Nominating Committee
Meeting
January 29, 2019
City Manager's Outer Office

AGENDA

5:30 TO 6:00 P.M. DISCUSSION REGARDING CHANGES IN THE CREATIVE PORTLAND BY-LAWS

a. Proposed Amendment to By-Laws and Articles of Incorporation for Creative Portland Corporation

6:00 TO 8:00 P.M. INTERVIEWS FOR VARIOUS BOARDS AND COMMISSIONS

CREATIVE**PORTLAND**ME

84 Free Street | Portland, ME 04101 | 207-370-4784

MEMORANDUM

TO: Nominating Committee

FROM: Dinah Minot, Executive Director/Creative Portland

DATE: January 9, 2019

SUBJECT: **Proposed Amendment to Bylaws for Creative Portland**

PRESENTATION: Dinot Minot/5 Minutes

I. ONE SENTENCE SUMMARY

At the November 7, 2018 meeting of the Board of Directors of Creative Portland, the Board voted unanimously to recommend to the City Council a proposed amendment to its Bylaws regarding appointment of Board Directors.

II. AGENDA DESCRIPTION

At the November 7, 2018 meeting of the Board of Directors of Creative Portland (CP), the Board voted unanimously to recommend to the City Council a proposed amendment to its Bylaws regarding the appointment and removal of Board Directors.

Currently, the Corporator appoints up to 10 Directors, eight (8) of whom shall be Directors appointed by the Corporator through the City Council, and two (2) additional Directors shall be ex officio members by virtue of his or her holding the position of (1) Mayor or City Council member of the City of Portland as appointed by the Corporator, and (2) City Manager or designee of the City Manager associated with the Economic Development Department as appointed by the Corporator. The remaining 11 Directors are appointed by the Board.

The CP Board is recommending that all appointments to the Board, as well as any removal of Directors, be made by the Board, excluding ex officio Directors, due to the Board's expertise in determining what experience and background is needed for potential Directors.

III. BACKGROUND

The CP Board would like to have control of all Board of Directors appointments and removals, excluding ex officio members, due to the Board's expertise in determining what experience and background is needed for potential Directors.

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

The intended result would be to amend the Bylaws for the CP Board to have appointment/removal control of all Board Directors, excluding ex officio Directors.

V. FINANCIAL IMPACT

There is no financial impact associated with this item.

VI. STAFF ANALYSIS AND BACKGROUND

CP staff recommends the Council amend the Bylaws as proposed.

VII. RECOMMENDATION

The CP Board voted unanimously to forward the proposed Bylaws amendment to the City Council for approval.

Attachments:

- Marked Revisions to CP Bylaws
- Clean Version of CP Bylaws
- Proposed Amendments to Article Sixth of Articles of Incorporation
- Order Creating the CP and approving Articles of Incorporation and Bylaws of 11-17-2008 and backup
- Letter from Portland Society of Architects of 10/28/2008 in Support

DRAFT AMENDMENTS TO BYLAWS

As amended and passed by the City Council/Corporator at its December 15, 2014 Meeting:

BYLAWS OF THE CREATIVE PORTLAND CORPORATION (commonly known as "Creative Portland")

ARTICLE 1 NAME, PRINCIPAL OFFICE, CORPORATE SEAL

Section 1.1. Name. The name of this corporation shall be the Creative Portland Corporation, commonly known as "Creative Portland".

Section 1.2. Principal Office. The principal office for the conduct of the activities of the corporation shall be located in Portland, Maine.

Section 1.3. Registered Office. The Registered Office of the Corporation is at 389 Congress Street, Portland, Maine. The address of the Registered Office may be changed from time to time by the Board of Directors or by the Registered Agent.

Section 1.4. Registered Agent. The Registered Agent of the Corporation is the person designated in the Articles of Incorporation, as amended from time to time by the Board of Directors.

ARTICLE II PURPOSES

Section 2.1. General Purposes. The Corporation is organized and shall be operated on a non-profit basis to receive donations, grants and contributions in support of the City of Portland's economic development efforts by strengthening, stimulating and supporting Portland's creative industries, enterprises, and workforce, with specific regard for artists and cultural institutions who are critical assets to the city's identity, economy, and community. In furtherance of its mission, the Corporation shall endeavor to:

A. Act as the official Local Arts Agency for the City of Portland.

B. Supports and, at times, sponsors activities and programs, like the First Friday Art Walk, that encourage greater access to, and participation in, arts and culture.

C. Supports programs that assist artists, creative workers, and creative entrepreneurs with the development of their professional skills and expertise, and help catalyze the creative community with up-to-date information and constructive discussion.

D. Partner with key institutions to pursue a larger, collective vision based on the success of Portland's creative community with a particular emphasis on the arts and culture.

E. Consider new (or updated) public policies that affect artists, arts organizations, and creative industries in Portland and makes recommendations to the appropriate governmental bodies.

F. Pursue strategies that keep Portland's identity as a vibrant, creative place at the forefront nationally, and increase awareness among those with the potential to add to the consumer/audience/ donor base for the arts and cultural community.

G. Develop and implement strategies in conjunction with the City's Economic Development Department to stimulate creative enterprise development, job growth, and attraction of consumers and audiences who frequent and support artists, cultural institutions, and creative enterprises.

H. Pursue strategies that support the continued development of Portland's Arts District and increase opportunities for artists and arts organizations to thrive.

I. Conduct and/or fund research to support Corporation objectives as well as the key interests/needs of artists, arts and cultural organizations and creative entrepreneurs.

Section 2.2. Powers. This Corporation shall have all such powers as are authorized to non-profit corporations by the Maine Nonprofit Corporations Act. The corporation shall neither have nor exercise any power, nor shall it engage directly or indirectly in any activity that would invalidate its status (i) as a corporation which is exempt from federal income taxation as described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or (ii) as a corporation, contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code of 1986, as amended.

Section 2.3. Prohibition of the Inurement of Assets and Income to Private Persons. The corporation is not organized for pecuniary profit and shall not have any capital stock. No part of its net earnings or of its principal shall inure to the benefit of any officer or director of the corporation, or any other individual, partnership or corporation, but reimbursements for expenditures or the payment of reasonable compensation for services rendered shall not be deemed to be a distribution of earnings or principal.

Section 2.4. Dissolution. If this Corporation is dissolved or its legal existence terminated, either voluntarily or involuntarily, or upon final liquidation of the Corporation, none of its assets shall inure to the benefit of any private individual, and all of its assets remaining after payment of all of its liabilities shall be distributed to one or more organizations which the Board of Directors then determines is qualified both as an exempt organization under Section 501(c)(3) of the Internal Revenue Code, and as an organization engaged in activities substantially similar to those of this Corporation (within the meaning of 13-B M.R.S.A. §407).

Section 2.5 Tax exempt Status. It is intended that the Corporation shall have and continue to have the status of a corporation which is exempt from federal income tax under Section 501(a) of the Internal Revenue Code of 1986, as amended, or successor provisions of federal tax law (the "Internal Revenue Code") as an organization described in Section 501(c)(3) of such Code, and to which contributions are deductible under Section 170(c)(2) and 2055(a)(2) of the Internal Revenue Code, which is other than a private foundation as defined in Section 509(A) of the Internal Revenue Code. The Articles of Incorporation and these Bylaws shall be construed accordingly, and all powers and activities shall be limited accordingly.

No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation; provided that the Corporation shall have the power to make an election under Section 501(h) of the Internal Revenue Code. Likewise, the Corporation shall not participate or intervene in any manner or to any extent in any political campaign on behalf of any candidate for public office. Furthermore, the Corporation shall not engage in any activities that are unlawful under applicable federal, state or local laws, including, but not limited to, activities prohibited for an exempt organization under Section 501(c)(3) of the Internal Revenue Code and regulations thereunder as they now exist or as they may hereafter be amended.

ARTICLE III
MEMBERSHIP

Section 3.1. Member. The sole member of the Corporation shall be the City of Portland, Maine. The sole member of the Corporation shall be referred to as the "Corporator" for the purposes of the Articles of Incorporation and these Bylaws.

Section 3.2 General. The rights and responsibilities of the Corporator, may be changed from time to time by an amendment to the Articles of Incorporation (to the extent required by law) and these Bylaws.

Section 3.3. Powers. The Corporator shall have only those rights set forth in the Articles of Incorporation, as restated in these Bylaws. Such rights are as follows:

~~A. The establishment of the size of the Board of Directors within the limits described in Section 4.2 hereof;~~

B. The appointment of **up to two (2) ex officio members of the Board of Directors** ~~**10 Directors**~~ pursuant to Article IV hereof, ~~**with the exception of filling of a vacant Board seat as provided in Section 4.5 hereof;**~~

C. The removal of Directors it has appointed from the Board of Directors;

D. The amendment, restatement, or modification of the Articles of Incorporation or of the Bylaws of this Corporation;

E. The approval of the sale, lease, or other disposition (excluding by mortgage or pledge for purposes of security) of all, or substantially all, of the assets and property of the Corporation;

F. The dissolution of the Corporation or its merger with or consolidation with another corporation; and

G. Any other matter which a majority of the Board of Directors voting on the matter votes to submit to the Member.

Section 3.4 Annual Meetings. The Annual Meeting of the Corporator shall be held at a regular meeting of the City Council in the month of November of each year at such place and time as shall be fixed by the Board of Directors. In the event of a failure for any reason to hold an Annual Meeting as aforesaid, any business which may properly be transacted at an Annual Meeting, including the election of Directors, may be transacted at a Special Meeting.

Section 3.5 Special Meetings. Special Meetings of the Corporator may be called at any time by the President or a majority of the Directors.

Section 3.6. Notice of Meetings. Notice of all meetings of the Corporator shall be given by the Secretary or in his or her absence or disability by the President, by mailing or emailing to the Corporator a written notice specifying the time and place of the meeting, such notice to be addressed to the Corporator and emailed or mailed (postage prepaid) at least five (5) but not more than fifty (50) days before the meeting.

Section 3.7. Action by Unanimous Consent. Any action required or permitted to be taken at a meeting of the Corporator may be taken without a meeting as long as consent in writing, setting forth the action so taken shall be signed by the Corporator, and filed with the minutes of the meetings of the Corporator.

Section 3.8. Manner of Acting. The act of the Corporator, present in person or by proxy at a meeting, shall be the valid act of the Corporator.

ARTICLE IV
BOARD OF DIRECTORS

Section 4.1. Management by Board. The affairs of the Corporation shall be managed by its Board of Directors, which may exercise all powers of the Corporation and do all lawful acts and things necessary or appropriate to carry out the purposes of the Corporation. The Board of Directors may hire an Executive Director to whom it may delegate such duties as it deems appropriate.

Section 4.2. Number of Directors; Eligibility. The Board of Directors shall consist of up to twenty-one (21) individuals **~~– eight (8) of whom shall be Directors appointed by the Corporator through the Portland City Council,~~** two (2) of whom shall be ex officio members of the Board pursuant to Section 4.4 of this Article, **and the remaining members** **~~eleven of whom~~** will be elected by the Board of Directors pursuant to Section 4.4 of this Article. Two-thirds of the Directors, with the exception of the ex officio members, must be either residents of, own a business located in, or work in the City of Portland.

Section 4.3. Nomination. **The Board of Directors shall have the authority to consider nominations from Board Members, the City, and the community.** **~~The Corporator shall receive nominations from the Portland City Council Nominating Committee.~~**

Section 4.4. Ex Officio Members of the Board of Directors. There shall be two (2) individuals who shall each be deemed an ex officio members of the Board of Directors by virtue of his or her holding the position of (1) Mayor or City Council member of the City of Portland as appointed by the Corporator; and (2) City Manager or designee of the City Manager associated with the Economic Development Department as appointed by the Corporator.

The provisions of these Bylaws contained in Section 4.5 regarding term of office, Sections 3.2 and 3.3 regarding appointment of directors and Section 4.7 regarding vacancies shall not apply to said ex officio members. The City Manager or designee shall be a member of the Board of Directors so long as he or she continues to serve in the office by virtue of his or her employment in the said capacity by the City; and the Mayor or City Council member shall be appointed annually; and said members shall enjoy all the rights, privileges and responsibilities of all other member of the Board of Directors, including, without limitation, voting privileges, except, however that no ex officio member may serve as President of the Board of Directors. The Board of Directors may take action by unanimous consent only with the consent of said ex officio member. Ex officio members shall be counted as Directors for purposes of determination of the residency/business requirements in Section 4.2 of this Article. Ex officio members shall be entitled to the same indemnification rights available to all Directors under the law, these Bylaws or otherwise.

Section 4.5. Terms of Office. ~~**The Corporator shall specify the term of office for which each of its up to ten (10) Directors is initially appointed. The Board of Directors shall specify the term of office for which each of its up to eleven (11) Directors is initially appointed. Thereafter,**~~ Directors shall be appointed by ~~**either the Corporator or**~~ the Board of Directors at Annual Meetings of the Corporation to serve as such for a term of three (3) years. Each Director shall serve until his or her successor shall be duly qualified and appointed. Directors shall be nominated prior to the Annual Meeting of the Corporation. No Director shall succeed himself or herself after his or her initial term for more than two (2) full consecutive terms, and no Director shall serve for more than nine years. ~~**However, if the President is serving the last year of his or her term, and would not otherwise be able to continue on the Board, he or she may in this case (to serve as Immediate Past President) serve for one additional year.**~~

Section 4.6. Voting. Each Director shall be entitled to one (1) vote.

Section 4.7. Vacancies. ~~**Any vacancy occurring on the Board of Directors among the Corporator's appointees may be filled by the Corporator.. A person appointed to fill a vacancy which occurs other than by reason of an increase in the number of Directors shall serve the remainder of the term of the individual he/she is replacing unless otherwise ordered by the Corporator.**~~

Any vacancy occurring on the Board of Directors among Board appointees may be filled by the Board of Directors. A person appointed to fill a vacancy which occurs other than by reason of an increase in the number of Directors shall serve the remainder of the term of the individual he/she is replacing unless otherwise ordered by the Board.

Section 4.8. Resignation. Any Director may resign at any time by giving written notice to the President of the Corporation. Such resignation shall take effect on the date of receipt or at any later time specified therein.

ARTICLE V
MEETINGS

Section 5.1. Annual Meeting. The Annual Meeting of the Board of Directors shall be held without call at the Board's Regular Meeting in the month of November, at the principal office of the Corporation or at some other place fixed by the President.

Section 5.2. Regular Meeting. Other Regular Meetings of the Board of Directors may be held, without call, at such place, date and time as shall be fixed from time to time by resolution of the Board of Directors. **The Board shall hold no fewer than six Regular Meetings per calendar year. Board members are expected to attend all Regular Meetings of the Board. If a Board member fails to attend three consecutive Regular Meetings of the Board, the Executive Committee shall have discretion to remove that individual from the Board.**

Section 5.3. Special Meetings. Special Meetings of the Board of Directors may be called by such persons as are authorized by law to call Special Meetings. The place, date and time of the Special Meeting shall be fixed in the call therefor.

Section 5.4. Notice of Meetings. Notice of each Annual, Regular or Special Meeting of the Board of Directors shall be given by the person or persons calling the same or by the President or Secretary at least three (3) days in advance thereof. Notice may be given in writing, by email, by telephone, by oral statement or by any other means to the Directors in person or by delivery of a writing to his residence or business address. Notice given in writing by mail shall be deemed given on the day that the same is deposited in the U.S. mails as first class mail, postage prepaid. Neither the business to be transacted there at, nor the purposes of any Annual, Regular or Special Meeting of the Board of Directors need to be specified in the notice of such meeting, except when otherwise provided by law.

Section 5.5. Conduct of Meetings. The final actions of the Board of Directors shall be taken openly, and subject to provisions of the Maine Freedom of Access Law, deliberations of the Board shall be conducted openly, and the records of their actions shall be open to public inspection. The Board may go into executive session from time to time as allowed by the Maine Freedom of Access Law.

Section 5.6. Quorum. A simple majority (over 50%) of the Directors shall constitute a quorum for the transaction of business. The act of the majority of the directors present at a meeting of the Board of Directors at which a quorum is present shall be the act of the Board of Directors.

Section 5.7. Informal Action by Directors. Action of the Directors may be taken in accordance with the provisions of Section 708 of the Maine Nonprofit Corporations Act, Title 13-B M.R.S.A. as it may be amended from time to time. In amplification of, and not in limitation of the foregoing, action taken by agreement of a majority of Directors shall be deemed action of the Board of Directors if all Directors know of the action taken and no Director makes prompt objection to such action. Objection by a Director shall be effective if written objection to any specific action so taken is filed with the Secretary of this Corporation within thirty (30) days of such specific action.

Section 5.8. Notice. Whenever under the provisions of the statutes, Articles of Incorporation or these Bylaws notice is required to be given to any Director, such notice must be given in writing by personal delivery, by email, mail, or by telephone, addressed to such Director at his or her address as it appears on the records of the Corporation, with postage or other delivery fees prepaid, or at his or her telephone number as it appears on the records of the Corporation. Notice by mail shall be deemed to be given at the time it is deposited in the United States mail.

Section 5.9. Indemnification. This corporation shall in all cases indemnify any person who 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, by reason of the fact that he or she is or was a Director, officer, employee or agent of this corporation, against expenses, including attorney's fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding to the maximum extent permitted by law, including, without limitation, 13-B M.R.S.A. §714 as it may be amended from time to time, and acts additional thereto and supplementary thereof, to which reference is made.

ARTICLE VI
OFFICERS AND AGENTS

Section 6.1. Officers. The officers of the corporation shall be chosen annually at the Annual Meeting of the Board of Directors, and shall be a President, Vice President, a Treasurer, **and** a Secretary~~, and an Immediate Past President~~. One individual may serve in more than one such office. The Board of Directors may also appoint one or more Assistant Secretaries and Assistant Treasurers.

Section 6.2. Term. Officers shall be elected for a term of one (1) year to serve until the next Annual Meeting of the Board of Directors or until their successors are duly chosen and qualified. Officers may succeed themselves for any period of years. The initial officers shall be appointed by the Board of Directors at their first meeting following incorporation to serve as such until the first Annual Meeting of the Board of Directors.

Section 6.3. Removal. Any officer of the corporation may be removed by the Board of Directors whenever in their judgment the best interests of the corporation will be served thereby. **The Executive Committee shall have the authority to remove any officer who fails to attend Regular Meetings of the Board as described in Section 5.2.**

Section 6.4. Vacancies. Any vacancy in any office ~~(except the office of Director)~~ may be filled by the Board of Directors.

Section 6.5. President. The President of the Corporation shall be elected from among the members of the Board of Directors, provided however that no ex officio member may be permitted to serve as President.

Section 6.6. Vice-President. The Vice President shall perform such duties as are assigned to him or her by the President and the Board of Directors. In the absence of the President, he or she shall perform the duties of that office.

Section 6.7. Treasurer. The Treasurer shall be the chief financial officer of the corporation and, together with the Assistant Treasurer, shall have the responsibility for all corporate funds and securities and shall maintain full and accurate accounts of receipts and disbursements in a book or books kept for that purpose. The Treasurer shall perform such other duties as may be prescribed by the Board of Directors or the President, under whose supervision the Treasurer shall be.

Section 6.8. Secretary. The Secretary shall attend all meetings of Corporation and the Board of Directors and keep minutes of all meetings of the Corporation and the Board of Directors in a book or books kept for that purpose. The Secretary shall perform such other duties as may be prescribed by the Board of Directors or the President, under whose supervision the Secretary shall be. The Secretary, and any Assistant Secretaries, shall have authority to affix the corporate seal to any instrument which requires it, and when so affixed, it may be attested by the Secretary or by any Assistant Secretary.

~~Section 6.9 Immediate Past President. The Immediate Past President shall perform such duties as are assigned to him or her by the President and the Board of Directors.~~

Section 6.9~~.1.~~ The Assistant Treasurer and Assistant Secretary. One (1) Assistant Secretary shall be appointed by the Board of Directors. The individual appointed Assistant Secretary shall be the Director of Economic Development Department of the City of Portland and shall be the principal staff person for the Corporation. One (1) Assistant Treasurer shall be appointed by the Board of Directors. The individual appointed as the Assistant Treasurer shall be that individual who holds the position of Treasurer for the City of Portland. The Assistant Treasurer shall, together with the Treasurer, have the responsibility for all corporate funds and securities and shall maintain full and accurate accounts of receipts and disbursements in a book or books kept for that purpose. The Assistant Treasurer shall have such other powers and duties as may be prescribed from time to time by the Board of Directors. Assistant Secretaries and Assistant Treasurers shall not be members of the Board of Directors.

Section 6.10.**1**~~2.~~ Other Employees. Other employees of the Corporation may be appointed by the Board of Directors, and if so appointed, shall be supervised by, and shall serve under the direction of the Board of Directors.

ARTICLE VII
COMMITTEES

Section 7.1. Executive Committee. The Executive Committee of the Corporation shall consist of President, Vice President, Treasurer, **and Secretary. ~~Immediate Past President.~~** Except for the power to amend the Articles of Incorporation and Bylaws, the Executive Committee shall have all of the powers and authority of the Board of Directors in the intervals between meetings of the Board of Directors, subject to the direction and control of the Board of Directors. This includes supervision of the staff of the Corporation.

Section 7.2. Finance Committee. The Finance Committee of the Corporation shall consist of three members of the Board. The incumbent Treasurer of the Board will serve as a member and chair of the Finance Committee. The Finance Committee is responsible for developing and reviewing fiscal procedures, a fundraising plan, and annual budget. The Board must approve the budget, and all expenditures must be within the budget. Any major change in the budget must be approved by the Board or the Executive Committee. The fiscal year shall be July 1 to June 30. Annual reports are required to be submitted to the Board showing income, expenditures, and pending income. The financial records of the organization are public information and shall be made available to the membership, Board members, and the public.

Section 7.1. Subcommittees of the Board. The Board may create subcommittees, such as fundraising, marketing, events, as needed. Both members of the Board and the public can be members. The Board President will appoint the Chairs of each **subcommittee.** ~~**the Committee.**~~ Each Board director shall serve on at least one subcommittee.

ARTICLE VIII
ADOPTION, AMENDMENT

Section 8.1. Generally. These Bylaws may be amended or repealed or new Bylaws adopted only by the affirmative vote of the Corporator, provided, however, that the Bylaws may not be amended in such a way as to cause the Corporation to lose its status (i) as a corporation which is exempt from federal income taxation as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or (ii) as a corporation to which contributions are deductible under Section 170(c)(2) of the Internal Revenue Code of 1986, as amended, or (iii) as a corporation described in Section 170(b)(1)(A)(vi) of the Internal Revenue Code of 1986, as amended.

Section 8.2. Amendments. These Bylaws may be amended solely by the Corporator.

ARTICLE IX
CONFLICT OF INTEREST

Section 9.1. Avoidance of Conflict or the Appearance of such Conflict. Every Director shall endeavor to avoid conflicts of interest or the appearance of such conflicts or impropriety as provided by state statute, by full disclosure at all times and by abstention in the appropriate circumstances.

Section 9.1. Disclosure. Any Director who has a direct interest in any matter to be considered by the Board shall fully disclose that interest to the Board. If a Director is unsure whether a direct interest exists in a particular matter or if the issue is otherwise raised in good faith, the Director shall disclose the pertinent facts to the Board, and the Board shall determine the issue.

Section 9.3. Abstention. When the Director has so disclosed and is deemed to have a direct interest in a matter, the Director shall abstain from voting on the matter and from otherwise participating in the decision-making process on the matter. Notation of the disclosure and abstention of the Director shall be recorded in the minutes.

Section 9.4. Direct Interest. For purposes of this Article, direct interest in a matter shall mean:

A. A substantial financial interest of the Director or of the spouse or dependent child of the Director;

B. A substantial financial interest of any employer, partner, associate, co-shareholder or other co-venturer of the Director;

C. A substantial financial interest of the Director in any entity which has a substantial financial interest in the matter; or

D. Any other substantial interest of the Director which the Director or the Board believes might reasonably impair the Director's ability to act independently.

ATTEST:_________________________ DATE:______________________________
Secretary

DRAFT AMENDMENTS TO BYLAWS
As amended and passed by the City Council/Corporator at its December 15, 2014 Meeting:

BYLAWS OF THE CREATIVE PORTLAND CORPORATION (commonly known as "Creative Portland")

ARTICLE 1
NAME, PRINCIPAL OFFICE, CORPORATE SEAL

Section 1.1. Name. The name of this corporation shall be the Creative Portland Corporation, commonly known as "Creative Portland".

Section 1.2. Principal Office. The principal office for the conduct of the activities of the corporation shall be located in Portland, Maine.

Section 1.3. Registered Office. The Registered Office of the Corporation is at 389 Congress Street, Portland, Maine. The address of the Registered Office may be changed from time to time by the Board of Directors or by the Registered Agent.

Section 1.4. Registered Agent. The Registered Agent of the Corporation is the person designated in the Articles of Incorporation, as amended from time to time by the Board of Directors.

ARTICLE II
PURPOSES

Section 2.1. General Purposes. The Corporation is organized and shall be operated on a non-profit basis to receive donations, grants and contributions in support of the City of Portland's economic development efforts by strengthening, stimulating and supporting Portland's creative industries, enterprises, and workforce, with specific regard for artists and cultural institutions who are critical assets to the city's identity, economy, and community. In furtherance of its mission, the Corporation shall endeavor to:

A. Act as the official Local Arts Agency for the City of Portland.

B. Support and, at times, sponsor activities and programs, like the First Friday Art Walk, that encourage greater access to, and participation in, arts and culture.

C. Support programs that assist artists, creative workers, and creative entrepreneurs with the development of their professional skills and expertise, and help catalyze the creative community with up-to-date information and constructive discussion.

D. Partner with key institutions to pursue a larger, collective vision based on the success of Portland's creative community with a particular emphasis on the arts and culture.

E. Consider new (or updated) public policies that affect artists, arts organizations, and creative industries in Portland and makes recommendations to the appropriate governmental bodies.

F. Pursue strategies that keep Portland's identity as a vibrant, creative place at the forefront nationally, and increase awareness among those with the potential to add to the consumer/audience/donor base for the arts and cultural community.

G. Develop and implement strategies in conjunction with the City's Economic Development Department to stimulate creative enterprise development, job growth, and attraction of consumers and audiences who frequent and support artists, cultural institutions, and creative enterprises.

H. Pursue strategies that support the continued development of Portland's Arts District and increase opportunities for artists and arts organizations to thrive.

I. Conduct and/or fund research to support Corporation objectives as well as the key interests/needs of artists, arts and cultural organizations and creative entrepreneurs.

Section 2.2. Powers. This Corporation shall have all such powers as are authorized to non-profit corporations by the Maine Nonprofit Corporations Act. The corporation shall neither have nor exercise any power, nor shall it engage directly or indirectly in any activity that would invalidate its status (i) as a corporation which is exempt from federal income taxation as described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or (ii) as a corporation, contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code of 1986, as amended.

Section 2.3. Prohibition of the Inurement of Assets and Income to Private Persons. The corporation is not organized for pecuniary profit and shall not have any capital stock. No part of its net earnings or of its principal shall inure to the benefit of any officer or director of the corporation, or any other individual, partnership or corporation, but reimbursements for expenditures or the payment of reasonable compensation for services rendered shall not be deemed to be a distribution of earnings or principal.

Section 2.4. Dissolution. If this Corporation is dissolved or its legal existence terminated, either voluntarily or involuntarily, or upon final liquidation of the Corporation, none of its assets shall inure to the benefit of any private individual, and all of its assets remaining after payment of all of its liabilities shall be distributed to one or more organizations which the Board of Directors then determines is qualified both as an exempt organization under Section 501(c)(3) of the Internal Revenue Code, and as an organization engaged in activities substantially similar to those of this Corporation (within the meaning of 13-B M.R.S.A. §407).

Section 2.5 Tax exempt Status. It is intended that the Corporation shall have and continue to have the status of a corporation which is exempt from federal income tax under Section 501(a) of the Internal Revenue Code of 1986, as amended, or successor provisions of federal tax law (the "Internal Revenue Code") as an organization described in Section 501(c)(3) of such Code, and to which contributions are deductible under Section 170(c)(2) and 2055(a)(2) of the Internal Revenue Code, which is other than a private foundation as defined in Section 509(A) of the Internal Revenue Code. The Articles of Incorporation and these Bylaws shall be construed accordingly, and all powers and activities shall be limited accordingly.

No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation; provided that the Corporation shall have the power to make an election under Section 501(h) of the Internal Revenue Code. Likewise, the Corporation shall not participate or intervene in any manner or to any extent in any political campaign on behalf of any candidate for public office. Furthermore, the Corporation shall not engage in any activities that are unlawful under applicable federal, state or local laws, including, but not limited to, activities prohibited for an exempt organization under Section 501(c)(3) of the Internal Revenue Code and regulations thereunder as they now exist or as they may hereafter be amended.

ARTICLE III
MEMBERSHIP

Section 3.1. Member. The sole member of the Corporation shall be the City of Portland, Maine. The sole member of the Corporation shall be referred to as the "Corporator" for the purposes of the Articles of Incorporation and these Bylaws.

Section 3.2 General. The rights and responsibilities of the Corporator, may be changed from time to time by an amendment to the Articles of Incorporation (to the extent required by law) and these Bylaws.

Section 3.3. Powers. The Corporator shall have only those rights set forth in the Articles of Incorporation, as restated in these Bylaws. Such rights are as follows:

A. The appointment of up to two (2) ex officio members of the Board of Directors pursuant to Article IV hereof;

B. The removal of Directors it has appointed from the Board of Directors;

C. The amendment, restatement, or modification of the Articles of Incorporation or of the Bylaws of this Corporation;

D. The approval of the sale, lease, or other disposition (excluding by mortgage or pledge for purposes of security) of all, or substantially all, of the assets and property of the Corporation;

E. The dissolution of the Corporation or its merger with or consolidation with another corporation; and

F. Any other matter which a majority of the Board of Directors voting on the matter votes to submit to the Member.

Section 3.4 Annual Meetings. The Annual Meeting of the Corporator shall be held at a regular meeting of the City Council in the month of November of each year at such place and time as shall be fixed by the Board of Directors. In the event of a failure for any reason to hold an Annual Meeting as aforesaid, any business which may properly be transacted at an Annual Meeting, including the election of Directors, may be transacted at a Special Meeting.

Section 3.5 Special Meetings. Special Meetings of the Corporator may be called at any time by the President or a majority of the Directors.

Section 3.6. Notice of Meetings. Notice of all meetings of the Corporator shall be given by the Secretary or in his or her absence or disability by the President, by mailing or emailing to the Corporator a written notice specifying the time and place of the meeting, such notice to be addressed to the Corporator and emailed or mailed (postage prepaid) at least five (5) but not more than fifty (50) days before the meeting.

Section 3.7. Action by Unanimous Consent. Any action required or permitted to be taken at a meeting of the Corporator may be taken without a meeting as long as consent in writing, setting forth the action so taken shall be signed by the Corporator, and filed with the minutes of the meetings of the Corporator.

Section 3.8. Manner of Acting. The act of the Corporator, present in person or by proxy at a meeting, shall be the valid act of the Corporator.

ARTICLE IV
BOARD OF DIRECTORS

Section 4.1. Management by Board. The affairs of the Corporation shall be managed by its Board of Directors, which may exercise all powers of the Corporation and do all lawful acts and things necessary or appropriate to carry out the purposes of the Corporation. The Board of Directors may hire an Executive Director to whom it may delegate such duties as it deems appropriate.

Section 4.2. Number of Directors; Eligibility. The Board of Directors shall consist of up to twenty-one (21) individuals, two (2) of whom shall be ex officio members of the Board pursuant to Section 4.4 of this Article, and the remaining members will be elected by the Board of Directors pursuant to Section 4.4 of this Article. Two-thirds of the Directors, with the exception of the ex officio members, must be either residents of, own a business located in, or work in the City of Portland.

Section 4.3. Nomination. The Board of Directors shall have the authority to consider nominations from Board Members, the City, and the community.

Section 4.4. Ex Officio Members of the Board of Directors. There shall be two (2) individuals who shall each be deemed an ex officio members of the Board of Directors by virtue of his or her holding the position of (1) Mayor or City Council member of the City of Portland as appointed by the Corporator; and (2) City Manager or designee of the City Manager associated with the Economic Development Department as appointed by the Corporator.

The provisions of these Bylaws contained in Section 4.5 regarding term of office, Sections 3.2 and 3.3 regarding appointment of directors and Section 4.7 regarding vacancies shall not apply to said ex officio members. The City Manager or designee shall be a member of the Board of Directors so long as he or she continues to serve in the office by virtue of his or her employment in the said capacity by the City; and the Mayor or City Council member shall be appointed annually; and said members shall enjoy all the rights, privileges and responsibilities of all other member of the Board of Directors, including, without limitation, voting privileges, except, however that no ex officio member may serve as President of the Board of Directors. The Board of Directors may take action by unanimous consent only with the consent of said ex officio member. Ex officio members shall be counted as Directors for purposes of determination of the residency/business requirements in Section 4.2 of this Article. Ex officio members shall be entitled to the same indemnification rights available to all Directors under the law, these Bylaws or otherwise.

Section 4.5. Terms of Office. Directors shall be appointed by the Board of Directors at Annual Meetings of the Corporation to serve as such for a term of three (3) years. Each Director shall serve until his or her successor shall be duly qualified and appointed. Directors shall be nominated prior to the Annual Meeting of the Corporation. No Director shall succeed himself or herself after his or her initial term for more than two (2) full consecutive terms, and no Director shall serve for more than nine years.

Section 4.6. Voting. Each Director shall be entitled to one (1) vote.

Section 4.7. Vacancies. Any vacancy occurring on the Board of Directors among Board appointees may be filled by the Board of Directors. A person appointed to fill a vacancy which occurs other than by reason of an increase in the number of Directors shall serve the remainder of the term of the individual he/she is replacing unless otherwise ordered by the Board.

Section 4.8. Resignation. Any Director may resign at any time by giving written notice to the President of the Corporation. Such resignation shall take effect on the date of receipt or at any later time specified therein.

ARTICLE V
MEETINGS

Section 5.1. Annual Meeting. The Annual Meeting of the Board of Directors shall be held without call at the Board's Regular Meeting in the month of November, at the principal office of the Corporation or at some other place fixed by the President.

Section 5.2. Regular Meeting. Other Regular Meetings of the Board of Directors may be held, without call, at such place, date and time as shall be fixed from time to time by resolution of the Board of Directors. The Board shall hold no fewer than six Regular Meetings per calendar year. Board members are expected to attend all Regular Meetings of the Board. If a Board member fails to attend three consecutive Regular Meetings of the Board, the Executive Committee shall have discretion to remove that individual from the Board.

Section 5.3. Special Meetings. Special Meetings of the Board of Directors may be called by such persons as are authorized by law to call Special Meetings. The place, date and time of the Special Meeting shall be fixed in the call therefor.

Section 5.4. Notice of Meetings. Notice of each Annual, Regular or Special Meeting of the Board of Directors shall be given by the person or persons calling the same or by the President or Secretary at least three (3) days in advance thereof. Notice may be given in writing, by email, by telephone, by oral statement or by any other means to the Directors in person or by delivery of a writing to his residence or business address. Notice given in writing by mail shall be deemed given on the day that the same is deposited in the U.S. mails as first class mail, postage prepaid. Neither the business to be transacted there at, nor the purposes of any Annual, Regular or Special Meeting of the Board of Directors need to be specified in the notice of such meeting, except when otherwise provided by law.

Section 5.5. Conduct of Meetings. The final actions of the Board of Directors shall be taken openly, and subject to provisions of the Maine Freedom of Access Law, deliberations of the Board shall be conducted openly, and the records of their actions shall be open to public inspection. The Board may go into executive session from time to time as allowed by the Maine Freedom of Access Law.

Section 5.6. Quorum. A simple majority (over 50%) of the Directors shall constitute a quorum for the transaction of business. The act of the majority of the directors present at a meeting of the Board of Directors at which a quorum is present shall be the act of the Board of Directors.

Section 5.7. Informal Action by Directors. Action of the Directors may be taken in accordance with the provisions of Section 708 of the Maine Nonprofit Corporations Act, Title 13-B M.R.S.A. as it may be amended from time to time. In amplification of, and not in limitation of the foregoing, action taken by agreement of a majority of Directors shall be deemed action of the Board of Directors if all Directors know of the action taken and no Director makes prompt objection to such action. Objection by a Director shall be effective if written objection to any specific action so taken is filed with the Secretary of this Corporation within thirty (30) days of such specific action.

Section 5.8. Notice. Whenever under the provisions of the statutes, Articles of Incorporation or these Bylaws notice is required to be given to any Director, such notice must be given in writing by personal delivery, by email, mail, or by telephone, addressed to such Director at his or her address as it appears on the records of the Corporation, with postage or other delivery fees prepaid, or at his or her telephone number as it appears on the records of the Corporation. Notice by mail shall be deemed to be given at the time it is deposited in the United States mail.

Section 5.9. Indemnification. This corporation shall in all cases indemnify any person who 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, by reason of the fact that he or she is or was a Director, officer, employee or agent of this corporation, against expenses, including attorney's fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding to the maximum extent permitted by law, including, without limitation, 13-B M.R.S.A. §714 as it may be amended from time to time, and acts additional thereto and supplementary thereof, to which reference is made.

ARTICLE VI
OFFICERS AND AGENTS

Section 6.1. Officers. The officers of the corporation shall be chosen annually at the Annual Meeting of the Board of Directors, and shall be a President, Vice President, a Treasurer, and a Secretary. One individual may serve in more than one such office. The Board of Directors may also appoint one or more Assistant Secretaries and Assistant Treasurers.

Section 6.2. Term. Officers shall be elected for a term of one (1) year to serve until the next Annual Meeting of the Board of Directors or until their successors are duly chosen and qualified. Officers may succeed themselves for any period of years. The initial officers shall be appointed by the Board of Directors at their first meeting following incorporation to serve as such until the first Annual Meeting of the Board of Directors.

Section 6.3. Removal. Any officer of the corporation may be removed by the Board of Directors whenever in their judgment the best interests of the corporation will be served thereby. The Executive Committee shall have the authority to remove any officer who fails to attend Regular Meetings of the Board as described in Section 5.2.

Section 6.4. Vacancies. Any vacancy in any office may be filled by the Board of Directors.

Section 6.5. President. The President of the Corporation shall be elected from among the members of the Board of Directors, provided however that no ex officio member may be permitted to serve as President.

Section 6.6. Vice-President. The Vice President shall perform such duties as are assigned to him or her by the President and the Board of Directors. In the absence of the President, he or she shall perform the duties of that office.

Section 6.7. Treasurer. The Treasurer shall be the chief financial officer of the corporation and, together with the Assistant Treasurer, shall have the responsibility for all corporate funds and securities and shall maintain full and accurate accounts of receipts and disbursements in a book or books kept for that purpose. The Treasurer shall perform such other duties as may be prescribed by the Board of Directors or the President, under whose supervision the Treasurer shall be.

Section 6.8. Secretary. The Secretary shall attend all meetings of Corporation and the Board of Directors and keep minutes of all meetings of the Corporation and the Board of Directors in a book or books kept for that purpose. The Secretary shall perform such other duties as may be prescribed by the Board of Directors or the President, under whose supervision the Secretary shall be. The Secretary, and any Assistant Secretaries, shall have authority to affix the corporate seal to any instrument which requires it, and when so affixed, it may be attested by the Secretary or by any Assistant Secretary.

Section 6.9. The Assistant Treasurer and Assistant Secretary. One (1) Assistant Secretary shall be appointed by the Board of Directors. The individual appointed Assistant Secretary shall be the Director of Economic Development Department of the City of Portland and shall be the principal staff person for the Corporation. One (1) Assistant Treasurer shall be appointed by the Board of Directors. The individual appointed as the Assistant Treasurer shall be that individual who holds the position of Treasurer for the City of Portland. The Assistant Treasurer shall, together with the

Treasurer, have the responsibility for all corporate funds and securities and shall maintain full and accurate accounts of receipts and disbursements in a book or books kept for that purpose. The Assistant Treasurer shall have such other powers and duties as may be prescribed from time to time by the Board of Directors. Assistant Secretaries and Assistant Treasurers shall not be members of the Board of Directors.

Section 6.10. Other Employees. Other employees of the Corporation may be appointed by the Board of Directors, and if so appointed, shall be supervised by, and shall serve under the direction of the Board of Directors.

ARTICLE VII
COMMITTEES

Section 7.1. Executive Committee. The Executive Committee of the Corporation shall consist of President, Vice President, Treasurer, and Secretary. Except for the power to amend the Articles of Incorporation and Bylaws, the Executive Committee shall have all of the powers and authority of the Board of Directors in the intervals between meetings of the Board of Directors, subject to the direction and control of the Board of Directors. This includes supervision of the staff of the Corporation.

Section 7.2. Finance Committee. The Finance Committee of the Corporation shall consist of three members of the Board. The incumbent Treasurer of the Board will serve as a member and chair of the Finance Committee. The Finance Committee is responsible for developing and reviewing fiscal procedures, a fundraising plan, and annual budget. The Board must approve the budget, and all expenditures must be within the budget. Any major change in the budget must be approved by the Board or the Executive Committee. The fiscal year shall be July 1 to June 30. Annual reports are required to be submitted to the Board showing income, expenditures, and pending income. The financial records of the organization are public information and shall be made available to the membership, Board members, and the public.

Section 7.1. Subcommittees of the Board. The Board may create subcommittees, such as fundraising, marketing, events, as needed. Both members of the Board and the public can be members. The Board President will appoint the Chairs of each subcommittee. Each Board director shall serve on at least one subcommittee.

ARTICLE VIII
ADOPTION, AMENDMENT

Section 8.1. Generally. These Bylaws may be amended or repealed or new Bylaws adopted only by the affirmative vote of the Corporator, provided, however, that the Bylaws may not be amended in such a way as to cause the Corporation to lose its status (i) as a corporation which is exempt from federal income taxation as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or (ii) as a corporation to which contributions are deductible under Section

170(c)(2) of the Internal Revenue Code of 1986, as amended, or (iii) as a corporation described in Section 170(b)(1)(A)(vi) of the Internal Revenue Code of 1986, as amended.

Section 8.2. Amendments. These Bylaws may be amended solely by the Corporator.

ARTICLE IX
CONFLICT OF INTEREST

Section 9.1. Avoidance of Conflict or the Appearance of such Conflict. Every Director shall endeavor to avoid conflicts of interest or the appearance of such conflicts or impropriety as provided by state statute, by full disclosure at all times and by abstention in the appropriate circumstances.

Section 9.1. Disclosure. Any Director who has a direct interest in any matter to be considered by the Board shall fully disclose that interest to the Board. If a Director is unsure whether a direct interest exists in a particular matter or if the issue is otherwise raised in good faith, the Director shall disclose the pertinent facts to the Board, and the Board shall determine the issue.

Section 9.3. Abstention. When the Director has so disclosed and is deemed to have a direct interest in a matter, the Director shall abstain from voting on the matter and from otherwise participating in the decision-making process on the matter. Notation of the disclosure and abstention of the Director shall be recorded in the minutes.

Section 9.4. Direct Interest. For purposes of this Article, direct interest in a matter shall mean:

A. A substantial financial interest of the Director or of the spouse or dependent child of the Director;

B. A substantial financial interest of any employer, partner, associate, co-shareholder or other co-venturer of the Director;

C. A substantial financial interest of the Director in any entity which has a substantial financial interest in the matter; or

D. Any other substantial interest of the Director which the Director or the Board believes might reasonably impair the Director's ability to act independently.

ATTEST:_________________________ DATE:______________________________

Secretary

ARTICLE SIXTH OF ARTICLES OF INCORPORATION OF CREATIVE PORTLAND CORPORATION

The City of Portland, Maine shall be the sole voting member of Creative Portland Corporation and is hereby designated the Corporator. The Corporator shall act by and through its City Council in all matters relating to Creative Portland Corporation. The rights, powers, and responsibilities of the Corporator shall be as follows:

The Corporator shall have the sole and exclusive right to vote at all meetings of the Creative Portland Corporation for such purposes or such other matters as may be prescribed for consideration by these Articles of Incorporation, the By-laws of the Creative Portland Corporation, amendments thereto, and the laws and statutes of the State of Maine, as from time to time constituted. Specifically, the Corporator shall have the following rights:

A) Addition of Corporators;
B) Creation of an additional Class of Corporators;
C) ~~Appoint the Board of Directors and~~Expand ~~expand~~ or contract ~~its~~ the ~~size~~number of members of the Board of Directors;
~~D) Addition of one or more classes of Directors;~~
~~E) Appointment of Directors;~~
~~F) Removal of Directors;~~
~~G)~~D) Alteration, amendment or repeal of By-laws;
~~H)~~E) Amendment, modification or restatement of the Articles of Incorporation;
~~I)~~F) Dissolution, merger or consolidation of the Creative Portland Corporation;
~~J)~~G) Approval of the sale, lease or disposition (excluding mortgage or pledge) of all or substantially all of the assets or property of the Creative Portland Corporation;
~~K)~~H) Approval of the annual operating budget;
~~L)~~I) Any other matters which a majority of the Board voting to submit to the Corporator.

The Creative Portland Corporation shall have the sole and exclusive authority, consistent with their City Council approved By-laws, to appoint and remove Directors.

Order 79-08/9
~~Tab 14 10-20-08~~
Tab 18 11-17-08

EDWARD J. SUSLOVIC (MAYOR)
KEVIN J. DONOGHUE (1)
DAVID A. MARSHALL (2)
DANIEL S. SKOLNIK (3)
CHERYL A. LEEMAN (4)

CITY OF PORTLAND

IN THE CITY COUNCIL

JAMES I. COHEN (5)
JOHN M. ANTON (A/L)
JILL C. DUSON (A/L)
NICHOLAS M. MAVODONES (A/L)

ORDER CREATING THE CREATIVE PORTLAND CORPORATION AND APPROVING ARTICLES OF INCORPORATION AND BY-LAWS

ORDERED, that the City of Portland, by authority of its City Council, hereby approves the creation of the Creative Portland Corporation; and

BE IT FURTHER ORDERED, that the Council approves the Articles of Incorporation of the Creative Portland Corporation in substantially the form attached hereto as Attachment 1 and the filing of those Articles with the Secretary of State; and

BE IT FURTHER ORDERED, that the Council approves the By-Laws of the Creative Portland Corporation in substantially the form attached hereto as Attachment 2; and

BE IT FURTHER ORDERED, that this Order shall be filed as part of the corporate records of the Creative Portland Corporation.

Mayor Edward J. Suslovic

Councilor Jill C. Duson

Councilor John M. Anton

Councilor Nicholas M. Mavodones, Jr.

Councilor James I. Cohen

Councilor Cheryl A. Leeman

Councilor Daniel S. Skolnik

Councilor David A. Marshall

Councilor Kevin J. Donoghue

Order 92-08/9
~~Tab 14 10-20-08~~
Tab 18 11-17-08

EDWARD J. SUSLOVIC (MAYOR)
KEVIN J. DONOGHUE (1)
DAVID A. MARSHALL (2)
DANIEL S. SKOLNIK (3)
CHERYL A. LEEMAN (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

JAMES I. COHEN (5)
JOHN M. ANTON (A/L)
JILL C. DUSON (A/L)
NICHOLAS M. MAVODONES (A/L)

ORDER CREATING THE CREATIVE PORTLAND CORPORATION AND APPROVING ARTICLES OF INCORPORATION AND BY-LAWS

ORDERED, that the City of Portland, by authority of its City Council, hereby approves the creation of the Creative Portland Corporation; and

BE IT FURTHER ORDERED, that the Council approves the Articles of Incorporation of the Creative Portland Corporation in substantially the form attached hereto as Attachment 1 and the filing of those Articles with the Secretary of State; and

BE IT FURTHER ORDERED, that the Council approves the By-Laws of the Creative Portland Corporation in substantially the form attached hereto as Attachment 2; and

BE IT FURTHER ORDERED, that this Order shall be filed as part of the corporate records of the Creative Portland Corporation.

Mayor Edward J. Suslovic

Councilor Jill C. Duson

Councilor John M. Anton

Councilor Nicholas M. Mavodones, Jr.

Councilor James I. Cohen

Councilor Cheryl A. Leeman

Councilor Daniel S. Skolnik

Councilor David A. Marshall

Councilor Kevin J. Donoghue

TO: Mayor Suslovic and City Councilors
FROM: Alex Jaegerman and Pat Finnigan
DATE: October 17, 2008

RE: Report of the Creative Economy Steering Committee

The October 20 Council Agenda includes the Orders and documents to establish the Creative Portland Corporation (CPC) including the Articles of Incorporation, By-laws, and Tax Increment Finance District. These will all be on this agenda for informational purposes, but we are asking them to be tabled for action at the November 17 meeting. The TIF district document is a draft while we finalize the financial information. The TIF district and development plan requires a public hearing before Council action. That public hearing is scheduled for November 17 as well.

All of the documents pertaining to the Creative Economy structure and financing were previously reviewed and discussed with you at the Oct. 6 workshop. In addition, you will consider an Order to authorize the City Manager to work with the Portland Arts and Cultural Alliance (PACA) to collaborate with the Creative Portland Corporation in order to eliminate any unnecessary duplication and strengthen our efforts to attract and retain creative economy based businesses and entities.

Staff is compiling the answers to the questions posed by Councilors at the Oct. 6 Council workshop, as well as by the Finance Committee at its Oct. 7 meeting. We will forward these to you when they are done.

The following is a summary of the major findings of the Creative Economy Steering Committee.

Background. On May 31, 2006 then Mayor Jim Cohen convened the Creative Economy Summit. This convention brought together over 200 stakeholders of artists, cultural organizations, and creative enterprises in a day-long session to identify challenges and opportunities to grow and further develop Portland's creative economy. The Summit participants identified three major action steps:

(1) Build Portland's identity as an international creative center;

(2) Develop publicly supported and/or affordable public space for art studios, exhibitions performance space, office space, and housing;

(3) Increase collaboration, coordination, and communication within Portland's creative economy.

Following the Summit, the Portland City Council established a 17 member *Creative Economy Steering Committee* (CESC) in December 2006. Councilor James Cohen was appointed chair and Councilor David Marshall was appointed vice chair. The purpose of the Steering Committee was to take the results of the Summit, and develop recommended strategies on how best to achieve them. The Report contains a number of recommendations.

Recommendations

Two of the Steering Committee's recommendations require City Council action. The Steering Committee wanted to ensure that this was a report that didn't sit on a shelf without being implemented. Therefore the first two recommendations are to establish an organizational structure and develop a plan for sustained financial resources to promote and grow the creative economy.

1. ***Administrative Structure.*** The Steering Committee recommends that the City Council establish a 13-member ***quasi-municipal organization,*** *known as the* ***Creative Portland Corporation (CPC).*** The CPC would be modeled after the Downtown Portland Corporation, Portland Downtown District, or the Fish Pier Authority. To achieve this, the Council will need to enact By-laws and Articles of Incorporation. (Please see pages 9 – 11 of the report).

2. ***Funding.*** The Steering Committee was mindful of the financial pressures facing the City. In order to reduce the impact on the City budget and become financially self sustaining, the Steering Committee envisions a multi-faceted approach: public funding, private fundraising, revenues from fees, etc. The Steering Committee estimates that $100,000 will be needed initially to cover an administrator's salary and program costs. The Steering Committee recognizes this is a significant challenge. The goal is to make the CPC self sufficient and reduce its reliance on public funding (page 12).

One of the funding mechanisms recommended by the Steering Committee is to establish a ***Creative Economy Fund.*** The Steering Committee is requesting that the City Council approve a ***Creative Economy Tax Increment Finance (TIF) District***, which would generate revenues for that fund (See page 13 of the report)

3. Promote and Attract Creative Enterprise Clusters. To foster growth in the creative economy, the Committee noted the need to reinforce and strengthen existing arts and culture based enterprises and activate mechanisms to attract, nurture, and grow additional creative enterprises. (page 14)

4. Strengthen the City's Arts District. The Steering Committee concluded that it was critical to address the issue of attrition by artists to less expensive locations outside of Portland by securing existing arts and cultural organizations and enterprises and attracting new artists and members of the creative economy. (page 14)

5. Create a Center for the Arts. The Steering Committee concluded that Portland has a shortage of available, affordable space for artists and cultural endeavors. They recommend the development of a Center for the Arts in downtown Portland to create dedicated space for artists and arts organizations, provide incubator space for emerging creative economy-based enterprises, cooperatives/collectives, artist studios, and create live/work spaces, rehearsal, and theater space, etc. (pages 14-15)

6. Create a Creative Economy Web site. The Steering Committee concluded that a current, vibrant web site is necessary to promote the creative economy and reinforce Portland as the cultural center where individuals and entities involved in creative endeavors choose to locate. (page 16)

7. Identify and Support "Tipping Point" Projects. *Tipping point projects* are initiatives that move an organization, individual artists or program to the next level of accomplishment. The Steering Committee recognized that tipping point projects which involved a reasonable investment could yield significant, near-term success. They recommended that funds should be focused on the greatest opportunities not necessarily the greatest problems. (page 16).

8. Conduct on-going Economic Impact Analyses. In order to know what is working and where more attention is needed, the Steering Committee recommended that conducting economic analyses to identify trends, establish benchmarks, and help target financial resources in ways that will achieve maximum impact. (page 17)

As noted above, staff is assembling the answers to the questions you raised at your workshop on the Creative Economy (see below). If you have additional ones you would like us to address, please let us know.

***

Questions/requests posed by Councilors

1. Remove the area of the proposed TIF district north of Cumberland Ave. from the Creative Economy Tax Increment Financing Map.
2. Provide a map of all existing TIF districts.
3. Explanation of the differences in operation including limitations on activities, that would apply to a 501(c) 3 but not a non 501(c) 3 non profit corporation.
4. Explanation of the proposed budget of $100,000, how this figure was arrived at.
5. Provide a preliminary work plan and budget for the proposed Creative Portland Corporation.
6. Further explanation of the proposed TIF funding mechanism, and the issue of funding for the duration if the TIF funds have not materialized. Related to this is the issue of start-up funding and phasing of funds sources over time.
7. A summary of the history of PACA, and their current status of budget, City funding, and personnel.
8. Explanation of how the TIF district relates to the activities of the CPC, as to what program activities are targeted to properties within the TIF district, and what program activities are city wide or otherwise broader in geographic scope.
9. Explain any overlap of PDD and PACA, particularly with regard to geographic jurisdiction, mission, and organizational structure.
10. Explanation of how TIF revenues are raised, including how the base tax year revenue is determined, and how the increment in value and revenue is calculated.
11. A summary of the economic opportunities that justify an investment in the Creative Economy Cluster and the Creative Portland Corporation.
12. Definition of the creative economy, distinguishing between artists, arts *organizations, and creative enterprises.*

Filing Fee $40.00

DOMESTIC
NONPROFIT CORPORATION

STATE OF MAINE

ARTICLES OF INCORPORATION

DRAFT

Deputy Secretary of State

A True Copy When Attested By Signature

Deputy Secretary of State

Pursuant to 13-B MRSA §403, the undersigned incorporator(s) execute(s) and deliver(s) the following Articles of Incorporation:

FIRST: The name of the corporation is Creative Portland Corporation.

SECOND: ("X" one box only. Attach additional page(s) if necessary.)

☑ The corporation is organized as a public benefit corporation for the following purpose or purposes:

See Ex. A attached.

☐ The corporation is organized as a mutual benefit corporation for all purposes permitted under Title 13-B or, if not for all such purposes, then for the following purpose or purposes:

THIRD: The Registered Agent is a: (select either a Commercial or Noncommercial Registered Agent)

☐ Commercial Registered Agent CRA Public Number: ____________

____
(name of commercial registered agent)

☐ Noncommercial Registered Agent

____
(name of noncommercial registered agent)

____
(physical location, not P.O. Box – street, city, state and zip code)

____
(mailing address if different from above)

FOURTH: Pursuant to 5 MRSA §108.3, the registered agent as listed above has consented to serve as the registered agent for this nonprofit corporation.

Form No. MNPCA-6 (1 of 3)

FIFTH: The number of directors (not less than 3) constituting the initial board of directors of the corporation, if the number has been designated or if the initial directors have been chosen, is ________________________.

The minimum number of directors (not less than 3) shall be ________________________ and the maximum number of directors shall be ________________________.

SIXTH: Members: ("X" one box only.)

☐ There shall be no members.
☑ There shall be one or more classes of members and the information required by 13-B MRSA §402 is attached.

See Ex B attached.

SEVENTH: (Optional) ☑ (Check if this article is to apply.)

No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate in or intervene in (including the publication or distribution of statements) any political campaign on behalf of any candidate for public office.

EIGHTH: (Optional) ☑ (Check if this article is to apply.)

Other provisions of these articles including provisions for the regulation of the internal affairs of the corporation, distribution of assets on dissolution or final liquidation and the requirements of the Internal Revenue Code section 501(c) are set out in Exhibit C attached hereto and made a part hereof.

Incorporators* Dated ________________________

________________________ Street ________________________
(signature) (residence address)

________________________ ________________________
(type or print name) (city, state and zip code)

________________________ Street ________________________
(signature) (residence address)

________________________ ________________________
(type or print name) (city, state and zip code)

________________________ Street ________________________
(signature) (residence address)

________________________ ________________________
(type or print name) (city, state and zip code)

Form No. MNPCA-6 (2 of 3)

ATTACHMENT 1

ARTICLE SECOND OF ARTICLES OF INCORPORATION OF CREATIVE PORTLAND CORPORATION

Creative Portland Corporation is organized and shall at all times be operated exclusively for charitable, education and non profit purposes as a non profit tax exempt organization organized under the laws of the State of Maine with all such powers as are authorized to non profit corporations by the Maine Non Profit Corporation Act. The primary activities of the Creative Portland Corporation shall include, but not be limited to, the following:

A. Build Portland's identity as an international creative center;

B. Develop publicly supported and/or affordable space for artists, including performance space, office space, studio space, housing, and exhibition space;

C. Increase collaboration, coordination, and communication within Portland's creative economy;

D. Provide resources and support for community events and cultural tourism;

E. Recruit creative industries;

F. Provide timely input on Portland's development projects that could contribute to the Creative Economy Fund;

G. Acquire, hold, own manage, dispose or liquidate property, upon City Council approval, for the purpose of advancing the creative economy and promoting employment opportunities in the City of Portland; and

H. Implement, facilitate and administer programs which enhance creative opportunities in Portland as initially defined by the City of Portland's Creative Economy Steering Committee in a certain Report of said Committee dated October 2008, and on file in the City's Department of Planning, including but not limited to:

1. Promotion of the Creative Enterprises Cluster
2. Development of the Arts District
3. Creation of a Center for the Arts
4. Creation of a Creative Economy Website
5. Identification and Supporting of "Tipping Point" Projects
6. *Conduct Creative Economy Analyses*
7. Creation of Programming Strategy for Current Events and Cultural Activities
8. Provision of resources and support for community events and cultural tourism

Orders:\creative economy articles and by-laws

9. Recruitment of Creative Industries
10. Promotion of cultural tourism
11. Maintenance of an information clearinghouse for use by artists, organizations, available space and related information
12. Creation of a strategic plan.

Notwithstanding any other provision of these Articles, this Creative Portland Corporation shall not carry on any activities not permitted to be carried on (a) by a corporation exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code of 1986 ("Code") or the corresponding section of any future tax code, or (b) by a corporation contributions to which are deductible under section 170(c)(2) of the Code.

ARTICLE SIXTH OF ARTICLES OF INCORPORATION OF CREATIVE PORTLAND CORPORATION

The City of Portland, Maine shall be the sole voting member of Creative Portland Corporation and is hereby designated the Corporator. The Corporator shall act by and through its City Council in all matters relating to Creative Portland Corporation. The rights, powers, and responsibilities of the Corporator shall be as follows:

The Corporator shall have the sole and exclusive right to vote at all meetings of the Creative Portland Corporation for such purposes or such other matters as may be prescribed for consideration by these Articles of Incorporation, the By-laws of the Creative Portland Corporation, amendments thereto, and the laws and statutes of the State of Maine, as from time to time constituted. Specifically, the Corporator shall have the following rights:

A) Addition of Corporators;
B) Creation of an additional Class of Corporators;
C) Appoint the Board of Directors and expand or contract its size;
D) Addition of one or more classes of Directors;
E) Appointment of Directors;
F) Removal of Directors;
G) Alteration, amendment or repeal of By-laws;
H) Amendment, modification or restatement of the Articles of Incorporation;
I) Dissolution, merger or consolidation of the Creative Portland Corporation;
J) Approval of the sale, lease or disposition (excluding mortgage or pledge) of all or substantially all of the assets or property of the Creative Portland Corporation;
K) Approval of the annual operating budget;
L) Any other matters which a majority of the Board voting to submit to the Corporator.

ATTACHMENT 1

ARTICLE EIGHTH OF ARTICLES OF INCORPORATIN OF CREATIVE PORTLAND CORPORATION

Other provisions of these Articles:

A. (1) It is intended that the Creative Portland Corporation shall be entitled to exemption from federal income tax under Section 501(c)(3) of the Internal Revenue Code and shall not be a private foundation under Section 509(a) of the Internal Revenue Code. Notwithstanding any other provision of these Articles, the Creative Portland Corporation shall not engage in any activity or exercise any power which would deprive it of any exception from federal income tax which the Creative Portland Corporation may receive under Section 501(c)(3) of the Internal Revenue Code and contributions to which a deduction may be claimed under Sections 170(c)(2), 2055(a)(2) of the Internal Revenue Code.

(2) No substantial part of the activities of the Creative Portland Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation and the Creative Portland Corporation shall not participate in or intervene in (including the publish in or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office; provided that the Creative Portland Corporation shall have the power to make an election under the Internal Revenue Code. Likewise, no substantial part of the activities of the Creative Portland Corporation shall be the provision of "commercial type insurance" within the meaning of Section 501(m) of the Code. Furthermore, the Creative Portland Corporation shall not engage in any activities that are unlawful under applicable federal, state or local laws.

(3) The Creative Portland Corporation is not organized for pecuniary profit and shall not have any capital stock. All the assets and income of the Creative Portland Corporation shall be used exclusively for its arts related, charitable, scientific and educational purposes. No part of the net earnings of the Creative Portland Corporation shall inure to the benefit of, or be distributable to, its members, trustees, officers, or other private persons; provided, however, that nothing contained herein shall be construed to prevent the payment by the Creative Portland Corporation of the reasonable compensation to employees and reasonable expenses of Officers and employees of the Creative Portland Corporation for services rendered.

B. If the Creative Portland Corporation be dissolved or its legal existence terminated, either voluntarily or involuntarily, or upon final liquidation of the Creative Portland Corporation, none of its assets shall inure to the benefit of any private individual, and all of its assets remaining after payment of all of its just debts and liabilities, and creation of a reasonable reserve for contingent liabilities, if any, shall be distributed to one or more organizations which the Board of Directors then determines is qualified both as an exempt organization under Section 501(c)(3) of the Internal Revenue Code, and as an organization engaged in activities substantially similar to those of the Creative Portland Corporation (within the meaning of 13-B M.R.S.A. § 407).

C. The Creative Portland Corporation shall be an equal opportunity employer, shall not discriminate on the basis of age, race, religion, color, creed, sex, financial status, handicap or national origin:

(1) in the persons served, or in the manner of service; or
(2) in the hiring, assignment, promotion, salary determination, or other conditions of staff employment; or
(3) in the membership of the Board of Directors.

D. Each reference in these Articles of Incorporation to a Section in the Internal Revenue Code or the Maine Non-Profit Corporation Act shall be deemed to include a reference to such code or such act as the same may hereafter be amended and to be the corresponding provision of any such future United States Internal Revenue or Maine Non-Profit Corporation Act, as the case may be.

Filer Contact Cover Letter

To: Department of the Secretary of State
Division of Corporations, UCC and Commissions
101 State House Station
Augusta, ME 04333-0101

Tel. (207) 624-7752

Name of Entity (s):

Creative Portland Corporation

List type of filing(s) enclosed (i.e. Articles of Incorporation, Articles of Merger, Articles of Amendment, Certificate of Correction, etc.) Attach additional pages as needed.

Articles of Incorportion

Special handling request(s): (check all that apply)

- ☐ Hold for pick up
- ☐ Expedited filing - 24 hour service ($50 additional filing fee per entity, per service)
- ☐ Expedited filing - Immediate service ($100 additional filing fee per entity, per service)

Total filing fee(s) enclosed: $ ____________

Contact Information – questions regarding the above filing(s), please call or email: (failure to provide a contact name and telephone number or email address will result in the return of the erroneous filing (s) by the Secretary of State's office)

________________________ (Name of contact person)

________________________ (Daytime telephone number)

________________________ (Email address)

The enclosed filing(s) and fee(s) are submitted for filing. Please return the attested copy to the following address:

________________________ (Name of attested recipient)

________________________ (Firm or Company)

________________________ (Mailing Address)

________________________ (City, State & Zip)

For Corporate Incorporators*

Name of Corporate Incorporator ____

By ______________________________ Street ______________________________
(signature of officer) (principal business location)

______________________________ ______________________________
(type or print name and capacity) (city, state and zip code)

Name of Corporate Incorporator ____

By ______________________________ Street ______________________________
(signature of officer) (principal business location)

______________________________ ______________________________
(type or print name and capacity) (city, state and zip code)

***Articles are to be executed as follows:**

If a corporation is an incorporator (13-B MRSA §401), the name of the corporation should be typed or printed and signed on its behalf by an officer of the corporation. The articles of incorporation must be accompanied by a certificate of an appropriate officer of the corporation, not the person signing the articles, certifying that the person executing the articles on behalf of the corporation was duly authorized to do so.

Please remit your payment made payable to the Maine Secretary of State.

Submit completed form to: **Secretary of State**
Division of Corporations, UCC and Commissions
101 State House Station
Augusta, ME 04333-0101
Telephone Inquiries: **(207) 624-7752** Email Inquiries: CEC.Corporations@Maine.gov

ATTACHMENT 2

BYLAWS OF THE CREATIVE PORTLAND CORPORATION

ARTICLE 1
NAME, PRINCIPAL OFFICE, CORPORATE SEAL

Section 1.1. Name. The name of this corporation shall be the Creative Portland Corporation.

Section 1.2. Principal Office. The principal office for the conduct of the activities of the corporation shall be located at Portland City Hall, 389 Congress Street, Portland, Maine.

Section 1.3. Corporate Seal. The corporate seal of the corporation shall be circular in form and shall bear the words and figures "Creative Portland Corporation," the word "Maine" and the year of the corporation's incorporation. The form of such seal may be altered from time to time by the Board of Directors.

Section 1.4. Registered Office. The Registered Office of the Corporation is at 389 Congress Street, Portland, Maine. The address of the Registered Office may be changed from time to time by the Board of Directors or by the Registered Agent.

Section 1.5. Registered Agent. The Registered Agent of the Corporation is the person designated in the Articles of Incorporation, as amended from time to time by the Board of Directors.

ARTICLE II
PURPOSES

Section 2.1. General Purposes. The Corporation is organized and shall be operated on a non-profit basis to receive donations, grants and contributions in support of the City of Portland's economic development efforts which enhance and create creative economy business and arts district development and employment opportunities including:

B. Build Portland's identity as an international creative center;

C. Develop publicly supported and/or affordable space for artists, including performance space, office space, studio space, housing, and exhibition space;

D. Increase collaboration, coordination, and communication within Portland's creative economy;

E. Provide resources and support for community events and cultural tourism;

F. Recruit creative industries;

G. Provide timely input on Portland's development projects that could contribute to the creative economy;

H. Acquire, hold, own manage, dispose or liquidate property, upon City Council approval, for the purpose of advancing the creative economy and promoting employment opportunities in the City of Portland; and

I. Implement, facilitate and administer programs which enhance creative opportunities in Portland as identified by the Creative Economy Steering Committee in a Report of said Committee dated October 2008, on file in the City's Office of Planning, including but not limited to:

1. Promotion of the Creative Enterprises Cluster
2. Development of the Arts District
3. Creation of a Center for the Arts
4. Creation of a Creative Economy Website and Clearinghouse
5. Identification and Supporting of "Tipping Point" Projects
6. Conduct Creative Economy Analyses
7. Creation of Programming Strategy for Current Events and Cultural Activities
8. Provision of resources and support for community events and cultural tourism
9. Recruitment of Creative Industries
10. Promotion of cultural tourism
11. Maintenance of an information clearinghouse for use by artists, organizations, available space and related information
12. Creation of a strategic plan.

Section 2.2. Powers. This Corporation shall have all such powers as are authorized to non-profit corporations by the Maine Nonprofit Corporations Act. The corporation shall neither have nor exercise any power, nor shall it engage directly or indirectly in any activity that would invalidate its status (i) as a corporation which is exempt from federal income taxation as described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or (ii) as a corporation, contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code of 1986, as amended.

Section 2.3. Prohibition of the Inurement of Assets and Income to Private Persons. The corporation is not organized for pecuniary profit and shall not have any capital stock. No part of its net earnings or of its principal shall inure to the benefit of any officer or director of the corporation, or any other individual, partnership or corporation, but reimbursements for expenditures or the payment of reasonable compensation for services rendered shall not be deemed to be a distribution of earnings or principal.

Section 2.4. Dissolution. If this Corporation is dissolved or its legal existence terminated, either voluntarily or involuntarily, or upon final liquidation of the Corporation, none of its assets shall inure to the benefit of any private individual, and all of its assets remaining after payment of all of its liabilities shall be distributed to one or more organizations which the Board of Directors then determines is qualified both as an exempt organization under Section 501(c)(3) of the Internal Revenue Code, and as an organization engaged in activities substantially similar to those of this Corporation (within the meaning of 13-B M.R.S.A. §407).

Section 2.5 Tax exempt Status. It is intended that the Corporation shall have and continue to have the status of a corporation which is exempt from federal income tax under Section 501(a) of the Internal Revenue Code of 1986, as amended, or successor provisions of federal tax law (the "Internal Revenue Code") as an organization described in Section 501(c)(3) of such Code, and to which contributions are deductible under Section 170(c)(2) and 2055(a)(2) of the Internal Revenue Code, which is other than a private foundation as defined in Section 509(A) of the Internal Revenue Code. The Articles of Incorporation and these Bylaws shall be construed accordingly, and all powers and activities shall be limited accordingly.

No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation; provided that the Corporation shall have the power to make an election under Section 501(h) of the Internal Revenue Code. Likewise, the Corporation shall not participate or intervene in any manner or to any extent in any political campaign on behalf of any candidate for public office. Furthermore, the Corporation shall not engage in any activities that are unlawful under applicable federal, state or local laws, including, but not limited to, activities prohibited for an exempt organization under Section 501(c)(3) of the Internal Revenue Code and regulations thereunder as they now exist or as they may hereafter be amended.

ARTICLE III
MEMBERSHIP

Section 3.1. Member. The sole member of the Corporation shall be the City of Portland, Maine. The sole member of the Corporation shall be referred to as the "Corporator" for the purposes of the Articles of Incorporation and these Bylaws.

Section 3.2 General. In addition to the other powers of the Corporator listed in Section 3.3 hereof, the Corporator shall have the responsibility for the appointment of the Board of Directors of the Corporation, which Board has the ultimate responsibility for governing the Corporation. The rights and responsibilities of the Corporator, may be changed from time to time by an amendment to the Articles of Incorporation (to the extent required by law) and these Bylaws.

Section 3.3. Powers. The Corporator shall have only those rights set forth in the Articles of Incorporation, as restated in these Bylaws. Such rights are as follows:

A. The establishment of the size of the Board of Directors within the limits described in Section 4.2 hereof;

B. The appointment of Directors pursuant to Article IV hereof, with the exception of filling of a vacant Board seat as provided in Section 4.5 hereof;

C. The removal of Directors from the Board of Directors;

D. The amendment, restatement, or modification of the Articles of Incorporation or of the Bylaws of this Corporation;

E. The approval of the sale, lease, or other disposition (excluding by mortgage or pledge for purposes of security) of all, or substantially all, of the assets and property of the Corporation;

F. The dissolution of the Corporation or its merger with or consolidation with another corporation; and

G. Any other matter which a majority of the Board of Directors voting on the matter votes to submit to the Member.

Section 3.4 Annual Meetings. The Annual Meeting of the Corporator shall be held at a regular meeting of the City Council in the month of November of each year at such place and time as shall be fixed by the Board of Directors. In the event of a failure for any reason to hold an Annual Meeting as aforesaid, any business which may properly be transacted at an Annual Meeting, including the election of Directors, may be transacted at a Special Meeting.

Section 3.5 Special Meetings. Special Meetings of the Corporator may be called at any time by the President or a majority of the Directors.

Section 3.6. Notice of Meetings. Notice of all meetings of the Corporator shall be given by the Secretary or in his or her absence or disability by the President, by mailing or emailing to the Corporator a written notice specifying the time and place of the meeting, such notice to be addressed to the Corporator and emailed or mailed (postage prepaid) at least five (5) but not more than fifty (50) days before the meeting.

Section 3.7. Action by Unanimous Consent. Any action required or permitted to be taken at a meeting of the Corporator may be taken without a meeting as long as consent in writing, setting forth the action so taken shall be signed by the Corporator, and filed with the minutes of the meetings of the Corporator.

Section 3.8. Manner of Acting. The act of the Corporator, present in person or by proxy at a meeting, shall be the valid act of the Corporator.

ARTICLE IV
BOARD OF DIRECTORS

Section 4.1. Management by Board. The affairs of the Corporation shall be managed by its Board of Directors, which may exercise all powers of the Corporation and do all lawful acts and things necessary or appropriate to carry out the purposes of the Corporation.

Section 4.2. Number of Directors; Eligibility. The Board of Directors shall consist of thirteen (13) individuals eleven (11) of whom shall be Directors appointed by the Corporator through the Portland City Council and two (2) of whom shall be ex officio members of the Board pursuant to Section 4.4 of this Article. Of the thirteen (13) Directors, the Corporator shall endeavor to appoint three (3) representatives from each private creative category (creative enterprises, creative organizations, and artists), and two (2) members representing higher education and real estate. All Directors, with the exception of the ex officio members, must be either residents of, own a business located in or work in the City of Portland.

Section 4.3. Nomination. The Corporator shall receive nominations from the Portland City Council Appointments Committee, which shall supplement its regular Committee recruitment efforts by advertising in the local media and by otherwise publicizing the vacancies as widely as possible.

Section 4.4. Ex Officio Members of the Board of Directors. There shall be two (2) individuals who shall each be deemed an ex officio members of the Board of Directors by virtue of his or her holding the position of (1) Mayor or City Council member of the City of Portland as appointed by the Corporator; and (2) City Manager or designee of the City Manager associated with the Economic Development Division as appointed by the Corporator.

The provisions of these Bylaws contained in Section 4.5 regarding term of office, Sections 3.2 and 3.3 regarding appointment of directors and Section 4.7 regarding vacancies shall not apply to said ex officio members. The City Manager or designee shall be a member of the Board of Directors so long as he or she continues to serve in the office by virtue of his or her employment in the said capacity by the City; and the Mayor or City Council member shall be appointed annually; and said members shall enjoy all the rights, privileges and responsibilities of all other member of the Board of Directors, including, without limitation, voting privileges, except, however that no ex officio member may serve as President of the Board of Directors. The Board of Directors may take action by unanimous consent only with the consent of said ex officio member. Ex officio members shall be counted as Directors for purposes of determination of the residency/business requirements in Section 4.2 of this Article. Ex officio members shall be entitled to the same indemnification rights available to all Directors under the law, these Bylaws or otherwise.

Section 4.5. Terms of Office. Five (5) Directors shall be initially appointed by the Corporator to hold office until the Second Annual Meeting of the Corporation following the incorporation of this Corporation; three (3) Directors shall be initially appointed by the Corporator to hold office until the Third Annual Meeting of the Corporator following the incorporation of this Corporation; and three (3) Directors shall be initially appointed by the Corporator to hold office until the fourth Annual Meeting of the Corporation following the incorporation of this Corporation. The Corporator shall specify the term of office for which each Director is initially appointed. Thereafter, Directors shall be appointed by the Corporator at Annual Meetings of the Corporation to serve as such for a term of three (3) years. Each Director shall serve until his or her successor shall be duly qualified and appointed. Directors shall be nominated prior to the Annual Meeting of the Corporation. No Director shall succeed himself or herself after his or her initial term for more than two (2) full consecutive terms, and no Director shall serve for more than nine years.

Section 4.6. Voting. Each Director shall be entitled to one (1) vote.

Section 4.7. Vacancies. Any vacancy occurring on the Board of Directors may be filled by the Corporator by appointment of an individual qualifying and eligible for such position. A person appointed to fill a vacancy which occurs other than by reason of an increase in the number of Directors shall serve the remainder of the term of the individual he/she is replacing unless otherwise ordered by the Corporator.

Section 4.8. Resignation. Any Director may resign at any time by giving written notice to the President of the Corporation. Such resignation shall take effect on the date of receipt or at any later time specified therein.

ARTICLE V
MEETINGS

Section 5.1. Annual Meeting. The Annual Meeting of the Board of Directors shall be held without call at the Board's Regular Meeting in the month of November, at the principal office of the Corporation or at some other place fixed by the President.

Section 5.2. Regular Meeting. Other Regular Meetings of the Board of Directors may be held, without call, at such place, date and time as shall be fixed from time to time by resolution of the Board of Directors.

Section 5.3. Special Meetings. Special Meetings of the Board of Directors may be called by such persons as are authorized by law to call Special Meetings. The place, date and time of the Special Meeting shall be fixed in the call therefor.

Section 5.4. Notice of Meetings. Notice of each Annual, Regular or Special Meeting of the Board of Directors shall be given by the person or persons calling the same or by the President or Secretary at least three (3) days in advance thereof. Notice may be given in writing, by email, by telephone, by oral statement or by any other means to the Directors in person or by delivery of a writing to his residence or business address. Notice given in writing by mail shall be deemed given on the day that the same is deposited in the U.S. mails as first class mail, postage prepaid. Neither the business to be transacted there at, nor the purposes of any Annual, Regular or Special Meeting of the Board of Directors need to be specified in the notice of such meeting, except when otherwise provided by law.

Section 5.5. Conduct of Meetings. The final actions of the Board of Directors shall be taken openly, and subject to provisions of the Maine Freedom of Access Law, deliberations of the Board shall be conducted openly, and the records of their actions shall be open to public inspection. The Board may go into executive session from time to time as allowed by the Maine Freedom of Access Law.

Section 5.6. Quorum. Eight (8) Directors shall constitute a quorum for the transaction of business. The act of at least six (6) of the directors present at a meeting of the Board of Directors at which a quorum is present shall be the act of the Board of Directors.

Section 5.7. Informal Action by Directors. Action of the Directors may be taken in accordance with the provisions of Section 708 of the Maine Nonprofit Corporations Act, Title 13-B M.R.S.A. as it may be amended from time to time. In amplification of, and not in limitation of the foregoing, action taken by agreement of a majority of Directors shall be deemed action of the Board of Directors if all Directors know of the action taken and no Director makes prompt objection to such action. Objection by a Director shall be effective if written objection to any specific action so taken is filed with the Secretary of this Corporation within thirty (30) days of such specific action.

Section 5.8. Notice. Whenever under the provisions of the statutes, Articles of Incorporation or these Bylaws notice is required to be given to any Director, such notice must be given in writing by personal delivery, by email, mail, or by telephone, addressed to such Director at his or her address as it appears on the records of the Corporation, with postage or other delivery fees prepaid, or at his or her telephone number as it appears on the records of the Corporation. Notice by mail shall be deemed to be given at the time it is deposited in the United States mail.

Section 5.9. Indemnification. This corporation shall in all cases indemnify any person who 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, by reason of the fact that he or she is or was a Director, officer, employee or agent of this corporation, against expenses, including attorney's fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding to the maximum extent permitted by law, including, without limitation, 13-B M.R.S.A. §714 as it may be amended from time to time, and acts additional thereto and supplementary thereof, to which reference is made.

ARTICLE VI
OFFICERS AND AGENTS

Section 6.1. Officers. The officers of the corporation shall be chosen annually at the Annual Meeting of the Board of Directors, and shall be a President, a Treasurer and a Secretary. One individual may serve in more than one such office. The Board of Directors may also appoint one or more Assistant Secretaries and Assistant Treasurers.

Section 6.2. Term. Officers shall be elected for a term of one (1) year to serve until the next Annual Meeting of the Board of Directors or until their successors are duly chosen and qualified. Officers may succeed themselves for any period of years. The initial officers shall be appointed by the Board of Directors at their first meeting following incorporation to serve as such until the first Annual Meeting of the Board of Directors.

Section 6.3. Removal. Any officer of the corporation may be removed by the Board of Directors whenever in their judgment the best interests of the corporation will be served thereby.

Section 6.4. Vacancies. Any vacancy in any office (except the office of Director) may be filled by the Board of Directors.

Section 6.5. President. The President of the Corporation shall be elected from among the members of the Board of Directors, provided however that no ex officio member may be permitted to serve as President.

Section 6.6. Treasurer. The Treasurer shall be the chief financial officer of the corporation and, together with the Assistant Treasurer, shall have the responsibility for all corporate funds and securities and shall maintain full and accurate accounts of receipts and disbursements in a book or books kept for that purpose. The Treasurer shall perform such other duties as may be prescribed by the Board of Directors or the President, under whose supervision the Treasurer shall be.

Section 6.7. Secretary. The Secretary shall attend all meetings of Corporation and the Board of Directors and keep minutes of all meetings of the Corporation and the Board of Directors in a book or books kept for that purpose. The Secretary shall perform such other duties as may be prescribed by the Board of Directors or the President, under whose supervision the Secretary shall be. The Secretary, and any Assistant Secretaries, shall have authority to affix the corporate seal to any instrument which requires it, and when so affixed, it may be attested by the Secretary or by any Assistant Secretary.

Section 6.8. The Assistant Treasurer and Assistant Secretary. One (1) Assistant Secretary shall be appointed by the Board of Directors. The individual appointed Assistant Secretary shall be the Director of Economic Development Division of the City of Portland and shall be the principal staff person for the Corporation. One (1) Assistant Treasurer shall be appointed by the Board of Directors. The individual appointed as the Assistant Treasurer shall be that individual who holds the position of Treasurer for the City of Portland. The Assistant Treasurer shall, together with the Treasurer, have the responsibility for all corporate funds and securities and shall maintain full and accurate accounts of receipts and disbursements in a book or books kept for that purpose. The Assistant Treasurer shall have such other powers and duties as may be prescribed from time to time by the Board of Directors. Assistant Secretaries and Assistant Treasurers shall not be members of the Board of Directors.

Section 6.9. Other Employees. Other employees of the Corporation may be appointed by the Board of Directors, and if so appointed, shall be supervised by, and shall serve under the direction of the Assistant Secretary.

ARTICLE VII
ADOPTION, AMENDMENT

Section 7.1. Generally. These Bylaws may be amended or repealed or new Bylaws adopted only by the affirmative vote of the Corporator, provided, however, that the Bylaws may not be amended in such a way as to cause the Corporation to lose its status (i) as a corporation which is exempt from federal income taxation as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or (ii) as a corporation to which contributions are deductible under Section 170(c)(2) of the Internal Revenue Code of 1986, as amended, or (iii) as a corporation described in Section 170(b)(1)(A)(vi) of the Internal Revenue Code of 1986, as amended.

Section 7.2. Amendments. These Bylaws may be amended solely by the Corporator.

ARTICLE IX
CONFLICT OF INTEREST

Section 8.1. Avoidance of Conflict or the Appearance of such Conflict. Every Director shall endeavor to avoid conflicts of interest or the appearance of such conflicts or impropriety as provided by state statute, by full disclosure at all times and by abstention in the appropriate circumstances.

Section 8.1. Disclosure. Any Director who has a direct interest in any matter to be considered by the Board shall fully disclose that interest to the Board. If a Director is unsure whether a direct interest exists in a particular matter or if the issue is otherwise raised in good faith, the Director shall disclose the pertinent facts to the Board, and the Board shall determine the issue.

Section 8.3. Abstention. When the Director has so disclosed and is deemed to have a direct interest in a matter, the Director shall abstain from voting on the matter and from otherwise participating in the decision-making process on the matter. Notation of the disclosure and abstention of the Director shall be recorded in the minutes.

Section 8.4. Direct Interest. For purposes of this Article, direct interest in a matter shall mean:

A. A substantial financial interest of the Director or of the spouse or dependent child of the Director;

B. A substantial financial interest of any employer, partner, associate, co-shareholder or other co-venturer of the Director;

C. A substantial financial interest of the Director in any entity which has a substantial financial interest in the matter; or

D. Any other substantial interest of the Director which the Director or the Board believes might reasonably impair the Director's ability to act independently.

ATTEST:____________________ DATE:____________________

Secretary

Portland
Society of
Architects

Mr. James I. Cohen
62 Deepwood Drive
Portland, ME 04103

October 28, 2008

Dear Councilor Cohen,

The Portland Society of Architects applauds the work that you, city staff and the Creative Economy Steering Committee have accomplished over the last two years, in recognizing the importance creative enterprises have on the overall economic viability of this city. Much of what makes Portland one of the most livable cities in the U.S. is rooted in the visibility of the vibrant arts community. From a "world class" art museum, to the expanding array of artisan-made holiday street lighting ornaments, the First Friday Art walk and the award-winning architecture on Congress Street, the West End, and in the Old Port, the vitality of the Creative Economy enriches our daily lives.

Despite this positive energy, PSA does have concerns that over the last 20 years a number of architects and artists have relocated from Portland to surrounding communities to "set up shop". The reason in most cases is due to the scarcity of affordable workspace. Because of this trend, the Old Port, once a haven for the design community, has a shrinking number of artists, architects, and designers. We now understand that the fringe industrial areas of Bayside are quickly becoming priced beyond the means of many artists.

A Creative Portland Corporation that will administer and manage financial incentives as well as oversee Creative Economy related projects will send a clear message to the public; that the City of Portland supports the Creative Economy and is committed to keeping the arts community thriving, while helping it grow. For what appears to be a modest investment, Portland city, rich in history, is at the same time creating a future based on integrated economic disciplines.

The Portland Society of Architects requests that the City Council endorse the recommendations as put fourth in the Creative Economy Steering Committee's Report of Recommendations dated October 2008.

Respectfully Submitted,

The Board of Directors
Portland Society of Architects

P.O. Box 5321
Portland, Maine 04101

www.portlandarchitects.org