in Ordinance 12-92, as well as the business community, and the Township, and to further create, promote, and implement the economic revitalization and general welfare of the District and Township; and
- (2) Revitalize and encourage the economic development, business presence and growth of the District, as well as to promote and preserve the cultural, historic, tourist, and civic interest in the District; and
- (3) 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
- (4) Formulate, promote, and implement events, programs, physical improvements to the District; and
- (5) Mobilize available public and private resources in furtherance of the Corporation's purpose; and
- (6) Recruit complimentary businesses to the District; and
- (7) Shall not: (i) carry on propaganda or otherwise attempt to influence legislation; (ii) engage in any transaction or permit any act or omission which shall operate to deprive it of its tax-exempt status under Section 501(c)(3) of the Internal Revenue Code, as may be amended; (iii) participate or intervene in, regardless of manner or extent including with respect to publishing or distributing of statements, any political campaign on behalf of any candidate for public office; or (iv) engage in any prohibited transaction as defined in Section 503 (b) of the Internal Revenue Code.

## 2.02 Powers.

The Corporation shall have the powers granted under Ordinance 12-92 of the Revised General Ordinances of the Township of Millburn, ("Enabling Ordinance") as may be amended or revised from time to time, and the laws of the State of New Jersey that are in furtherance of the Corporation's exempt purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code or the corresponding section of any future federal tax code.

**Article III**  
**Members and Annual Meeting**

3.01 Membership.

Membership of the Corporation shall be unlimited and shall comprise of the following:

- (a) All non-residential property owners within the District which may be an individual, corporate, partnership, or any other entity, and who appear on the Township's tax roll for assessment purposes ("District Business Owners"). District Business Owners shall have a vote per separate parcel of real property owned and taxed within the District.
- (b) All business, commercial and professional tenants and subtenants within the district, excluding any residential tenants, who shall register with the Corporation no later than September 30<sup>th</sup> of each year ("District Tenants"). Registration remains viable upon first completion until the subject business relocates from the District. If the business merely relocates within the District, it must change its address with the Secretary. Each District Tenant shall have one vote per tenancy.
- (c) The Secretary shall maintain a data base of all (1) District Business Owners; (2) District Tenants; and (3) previously registered members.

3.02 Voting.

The members shall have the right to vote on items that may be presented to the Corporation's general membership by the Board of Trustees.

3.03 Annual Meeting.

The annual meeting of the members of the Corporation shall be held on the second Monday of November of each year, except that if the second Monday of November falls on a legal holiday, the meeting shall be held on the following day. The annual meeting of the members for the transaction of business as may properly come before the meeting shall be held on such date and at such place as may be fixed from time to time by the Board of Trustees. The Secretary shall cause written notice of the time and place of the annual meeting to be given to all the members of the Corporation, registered as of September 30 of that year, at their last known address on file with the Corporation, not less than 10 or more than 60 days, before the annual meeting. The notice may also state the purposes of the meeting.

**Article IV**  
**Board of Trustees**

4.01 Function of the Board of Trustees.

The Corporation's Board of Trustees (the "Board") shall manage the business and affairs of the Corporation. The Board shall have the duty and responsibility to oversee and implement the powers of the Corporation in accordance with N.J.S.A. 40:56-65, et seq., Title 15A of the Statutes of the State of New Jersey, and Ordinance 12-92, as may be amended and revised from time to time.

4.02 Composition of the Board.

- (a) The Board shall be comprised of seven voting members, who shall be appointed by majority vote of the Township Committee of the Township of Millburn, and nonvoting *ex officio* members.
- (b) The voting positions of the Board shall consist of the following:
  - (1) A member of the Township Committee.
  - (2) Two persons who are owners of real estate within the District, or officials of a corporation or entity owning real estate within the District to be called "Owner Trustees."
  - (3) Two persons who own and operate a business within the District but do not own property within the District to be called "Operator Trustees."
  - (4) Two residents of the Township of Millburn who are neither owners of property within the District nor owners or operators of a business within the District to be called "Resident Trustees."
- (c) The nonvoting *Ex Officio* positions of the Board shall consist of the following:
  - (1) The Township Business Administrator or his/her designee.
  - (2) The Mayor, or his/her designee.

- (3) For the purposes of this Section 4.02(c), the term “Designee” shall mean a former elected official, an appointed official or employee of the Township, or a resident with relevant experience and interest in the stimulation and the economic development of the District.

#### 4.03 Term.

- (a) All ex officio members shall be appointed for a one (1) year term.
- (b) The member of the Township Committee shall be appointed for a one-year term commencing January 1, except that the first member of the Township Committee to serve on the Board of Trustees shall be appointed during 2020 and whose term shall expire on December 31, 2020.
- (c) Commencing after January 1, 2021, all Board of Trustee members, excluding the Township Committee member, shall be appointed for three year terms. Initial appointments to the Board of Trustees during 2020 shall be as follows:
  - (1) One Resident Trustee and One Owner Trustee shall be appointed for a term terminating on December 31, 2021.
  - (2) One Owner trustee and one Operator Trustee shall be appointed for a term terminating on December 31, 2022.
  - (3) One Resident Trustee and one Operator trustee shall be appointed for a term terminating on December 31, 2023.
- (d) After the initial appointments are made in accordance with the above Subsection 4.03(c), the terms shall commence on January 1 and expire on December 31.

#### 4.04 Board of Trustees Executive Officers.

- (a) Of the voting members of the Board of Trustees, there shall be a Chair of the Board, a Secretary, and a Treasurer (“Executive Officers”) elected by the Board of Trustees each year for a term ending on December 31. The Officers shall have the following duties and responsibilities:
  - (1) Chair of the Board. The Chair of the Board shall preside over all meetings of the Board of Trustees, shall act as liaison between the Board of Trustees and the Executive Director, and shall perform such other duties, not

inconsistent with this Ordinance, as may be incidental to the office, or as may be determined by the Board of Trustees.

- (2) The Secretary. The Secretary shall be the custodian of the Corporation's records and documents and of the seal of the Corporation. The Secretary shall affix the corporate seal to all instruments, when authorized or directed to do so by the Board of Trustees, shall keep the minutes of all meetings of the Board of Trustees, and shall perform such other duties, not inconsistent with this Ordinance, as may be incidental to the office, or as may be determined by the Board of Trustees or the Chair of the Board.
- (3) The Treasurer. The Treasurer shall have charge of and be responsible for all funds, securities, receipts, and disbursements of the Corporation, and shall deposit or cause to be deposited in the name of the Corporation all monies and other valuable effects in such bank, or other depositories as the Board of Trustees may select from time to time. Upon request, the Treasurer shall provide an account of the financial condition of the Corporation, and shall perform such other duties, not inconsistent with this Ordinance, as may be incidental to the office, or as may be determined by the Board of Trustees or the Chair of the Board.

- (b) At the annual meeting of the Board of Trustees, the Board shall elect the Executive Officers.

#### 4.05 Appointment of Trustees.

The Township Committee shall appoint Trustees to fill the vacant seats on the Board of Trustees each year at the Township's annual reorganization meeting. If, for any reason including death and resignation, a seat becomes vacant, the Township Committee shall fill the vacancy.

- 4.06 Removal of Trustees. The Township Committee shall have the right to remove a voting member of the Board of Trustees at any time and for cause, in the discretion of a majority of the Members of the Township Committee, and to fill the vacancy with another person of the same class for the balance of the remaining term of the Trustee removed. For the purposes of this Section 4.06, the term "cause" shall include, but not be limited to, a failure to diligently perform the duties of a Trustee, lack of attendance at meetings, and similar neglectful or insufficient participation in the affairs of the Corporation.

#### 4.07 Meetings of the Board.

- (a) The regular meetings of the Board of Trustees shall be held at least four (4) times a year, generally once each quarter.
- (b) The annual meeting of the Board shall take place at the first meeting of the Board, held within 30 days of the reorganization meeting of the Township Committee.
- (c) Notice of all quarterly meetings of the Board shall be sent to all the members of the Corporation at the address on file with the Secretary, and posted on the Corporation's website, if any, not more than 2 week following to the annual meeting of the Board.
- (d) Notice of any rescheduled quarterly meeting shall be sent to all members of the Corporation at the address on file with the Secretary, posted on the Corporation's website, if any, and published in a local newspaper at least one (1) week prior to the meeting. No other notice to the members need be given.

4.08 Quorum and Transacting Business.

A majority of all voting Trustees shall constitute a quorum for the purposes of transacting business. Except in cases governed by statute, Certificate of Incorporation, Ordinance 12-92, or by any other Section of these Bylaws, the vote of a majority of a quorum at a duly noticed meeting of the Board shall be required to adopt a measure.

4.09 Special Meetings of the Board.

A special meeting of the Board may be called by the Chairman or any two members of the Board. Notice of the place day and hour of such special meeting shall be given to each Trustee not more than thirty (30) days, and not less than three (3) days prior to the meeting, by: (1) delivery of same to the Trustee personally, or by leaving the notice at the Trustee's residence or usual place of business; (2) contacting the Trustee by telephone, e-mail, or facsimile transmission; or (3) mailing such notice at least six (6) days before the meeting, postage prepaid, and addressed to the Trustee at his/her last known address.

4.10 Meetings Conducted Via Telephone, Video or Other Electronic Means.

Meetings held by telephone, video, or other electronic means by which all participants can hear each other at the same time shall be permitted, upon proper notice, provided that a quorum participates for the entire duration of the call.

## Article V

### **Advisory Board and Committees**

#### 5.01 Advisory Board.

There shall be an Advisory Board consisting of not less than 7 or more than 15 members. The first Advisory Board shall be appointed by the Township Committee for a term commencing during 2020 and terminating on December 31, 2021. Thereafter, the Board of Trustees shall elect the members of the Advisory Board for a one-year term commencing on January 1 and ending on December 31 of that year.

#### 5.02 Participation on the Advisory Board.

The Board shall encourage widespread participation on the Advisory Board among members of the Business Community, and shall seek applications from members that desire to be selected. The Board shall select members from the applicant pool to sit on the Advisory Board each year. If an insufficient number of applications are submitted to fill all the Advisory Board Positions, the Board may appoint members to fill the vacant seats for that year.

#### 5.03 Function of the Advisory Board.

The Advisory Board shall assist the Board of Trustees of the DMC by providing advice to the Board of Trustees in development of the annual program, plan and budget for the corporation, and shall provide ongoing advice and counsel to the Board of Trustees as requested by the Board of Trustees.

#### 5.04 Committees.

The Board may form, by adoption of a resolution, a Committee from within the Advisory Board with such powers and duties as it deems necessary to carry out a certain function, and may discontinue same at any time. It is anticipated that the Board shall create a Design Review Committee, which shall be charged with the duty to establish standards and to review and approve all signs, awnings, alterations, façades, and other aesthetic elements proposed within the District. The members of such a Committee shall be appointed and a committee chairman shall be named by the Board. The Board reserves the right to remove



a committee chairman or any member of the committee for any reason with or without cause. The number of members of each committee shall not exceed five (5). Each committee shall keep full accounts of its transactions and shall keep accurate minutes of its meetings.

5.05 Committee Reports.

Each committee shall meet for the purpose of fulfilling the purpose for which it has been established. All recommendations shall be reported in writing, addressed to the Chairman of the Board, and sent to all the members of the Board.

**Article VI**  
**Executive Director**

6.01 Executive Director.

The Corporation shall hire an Executive Director. The Executive Director shall direct, manage, and implement all the activities, programs, and affairs of the Corporation, and such other duties as may be assigned by the Board of Trustees. The Executive Director shall be paid a salary subject to the approval of the Township Committee. One half of the Executive Director's salary shall be paid for by the Corporation, and one half shall be paid for by the Township. The Board shall recommend a salary amount to the Township Committee for the Executive Director position which the Township may approve at its discretion.

6.02 Responsibilities.

Among other duties, the Executive Director shall:

- (a) Prepare and present the annual budget and annual report to the Board each year. The annual budget and annual report shall be prepared in accordance with Sections 8.03 and 8.04 below not later than November 1 of each year.
- (b) Recommend staff positions and proposed compensation to the Board for approval.
- (c) Attend all meetings of the Board of Trustees, and to the extent practicable, attend meetings of the members, Advisory Board, and Committees.

**Article VII**

## **Allowable and Prohibited Activities - Taking Actions**

### 7.01 Earnings, Legislative Involvement, and Campaign Contributions.

The Corporation shall not engage in any act of self-dealing as defined in Section 4941(d) of the Internal Revenue Code. No 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 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.

### 7.02 Responsibilities of the Board.

In general, the Board shall perform the specific functions set forth in Section 4.01 above, except as prohibited by law. Among other things, the Board shall:

- (a) Review and approve the annual budget, prepared by the Executive Director, to be submitted to the Township Committee in accordance with Section 8.03 below; and
- (b) Review and approve recommended staff positions, and compensation for such position; and
- (c) Conduct an annual review of the performance of the Executive Director.
- (d) Monitor the spending and budget of the Corporation to insure that compliance with the budget is maintained; and
- (e) Perform the function of a personnel committee as needed.

## **Article VIII**

### **Finances and Annual Reports and Audits**

#### 8.01 Checks, Drafts, Etc.

All checks, drafts and orders for payment of money, notes and other evidence of indebtedness issued in the name of the Corporation shall be signed by the Executive Director and at least one Executive Officer when the amount exceeds \$1,000.00. Payments of less than \$1,000.00 may be signed by only the Executive Director.

#### 8.02 Fiscal Year.

The fiscal year of the Corporation shall be the calendar year. The fiscal year shall commence on January 1 and terminate on December 31 of each year.

#### 8.03 Annual Budget.

The Executive Director shall prepare or cause to be prepared and submitted to the Board, an annual budget of the projected revenue and expenditures for the upcoming year. Among other things, the budget shall include the estimated costs of operating, maintaining, and improving the District for the next fiscal year. The annual budget shall be reasonably itemized and shall include a summary of the categories of cost properly chargeable in accordance with N.J.S.A. 40:56-80. The budget shall be submitted to the Township Committee no later than January 15 of each year. The annual budget shall be presented to the Township Committee in accordance with the procedures set forth in Ordinance 12-92.

#### 8.04 Annual Report.

In addition to the annual budget, the Executive Director shall submit an annual report which shall explain how the budget contributes to the goals and objectives of the Special Improvement District. The report shall contain an account of all the Corporation activities and achievements undertaken in the preceding year, and shall describe how those activities and achievements met the goals and objectives outlined in the preceding year's budget. The report shall also exhibit a breakdown of costs associated with each of the preceding year's activities. In accordance with Ordinance 12-92, the Township Committee shall review and evaluate the report, and at its discretion, shall make recommendations to the Corporation. The annual report shall be submitted to the Township Committee with the annual budget no later than January 15 of each year.

#### 8.05 Annual Audit.

The Corporation shall cause an annual audit of its books, accounts and financial transactions to be made and filed with the Township Committee of the Township, and for that purpose the Corporation shall employ a certified public accountant of the State of New Jersey, as required by law. The annual audit shall include a full and correct statement of the affairs of the Corporation, including a balance sheet and statement of the financial affairs of the Corporation. The audit report shall also include a balance sheet and statement of operations for the preceding fiscal year audited. The annual audit shall be completed and filed with the Township Committee within four months after the close of the fiscal year of

the Corporation and a certified duplicate copy of the audit shall be filed with the Director of the Division of Local Government Services in the Department of Community Affairs within five days of the filing of the audit with the Township Committee.

### **Article IX** **Dissolution**

The Corporation shall be prohibited from dissolving itself pursuant to the terms of Title 15A without first obtaining Township Committee approval in the form of a Resolution. In the event the Corporation receives approval from the Township Committee to dissolve pursuant to Title 15A, then upon the dissolution of the Corporation, assets shall be distributed to one or more exempt organizations within the meaning of Section 501(c)(3), of the Internal Revenue Code, as may be amended from time to time, the federal government, or a state or local government for a public purpose; *provided however*, that any remaining assets are first offered to the Township of Millburn, as a local government, for a public purpose within the meaning of Section 501(c)(3). If the Township of Millburn refuses the assets for public purposes, or is otherwise unable to accept the assets for any reason, then the assets may be given to any other of the aforementioned qualifying organizations or government entities for a public purpose. In the event that the Board of Trustees votes to obtain Township Committee approval to dissolve the Corporation and the Township Committee votes to disapprove the proposed dissolution, the Township Committee shall have the right, in its absolute discretion, to remove all or part of the Board and to reconstitute the same by appointing replacement Trustees to fill the vacancies for the balance of the terms remaining for any or all such Trustees so removed.

### **Article X** **Termination**

The Corporation acknowledges that the Township Committee reserves the right, in its sole discretion, to terminate the District and/or the Corporation at any time, by repeal of Ordinance 12-92 and/or implementing dissolution measures under Title 15A. In such an event, the Board of Trustees shall cooperate with the Township Committee in effectuating all termination measures, including dissolution. Upon such termination, the Township shall assume the liabilities of the Corporation and the Corporation's assets shall be turned over to the Township Committee for use for a public purpose in compliance with Section 501(c)(3) of the Internal Revenue Code, or for disposition through another method in accordance with Section 501(c)(3), at the Township Committee's discretion.

**Article XI**  
**Corporate Seal**

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

**Article XII**  
**Indemnification**

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

**Article XIII**  
**Amendment of the Bylaws**

13.01 General.

These Bylaws shall be amended only upon approval by the Township Committee prior to adoption by the Corporation's Board of Trustees.

13.02 Procedures.

- (a) A motion to request approval from the Township Committee to amend, alter, repeal, or enact a new Bylaw may be introduced, considered and discussed, but not voted on, at any meeting of the Board of Trustees, unless 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 certified mail, return receipt requested, to every member of the Board of Trustees at least ten (10) days prior to such a meeting.
- (b) Provided the above said motion is duly seconded, the Chairman of the Board 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 of Trustees. An affirmative vote by the majority of Trustees will carry the motion, and the proposed form of amendment to the Bylaws shall be sent to the Clerk of the Township of Millburn for placement on a Township Committee meeting agenda for consideration.

- (c) If the Township Committee approves, then the proposed form of amendment to the bylaws shall be deemed approved without need of further action by the Board of Trustees.
- (d) If the Township Committee conditionally approves or proposes a revision to the proposed form of Bylaws, then the Board shall vote to accept the Township Committee's condition or revision. An affirmative vote by the majority of Trustees will carry the motion; however, if the motion does not carry then the proposed form of amendment to the Bylaws is defeated.
- (e) If the Township Committee does NOT approve the proposed form of amendment to the Bylaws, then the proposed amendment to the Bylaws is defeated.

**Article XIV**  
**Force and Effect**

These Bylaws are subject to the provisions of Title 15A of the Statutes of the State of New Jersey entitled the "New Jersey Nonprofit Act", the Enabling Statute, N.J.S.A. 40:56-65, *et seq.* Ordinance 12-92, and the Certificate of Incorporation, as each may be amended from time to time. If any provision in these Bylaws is found to be inconsistent with a provision of Title 15A, the Enabling Statute, Ordinance 12-92, or the Certificate of Incorporation, then the provisions of Title 15A, the Enabling Statute, Ordinance 12-92, or the Certificate of Incorporation shall govern the extent of the inconsistency.