Berkshire Community Action - Bylaws

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ARTICLE 1: PURPOSE

The Corporation is organized and shall be operated for exclusively charitable and educational purposes within the meaning of the Internal Revenue Code Section 501(c)(3). In furtherance of those purposes, the Corporation shall operate programs to alleviate poverty and enhance the public health and welfare by opening to everyone the opportunity for education, housing, training, the opportunity to work, and the opportunity to live in decency and dignity. The Corporation shall engage in such activities as are determined by the Board of Directors to be in furtherance of such purposes of the Corporation.
ARTICLE 2: MEMBERS

The Corporation shall have no members. Any action which would otherwise require only approval by a majority of all members or approval by the members shall require only approval of the Board. All rights which would otherwise vest in the members shall vest in the Board of Directors.
ARTICLE 3: AUTHORITY AND RESPONSIBILITY

The governing body of the Corporation shall be the Board of Directors. All members of the Board of Directors shall fully participate in the development, planning, implementation and evaluation of the programs offered by the Corporation in its service of low income communities. The Board of Directors shall have supervision, control, and direction over the affairs of the Corporation, shall actively promote and pursue the Corporation's objectives, shall identify the needs of the area served by the Corporation's programs, and shall supervise the disbursement of the Corporation's funds. The Board may adopt such rules and regulations for the conduct of its business as shall be deemed advisable, and may, in the execution of the powers granted, delegate certain of its authority and responsibility to one or more committees.
ARTICLE 4: NUMBER OF DIRECTORS
The number of Directors that shall constitute the entire Board shall be fifteen (15). The number of Directors may be increased (but not more than twenty-one (21)) or decreased (but not to fewer than fifteen (15)) by resolution of the Board, but no decrease shall have the effect of shortening the term of any incumbent Director.
ARTICLE 5: COMPOSITION OF DIRECTORS

PUBLIC OFFICIAL DIRECTORS
One-third of the Directors shall be Public Official Directors. The individuals appointed as Public Official Directors shall be elected public officials, or if not enough elected officials are available and willing to serve, then appointed public officials, with general governmental responsibilities or responsibilities that require them to deal with poverty related issues may be appointed. The public officials shall be selected by vote of the Board of Directors. If a public official is not willing or able to serve personally on the Board of Directors, he or she may appoint a representative who shall serve as the Public Official Director.

LOW-INCOME DIRECTORS
At least one-third of the Directors shall be Low-Income Directors who are representative of the low-income residents served by the Corporation. If a Low-Income Director is a representative of a specific geographic area, then the Director must reside in the geographic area which he or she represents. The Board of Directors shall approve a policy and procedure for selection of such Directors, consistent with State and Federal CSBG regulations.

COMMUNITY REPRESENTATIVE DIRECTORS
The remaining members of the Board of Directors shall be Community Representative Directors. Community Representative Directors shall be individuals who represent business groups, labor groups, social service agencies, community development groups, charities, religious organizations, senior citizen groups and minority groups within the counties served by the Corporation’s activities. The community representatives shall be selected by vote of the Board of Directors.
ARTICLE 6: ELECTION AND APPOINTMENT OF BOARD OF DIRECTORS

Board members shall be selected in the following manner;

PUBLIC OFFICIAL DIRECTORS
Individuals elected as Public Official Directors shall be either: (a) elected public officials (or appointed public officials, if not enough elected public officials are available and willing to serve) with general government responsibilities that require them to deal with poverty related issues or, (b) if a public official chooses not to serve personally as a Director, then the public official’s representative may serve.

LOW INCOME DIRECTORS
At least one-third of the Directors shall be Low Income Directors. Low Income Directors shall be selected in accordance with a democratic selection procedure which assures compliance with State CSBG democratic selection regulations including restricting eligible voters to individuals having incomes at or below 175% of the Federal Poverty level. Upon the occurrence of a vacancy in a Low Income Directors seat, a replacement shall be selected by the Board of Directors.

COMMUNITY REPRESENTATIVE DIRECTORS
The remaining members of the Board of Directors shall be Community Representative Directors. The Community Representative Directors shall be elected by the Board of Directors. The Board of Directors shall adopt nomination procedures for Community Representatives Directors that insure that the Corporation will benefit from broad community involvement. Community Representatives Directors shall be individuals who represent civic, professional business, industry, labor, law enforcement, religious, welfare education or other groups within Berkshire County served by BCAC.

PETITIONS FOR BOARD REPRESENTATION
A low income individual, community organization, religious organization, or any representative of low-income individuals that consider its organization, or low income individuals, to be inadequately represented on the Board may submit a petition for representation to the Chair, who shall present the petition to the Directors at the next Board meeting. In the case of unincorporated organizations or interests, the petition must be signed by at least 25 individuals, unless the Chair determines that it is appropriate to waive this requirement in a particular case. The petitioning individual or organization shall be given an opportunity to be heard at a meeting of the Board, upon such reasonable terms as the Directors shall determine. A written statement of the Board’s action on the petition shall be provided to the petitioning individual or group and a copy of the statement shall be sent to the appropriate government funding source as required by law or procedure in effect from time to time. Should it decide to provide representation to the petitioning organization or interest, the Board shall take any actions necessary to provide that representation while ensuring that the Board’s composition meets the requirements of the federal Community Services Block Grant Act and any other applicable laws or regulations.

ALTERNATES
An alternate Director shall be elected/selected in the same manner as a representative; representatives of public officials may not select an alternate to substitute for them; no alternate shall be counted toward a quorum or cast a vote when the person, for whom he or she is an alternate, is present at a meeting and no alternate may hold office on the board of directors.
ARTICLE 7: TERMS OF OFFICE

Public Official Directors shall serve for a time period consistent with the term of the public official who made the recommendation. All other Board members shall serve a three year term. No elected Board member shall serve for more than three consecutive terms without at least one year absence from the Board.
ARTICLE 8: REMOVAL OF DIRECTORS

A Low-Income Director or Community Representative Director may be removed with or without cause by a vote of two-thirds (2/3) of the Board of Directors. In addition, a Director shall be recommended for removal after three (3) consecutive unexcused absences from meetings of the Board of Directors. After two (2) consecutive meetings are missed, notice shall be sent to the Board Member advising him or her that his or her membership on the Board may be terminated if he or she misses the next Board meeting. In the event that a Public sector or Community Representative Director misses two (2) consecutive meetings (unexcused absences), a notice reminding the Board member of those absences shall be sent to the Board member and the official or organization that recommended the Board member.
ARTICLE 9: VACANCIES

Any vacancy in a low income sector seat occurring on the Board of Directors for any cause shall be filled in accordance with the democratic selection procedure approved by the Board of Directors. Any vacancy in a public sector or community representative seat shall be filled by recommendation made by the official or organization who made the original appointment, or if no such replacement recommendation is made within one month after the notice, then by the Board of Directors.
ARTICLE 10: PLACE AND MANNER OF MEETING
The annual meeting of the Board of Directors shall be each year in second quarter of the agency’s fiscal year. Regular meetings of the Board of Directors shall be held at least six (6) times in any twelve (12) month period at the offices of the Corporation or at such other place and time as the Chair or the Directors may determine. Special meetings of the Board of Directors may be held from time to time upon call of the Chair, or at the request of any 8 directors. Members of the Board of Directors may act by means of a conference telephone network or similar communication method by which all persons participating in the meeting can hear one another.

NOTICE OF MEETING
Written notice of every annual, regular and special meeting of the Board of Directors, stating the place, day, and hour of the meeting must be given to each Director not fewer than seven (7) days prior to the date of the meeting and to the general public at least five (5) days prior to the date of the meeting; provided that notice must be given to each Director at least ten (10) days prior to the date of the meeting if the purpose of the meeting is to change the articles of incorporation. Notice of special meetings shall state the purpose for which the meeting is called.

DATE OF NOTICE
Any notice to a member of the Board of Directors that is required or permitted under these Bylaws shall be delivered to the Director at the Director’s address as shown on the records of the Corporation. If mailed, such notice shall be deemed to be delivered three days after being deposited in the United States mail in a sealed envelope so addressed, with postage thereon prepaid. If notice is given by email, such notice shall be deemed to be delivered the same day the email is sent.
ARTICLE 11: QUORUM
A simple majority of the total active members of the Board of Directors shall constitute a quorum at all meetings of the Board of Directors.

VOTING AND ACTION BY THE BOARD
At all meetings of the Board of Directors, each Director shall have one vote. Every act or decision made by a majority of the Directors presented at a meeting duly held at which a quorum is present shall be regarded as the act of the Board, unless a greater number is required by law, the articles of incorporation or these bylaws.

PROXY VOTING
Proxies and proxy voting shall not be allowed on behalf of any Board or Committee member.

ACTION WITHOUT A MEETING
Any action required or permitted to be taken at a meeting of the Board of Directors may be taken without a meeting if the matter is made by motion in writing, setting forth the action to be taken, and is voted on by all of the Directors of the Corporation entitled to vote with respect to the matter. A motion may be made by electronic mail, and each Director’s affirmative or negative vote via such electronic mail shall be valid. All Board members must vote affirmatively for a motion to pass when said motion is made outside of a scheduled Board meeting. Action taken without a meeting is effective when the last Director signs the consent unless the consent specifies a later effective date. Such written motions and subsequent votes shall be filed with the minutes of the Board of Directors at the next scheduled meeting.
ARTICLE 12: OFFICERS

The officers of the Board of Directors shall be a Chair, Vice Chair, Secretary and Treasurer. The Board of Directors may designate additional officers as it deems advisable. No two offices may be held by the same Director. The officers shall be selected by the Board of Directors. All of the officers of the Board must be voting members of the Board in good standing. Failure to appoint officers shall not require the Corporation to be dissolved.

ELECTIONS

The officers of the Board shall be elected by the Board of Directors each year at its Annual Meeting.

TERMS OF OFFICE

Each officer shall hold office for one year, or until the officer’s successor has been duly elected and qualified, or until removed. If an officer is elected at any other time than at the Annual Meeting, that officer shall hold the position until the next Annual Meeting.

REMOVAL OF OFFICERS

Any officer may be removed either with or without cause by two-thirds (2/3) vote of Directors presented at a regular or special Board meeting at which a quorum is present.

DUTIES OF OFFICERS

The duties and powers of the officers of the Board shall be set by resolution or policy of the Board of Directors:

CHAIR

The Chair shall be the chief volunteer officer of the Corporation and shall generally supervise all business and affairs of the Corporation pursuant to those powers delegated by the Board of Directors. The Chair shall preside at all meetings of the Board of Directors. In general, the Chair shall perform all duties indicative to the office of Chair and such other duties as may be prescribed by the Board of Directors.

VICE CHAIR

In the absence of the Chair or in the event of the Chair’s inability or refusal to act, the Vice Chair shall perform the duties of the Chair, and when so acting shall have all the power of and be subject to all the restrictions upon the Chair. The Vice Chair shall also perform such other duties as from time to time may be assigned to the Vice Chair by the Chair or the Board of Directors.

SECRETARY

The Secretary shall insure that the following duties are carried out on behalf of the Corporation: (a) Minutes of the meetings of the Board of Directors and Committees of the Board are kept in one or more books provided for that purpose; (b) All notices are duly provided in accordance with these Bylaws and as required by law; (c) An accurate record of all votes on motions is kept; (d) A copy of the Articles of Incorporation and Bylaws which shall be on file and open for inspection by Board Members; (e) All Corporation records, including financial records, are maintained at the principal office of the Corporation; (f) Financial reports are provided to the Board from time to time or as directed by the Board.

TREASURER
The Treasurer shall ensure that the following duties are carried out on behalf of the Corporation: (a) Minutes of the meetings of the Finance Committee are kept in one or more books provided for that purpose; (b) An accurate record of all finance committee votes on motions is kept; (c) There is on file at all times a copy of the fiscal policy's of the agency; (d) has general charge of financial affairs of the Board; (d) assures accurate system of fiscal accountability is in place; (e) Participates in Executive Committee meetings; (f) provides the board with information about the finances of the Corporation; and (g) ensures that agency complies with state and federal laws to have the property financial reporting completed (i.e. annual audit, Federal Form 990, MA Form PC and UFR);

DELEGATION OF DUTIES
An officer may delegate the specific duties set forth above to another individual or receive assistance from another individual in performing such duties, so long as the officer retains oversight and review of the records and documents prepared and distributed.

VACANCIES
A vacancy in any office may delegate the specific duties set forth above to another individual or receive assistance from another individual in performing such duties, so long as the officer retains oversight and review of such records and documents prepared and distributed.

EXECUTIVE DIRECTOR
The Board of Directors shall select and hire an Executive Director who shall be given the necessary authority and responsibility for the management of the Corporation, subject only to policies enacted by the Board of Directors. The Executive Director shall serve as an ex officio, non-voting member of the Board of Directors and may attend Board meetings and Board Committee meetings unless otherwise restricted due to Board policies. The Executive Director shall act as the duly authorized representative of the Board in all matters except those in which the Board has formally designated another individual or group to act. The Executive Director shall be responsible for hiring and terminating employees of the Corporation based upon the general guidelines prescribed by the Board of Directors. The Executive Director is directly accountable to the Board of Directors. The Board of Directors shall be responsible for initiating and completing an annual evaluation of the Executive Director. The Executive Director may be removed from employment only by the determination of the Board of Directors. A two thirds (2/3) vote of all seated Board members (excluding vacant positions) shall be necessary to remove the Executive Director. Any removal shall be without prejudice to the general employment contract rights of the individual removed.
ARTICLE 13: STANDING COMMITTEES

The Board shall have standing committees including the Executive, Governance, Finance, and Program Evaluation Committee. To the extent possible, membership of the standing committees shall represent the composition of the Board with one-third (1/3) public officials, at least one-third (1/3) representative of the low income population, and the remainder representative of the community.

EXECUTIVE COMMITTEE

The Executive Committee shall be composed of the Chair, Vice-Chair, Secretary, Treasurer and the chairpersons of all committees. The Executive Committee shall have the power and authority delegated to it by the Board from time to time as permitted by law, other than those actions specifically prohibited. The authority granted by the Board includes the authority to act in case of an emergency or be limited to special instances as delegated to it by the Board. The Executive Committee shall keep a record of its actions and proceedings and make a report of these actions and proceedings to the Board at the next meeting of the Board held after such actions or proceedings.

GOVERNANCE COMMITTEE

The Governance Committee shall be composed of up to four (4) members appointed by the Board Chair and approved by a simple majority vote of the Board in which a quorum is present. The Governance Committee shall review and report to the full Board on those governance issues as are delegated to it by the Board from time to time by resolution or policy.

FINANCE COMMITTEE

The Finance Committee shall be composed of the Vice President and/or the Treasurer and up to two (2) additional members appointed by the Board Chair and approved of by a majority vote of the Board. The Finance Committee shall review and report to the full Board on those financial issues as are delegated to it by the Board from time to time by resolution or policy.

PROGRAM EVALUATION COMMITTEE

The Program Evaluation Committee shall be composed of up to four (4) members appointed by the Board Chair and approved of by a majority vote of the Board. The Program Evaluation Committee shall have such power and authority as delegated by the Board from time to time by resolution or policy.

OTHER COMMITTEES

The Board may, by a majority vote of the Board, create additional committees; such as Personnel, Audit and Development & Nominating. Such committees shall include no fewer than three Directors who shall represent balance between public, private and low income. The members of any such committee shall serve at the pleasure of the Board of Directors. Committees shall exercise such powers as may be designated by the enabling resolution of the Board of Directors.

RESTRICTION ON COMMITTEES

Pursuant to the Commonwealth of Massachusetts Non Profit Corporation Act, no committee shall have the authority to (a) Authorize distributions (b) Elect, appoint or remove Directors or fill vacancies on the Board or any of its committees, or (c) Adopt, amend or repeal the Articles of Incorporation or Bylaws of the Corporation.
ARTICLE 14: EXECUTION OF PAPERS
Except as the Board of Directors may generally or in particular cases authorize the execution thereof in some other manner, all deeds, leases, transfers, contracts, bonds, notes, checks, drafts, and other obligations made, accepted and endorsed by the Corporation may be signed by the Chairman, President, Executive Director or by the Treasurer.

ARTICLE 15: COMPENSATION OF DIRECTORS
No Director shall receive any compensation from the Corporation for services rendered as a Director. No Director shall serve the Corporation in any other capacity and receive compensation from the Corporation for such services. However, Directors may receive such reimbursement for expenses, if any as may be fixed or determined by the Board.

ARTICLE 16: CONFLICT OF INTEREST
Because the Corporation’s Directors and Officers may have, or be involved in other organizations that may have business dealings or affiliations with or seek grants from the Corporation, the following general principals have been established:

(a) Except as otherwise provided by applicable law, a Public Official Director sitting on the Board of Directors will not be in conflict if the Corporation should contract with his/her jurisdiction to perform a component of the program;
(b) Each Board member and Officer of the Corporation has a duty of loyalty to the Corporation. The duty of loyalty generally requires a Director or Officer to prefer the interests of the Corporation over the Director’s/Officer’s own interests or the interests of others. The Board of Directors shall adopt a policy that defines actual and apparent conflicts of interest and sets forth procedures by which the Board can take action to determine if a particular conflict of interest transaction is in the best interest of the Corporation.
ARTICLE 17: LIABILITY, INDEMNIFICATION, AND INSURANCE

Section 1: INDEMNIFICATION

Mandatory Indemnification-The Corporation shall indemnify each person who is or was a Director or officer of the Corporation, or who is serving or has served at the Corporation as a Director, trustee or officer of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, to the fullest extent from time to time permitted by the laws of the Commonwealth of Massachusetts in the event any of such persons was or is a party, or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative.

Allowable Indemnification-The Corporation may indemnify any person who is or was an employee or agent of the Corporation and any person who is serving or has served at its request as an employee or agent of any other enterprise, to the fullest extent from time to time permitted by the laws of the Commonwealth of Massachusetts in the event any of such persons was or is a party, or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative;

Good faith Requirement-An individual may be indemnified only if the individual (1) has conducted themselves in good faith; (2) reasonably believed; (i) in the case of conduct in his official capacity with the Corporation, that his conduct was in the best interests; and (ii) in all other cases, that his conduct was at least not opposed to its best interest; and (3) in the case of any criminal proceeding, had no reasonable cause to believe his conduct was unlawful.

Section 2: AUTHORIZATION OF INDEMNIFICATION

Any indemnification under this Article (unless the indemnification is ordered by a court) shall be made by the Corporation only as authorization in the specific case, upon a determination that indemnification of the Director, officer, employee or agent is proper in the circumstances. In the case of indemnification that is mandatory under Section 1(a) of this Article, the determination shall be limited to whether the person to be indemnified has met the standards specified in Section 1 and the amount of the indemnification permitted by law. Any determination under this Section shall be (a) by the Board of Directors by a majority vote of a quorum consisting of Directors not at the time parties to the proceeding, (b) if such a quorum is not obtainable, by a majority vote of a committee designated by the Board of Directors consisting solely of two or more Directors not at the time parties to the proceeding, or (c) by special legal counsel selected by the Board of Directors or a committee as provided in (a) or (b) of this section or, if a quorum cannot be obtained under (a) and a committee cannot be designated under (b), the special legal counsel shall be selected by majority vote of the full Board, in which selected Directors who are parties to the proceeding may participate.

Section 3: ADVANCED PAYMENTS

Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Corporation in advance of the final disposition of such action, suit or proceeding, as authorized by the Board of Director’s in the specific case, upon receipt of (a) a written affirmation from the Director, officer, employee or agent of his or her good faith belief that he or she is entitled to indemnification a authorized in this Article; and (b) an undertaking by or on behalf of the Director, officer, employee or agent to repay such amount, unless it shall ultimately be determined that he or she is entitled to be indemnified by the Corporation as authorized in this Article.

Section 4: NON-EXCLUSIVITY AND CONTINUATION
The indemnification provided by this Article shall not be deemed exclusive of any other rights to which a person seeking indemnification may be entitled under any agreement, vote of disinterested Directors, or otherwise, both as to action in the person’s official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a Director, officer, employee or agent, and shall inure to the benefit of the heirs, executors and administrators of such a person.

Section 5: INSURANCE

The Corporation may purchase and maintain insurance (a) to insure itself with respect to the indemnification payments it is authorized or obligated to make pursuant to this Article, and (b) on behalf of any person who is or was a Director, officer, employee or agent of the Corporation, or who is or was serving at the request of the Corporation as a Director, trustee, officer employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, to insure against any liability asserted against such person and incurred by him or her in any such capacity, or arising out of his or her status as such, whether or not the Corporation would have the power to indemnify the person against such liability under the provisions of this Article.
ARTICLE 18: AMENDMENT OF BYLAWS

The Bylaws of the Corporation may be altered, amended, added to, or repealed by simple majority vote of the entire Board of Directors as is necessary or appropriate to carry out the purpose of the Corporation to the fullest extent permitted by law. No such alteration, amendment, repeal or adoption shall in any way conflict with the purposes of the Corporation as stated in its Articles of Incorporation or otherwise cause the Corporation to lose its qualification as an organization described in Internal Revenue Code Section 501(c)(3). Specific notice of the proposed amendments to the Bylaws must be given to each Director along with the general notice for the meeting at which the amendments will be considered.