

MEMORANDUM

February 5, 2021

TO: Planning, Housing, & Economic Development Committee

FROM: Carlos Camacho, Legislative Analyst
Robert H. Drummer, Senior Legislative Attorney

SUBJECT: Proposed Revisions to Bethesda Urban Partnership (BUP) Bylaws

PURPOSE: Discuss and make recommendation for Council consideration

Expected Attendees:

- Jeff Burton, Executive Director, Bethesda Urban Partnership
- Jeff Oyer, Director of Finance & Operations, Bethesda Urban Partnership
- Ken Hartman-Espada, Director, Bethesda-Chevy Chase Regional Services Center
- Neal Anker, Associate County Attorney, Division of Land Use, Zoning & Economic Development, Montgomery County Attorney's Office

Today, the Planning, Housing, & Economic Development (PHED) Committee will receive an update on proposed revisions to the bylaws of the Bethesda Urban Partnership (BUP) and make a recommendation regarding the approval of the bylaws.

1. Background

In August, BUP submitted to the Council proposed revisions to its bylaws. The current version of the BUP bylaws was approved by the Council in 2006.

Section 68A-10(g) of the County Code specifies that “any later amendment to the bylaws must be submitted to the County Council and County Executive for approval at least 60 days before the board of directors takes final action on the amendment. All bylaws must be filed with the County Executive within 5 working days of adoption.”

The Code also outlines provisions governing the urban district corporation’s Board of Directors, employees, powers, budget, finance, administration, termination, dissolution, and other organizational matters.

While the revised bylaws make several technical changes, including updating specific citations of the state code, specifying “Bethesda” when referencing the Urban District, specifying “Maryland” when referencing the Open Meetings Act, and other minor clarifications, this staff report details

material changes that can be viewed as either conforming or not conforming to the County Code or changes that alter the organization or procedures of BUP.

2. Proposed Material Changes to BUP Bylaws

ARTICLE II. BOARD OF DIRECTORS

Section 4. Term: Removal, Filling of Vacancies

The revised bylaws remove specific language specifying the number of Board meetings, two, a Director may miss in order for the Board to recommend removal from the Board. The language is changed to define broader actions that may lead to the removal of a Director, which includes “neglect, misconduct, failure to attend meetings, malfeasance, misfeasance or nonfeasance.” Furthermore, the bylaws now specify that a Director may be removed by a majority vote by the Board of Directors.

Section 5. Regular Meetings

The time of regular Board meetings is changed from 8:00am to 7:45am. In addition, the revised bylaws now state that the election of officers will take place in either May “or June” of each year and adds that “if the election of officers is not held at such meeting, it shall be held as soon as convenient thereafter.”

A new paragraph was created titled “Open Meetings Act” specifying that the BUP Board will meet in open session unless a session is permitted to be closed pursuant to the requirements of the Open Meetings Act, and generally states that the Board will comply with the requirements of the Act for both open and closed sessions. This differs from the current version of the bylaws that instead lists specific exceptions from the Open Meetings Act that would allow the Board to meet in a closed session. Council staff recommended a shift to broader language to prevent the bylaws from going out of date if the State were to amend or remove any of the exceptions explicitly listed in the current version of the bylaws.

Section 7. Notice

This section was updated so that notice of each meeting to the Board may now be given by email. Additionally, the bylaws now specify that public notice of a meeting must be given with “reasonable advance notice” and must include the date, time, and location of the meeting. The bylaws also now state that an agenda must be made available prior to a meeting of the Board in accordance with the Open Meetings Act. Notice of a meeting may now be posted on the Corporation’s website as well.

Section 11. Meetings by Telephone

The name of this section has been changed to “Meetings by Telephone, Video, or other Electronic Means” and now allows meetings of the Board or committees to be conducted by video or other electronic communications equipment.

Section 12. Meeting Minutes

This is a new section that was created to specify that the Board will prepare minutes “as soon as practicable” after each Board meeting, as well as maintain and make available such minutes in accordance with the requirements of the Open Meetings Act.

ARTICLE III. OFFICERS AND AGENTS

Section 6. Authority and Duties of Officers

The changes to this section allow the designee of the Chair of the Board, the Secretary, and the Treasurer to fulfill the functions specified for each position.

Furthermore, the title of Assistant Director has been changed to Deputy Director and the title of Comptroller has been changed to Director of Finance.

Section 7. Insurance

The language in this section is strengthened to require the Corporation to purchase and maintain insurance for protection against liability. Furthermore, the proposed bylaws also add that the BUP has the right to participate in the Montgomery County self-insurance program. Both provisions are consistent with Section 68A-10 (j) of the County Code.

ARTICLE V. MISCELLANEOUS

Section 4. Ethics

Section 68A-10 (f)(2) of the County Code states that members of the Board are not subject to the Montgomery County Public Ethics Law, however, the Code does specify under Section 68A-10 (g)(2) that the bylaws must contain provisions that “protect against any conflict of interest or similar impropriety by members of the board of directors or the Executive Director or any other employees, including self-dealing and collusive practices.” The Code also specifies that an Urban District Corporation must include within their ethics requirements “a provision for the disclosure of a financial or similar interest of any person in any matter before the corporation and the establishment of conditions under which that person is disqualified from participating in decisions or other actions in which there is a conflict between the person's official duties and private interests,” along with “remedies against violation, including removal or termination.”

The current bylaws contain provisions regarding BUP procedures on handling incidents of conflicts of interest. The proposed bylaws adds to this section by disqualifying a Director, Officer, or other employee from participation in any BUP matter that affects not only any property or business but any “other personal matter” in which said Director, Officer, employee, or member of his/her family may have an economic, fiduciary interest, or “which otherwise introduces or creates a bias or conflict of interest.”

Furthermore, the proposed revisions now state that the Board may disqualify a Director, Officer, or employee, on their own initiative by a two-thirds vote, “if it discovers a conflict of interest affecting said Director, Officer, or employee.”

Section 5. Procurement Practices

Section 68A-10(g) specifies that an urban district corporation’s bylaws must “provide for competitive procurement for goods and services with reasonable public notice.” The revised bylaws do address this provision by stating: “The Corporation shall establish policies for affecting its competitive procurement of goods and services including posting planned solicitations to purchase goods/or services with a value greater than \$10,000 on the Corporation’s website, seeking multiple bids for goods and/or service contracts, performing due diligence of contractors, approving contractors by the Board for contracts in excess of \$10,000, and annually negotiating contracts with an emphasis on expenditures, quality of service, and building and maintaining relationships with vendors.”

However, this language is more general compared to the provisions in the current bylaws. The revised language requires the Corporation to establish specific competitive procurement policies rather than trying to establish these policies in the Bylaws. The revised section no longer addresses BUP’s ability to engage in the sole source procurement of goods and services, the specific details contained within a Request for Bids (RFB), or the procedure the Executive Director or the Director chairing the committee requesting the procurement will engage in after receiving a response to an RFB.

The revised bylaws do specifically address provisions in Section 68A-11(d) that state that while County procurement policies do not apply to an urban district corporation, the corporation must still “make a good faith effort to meet the minority, female, and disabled business procurement goals that apply to County government under Chapter 11B,” “participate in the County cooperative purchasing program to the fullest extent possible,” and “utilize the County's centralized purchasing system.”

The changes to the Procurement provisions do not raise any legal issues and are a matter of policy.

3. Staff Recommendation

Council staff recommends approval of the revised bylaws as proposed by BUP and attached at © 1-11.

List of Attachments

- 1) Proposed BUP Bylaws ©1-11
- 2) Current BUP Bylaws ©12-23
- 3) Letter from BUP to the Council Requesting Approval for Proposed Bylaws ©24



**BYLAWS
OF
BETHESDA URBAN PARTNERSHIP, INC.**

ARTICLE I. OFFICES

Section 1. **PRINCIPAL OFFICE.** The principal office of the Corporation shall be located in the Bethesda Urban District.

Section 2. **REGISTERED OFFICE.** The registered office of the Corporation required by Maryland Code to be maintained in Maryland may be, but need not be, the same as the principal office if in Maryland, and the address of the registered office may be changed from time to time by the Board of Directors or by the officers of the Corporation.

Section 3. **AMENDED AND RESTATED.** These By-Laws amend and restate in their entirety the By-Laws of the Corporation that were executed in 2006.

ARTICLE II. BOARD OF DIRECTORS

Section 1. **GENERAL POWERS.** The business and affairs of the Corporation shall be managed by its Board of Directors, except as otherwise provided in Chapter 68A, Montgomery County Code, in the Articles of Incorporation, or these Bylaws. The Board of Directors directs all aspects of the program, management, and finances of the Corporation.

Section 2. **NUMBER AND TERM OF OFFICE.** As provided in Chapter 68A, Montgomery County Code, there shall be eleven (11) Directors of the Corporation each of whom shall serve for a period of three years. However, when the Board of Directors is first formed, any member of the Bethesda Urban District Advisory Committee who consents to do so shall serve as a member of the Board of Directors for the remainder of that person's term.

Section 3. **QUALIFICATIONS AND APPOINTMENT OF DIRECTORS.** As provided in Chapter 68A, Montgomery County Code, members are appointed by the County Executive and confirmed by the County Council. The County Executive must appoint the members of the Board of Directors so that:

Attachment 1: Proposed BUP Bylaws

- A. An ex-officio, non-voting member is the County Executive or the Executive's designee;
- B. 2 members are persons nominated by The Greater Bethesda Chamber of Commerce;
- C. 3 members are, or represent, owners of a property developed under the optional method of development within the Bethesda Urban District;
- D. one member is an owner, partner, proprietor, or corporate officer of a business that employs fewer than 10 employees;
- E. One member lives in the Bethesda Urban District;
- F. One member lives in a residential community outside of, but in close proximity to, the Bethesda Urban District, who must be appointed by the County Executive from among three candidates nominated by the County Council;
- G. One member lives in a residential community within the planning area in which the Bethesda Urban District is located, and is nominated by the Citizens Advisory Board serving that area after the Board has solicited interest from the public and interviewed potential nominees; and
- H. One member is a resident member of the Citizens Advisory Board who is nominated by that Board, or if no member of that Board is able to serve, a resident of the planning area in which the Bethesda Urban District is located who is nominated by the Citizens Advisory Board.

The County Executive may reject any person nominated to serve on the Board of Directors and request additional nominations from the body that nominated the person.

Section 4. **TERM: REMOVAL, FILLING OF VACANCIES.**

- A. The County Executive may reappoint a member to the Board of Directors for one additional term, but a member may not serve more than two consecutive terms on the Board.
- B. The County Executive may remove a member of the Board of Directors for malfeasance, misfeasance, nonfeasance, or other reason specified in these Bylaws.
- C. Any Director may resign at any time by giving written notice to the County Executive and the Chair of the Board. A Director's resignation takes effect at the time specified in such notice, and unless otherwise specified therein, the acceptance of such resignation is not necessary to make it effective. The County Executive shall promptly appoint a Director to fill the unexpired term in the same manner as outlined in these Bylaws and Chapter 68A, Montgomery County Code.

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- D. A Director whose actions are deemed detrimental to the Corporation; i.e., neglect, misconduct, failure to attend meetings, malfeasance, misfeasance or nonfeasance, may be removed from the Board of Directors by a majority vote of the Board of Directors. The County Executive and County Council shall be promptly notified of any such removal. The County Executive, at his or her discretion, may waive removal of the Director for illness, emergency, or other good cause.

Section 5. **REGULAR MEETINGS.**

- A. **Schedule.** The Board of Directors shall meet at least once quarterly for the transaction of such business as may come before the Board. The Board intends to hold regular meetings on the third Tuesday of every month, except for the months of August and December, at 7:45 AM in the principal office of the Corporation. Regular meetings may be scheduled at such other times and frequency as the Board of Directors decides, provided however, the Board of Directors shall meet at least once quarterly.
- B. **Elections of Officers.** At the Board of Directors regular meeting in either May or June of each year, the Board of Directors will elect officers who will serve for the following fiscal year commencing July 1st of each year. If the election of officers is not held at such meeting, it shall be held as soon as convenient thereafter.
- C. **Public Invitation.** All meetings of the Board of Directors shall be open to the public, except as provided below. The Board of Directors shall adopt and enforce reasonable rules regulating the conduct and participation of persons attending its meetings, and the videotaping, televising, photographing, broadcasting, or recording of its meetings. The presiding officer may have any individual removed from a meeting if he or she determines the behavior of an individual is disrupting an open session.

Open Meetings Act. The Board of Directors shall hold its meetings in open session pursuant to requirements of the Open Meetings Act, Maryland Code, General Provisions Article, § 3-101, et. seq., unless the Board holds such meeting in closed session as permitted under the Act. The Board shall comply with the requirements of the Act for all meetings held in both open and closed session.

Section 6. **SPECIAL MEETINGS.** Special meetings of the Board of Directors may be called by or at the request of the Chair of the Board or the Executive Director under section {7.b} of these Bylaws.

Section 7. **NOTICE.**

- A. **Notice to the Board.** Notice of each meeting of the Board of Directors stating the place, day, and hour of the meeting shall be given to each Director at such Director's preferred address at least five days prior thereto by the mailing of written notice by first class mail, or at least one

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day prior thereto by personal delivery of written notice or by telephonic, telegraphic, telex, facsimile, or email notice (and the method of such notice need not be the same as to each Director). Any Director may waive notice of any meeting before, at, or after such meeting. The attendance of a Director at a meeting shall constitute a waiver of notice of such meeting, except where a Director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any meeting of the Board of Directors need be specified in the notice or waiver of notice of such meeting unless otherwise required by statute.

- B. **Public Notice.** Reasonable advance written notice of regular meetings of the Board of Directors, including date, time and location shall be given by delivery to representatives of the news media who regularly report on activities of the Corporation or of the Montgomery County Government and to representatives of business organizations and citizens groups serving the Bethesda area, or by posting public notice at a convenient public location at or near the place of the session, or by posting the notice on the Corporation's website ordinarily used by the Corporation to provide information to the public, or any other reasonable method. Notice of special meetings shall be given in a similar fashion as notice of regular meetings, with as much advance notice as is reasonable under the circumstances. A meeting agenda shall be made available prior to an open meeting of the Board in accordance with the requirements of the Act.

Section 8. **QUORUM AND VOTING.** A majority of the voting Directors shall constitute a quorum for the transaction of business at any meeting of the Board of Directors, and the vote of a majority of the Directors present in person at a meeting at which a quorum is present shall be the act of the Board of Directors. If less than a quorum is present at a meeting, a majority of the voting Directors present may adjourn the meeting from time-to-time with further notice of the time and place for the continuation of the meeting when a quorum shall be present.

Section 9. **COMPENSATION.** Directors shall not receive compensation. Directors may be reimbursed for any ordinary and necessary expenses, which they may pay or incur in carrying out Corporation business. A member of the Board of Directors is not eligible to receive benefits under the County retirement system for service rendered as a board member.

Section 10. **EXECUTIVE AND OTHER COMMITTEES.** It is the intent of the Corporation to utilize committees to involve a broad spectrum of the local community in its activities. The Board may designate from among its members an Executive Committee and one or more other committees, each of which will be chaired by a Board member, and can include persons who are not on the Board of Directors. To the extent provided by the Board in establishing the committee, committees shall have and may exercise all of the authority of the Board of Directors as may be specifically delegated to it by the Board of Directors. The delegation of authority to any committee shall not operate to relieve the Board of Directors or any member of the Board from any responsibility imposed by law. Rules governing procedures for meetings of any committee of the Board shall be as established by the Board of Directors or in the absence thereof, by the committee itself.

Section 11. **MEETINGS BY TELEPHONE, VIDEO, or OTHER ELECTRONIC MEANS.**

Members of the Board of Directors or any committee thereof may participate in a meeting of a committee or board meeting by means of conference telephone, video or electronic communications equipment by which all persons participating in the meeting, as well as members of the public, can hear each other at the same time. Such participation shall constitute presence in person at the meeting.

Section 12. **MEETING MINUTES.** The Board must prepare minutes “as soon as practicable” after each Board meeting. For meetings that are covered under the Maryland Open Meetings Act, the Board shall prepare, maintain and make available meeting minutes in accordance with the requirements of the Act.

ARTICLE III. OFFICERS AND AGENTS

Section 1. **NUMBER AND QUALIFICATIONS.** The elected officers of the Corporation shall be a Chair of the Board, one or more Vice Chairmen, a Secretary, and a Treasurer. One person may hold more than one office at a time, except that no person may simultaneously hold the offices of Chair and Secretary. All elected officers must be at least eighteen (18) years old and a member of the Board. In addition, the Board of Director is authorized to hire on behalf of the Corporation, an Executive Director and an Deputy Director, both of whose duties are described below, and such other employees and titles as deemed appropriate by the Board of Directors.

Section 2. **ELECTION AND TERM OF OFFICE.** The elected officers of the Corporation shall be elected by the Board of Directors annually at either the regular May or June meeting of the Board, or if the election of officers is not held at such meeting, then at a different meeting held as soon as convenient thereafter. Each officer shall hold office until such officer’s successor shall have been duly elected and shall have qualified, or until such officer’s earlier death, resignation, or removal. Each elected officer may serve in the same office for no more than two consecutive one-year terms.

Section 3. **COMPENSATION.** Directors and Officers (other than the Executive Director and any Assistants hired by the Executive Director) of the Corporation shall not receive compensation or a salary for services provided as a Director or Officer on behalf of the Corporation.

Section 4. **REMOVAL.** Any officer or agent may be removed by the Board of Directors whenever in its judgement the best interests of the Corporation will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer shall not in itself create contract rights. A director may only be removed in accordance with Article II, Section 4 of the Bylaws.

Section 5. **VACANCIES.** Any officer may resign at any time, subject to any rights or obligations between the Officer and the Corporation, by giving written notice to the Chair of the Board, to the

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Executive Director, or to the Board of Directors. An officer's resignation takes effect at the time specified in such notice, and unless otherwise specified therein, the acceptance of such resignation is not necessary to make it effective. A vacancy in any office, however occurring, may be filled by the Board of Directors for the unexpired portion of the term.

Section 6. **AUTHORITY AND DUTIES OF OFFICERS.** The officers of the Corporation shall exercise the powers and perform the duties specified below and as may be additionally specified by the Chair of the Board, the Board of Directors or these Bylaws, except that in any event each officer shall exercise such powers and perform such duties as may be required by law.

- A. **Chair of the Board.** The Chair of the Board, or the Chair's designee, shall (i) preside at all meetings of the Board of Directors; (ii) create ad hoc committees of the Board of Directors, as the chair deems appropriate from time-to-time, and appoint the members and chair of each such committee; (iii) act as a representative of the Corporation's purpose in the community affairs and promote the Corporation's purpose in the community; (iv) see that all orders and resolutions of the board of directors are carried into effect; and, (v) perform all other duties incident to the office of chair of the board as from time to time may be assigned to the chair by the Board of Directors.
- B. **Vice Chair.** The Vice Chair shall assist the Chair of the Board and shall perform such duties as may be assigned to him or her by the Chair of the Board or the Board of Directors whenever the chair is absent.
- C. **Secretary.** The secretary, or the secretary's designee, shall (i) keep the minutes of the proceedings of the Board of Directors and any committees of the Board; (ii) see that all notices are duly given in accordance with provisions of these Bylaws or as required by law; (iii) be custodian of the corporate records and of the seal of the Corporation; and, (iv) in general, perform such other duties as from time-to-time may be assigned to such office by the Chair of the Board, the Executive Director, or the Board of Directors. Assistant Secretaries, if any, shall have the same duties and powers, subject to supervision by the Secretary.
- D. **Treasurer.** The Treasurer, or the Treasurer's designee, shall (i) be the principal financial officer of the Corporation and have the care and custody of all its funds, securities, evidences of indebtedness and other personal property and deposit the same in accordance with the instructions of the Board of Directors; (ii) receive and give receipts and acquittance for monies paid in on account of the Corporation, and pay out of the funds on hand all bills, payrolls, and other just debts of the Corporation of whatever nature upon maturity; (iii) unless there is a Director of Finance, be the principal accounting officer of the corporation and as such prescribe and maintain the methods and systems of accounting to be followed, keep complete books and records of account, prepare and file all required Local, State and Federal tax returns and related documents, prescribe and maintain an adequate system of internal audit, and prepare and furnish to the Executive Director and the Board of Directors statements of account showing the

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financial position of the Corporation and the results of its operations; (iv) upon request of the Board, make such reports to it as may be required at any time; and, (v) perform all other duties incident to the office of Treasurer and such other duties as from time-to-time may be assigned to such office by the Chair of the Board, the Executive Director, or the Board of Directors. Assistant Treasurers, if any, shall have the same powers and duties, subject to the supervision by the Treasurer.

- E. **Executive Director.** The Executive Director shall, subject to the direction and supervision of the Chair of the Board and the Board of Directors: (i) be the Chief Executive Officer of the Corporation and have general and active control of its affairs and business and general supervision of its officers, agents and employees; (ii) see that all orders and resolutions of the Board of Directors are carried into effect; and, (iii) perform all other duties incident to the office of Executive Director and as from time-to-time may be assigned to such office by the Chair of the Board or by the Board of Directors.
- F. **Deputy Director.** The Deputy Director, if any, shall assist the Executive Director, and shall perform such duties as may be assigned to them by the Executive Director. The Deputy Director shall at the request of the Executive Director, or in the Executive Director's absence or inability to act, perform the duties of Executive Director and when so acting shall have all the powers of and be subject to all the restriction on the Executive Director.

Section 7. **SURETY BONDS.** The Board of Directors shall provide for surety bonds or similar instruments to protect against misappropriation of funds by employees of the Corporation responsible for handling the Corporation's funds. The Board of Directors may require any officer, employee, or agent of the Corporation to execute to the Corporation a bond in such sums and with such sureties as shall be satisfactory to the Board, conditioned upon the faithful performance of such person's duties and for the restoration to the Corporation of all books, papers, vouchers, money, and other property of whatever kind in such person's possession or under such person's control belonging to the Corporation.

Section 8. **INSURANCE.** By action of the Board of Directors, notwithstanding any interest of the Directors in such action, the Corporation shall purchase and maintain insurance in such amounts as the Board of Directors deems appropriate to protect itself and any person who is or was a Director, officer, employee, fiduciary or agent of the Corporation or who, while a Director, officer, employee, fiduciary, or agent of the Corporation against any liability asserted against or incurred by such person in any such capacity arising out of person's status such whether or not the Corporation would have the power to indemnify such person against such liability under applicable provisions of law and the Articles of Incorporation and Bylaws. Any such insurance may be procured from the insurance company designated by the Board of Directors, whether such insurance company is formed under the laws of the State of Maryland or any other jurisdiction. The Corporation may create a trust fund, grant a security interest, or use other means to ensure the payment of such sums as may become necessary to effect indemnification as provided herein. Notwithstanding the foregoing, the Corporation shall have the right to participate in the Montgomery County Self Insurance Program, per Section 20-37 of the Montgomery County Code.

ARTICLE IV. FINANCES

Section 1. **FINANCES.** The funds of the Corporation shall be deposited in its name with such banks or trust companies as the Board of Directors may from time- to-time designate. All checks, notes, drafts, and other negotiable instruments of the Corporation shall be signed by such officers or employees as the Board of Directors may from time-to-time designate by resolution. No officers, or agents, or employees of the Corporation, alone or with others, shall have power to make any checks, notes, drafts, or other negotiable instruments in the name of the Corporation, or to bind the Corporation thereby, except as provided in this Article.

Section 2. **BUDGET PROPOSAL.** A proposed annual budget shall be prepared by the Executive Director and presented for approval to the Board of Directors. The Corporation shall submit an annual budget to the Montgomery County Office of Management and Budget for review in accordance with the procedures and schedule established by the Office of Management and Budget.

ARTICLE V. MISCELLANEOUS

Section 1. **ACCOUNT BOOKS, MINUTES, ETC.** The Corporation shall keep correct books and records of account and shall keep minutes of all proceedings of its Board of Directors and committees. All books and records of the Corporation may be inspected by any Director and by any authorized official or employee of the Montgomery County Government at any reasonable time, upon request to the Executive Director.

Section 2. **ANNUAL REPORT AND AUDIT.** The Corporation shall file with the County Director of Finance an annual report at the end of its fiscal year. The Corporation also will provide the County with an annual independent audit by a certified public accountant, including a copy of any accompanying management letter.

Section 3. **FISCAL YEAR.** The fiscal year of the Corporation shall begin on July 1 and end on June 30 of each year.

Section 4. **ETHICS.**

A. **Conflicts of Interest.** A Director, Officer, or an employee of the Corporation shall not participate in any corporate matter that affects, in a manner distinct from its effect on the public in the Bethesda Urban District generally, any property, business or other personal matter in which the Director, officer, or employee, or a member of his or her family, holds an economic or fiduciary interest, or which otherwise introduces or creates a bias or conflict of interest for said Director, Officer or employee. Family means a spouse, child, parent, or sibling, and the spouse's child, parent, or sibling. Prior to participating in a matter that would involve a conflict of interest, a Director, Officer or employee shall:

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- (1) Immediately inform those charged with approving the transaction on behalf of the Corporation of the conflict of interest;
- (2) Aid any person charged with making a decision in the relevant matter by disclosing all material facts concerning the conflict of interest; and,
- (3) Not participate in or vote on the matter unless the Board of Directors by a two-thirds vote approves participation in or voting on the matter.

Notwithstanding the provisions of this subsection A, the Board may disqualify a Director, Officer or an employee of the Corporation from participating in any corporate matter by a two-thirds vote if, on its own initiative, it discovers a conflict of interest affecting said Director, Officer or employee.

- B. **Exception to Disqualification in Case of Conflict of Interest.** If a conflict of interest disqualifies a Director and the disqualification leaves less than a quorum capable of acting, the Director may participate or act in the matter if the Director discloses the nature and circumstances of the conflict to the Board of Directors.
- C. **Confidential Information.** A Director, Officer, or employee shall not disclose to any person confidential information relating to the corporation that is not available to the public. A Director, Officer, or employee shall not use confidential information for personal gain or the gain of another.
- D. **Gifts.** A Director, Officer, or employee shall not solicit or accept a gift from any person if receipt of the gift would influence, or is intended to influence, any business of the Corporation. If a Director, Officer, or employee receives a gift prohibited by this section, the Director, Officer or employee shall disclose the gift in writing to the Board of Directors and dispose of the gift as directed by the Board.
- E. **Person.** Definition. A person includes any entity.
- F. **Violation.** If a Director, Officer, or employee violates this section, the Director, Officer, or employee may be removed from the Board under Article II, Section 4, or fired, as appropriate.
- G. **Loans to Directors and Officers Prohibited.** Notwithstanding any other provision in the Articles of Incorporation and Bylaws, no loans shall be made by the Corporation to any of its Directors or Officers. Any Director or Officer who assents to or participates in the making of any such loan shall be liable to the Corporation for the amount of such loan until it is repaid.

Section 5. **PROCUREMENT PRACTICES**

- (1) The Corporation shall exercise reasonable and prudent business practices when purchasing goods and services required by the Corporation. The Corporation shall establish policies for affecting its competitive procurement of goods and services including posting planned solicitations to purchase goods/or services with a value

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greater than \$10,000 on the Corporation's website, seeking multiple bids for goods and/or service contracts, performing due diligence of contractors, approving contractors by the Board for contracts in excess of \$10,000, and annually negotiating contracts with an emphasis on expenditures, quality of service, and building and maintaining relationships with vendors.

- (2) The Corporation shall participate in the County cooperative purchasing program to the fullest extent possible. To the extent practicable and cost effective, the Corporation shall utilize the County's centralized purchasing system by purchasing goods under County requirement contracts with vendors or using existing County inventories
 - (3) The corporation shall make a good faith effort to meet the minority, female, and disabled business procurement goals that apply to County government under Chapter 11B of the Montgomery County Code. Similarly, the Corporation must make a good faith effort to achieve procurement goals for the purchase of recycled goods that apply to County government under said Chapter 11B. The corporation shall submit a report to the Chief Administrative Officer by September 1 of each year describing achievement of those goals in the prior fiscal year.
 - (4) The Board of Directors may delegate to the Executive Director the authority to accept offers and enter into contracts subject to conditions imposed by the Board.
 - (5) The Board of Directors may authorize the Executive Director to enter into a contract to obtain required goods or services.
 - (6) On an annual basis, the Board of Directors shall review all contracts and expenditures as part of the annual budget process and any contracts and expenditures not included in the approved budget in excess of \$15,000 that may arise throughout the year.
- C. **Contract Funding.** The Corporation shall not enter into a contract, which obligates the Corporation to pay any amount in excess of the encumbered funds available to the Corporation.
- D. **Contract Form.** Each contract executed by the Corporation must state Montgomery County, Maryland, is not liable for any obligation of the corporation under the contract.
- E. **Recycled Goods.** The Corporation shall make a good faith effort to achieve procurement goals that apply to the county Government with respect to the purchase of recycled goods.
- F. **Centralized Purchasing.** The Corporation shall, to the extent practicable and cost effective, utilize the County's centralized purchasing system by purchasing goods under County requirement contracts with vendors in order to take advantage of volume discounts. The Executive Director shall work cooperatively with the County's Director of Procurement in order to maximize savings to the Corporation by using the County's centralized purchasing system.

G. **Minority Owned Business Purchasing Program**

- (1) The Corporation shall make a good faith effort to achieve minority owned business goals that apply to the County Government. The Corporation shall require any non-minority owned business with a contract exceeding \$65,000 in value to subcontract to a minority owned business 20% of the total dollar value of the contract. The Board of Directors may omit this requirement for a particular contract if, in the judgement of the Board, the subcontracting goal is not practicable under the circumstances of that contract.
- (2) A minority owned business is business certified as a minority, female, disabled (MFD) firm under Montgomery County's Minority Procurement Purchasing Program.
- (3) The Corporation shall utilize the Montgomery County Minority Business Directory and other resources to seek responses from qualified MFD firms to any RFB of the Corporation.

Section 6. **COMPLIANCE WITH STATE PUBLIC RECORDS LAW.**

- A. The Executive Director shall generally make all records of the Corporation available for inspection pursuant to the Public Information Act, Maryland Code, General Provisions Article, § 4-101, et. seq.
- B. Any person denied access to a public record may file a written appeal within 30 days of the denial with the Corporation. The Board of Directors shall decide the appeal at its next regularly scheduled meeting.
- C. The Executive Director shall establish reasonable charges for the search for, preparation of, and reproduction of public records in accordance with the State Public Information Act.

Section 7. **AMENDMENTS.** Any amendment to the Bylaws must be submitted to the County Council and County Executive for approval at least 60 days before the Corporation's Board of Directors takes final action on the amendment. All Bylaws must be filed with the County Executive within 5 working days of adoption.

Section 8. **SEVERABILITY.** The invalidity of any provision of these Bylaws shall not affect the other provisions hereof, and in such event these Bylaws shall be construed in all respects as if such in valid provision were omitted.



**BYLAWS
OF
BETHESDA URBAN PARTNERSHIP, INC.
A NONPROFIT CORPORATION**

ARTICLE I. OFFICES

Section 1. **PRINCIPAL OFFICE.** The principal office of the Corporation shall be located in the Bethesda Urban District.

Section 2. **REGISTERED OFFICE.** The registered office of the Corporation required by Maryland Code to be maintained in Maryland may be, but need not be, the same as the principal office if in Maryland, and the address of the registered office may be changed from time to time by the Board of Directors or by the officers of the Corporation.

ARTICLE II. BOARD OF DIRECTORS

Section 1. **GENERAL POWERS.** The business and affairs of the Corporation shall be managed by its Board of Directors, except as otherwise provided in Chapter 68A, Montgomery County Code, in the Articles of Incorporation, or these Bylaws. The Board of Directors directs all aspects of the program, management, and finances of the Corporation.

Section 2. **NUMBER AND TERM OF OFFICE.** As provided in Chapter 68A, Montgomery County Code, there shall be eleven (11) Directors of the Corporation each of whom shall serve for a period of three years. However, when the Board of Directors is first formed, any member of the Bethesda Urban District Advisory Committee who consents to do so shall serve as a member of the Board of Directors for the remainder of that person's term.

Section 3. **QUALIFICATIONS AND APPOINTMENT OF DIRECTORS.** As provided in Chapter 68A, Montgomery County Code, members are appointed by the County Executive and confirmed by the County Council. The County Executive must appoint the members of the Board of Directors so that:

- A. an ex-officio, non-voting member is the County Executive or the Executive designee;
- B. 2 members are persons nominated by the Bethesda Chamber of Commerce;

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- C. 3 members are, or represent, owners of a property developed under the optional method of development;
- D. one member is an owner, partner, proprietor, or corporate officer of a small business;
- E. One member lives in the urban district;
- F. One member lives in a residential community outside of, but in close proximity to, the urban district, who must be appointed by the County Executive from among three candidates nominated by the County Council;
- G. One member lives in a residential community within the planning area in which the Urban District is located, and is nominated by the Citizens Advisory Board serving that area after that Board has solicited interest from the public and interviewed potential nominees; and,
- H. One member is a resident member of the Citizens Advisory Board who is nominated by that Board, or if no member of that Board is able to serve, a resident of the planning area in which the urban district is located who is nominated by the Citizens Advisory Board.

The County Executive may reject any person nominated to serve on the Board of Directors and request additional nominations from the body that nominated the person.

Section 4. **TERM: REMOVAL, FILLING OF VACANCIES.**

- A. The County Executive may reappoint a member to the Board of Directors for one additional term, but a member may not serve more than two consecutive terms on the Board.
- B. The County Executive may remove a member of the Board of Directors for malfeasance, misfeasance, nonfeasance, or other reason specified in the Bylaws of the Corporation.
- C. Any Director may resign at any time by giving written notice to the County Executive and the Chair of the Board. A Director's resignation takes effect at the time specified in such notice, and unless otherwise specified therein, the acceptance of such resignation is not necessary to make it effective. The County Executive shall promptly appoint a Director to fill the unexpired term in the same manner as outlined in these Bylaws and Chapter 68A, Montgomery County Code.
- D. A Director who fails to attend two Board meetings in any year without a reasonable excuse or one whose actions are deemed detrimental to the Corporation by the Board of Directors, must be recommended by the Board of Directors for removal to the County Executive. The County Executive, at his or her discretion, may waive removal of the Director for cause.

Attachment 2: Current BUP Bylaws

- E. Board members may be removed for other causes; i.e., neglect, misconduct, with appropriate notice by the County Executive. The County Council must also be notified.

Section 5. **REGULAR MEETINGS.**

- A. **Schedule.** The Board of Directors shall meet at least once quarterly for the transaction of such business as may come before the meeting. The Board intends to hold regular meetings on the third Tuesday of every month, except for the months of August and December, at 8:00 AM in the principal office of the Corporation. Regular meetings may be scheduled at such other times and frequency as the Board of Directors decides, provided however, the Board of Directors shall meet at least once quarterly.
- B. **Elections of Officers.** At the Board of Directors regular meeting in May of each year, the Board of Directors shall elect officers who will serve for the following fiscal year commencing July 1st of each year.
- C. **Public Invitation.** All meetings of the Board of Directors shall be open to the public, except as provided below. The Board of Directors shall adopt and enforce reasonable rules regulating the conduct and participation of persons attending its meetings, and the videotaping, televising, photographing, broadcasting, or recording of its meetings. The presiding officer may have any individual removed from a meeting if he or she determines the behavior of an individual is disrupting an open session.
- D. Each meeting of the Board of Directors and any committee created by the Board is covered by the state Open Meetings act when the meeting is held to perform a legislative, quasi-legislative, or advisory function, as those terms are used in the Act. Meetings covered by the Act may be closed for the reasons specified in the Act.

The Board or a committee shall meet in public session when carrying out an executive function that is not covered by the Open Meetings Act. When carrying out an executive function, the Board or a committee may meet in closed session or adjourn an open session to a closed session, by majority vote, as specified below.

- (1) **Reasons for Closed Meeting.** When a meeting is not covered by the Open Meetings Act, the following are the reasons the Board of Directors may hold a closed meeting:
 - (a) Discuss:
 - (i) the appointment, employment, assignment, promotion, discipline, demotion, compensation, removal, resignation, or performance evaluation of appointees or employees, or
 - (ii) any other personnel matter that affects one or more specific individuals;

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- (b) Protect the privacy or reputation of individuals with respect to a matter that is not related to public business;
- (c) Consider the acquisition by bequest, or gift, or sale, or disposition of real property for a public purpose and matters directly related thereto;
- (d) Consider a matter that concerns the proposal for a business or industrial organization to locate, expand, or remain in the urban district;
- (e) Consider the investment of its funds;
- (f) Consult with counsel to obtain legal advice;
- (g) Consult with staff, consultants, or other individuals about pending or potential litigation;
- (h) Discuss public security;
- (i) Conduct or discuss an investigative proceeding on actual or possible criminal conduct;
- (j) Comply with a specific constitutional, statutory, or judicially imposed requirement that prevents public disclosures about a particular proceeding or matter; or
- (k) Before a contract is awarded or bids are opened, discuss a matter directly related to a negotiating strategy or the contents of a bid or proposal, if public discussion or disclosure would adversely impact the ability of the corporation.
 - (i) **Limitation.** The Board of Directors that meets in closed session under this section may not discuss or act on any matter not permitted under subsection (a) of this section.
 - (ii) **Construction.** The exceptions in subsection (a) of this section shall be strictly construed in favor of open meetings of the Board of Directors.
 - (iii) **Vote; Written Statements.** Unless a majority of the Board of Directors present and voting vote in favor of closing the session, the Board may not meet in closed session.
 - (iv) **Steps Required.** Before the Board of Directors meets in closed session, the presiding officer shall:
 - (aa) Conduct a recorded vote on the closing of the session at a public meeting; and,

Attachment 2: Current BUP Bylaws

- (bb) Make a written statement of the reason for closing the meeting and a listing of the topics to be discussed.

Section 6. **SPECIAL MEETINGS.** Special meetings of the Board of Directors may be called by or at the request of the Chair of the Board, the Executive Director under section {7.b} of these Bylaws.

Section 7. **NOTICE.**

- A. **Notice to the Board.** Notice of each meeting of the Board of Directors stating the place, day, and hour of the meeting shall be given to each Director at such Director's preferred address at least five days prior thereto by the mailing of written notice by first class mail, or at least one day prior thereto by personal delivery of written notice or by telephonic, telegraphic, telex, or facsimile notice (and the method of such notice need not be the same as to each Director). Any Director may waive notice of any meeting before, at, or after such meeting. The attendance of a Director at a meeting shall constitute a waiver of notice of such meeting, except where a Director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any meeting of the Board of Directors need be specified in the notice or waiver of notice of such meeting unless otherwise required by statute.
- B. **Public Notice.** Notice of regular meetings of the Board of Directors shall be given by delivery to representatives of the news media who regularly report on activities of the Corporation or of the Montgomery County Government, and to representatives of business organizations and citizens groups serving the Bethesda area, or by posting public notice at a convenient public location at or near the place of the session, or by any other reasonable method, at least five days before the scheduled regular meeting. Notice of special meetings shall be given in a similar fashion as notice of regular meetings, with as much advance notice as is reasonable under the circumstances.

Section 8. **QUORUM AND VOTING.** A majority of the Directors shall constitute a quorum for the transaction of business at any meeting of the Board of Directors, and the vote of a majority of the Directors present in person at a meeting at which a quorum is present shall be the act of the Board of Directors. If less than a quorum is present at a meeting, a majority of the Directors present may adjourn the meeting from time-to-time with further notice of the time and place for the continuation of the meeting when a quorum shall be present.

Section 9. **COMPENSATION.** Directors shall not receive compensation. Directors may be reimbursed for any ordinary and necessary expenses, which they may pay or incur in carrying out Corporation business. A member of the Board of Directors is not eligible to receive benefits under the County retirement system for service rendered as a board member.

Section 10. **EXECUTIVE AND OTHER COMMITTEES.** It is the intent of the Corporation to utilize committees to involve a broad spectrum of the local community in its activities. By one or more resolutions adopted by a majority of the Directors, the Board may designate from among its members an Executive Committee and one or more other committees, each of which will be chaired by a Board member, and can include persons who are not on the Board of Directors. To the extent provided in the resolution establishing the committee, committees shall have and may exercise all of the authority of the Board of Directors as may be specifically delegated to it by the Board of Directors. The delegation of authority to any committee shall not operate to relieve the Board of Directors or any member of the Board from any responsibility imposed by law. Rules governing procedures for meetings of any committee of the Board shall be as established by the Board of Directors or in the absence thereof, by the committee itself.

Section 11. **MEETINGS BY TELEPHONE.** Members of the Board of Directors or any committee thereof may participate in a meeting of a committee by means of conference telephone or similar communications equipment by which all persons participating in the meeting, as well as members of the public, can hear each other at the same time. Such participation shall constitute presence in person at the meeting. For meetings not covered by the State Open Meetings Act, minutes, or in the absence of minutes, any tape recordings of such meetings that may be prepared shall be retained for at least one (1) year.

ARTICLE III. OFFICERS AND AGENTS

Section 1. **NUMBER AND QUALIFICATIONS.** The elected officers of the Corporation shall be a Chair of the Board, one or more Vice Chairmen, a Secretary, and a Treasurer. One person may hold more than one office at a time, except that no person may simultaneously hold the offices of Chair and Secretary. All elected officers must be at least eighteen (18) years old and a member of the Board. In addition, the Board of Director is authorized to hire on behalf of the Corporation, an Executive Director and an Assistant Director, both of whose duties are described below, and such other employees and titles as deemed appropriate by the Board of Directors.

Section 2. **ELECTION AND TERM OF OFFICE.** The elected officers of the Corporation shall be elected by the Board of Directors annually at the regular May meeting of the Board. If the election of officers is not held at such meeting, it shall be held as soon as convenient thereafter. Each officer shall

hold office until such officer's successor shall have been duly elected and shall have qualified, or until such officer's earlier death, resignation, or removal. Each elected officer may serve in the same office for no more than two consecutive one-year terms.

Section 3. **COMPENSATION.** Directors and Officers (other than the Executive Director and any Assistants hired by the Executive Director) of the Corporation shall not receive compensation or a salary for services provided as a Director of officer on behalf of the Corporation.

Attachment 2: Current BUP Bylaws

Section 4. **REMOVAL.** Any officer or agent may be removed by the Board of Directors whenever in its judgement the best interests of the Corporation will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer shall not in itself create contract rights. A director may only be removed in accordance with Article II, Sections 3 and 4 of the Bylaws.

Section 5. **VACANCIES.** Any officer may resign at any time, subject to any rights or obligations between the Officer and the Corporation, by giving written notice to the Chair of the Board, to the Executive Director, or to the Board of Directors. An officer's resignation takes effect at the time specified in such notice, and unless otherwise specified therein, the acceptance of such resignation is not necessary to make it effective. A vacancy in any office, however occurring, may be filled by the Board of Directors for the unexpired portion of the term.

Section 6. **AUTHORITY AND DUTIES OF OFFICERS.** The officers of the Corporation shall exercise the powers and perform the duties specified below and as may be additionally specified by the Chair of the Board, the Board of Directors or these Bylaws, except that in any event each officer shall exercise such powers and perform such duties as may be required by law.

- A. **Chair of the Board.** The Chair of the Board shall (i) preside at all meetings of the Board of Directors; (ii) create ad hoc committees of the Board of Directors, as the chair deems appropriate from time-to-time, and appoint the members and chair of each such committee; (iii) act as a representative of the Corporation's purpose in the community affairs and promote the Corporation's purpose in the community; (iv) see that all orders and resolutions of the board of directors are carried into effect; and, (v) perform all other duties incident to the office of chair of the board as from time to time may be assigned to the chair by the Board of Directors.
- B. **Vice Chair.** The Vice Chair shall assist the Chair of the Board and shall perform such duties as may be assigned to him or her by the Chair of the Board or the Board of Directors whenever the chair is absent.
- C. **Secretary.** The secretary shall (i) keep the minutes of the proceedings of the Board of Directors and any committees of the Board; (ii) see that all notices are duly given in accordance with provisions of these Bylaws or as required by law; (iii) be custodian of the corporate records and of the seal of the Corporation; and, (iv) in general, perform such other duties as from time-to-time may be assigned to such office by the Chair of the Board, the Executive Director, or the Board of Directors. Assistant Secretaries, if any, shall have the same duties and powers, subject to supervision by the Secretary.
- D. **Treasurer.** The Treasurer shall (i) be the principal financial officer of the Corporation and have the care and custody of all its funds, securities, evidences of indebtedness and other personal property and deposit the same in accordance with the instructions of the Board of Directors; (ii)

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receive and give receipts and acquittance for monies paid in on account of the Corporation, and pay out of the funds on hand all bills, payrolls, and other just debts of the Corporation of whatever nature upon maturity; (iii) unless there is a comptroller, be the principal accounting officer of the corporation and as such prescribe and maintain the methods and systems of accounting to be followed, keep complete books and records of account, prepare and file all required Local, State and Federal tax returns and related documents, prescribe and maintain an adequate system of internal audit, and prepare and furnish to the Executive Director and the

Board of Directors statements of account showing the financial position of the Corporation and the results of its operations; (iv) upon request of the Board, make such reports to it as may be required at any time; and, (v) perform all other duties incident to the office of Treasurer and such other duties as from time-to-time may be assigned to such office by the Chair of the Board, the Executive Director, or the Board of Directors. Assistant Treasurers, if any, shall have the same powers and duties, subject to the supervision by the Treasurer.

E. **Executive Director.** The Executive Director shall, subject to the direction and supervision of the Chair of the Board and the Board of Directors: (i) be the Chief Executive Officer of the Corporation and have general and active control of its affairs and business and general supervision of its officers, agents and employees; (ii) see that all orders and resolutions of the Board of Directors are carried into effect; and, (iii) perform all other duties incident to the office of Executive Director and as from time-to-time may be assigned to such office by the Chair of the Board or by the Board of Directors.

F. **Assistant Director.** Each Assistant Director, if any, shall assist the Executive Director, and shall perform such duties as may be assigned them by the Executive Director. The Assistant Director shall at the request of the Executive Director, or in the Executive Director's absence or inability or refusal to act, perform the duties of Executive Director and when so acting shall have all the powers of and be subject to all the restriction on the Executive Director.

Section 7. **SURETY BONDS.** The Board of Directors shall provide for surety bonds or similar instruments to protect against misappropriation of funds by employees of the Corporation responsible for handling the Corporation's funds. The Board of Directors may require any officer, employee, or agent of the Corporation to execute to the Corporation a bond in such sums and with such sureties as shall be satisfactory to the Board, conditioned upon the faithful performance of such person's duties and for the restoration to the Corporation of all books, papers, vouchers, money, and other property of whatever kind in such person's possession or under such person's control belonging to the Corporation.

Section 8. **INSURANCE.** By action of the Board of Directors, notwithstanding any interest of the Directors in such action, the Corporation may purchase and maintain insurance in such amounts as the Board of Directors deems appropriate to protect itself and any person who is or was a Director, officer, employee, fiduciary or agent of the Corporation or who, while a Director, officer, employee, fiduciary, or agent of the Corporation against any liability asserted against or incurred by such person in any such capacity arising out of person's status such whether or not the Corporation would have the power to indemnify such person against such liability under applicable provisions of law and the Articles of

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Incorporation and Bylaws. Any such insurance may be procured from the insurance company designated by the Board of Directors, whether such insurance company is formed under the laws of the State of Maryland or any other jurisdiction. The Corporation may create a trust fund, grant a security interest, or use other means to ensure the payment of such sums as may become necessary to effect indemnification as provided herein.

ARTICLE IV. FINANCES

Section 1. **FINANCES.** The funds of the Corporation shall be deposited in its name with such banks or trust companies as the Board of Directors may from time- to-time designate. All checks, notes, drafts, and other negotiable instruments of the Corporation shall be signed by such officers or employees as the Board of Directors may from time- to-time designate by resolution. No officers, or agents, or employees of the Corporation, alone or with others, shall have power to make any checks, notes, drafts, or other negotiable instruments in the name of the Corporation, or to bind the Corporation thereby, except as provided in this Article.

Section 2. **BUDGET PROPOSAL.** A proposed annual budget shall be prepared by the Executive Director and presented for approval to the Board of Directors. The Corporation shall submit an annual budget to the Montgomery County Office of Management and Budget for review in accordance with the procedures and schedule established by the Office of Management and Budget.

ARTICLE V. MISCELLANEOUS

Section 1. **ACCOUNT BOOKS, MINUTES, ETC.** The Corporation shall keep correct books and records of account and shall keep minutes of all proceedings of its Board of Directors and committees. All books and records of the Corporation may be inspected by any Director and by any authorized official or employee of the Montgomery County Government at any reasonable time, upon request to the Executive Director.

Section 2. **ANNUAL REPORT AND AUDIT.** The Corporation shall file with the County Director of Finance an annual report at the end of its fiscal year. The Corporation also will provide the County with an annual independent audit by a certified public accountant, including a copy of any accompanying management letter.

Section 3. **FISCAL YEAR.** The fiscal year of the Corporation shall begin on July 1 and end on June 30 of each year.

Section 4. **ETHICS.**

A. **Conflicts of Interest.** A Director, Officer, or an employee of the Corporation shall not participate in any corporate matter that affects, in a manner distinct from its effect on the public in the Bethesda Urban District generally, any property or business in which the Director, officer,

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or employee, or a member of his or her family, holds an economic or fiduciary interest. Family means a spouse, child, parent, or sibling, and the spouse's child, parent, or sibling. Prior to participating in a matter that would involve a conflict of interest, a Director, Officer or employee shall:

- (1) Immediately inform those charged with approving the transaction on behalf of the Corporation of the conflict of interest;
- (2) Aid any person charged with making a decision in the relevant matter by disclosing all material facts concerning the conflict of interest; and,
- (3) Not participate in or vote on the matter unless the Board of Directors by a two thirds vote approves participation in or voting on the matter.

- B. **Exception to Disqualification in Case of Conflict of Interest.** If a conflict of interest disqualifies a Director and the disqualification leaves less than a quorum capable of acting, the Director may participate or act in the matter if the Director discloses the nature and circumstances of the conflict to the Board of Directors.
- C. **Confidential Information.** A Director, Officer, or employee shall not disclose confidential information relating to the corporation that is not available to the public. A Director, Officer, or employee shall not use confidential information for personal gain or the gain of another.
- D. **Gifts.** A Director, Officer, or employee shall not solicit or accept a gift from any person if receipt of the gift would influence, or is intended to influence, any business of the Corporation. If a Director, Officer, or employee receives a gift prohibited by this section, the Director, Officer or employee shall disclose the gift in writing to the Board of Directors and dispose of the gift as directed by the Board.
- E. **Person.** Definition. A person includes any entity.
- F. **Violation.** If a Director, Officer, or employee violates this section, the Director, Officer, or employee may be removed from the Board under Article II, Section 4, or fired, as appropriate.
- G. **Loans to Directors and Officers Prohibited.** Notwithstanding any other provision in the Articles of Incorporation and Bylaws, no loans shall be made by the Corporation to any if its Directors or Officers. Any Directors or Officer who assents to or participates in the making of any such loan shall be liable to the Corporation for the amount of such loan until it is repaid.

Section 5. **PROCUREMENT PRACTICES**

A. **Competitive Bids.**

- (1) The corporation shall exercise reasonable and prudent business practices when purchasing goods and services required by the Corporation. Where practicable, informal competitive pricing shall be used.

Attachment 2: Current BUP Bylaws

- (2) If the estimated value of the procurement exceeds \$10,000, the Corporation shall place a notice of request for bids (RFB) in one or more local newspapers generally covering activities of the Corporation and post the notice in the public offices of the Corporation. An RFB shall contain, at the minimum, a description of the required goods or services, the term of the contract, and the method by which the award will be evaluated and made.
- (3) Upon receipt of responses to an RFB, the Executive Director or Director chairing any committee requesting the procurement, shall recommend to the Board of Directors at its next meeting which offer should be accepted. The Board of Directors shall direct the Executive Director to negotiate within specified parameters with one or more offerors or direct that more offers be solicited.
- (4) The Board of Directors may delegate to the Executive Director the authority to accept offers and enter into contracts subject to conditions imposed by the Board.

B. **Sole Source.** The Board of Directors may authorize the Executive Director to enter into a contract to obtain the required goods or services without competition if the Board makes a written determination that:

- (1) The specifications for required goods or services are not overly restrictive for the Corporation's needs;
- (2) Competitive procurement is impractical based on past experience that only a sole source supplier for the particular goods or services is the only reasonable available vendor; and,
- (3) A sole source procurement serves the best interest of the Corporation.

Prior to entering into a sole source contract, the Executive Director must certify to the Board of Directors that the proposed price is fair and reasonable.

C. **Contract Funding.** The Corporation shall not enter into a contract, which obligates the Corporation to pay any amount in excess of the encumbered funds available to the Corporation.

D. **Contract Form.** Each contract executed by the Corporation must state Montgomery County, Maryland, is not liable for any obligation of the corporation under the contract.

E. **Recycled Goods.** The Corporation shall make a good faith effort to achieve procurement goals that apply to the county Government with respect to the purchase of recycled goods.

F. **Centralized Purchasing.** The Corporation shall, to the extent practicable and cost effective, utilize the County's centralized purchasing system by purchasing goods under County requirement contracts with vendors in order to take advantage of volume discounts. The Executive Director shall work cooperatively with the County's Director of Procurement in order to maximize savings to the Corporation by using the County's centralized purchasing system.

G. **Minority Owned Business Purchasing Program**

- (1) The Corporation shall make a good faith effort to achieve minority owned business goals that apply to the County Government. The Corporation shall require any non-minority owned business with a contract exceeding \$65,000 in value to subcontract to a minority owned business 20% of the total dollar value of the contract. The Board of Directors may omit this requirement for a particular contract if, in the judgement of the Board, the subcontracting goal is not practicable under the circumstances of that contract.
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- (3) The Corporation shall utilize the Montgomery County Minority Business Directory and other resources to seek responses from qualified MFD firms to any RFB of the Corporation.

Section 6. **COMPLIANCE WITH STATE PUBLIC RECORDS LAW.**

- A. The Executive Director shall generally make all records of the Corporation available for inspection pursuant to the State Public Information Act, Sections 10-601 et. seq., Maryland State Government Article Annotated.
- B. Any person denied access to a public record may file a written appeal within 30 days of the denial with the Corporation. The Board of Directors shall decide the appeal at its next regularly scheduled meeting.
- C. The Executive Director shall establish reasonable charges for the search for, preparation of, and reproduction of public records in accordance with the State Public Information Act.

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Section 8. **SEVERABILITY.** The invalidity of any provision of these Bylaws shall not affect the other provisions hereof, and in such event these Bylaws shall be construed in all respects as if such in valid provision were omitted.

rec'd Aug 10, 2020
8:00 am



August 5, 2020

Sidney Katz
President
Montgomery County Council
100 Maryland Avenue
Rockville, MD 20850

Council President Katz:

On behalf of the Board of Directors of the Bethesda Urban Partnership, we are submitting amended By-Laws of the Partnership for approval by the County Council under 68A Legislation, Section 68A-10.

The most recent By-Laws were amended in 2006. These amended By-Laws are reflective of various changes to the Maryland Open Meetings Act and also changes to reflect new meeting and communications options as necessitated by Covid-19. These By-Laws have been reviewed by Neal Anker from the County attorney's office.

We appreciate your support and attention to this matter. If you have questions or need any additional information please don't hesitate to contact me.

I look forward to hearing from you.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Burton", is written over the word "Sincerely,".

Jeff Burton
Executive Director
Bethesda Urban Partnership
jburton@bethesda.org

Bethesda Urban Partnership, Inc.
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Bethesda, MD 20814
301-215-6660
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