

**AMENDED AND RESTATED BYLAWS
of the
FALMOUTH EDIC**

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ARTICLE I – GENERAL

Section 1. Name

The name of this organization shall be the Falmouth Economic Development and Industrial Corporation, a public, non-profit corporation hereinafter referred to as the “Corporation.”

Section 2. Enabling Legislation

The Corporation was established in accordance with Massachusetts General Laws, Chapter 121C (the “Act”). The Corporation shall be subject to the provisions of Massachusetts General Laws, Chapter 180, except in so far as said provisions are inconsistent with or otherwise restricted or limited by the Act. The tax-exempt status of the Corporation shall be subject to Section 501(c)(3) of the Internal Revenue Code and applicable federal and state laws.

Section 3. Seal

The Corporation shall adopt and use a corporate seal, in a form determined from time to time by the Board of Directors.

Section 4. Place of Business

The principal place of business of the Corporation shall be located in the Town of Falmouth, Massachusetts (the “Town”). The Corporation, by action of its Board of Directors, may establish such offices or quarters and mailing addresses, as may be deemed necessary or convenient to the carrying out of the purposes for which the Corporation is organized. Offices or quarters and mailing addresses may be changed or discontinued by action of the Board of Directors.

Section 5. Fiscal Year

The fiscal year of the Corporation shall extend from January 1st to the ensuing December 31st, except as the same may be otherwise determined by a majority vote of the Board of Directors.

ARTICLE II – PURPOSE AND AREA OF OPERATIONS

Section 1. Purpose

The purpose of the Corporation is to protect the Town from the threat of future unemployment or lack of business opportunity by, in part:

- A. attracting new industry into the community;
- B. financing and implementing an economic development project to expanding existing industry in the community; and
- C. improving the living standards of its citizens by fostering the improvement of their employment opportunities.

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Section 2. Area of Operations

The primary area of operation of the Corporation shall be the Town of Falmouth and, as necessary or appropriate, the region of Cape Cod and the islands of Martha's Vineyard and Nantucket. The Corporation's projects and programs may also include activities in other portions of Barnstable County, insofar as they are consistent with the purpose of the Corporation as stated in Article II, Section 1, above.

ARTICLE III – POWERS AND RESTRICTIONS OF THE CORPORATION

Section 1. Powers

The Corporation shall have all the powers conferred by the provisions of Chapter 180 of the Massachusetts General Laws and all powers conferred by the provisions of Chapter 121C of the Massachusetts General Laws, except in so far as said provisions are inconsistent with or otherwise restricted or limited by such Acts or other applicable law, including but not limited to the power:

- A. To sue and be sued.
- B. To adopt and amend bylaws.
- C. To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers, and to employ consultants, superintendents, managers, and such other engineers, construction and accounting experts and attorneys and such other employees, agents and consultants as may be necessary in its judgment, and to fix their compensation.
- D. To receive and accept from any federal agency, the Commonwealth or the Town grants, loans or advances for or in aid of an economic development project or projects and to receive and accept contributions from any source of either money, property, labor or other things of value, to be held, used and applied for the purposes for which such grants, loans, advances and contributions may be made.
- E. To borrow money, and, from time to time, to make, accept, endorse, execute, and issue bonds, debentures, promissory notes, bills of exchange, and other obligations of the Corporation, for moneys borrowed or in payment for property acquired or for any of the other purposes of the Corporation, and to secure the payment of such obligations by mortgage, pledge, deed, indenture, agreement, or other instrument of trust, or by other lien upon, assignment of, or agreement in regard to all or any part of the property, rights, or privileges of the Corporation.
- F. To issue revenue bonds of the Corporation, payable solely from revenues, for the purpose of paying all or any part of the cost of a project or projects.

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- G. To invest any funds not required for immediate use or disbursement in certificates of deposit or in obligations of the government of the United States or in obligations the payment of the principal of, and interest on, which is guaranteed by the government of the United States.
- H. To provide such advisory services and technical assistance as may be necessary or desirable to carry out its purposes.
- I. To prepare or cause to be prepared and to modify plans, designs, drawings, specifications and estimates of cost for the construction, reconstruction, development, redevelopment, rehabilitation, remodeling, alteration or repair of economic development projects.
- J. To finance pollution control facilities for economic development projects.
- K. Subject to the approval of the Town to designate areas of the Town as economic development areas.
- L. To acquire and hold property, either real or personal, or any interest therein; and to acquire by purchase or otherwise, or by the exercise of the power of eminent domain such private lands, or any interests therein, as it may deem necessary for carrying out its purposes.
- M. To make relocation payments to persons and businesses displaced as a result of carrying out an economic development plan, including such payments on a pro tanto basis.
- N. To procure insurance against any loss in connection with its property and other assets and operations.
- O. To clear and improve property acquired by it, and to engage in or contract for the construction, reconstruction, development, redevelopment, rehabilitation, remodeling, alteration or repair thereof.
- P. To arrange or contract with the Town for the planning, replanning, opening, grading or closing of streets, roads, alleys or other places or for the furnishing of facilities or for the acquisition by the Town of property or property rights or for the furnishing of property or services in connection with a project or projects.
- Q. To sell, convey, mortgage, lease, transfer option, exchange or otherwise dispose of, any property, either real or personal, or any interest therein, as the objects and purposes of the Corporation may require.
- R. To loan on mortgages, including purchase money mortgages, on real estate and personal property within economic development areas, to foreclose the same when in default, and to bid for and purchase property at any foreclosure or other sale; and in such event, to deal with such property in such manner as may be necessary or desirable to protect the interests of the Corporation therein.

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- S. To manage any project whether owned or leased by the Corporation and to enter into agreements with the Commonwealth or the Town or any agency or instrumentality thereof or with any person, firm, partnership or corporation either public or private for the purpose of causing any project to be managed.
- T. To act with respect to one or more projects as a corporation organized under Section 3 or Section 18B of MGL Ch 121A of the Massachusetts General Laws; provided that the accounts for each project shall be kept separately, and the income of one project shall not be expended upon or for the benefit of another project.
- U. To borrow money for the purposes of aiding in the construction of equipment required by the Commonwealth or United States to abate air or water pollution.
- V. To do all acts and things necessary or convenient to carry out the powers expressly granted by the Act.

Section 2. Restrictions

The Corporation shall not participate or intervene in any political campaign on behalf of any candidate for public office nor publish or distribute any statements with respect thereto. Nor shall the Corporation, its Directors or Officers participate in any prohibited transactions or activities as defined in Section 503 of the Internal Revenue Code.

ARTICLE IV – BOARD OF DIRECTORS

Section 1. Appointment

The Directors shall be appointed by the Board of Selectmen, following consultation with and the receipt of recommendations from the Executive Committee. The Chair and Vice Chair shall be elected by the EDIC Board for the terms set by statute.

Section 2. Duties and Responsibilities

The Board of Directors shall conduct and manage the business and affairs of the Corporation, including, but not limited to:

- A. establishing a fiscal year for the operation of the Corporation;
- B. appointing Officers of the Corporation, and determining their compensation and their duties;
- C. submitting an annual report to the Town, MOBD, and the Director of Housing and Community Development;
- D. creating, amending or repealing bylaws in whole or in part.

Section 3. Number

The Board of Directors of the Corporation shall consist of seven Directors.

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Section 4. Composition

The composition of the Board of Directors shall be as follows: (i) at least one Director shall be experienced in industrial development; (ii) at least one shall be experienced in financial matters; (iii) at least one shall be experienced in real estate matters; (iv) at least one shall be experienced in municipal government; (v) at least one Director shall be representative of low income people, and shall be chosen from a list of three submitted by the regional or local community action agency, or when there is no such agency, from a list of three submitted by the department of housing and community development. The Board of Selectmen shall designate one of the seven Directors as chairman and another as vice-chairman, following consultation with and the receipt of recommendations from the Executive Committee.

Section 5. Terms

Of the Directors first appointed, two shall be appointed to serve for one year from July 1st, two for two years from said date, and three for three years from said date. Upon the expiration of the term of office of any such Director, or of any subsequent Director, his successor shall be appointed in like manner for a term of three years. In the event of a vacancy in the office of a Director, his successor shall be appointed in like manner to serve for the unexpired term. Unless reappointed, no Director shall hold office after the expiration of his term; and the appointment of a successor to any person whose term has expired shall be for the remainder of the term which would have begun at such expiration if the successor had then been appointed.

Section 6. Attendance

Regular attendance at Board meetings is expected of all Directors. Three consecutive absences may indicate the need to replace the Director. A Director may request a temporary leave of absence. If approved by the Board, attendance requirements will be waived for the term of the leave.

Section 7. Resignation

Notice of resignation by a Director shall be made in writing and addressed to the Clerk of the Corporation. Said resignation shall take effect either upon acceptance by the Board or the date specified in the notice of resignation.

Section 8. Removal from Office

The Board of Selectmen is vested with the authority to remove any Director for cause in accordance with the Act.

Section 9. Vacancies

In the event of a vacancy of a Director, his or her successor shall be appointed by the Board of Selectmen to serve for the unexpired term, following consultation with and the receipt of recommendations from the Executive Committee.

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Section 10. Compensation

No Director or Officer of the Corporation shall receive any compensation or remuneration from the Corporation, provided, however, the Board of Directors may see fit to reimburse its Directors or Officers for any reasonable and necessary expense incurred on behalf of the Corporation. Directors are prohibited from accepting gifts, monies, gratuities, or other form of compensation from persons, groups, agencies or firms receiving benefits or services under any program financed in whole or in part from local, state, or federal funds; from any person or agency performing services under contract to the Corporation, or from any persons, groups, agencies or firms who are otherwise in a position to benefit from the actions of the Board.

ARTICLE V – OFFICERS

Section 1. General

The Board of Directors may appoint a Clerk, a Treasurer, and such other Officers as it shall deem necessary, and may determine their duties. Duly appointed Directors are eligible to serve as Officers. Officers shall serve until their successors are appointed. The office of Treasurer and Clerk may be held by the same person.

Section 2. Duties

The duties of the Treasurer and Clerk shall be as follows:

- A. *Treasurer:* The Treasurer shall have charge and custody of and be responsible for all funds and securities of the Corporation. The Treasurer shall receive and give receipt of money due and payable to the Corporation from any source whatsoever, and shall deposit all such monies in the name of the Corporation in such bank, trust corporation, and/or other depositories as shall be specified in accordance with these bylaws.

The Treasurer shall prepare and present at each regular meeting of the Board a monthly financial statement.

- B. *Clerk:* The Clerk shall keep, or cause to be kept, a record of the attendance at, and minutes of, all meetings of the Corporation, including any committees of the Board of Directors.

The Clerk shall have authority to make copies of all minutes of the meetings and other records and documents of the Corporation, and to certify under the Corporate seal that such copies are true copies and all persons dealing with the Corporation may rely upon such certification. The Clerk shall provide a copy of the minutes as required by the Massachusetts Open Meetings Law and other applicable laws.

The Clerk shall be custodian of the corporate records and seal, and shall keep a register of the mailing address and street address (if different) of each Director.

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The Clerk shall post, or cause to be posted, notification of meetings of the Corporation's Board of Directors as required by the Massachusetts Open Meetings Law and other applicable laws.

Section 3. Term of Office

The term of office for all Officers shall be one year, and they shall serve until their successors are duly appointed. Officers are eligible for reappointment for successive terms.

Section 4. Vacancies

The Board of Directors may make interim appointments to fill Officer vacancies, and such appointments will extend for the duration of the term for which the vacancy exists.

Section 5. Indemnification

The Corporation shall, to the extent legally permissible, indemnify each of its Directors and Officers, former Directors and former Officers against all liabilities and expense, including amounts paid in satisfaction of judgment, in compromise or as fines and penalties, and, counsel fees, reasonably incurred by him/her in connection with the defense or disposition of any action, suit or other proceeding, whether civil or criminal, in which he/she may be involved or with which he/she may be threatened, while in office, except with respect to any matter as to which he/ she shall have been adjudicated in any proceeding not to have acted in good faith in the reasonable belief that his/her action was in the best interests of the Corporation; provided, however, that as to any matter disposed of by a compromise payment by such Director or Officer, pursuant to a consent decree or otherwise, or, indemnification either for said payment or for any other expenses shall not be provided unless such compromise shall be approved as in the best interests of the Corporation, after notice that it involves such indemnification, if a majority of the Directors then in office are disinterested, by two-thirds of the disinterested Directors then in office. The right of indemnification hereby provided shall not be exclusive of or affect any other rights to which the Directors or Officers may be entitled. As used in this paragraph, the terms Directors and Officers include their respective heirs, executors and administrators, and an "interested" Director or Officer is one against whom in such capacity the proceedings in question or another proceeding on the same or similar grounds is then pending.

The transactions in which the Corporation engages shall not result in private liability of any Director or Officer. No Director or Officer shall be responsible for losses of the Corporation unless the losses have been occasioned by the willful misconduct of that Director or Officer.

ARTICLE VI – COMMITTEES

Section 1. General

All Committees shall be advisory unless the scope of the Committee's power is specifically voted by the Board of Directors. The Board of Directors may vote to include non-Directors in its Committee appointments. All Committees shall report to the Board of Directors for action

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on their reports. The reports of all Committees shall be filed with the minutes of the meeting at which they are presented.

Section 2. Executive Committee.

The Executive Committee will be composed of the Chairman, the Vice Chairman and the Treasurer. The duties of the Executive Committee shall be as determined by a majority vote of the Board of Directors.

Section 3. Other Committees

The Chairman may establish other standing and ad hoc committees from time to time with the approval by majority vote of the Board of Directors. The quorum for each committee shall be a majority of the membership of each committee.

ARTICLE VII – MEETINGS

Section 1. Operating Procedures

Roberts' Rules of Order shall govern the proceedings of the Corporation. All meetings of the corporation (including the Executive Committee and Other Committees) shall be held in accordance with the Massachusetts Open Meeting Law.

Section 2. Prior Notice of Meetings

All meetings of the Corporation shall be duly posted in accordance with the Massachusetts Open Meeting Law.

Section 3. Regular Meetings of the Board of Directors and Committees

Regular meetings of the Board of Directors shall be scheduled in advance by the Chairman and held at least monthly with notice of such meetings going to each Director not less than five calendar days prior to such meetings. Regular meetings of the Executive Committee and other Committees shall be scheduled in advance by the Chairman of such Committee with notice of such meetings going to each Committee Director not less than five calendar days prior to such meetings.

Section 4. Special Meetings of the Board of Directors

Special meetings of the Board of Directors may be called at any time by the Chairman. The meeting notice shall describe the reason for the special meeting and the business to be considered. No other business shall be transacted at the meeting. Notice of any special meeting shall be given to the public in accordance with the requirements of the Massachusetts Open Meeting Law.

Section 5. Annual Meetings

The Annual Meeting of the Corporation shall be held within the Town in the month of September at a time determined by the Board of Directors and notice of the Annual Meeting shall be given to Directors as a Regular Meeting. Notice of the Annual Meeting shall be given to

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the public in accordance with the requirements of the Massachusetts Open Meeting Law. The Annual Meeting shall be for the purpose of annual reports, ratification of the appointment of auditors, and other appropriate business of the Corporation.

Section 6. Meeting Records

All meetings of the Corporation shall be open to the public. Records and minutes of all meetings shall be available for public inspection at all times during normal working hours at the Corporation's regular place of business.

Section 7. Quorums

A majority of the seven Directors shall constitute a quorum for the conduct and transaction of any business of the Corporation.

Section 8. Waiver Of Notice

Whenever any written notice is required to be given to the Directors by these bylaws, a waiver of notice signed either before or after the action for which notice is required shall have the effect of written notice.

ARTICLE VIII – BYLAWS

Section 1. Adoption

These bylaws shall be adopted by a majority vote of the Board of Directors at a duly constituted meeting of the Board of Directors.

Section 2. Periodic Review

These bylaws shall be reviewed at least once every two years by a committee appointed by the Chairman and shall report to the Board of Directors any recommended changes.

Section 3. Amendments

Amendments to these bylaws shall be made by a majority vote of all Directors present and voting, provided that every Director has received at least five days notice of the changes being considered.

Section 4. Conflict over Bylaws

In the event of conflicts or uncertainty over interpretations or a procedural issue not specifically addressed by these bylaws, the Corporation and the Board of Directors shall be bound to adhere to Roberts' Rules of Order.

ARTICLE IX – CONFLICT OF INTEREST

Any duality of interest or possible conflict of interest on the part of any Director, Officer, employee or consultant of the Corporation shall be disclosed to the Board of Directors and made

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a matter of record through an annual procedure and also when the interest becomes a matter of Board action, such disclosure shall be reflected in the record of the proceedings of the Board of Directors.

In all cases where a Director, Officer, employee or consultant of the Corporation may have a conflict of interest because he or she or a member of his or her family has an interest in any contract or transaction with the Corporation, either directly or indirectly through an interest in or employment by any legal entity which has an interest in such contract or transaction, or otherwise, such Director, Officer, employee or consultant shall disclose such conflict of interest and refrain from taking any action to authorize, approve, ratify and/or debate such transaction or contract; provided, however, that the ownership of a non-controlling minority interest in a publicly held legal entity shall not be deemed to be an interest requiring such disclosure. Any required disclosure shall be made, in the case of an employee or consultant, to the Officer to whom such employee or consultant reports and in the case of a Director or Officer, to the Board of Directors or committee prior to its acting on such contract or transaction. Such disclosure shall include any relevant and material facts, known to such person, about the contract or the transaction which might reasonably be construed to be adverse to the Corporation's interest.

Nothing contained herein shall preclude the Corporation from entering into such transaction or contract provided such disclosure is made and the Director, Officer, employee or consultant of the Corporation involved abstains from voting on the action taken to authorize, approve or ratify such transaction or contract. The minutes of the meeting where the transaction or contract is being voted upon shall reflect the disclosure made and the abstention from voting.

ARTICLE X – DISSOLUTION

The Corporation may, upon the affirmative vote of two-thirds of its Directors, petition for its dissolution by order of the supreme judicial or superior court, in the manner provided in Section 50 of Chapter 155 of the General Laws. Upon dissolution of the Corporation, the Board of Directors shall, after paying or making provision for the payment of all liabilities of the Corporation, dispose of all of the assets of the Corporation in such manner or to such organization or organizations as at the time qualify as an exempt organization or organizations under Chapter 501(c)(3) of the Internal Revenue Code.