

Bay Area Restoration Council

CONSTITUTION

Draft – May 21, 2009

ARTICLE ONE

Name and Interpretation

1.01 NAME

The name of the organization shall be “Bay Area Restoration Council,” commonly referred to by the acronym “BARC.”

1.02 DEFINITIONS

In this constitution and in any and all by-laws hereinafter enacted by the Association, unless the context otherwise requires:

“Act” means the Corporations Act of Ontario, and any Act that may be substituted therefor, as from time to time amended;

“Bay” and/or “Harbour” refers, respectively to “Burlington Bay” and “Hamilton Harbour,” two terms which, for BARC’s purposes, apply interchangeably to the body of water located at the Western end of Lake Ontario and known by both names;

“Board” means the board of directors of BARC;

“By-laws” means any by-laws enacted of BARC from time to time in force and effect;

“Corporation” means the corporation incorporated as a corporation without share capital under the Act by Letters Patent dated the thirteenth day of June, 1991 and named Bay Area Restoration Council of Hamilton-Wentworth and Halton Regions Inc., commonly referred to in this document as “BARC”;

“Letters Patent” means the Letters Patent incorporating the Corporation, as from time to time amended and supplemented by supplementary Letters Patent;

“Meeting of members” includes an annual meeting of members and a special meeting of members;

“Members” shall refer to members of BARC, excluding associate members, as defined in Article Seven, which may be supplemented from time to time by membership policies enacted by the Corporation;

Gender-Specific Language: In the Constitution, all personal pronouns (he/she) and possessive pronouns (his/hers) shall be understood to be non-gender specific in application and, therefore, applying equally to people of both female and male genders.

ARTICLE TWO

Purpose of the Corporation

2.01

PURPOSE

The Objects of the Corporation are set out in the Articles of Incorporation. More specifically, the main purpose of the Corporation is promoting, monitoring, assessing and involving community members and stakeholders in the implementation of plans for the environmental protection and restoration of Hamilton Harbour and the Hamilton Harbour watershed as outlined in the Hamilton Harbour Remedial Action Plan. BARC works with all stakeholders to keep harbour restoration issues at the forefront of community discussions and decision-making. BARC strives to create a multi-use harbour that balances vibrant and diverse ecosystems with opportunities for public recreation along with a bay that is a regional economic engine.

ARTICLE THREE
Business of the Corporation

3.01 HEAD OFFICE

Until changed in accordance with the Act, the head office of the Corporation shall be within the Hamilton Harbour watershed, usually within in the City of Hamilton.

3.02 CORPORATE SEAL

Until changed in accordance with the Act, the corporate seal of the Corporation shall be in the form impressed hereon.

3.03 FINANCIAL YEAR

Until otherwise ordered by the board, the financial year of the Corporation shall end on the thirty-first day of March in each year.

3.04 EXECUTION OF INSTRUMENTS

Deeds, transfers, assignments, contracts, obligations, certificates and other instruments may be signed on behalf of the Corporation by any two of the President, the Treasurer and one other director authorized by the board to sign on behalf of the Corporation (usually the Vice-President). In addition, the board may from time to time direct the manner in which and the person or persons by whom any particular instrument or class of instruments may or shall be signed. Any person authorized to sign an instrument on behalf of the Corporation may affix the corporate seal thereto.

3.05 BANKING ARRANGEMENTS

The banking business of the Corporation shall be transacted with such banks, trust companies or other firms or corporations as may from time to time be designated by or under the authority of the board. Such banking business or any part thereof shall be transacted under such agreements, instructions and delegations of powers as the board may from time to time prescribe or authorize.

3.05 VOTING RIGHTS IN OTHER COMPANIES

The proper signing officers of the Corporation may execute and deliver instruments of proxy and arrange for the issuance of voting certificates or other evidence of the right to exercise the voting rights attaching to any shares or other securities held by the Corporation. Such instruments, certificates or other evidence shall be in favour of such person or persons as may be determined by the officers signing them or arranging therefor. In addition, the board may from time to time direct the manner in which or the person or persons by whom any particular voting rights or class of voting rights may or shall be exercised.

ARTICLE FOUR
Directors

4.01 NUMBER OF DIRECTORS AND QUORUM

The affairs of the Corporation shall be managed by its board of directors. The usual number of directors shall be ten, of whom five shall constitute a quorum. The board of directors may, from time to time and at its sole discretion, present to the membership for election, a slate of proposed board members numbering to a maximum of twelve. When the board membership is greater than ten members, quorum for the transaction of business shall be six members. Notwithstanding vacancies, the remaining directors may act as if constituting a quorum.

4.02 QUALIFICATION

No person shall be qualified as a director unless he shall be eighteen or more years of age and shall at the time of his election and throughout his term of office be a member of the Corporation.

4.03 ELECTION AND TERM

The directors of the Corporation shall be elected by vote of the membership. Each director shall hold office until the second annual meeting after his election. A director shall be ineligible for re-election after he has served three consecutive terms.

4.04 REMOVAL OF DIRECTORS

The members may, by resolution passed by at least two-thirds of the votes cast thereon at a general meeting of members called for the purpose, remove any director before the expiration of his term of office and may, by majority vote at that meeting, elect any person who otherwise meets the qualification criteria in his stead for the remainder of his term.

4.05 VACATION OF OFFICE

The office of a director shall be vacated upon the occurrence of any of the following events: (a) if a receiving order is made against him or if he makes an assignment under the Bankruptcy Act; (b) if an order is made declaring him to be a mentally incompetent person or incapable of managing his affairs; (c) if he ceases to be qualified as provided in section 4.02; (d) if he shall be removed from office by resolution of the members as provided in section 4.04; or (e) if by notice in writing to the Corporation he resigns his office and such resignation, if not effective immediately, becomes effective in accordance with its terms.

4.06 VACANCIES

Vacancies on the board may be filled for the remainder of the term of office either by the members at a general meeting of members called for that purpose or by the board if the remaining directors constitute a quorum. If the number of directors is increased, a vacancy or vacancies on the board to the number of the authorized increase shall thereby be deemed to have occurred which may be filled in the manner above provided.

4.07 CALLING OF MEETINGS

Meetings of the board shall be held from time to time at the call of the board or the President or any two directors. Notice of the time and place of every meeting so called shall be given to each director not less than 48 hours (excluding Saturdays, Sundays and bank holidays) before the time when the meeting is to be held, save that no notice of a meeting shall be necessary if all the directors are present or if those absent waive notice of or otherwise signify their consent to such meeting being held.

4.08 FIRST MEETING OF A NEWLY-ELECTED BOARD

Provided a quorum of directors is present, each newly-elected board may without notice hold its first meeting immediately following the meeting of members at which such board is elected.

4.09 REGULAR MEETINGS

The board may appoint a day or days in any month or months for regular meetings at a place and hour to be named. A copy of any resolution of the board fixing the place and time of regular meetings of the board shall be sent to each director forthwith after being passed, but no other notice shall be required for any such regular meeting.

4.10 PLACE OF MEETING

Meetings of the board shall be held at the head office of the Corporation or elsewhere in Ontario or, if the board so determines or any absent directors consent, at some place outside Ontario. Directors need not be present at the place of meeting in order to participate in the meeting if a telephone, video conference, internet link or other technological medium deemed satisfactory by both the chair of the meeting and the distant board member(s) allows those board members to participate actively in the meeting.

4.11 CHAIR

The President or, in his absence, a Vice-President who is a director shall be Chair of any meeting of directors. If no such officer be present, the directors present shall choose one of their number to be Chair.

4.12 VOTES TO GOVERN

At all meetings of the board every question shall be decided by a majority of the votes cast on the question. Where one or more directors abstain from voting, those votes shall not be included among the "votes cast" total though abstentions will be noted in the official record of the meeting.

4.13 INTEREST OF DIRECTORS IN CONTRACTS

Each and every director shall be disqualified by his office from contracting with the Corporation.

4.14 DECLARATION OF INTEREST

It shall be the duty of every director of the Corporation who is in any way, whether directly or indirectly, interested in a contract or arrangement or proposed contract or proposed arrangement with the Corporation to declare such interest to the extent, in the manner and at the time required by the Act, and to refrain from voting on such contract or arrangement.

4.15 REMUNERATION

The directors shall serve as such without remuneration. The Corporation may enact policies that allow for reimbursement of reasonable expenses incurred by directors and/or other BARC volunteers in the course of conducting the business of the Corporation.

4.16 EXECUTIVE COMMITTEE

The board may elect from its number an Executive Committee consisting of not less than three, which committee shall have power to fix its quorum at not less than a majority of its members and may exercise all the powers of the board, subject to any regulations imposed from time to time by the board.

4.17 OTHER COMMITTEES

The board of directors may by resolution create one or more other committees which may but need not include members of the board. Until otherwise provided, the President shall be a member ex officio of all committees. Other committees created by the board of directors shall be given written terms of reference by the board.

ARTICLE FIVE

Officers

5.01 ELECTION OF PRESIDENT

From time to time the board shall elect from among its members a President.

5.02 APPOINTMENT OF OTHER OFFICERS

From time to time the board shall appoint one or more Vice-Presidents, a Treasurer and such other officers as the board may determine. The officers so appointed may but need not be directors and one person may hold more than one office, save that the President may not hold the office of Treasurer.

5.04 PRESIDENT

The President shall have the general management and direction, subject to the authority of the board, of the business and affairs of the Corporation. When the Corporation employs staff, the President, with direction from the Board, may assign responsibility for day-to-day management of the Corporation to a member of the staff, usually the Executive Director when the position exists.

5.05 VICE-PRESIDENT

During the absence or disability of the President, his duties shall be performed and his powers exercised by the Vice-President or, if there are more than one, by the Vice-Presidents in order of seniority.

5.07 TREASURER

The Treasurer shall keep full and accurate books of account in which shall be recorded all receipts and disbursements of the Corporation and, under the direction of the board, shall control the deposit of money, the safekeeping of securities and the disbursement of the funds of the Corporation. The Treasurer shall render to the board whenever required an account of all his transactions as Treasurer and of the financial position of the Corporation.

5.08 OTHER OFFICERS

The duties of all other officers of the Corporation shall be such as the terms of their engagement call for or as the board or the President may prescribe. Any of the powers and duties of an officer to whom an assistant has been appointed may be exercised and performed by such assistant, unless the board or the President otherwise directs.

5.09 VARIATION OF DUTIES

From time to time the board may vary, add to or limit the powers and duties of any officer.

5.10 AGENTS AND ATTORNEYS

The board shall have power from time to time to appoint agents or attorneys for the Corporation in or out of Canada with such powers of management or otherwise (including the power to sub-delegate) as may be thought fit.

5.11 FIDELITY BONDS

The board may require such officers, employees and agents of the Corporation as the board deems advisable to furnish bonds for the faithful discharge of their duties, in such form and with such surety as the board may from time to time prescribe.

ARTICLE SIX
Protection of Directors and Officers

6.01 LIMITATION OF LIABILITY

No director or officer of the Corporation shall be liable for the acts, receipts, neglects or defaults of any other director or officer or employee or agent appointed by the board to represent the Corporation, or for joining in any receipt or other act for conformity, or for any loss, damage or expense happening to the Corporation through the insufficiency or deficiency of title to any property acquired by order of the board for or on behalf of the Corporation, or for the insufficiency or deficiency of any security in or upon which any of the moneys of the Corporation shall be invested, or for any loss or damage arising from the bankruptcy, insolvency or tortious act of any person with whom any of the moneys, securities or effects of the Corporation shall be deposited, or for any loss occasioned by any error of judgment or oversight on his part, or for any other loss, damage or misfortune whatever which shall happen in the execution of the duties of his office or in relation thereto unless the same are occasioned by his own wilful neglect or default.

6.02 INDEMNITY

Every director and officer of the Corporation and his heirs, executors and administrators and estate and effects, respectively, shall from time to time and at all times be indemnified and saved harmless out of the funds of the Corporation from and against:

- (a) all costs, charges and expenses whatsoever that such director or officer sustains or incurs in or about any action, suit or proceeding that is brought, commenced or prosecuted against him for or in respect of any act, deed, matter or thing whatsoever made, done or permitted by him in or about the execution of the duties of his office; and
- (b) all other costs, charges and expenses that he sustains or incurs in or about or in relation to the affairs of the Corporation except such costs, charges or expenses as are occasioned by his own wilful neglect or default.

6.03 VALIDITY OF ACTIONS

No act or proceeding of any director or board of directors shall be deemed invalid or ineffective by reason of the subsequent ascertainment of any irregularity in regard to such act or proceeding or the qualification of such director or board of directors.

6.04 DIRECTORS' RELIANCE

Directors may rely upon the accuracy of any statement or report prepared by the Corporation's auditors and shall not be responsible or held liable for any loss or damage resulting from acting upon such statement or report.

ARTICLE SEVEN

Members

7.01 MEMBERS

There shall be two classes of members in the Corporation: ordinary members who have the right to vote in all matters brought to the members, and associate members who shall have all the rights and privilege of an ordinary member except that associate members shall be non-voting.

7.02 REPRESENTATION

When inviting and admitting persons who have an interest in, and support, the environmental protection and restoration of Hamilton Harbour to membership in BARC, the board and its appointees and agents shall endeavour to attract a diverse membership that represents the watershed communities and stakeholders as much as possible so that the BARC membership represents a diversity of ages, genders, ethnicities, races and abilities, as well as the spectrum of the social, economic and environmental constituencies in the area, including but not limited to political, educational, business, industrial, environmental and citizen groups.

7.03

VOTING RIGHTS

Each ordinary BARC member shall be entitled to one vote at all meetings of the Corporation when such votes are before the membership. Each ordinary member shall pay annual membership dues, when such dues apply according to membership policies resolved by the board of directors according to the provisions of as set by resolution of the directors of the Corporation from time to time as provided in paragraph 7.08.

When when the Corporation's membership policies allow for membership without payment of dues, an ordinary member must be listed on the BARC membership roster maintained at the BARC Head Office or in the possession of the President, by 5:00 pm local time on the day preceeding the vote in question.

The associate members shall not be entitled to vote at meetings of members of the Corporation. Each associate member shall pay annual membership dues, if applicable, as set by resolution of the directors of the Corporation from time to time as provided in paragraph 7.08.

7.04

MEMBERSHIP ROSTER

The Corporation shall maintain, either in the Head Office of BARC or in the possession of the President, a membership roster listing the names and, at a minimum, one valid method of contact for each ordinary member and associate member.

Each ordinary member shall promptly be informed by the Secretary of his admission as a member. The associate members may include the members of the Bay Area Implementation Team and such other persons as are admitted as associate members by resolution of the board of directors. Each associate member shall promptly be informed by the Secretary of his admission as an associate member.

7.05

TERM OF MEMBERSHIP

The interest of the members in the Corporation is not transferable and lapses and ceases to exist upon his death or when he ceases to be a member by resignation or otherwise in accordance with the by-laws of the Corporation.

7.06 RESIGNATION
Members may resign by resignation in writing which shall be effective upon any date or time on or after the execution of the instrument of resignation. In the case of resignation, a member shall remain liable for payment of any assessment or other sum levied or which became payable by him to the Corporation prior to acceptance of his resignation.

7.07 REMOVAL
Upon thirty days' notice in writing to a member of the Corporation, the board may pass a resolution authorizing the removal of such member from the register of members of the Corporation and thereupon such person shall cease to be a member of the Corporation. Any such member may re-apply for membership in the corporation.

7.08 DUES
The dues or fees, if any, payable by members shall from time to time be fixed by the board of directors, which vote shall become effective only when confirmed by a vote of the members at an annual or general meeting.

ARTICLE EIGHT
Meetings of Members

8.01 ANNUAL MEETINGS
The annual meeting of the members shall be held at such time and on such day in each year as the board or the President may from time to time determine, provided that an annual meeting shall be held at least every fifteen months, for the purpose of receiving the reports and statements required by the Act to be placed before the annual meeting, electing directors, appointing auditors and fixing or authorizing the board to fix their remuneration, and for the transaction of such other business as may properly be brought before the meeting.

8.02 SPECIAL MEETINGS
The board or the President shall have power to call a special meeting of members at any time.

8.03 PLACE OF MEETINGS

Meetings of members shall be held at the head office of the Corporation or elsewhere in the municipality in which the head office is situated or, pursuant to section 8.05 or if the board shall so determine, at some other place in Ontario.

8.04 NOTICE OF MEETINGS

Notice of the time and place of each meeting of members shall be given in the manner hereinafter provided not less than twenty-one (21) days before the day on which the meeting is to be held to each member of record at the close of business on the day on which the notice is given who is entered in the books of the Corporation. Notice of a special meeting of members shall state the general nature of the business to be transacted thereat. The auditors of the Corporation are entitled to receive all notices and other communications relating to any meetings of members that any member is entitled to receive.

8.05 MEETINGS WITHOUT NOTICE

A meeting of members may be held at any time and place without notice if all the members entitled to vote thereat are present in person or represented by proxy, or if those not present or represented by proxy waive notice or otherwise consent to such meeting being held, and at such meeting any business may be transacted which the Corporation at a meeting of members may transact.

8.06 CHAIR, SECRETARY AND SCRUTINEERS

The President or, in his absence, a vice-President who is a director of the Corporation shall be Chair of any meeting of members. If no such officer is present within fifteen minutes from the time fixed for holding the meeting, the persons present and entitled to vote shall choose one of their number to be Chair. The Chair shall appoint some person, who need not be a member, to act as secretary of the meeting. If desired, one or more scrutineers, who need not be members, may be appointed by a resolution of the members or by the Chair with the consent of the meeting.

8.07 PERSONS ENTITLED TO BE PRESENT

The only persons entitled to attend a meeting of members shall be the ordinary members who are those entitled to vote thereat, the auditors of the Corporation and others including the associate members, who although not entitled to vote, are entitled or required under any provision of the Act or the Letters Patent or by-laws to be present at the meeting. Any other person may be admitted only on the invitation of the Chair of the meeting or with the consent of the meeting.

8.08 QUORUM

A quorum for the transaction of business at any meeting of members shall be the lesser of 25 members or ten percent of members.

8.09 RIGHT TO VOTE

At any meeting of members every person shall be entitled to vote who is at the time of the meeting entered in the books of the Corporation as an ordinary member.

8.10 ALTERNATES

At any meeting of members an alternate duly and sufficiently appointed by an ordinary member who is an incorporated or unincorporated organization shall be entitled to exercise, subject to any restrictions expressed in the instrument appointing him, the same voting rights that the member appointing him would be entitled to exercise if present at the meeting. An alternate need not be a member. An instrument appointing an alternate shall be in writing and, if the appointer is corporation, shall be under its corporate seal, subject to the Act. An instrument appointing an alternate shall be acted on only if, prior to the time of voting, it is deposited with the President of the Corporation or of the meeting or as may be directed in the notice calling the meeting.

8.11 VOTES TO GOVERN

At any meeting every question shall, unless otherwise required by the Letters Patent or by-laws of the Corporation or by law, be determined by the majority of the votes duly cast on the question.

- 8.12 **AMENDING THE CONSTITUTION AND/OR CREATING/AMENDING BY-LAWS**
The Constitution and any by-law(s) of the Corporation may be amended, suspended or repealed in whole or in part by two-thirds of the votes cast at an annual meeting or at a special meeting of the members duly called to consider the bylaw(s). The proposed amendment(s) shall have been submitted to the members at the previous annual meeting or in writing to every ordinary member at least twenty-one days before the meeting at which the amendment(s) is (are) to be voted upon.
- 8.13 **SHOW OF HANDS**
Any question at a meeting of members shall be decided by a show of hands unless, after a show of hands, a poll thereon is required or demanded as hereinafter provided. Upon a show of hands every person who is present and entitled to vote shall have one vote. Whenever a vote by show of hands shall have been taken upon a question, unless a poll thereon is so required or demanded, a declaration by the Chair of the meeting that the vote upon the question has been carried or carried by a particular majority or not carried and an entry to that effect in the minutes of the meeting shall be prima facie evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against any resolution or other proceeding in respect of the said question, and the result of the vote so taken shall be the decision of the members upon the said question.
- 8.14 **POLLS**
After a show of hands has been taken on any question, the Chair may require or any person entitled to vote on the question may demand a poll thereon. A poll so required or demanded shall be taken in such manner as the Chair shall direct. A demand for a poll may be withdrawn at any time prior to the taking of the poll. Upon a poll each member present in person or represented by alternate and entitled to vote shall have one vote and the result of the poll shall be the decision of the members upon the said question.
- 8.15 **CASTING VOTE**
In case of an equality of votes at any meeting of members either upon a show of hands or upon a poll, the Chair of the meeting, who shall not ordinarily vote, shall be entitled to a casting vote.

8.16 ADJOURNMENT

The Chair at a meeting of members may, with the consent of the meeting and subject to such conditions as the meeting may decide, adjourn the meeting from time to time and from place to place.

8.17 PROCEDURE AT MEETINGS

Meetings shall be conducted in according to the procedural rules known as Robert's Rules of Order, though the Chair may modify said rules temporarily in the interest of efficiency.

ARTICLE NINE

Notices

9.01 METHOD OF GIVING NOTICE

Any notice (which term in this Article 8 includes any communication or document) to be given (which term in this Article 8 includes sent, delivered or served) pursuant to the Act, the Letters Patent, the by-laws or otherwise to a member, director, officer or auditor shall be sufficiently given if delivered personally to the person to whom it is to be given or if delivered to his last address as recorded in the books of the Corporation or if mailed by prepaid ordinary mail addressed to him at his said address or if sent to him at his said address by any means of wire or wireless or any other form of transmitted or recorded communication including electronic mail, instant messaging or other technology-based media as may become available. For the purposes of notice as described in this article, notice shall not be deemed to be properly given if notice is posted on the Corporation's World Wide Web site (or future technological equivalent) without a complementary form of communication that can be actively sent to members in order to direct them to the web posting or equivalent.

The President or his designate may change the address on the Corporation's books of any member, director, officer or auditor in accordance with any information believed by him to be reliable. A notice so delivered shall be deemed to have been given when it is delivered personally or at the address aforesaid; a notice so mailed shall be deemed to have been given when deposited in a post office or public letter box; a notice sent directly by any digital medium such as electronic mail shall be deemed to have been given when it appears in the appropriate recipient's list of received messages; and a notice sent by any means of wire or wireless or any other form of transmitted or recorded communication shall be deemed to have been given when delivered to the appropriate communication company or agency or its representative for dispatch.

9.02 DETERMINATION OF TIME

In determining the date when notice must be given under any provision requiring a specified number of days' notice of any meeting or other event, the date of giving the notice shall be excluded and the date of the meeting or other event shall be included.

9.03 OMISSIONS AND ERRORS

The accidental omission to give any notice to any member, director, officer or auditor or the non-receipt of any notice by any member, director, officer or auditor or any error in any notice not affecting the substance thereof shall not invalidate any action taken at any meeting held pursuant to such notice or otherwise founded thereon.

9.04 WAIVER OF NOTICE

Any member (or his duly appointed alternate), director, officer or auditor may waive any notice required to be given to him under any provision of the Act, the Letters Patent, the by-laws or otherwise and such waiver., whether given before or after the meeting or other event of which notice is required to be given, shall cure any default in giving such notice.

ARTICLE TEN
Auditors

10.01 APPOINTMENT OF AN AUDITOR

The members shall at each annual meeting appoint an auditor to audit the accounts of the Corporation, to hold office until the next annual meeting, provided that the directors may fill any casual vacancy in the office of the auditor. The remuneration of the auditor shall be fixed by the board of directors.

ARTICLE ELEVEN
Effective Date

11.01 EFFECTIVE DATE

This Constitution shall come into force when confirmed by the members in accordance with the terms described in the Corporation By-Law enacted on July 29, 1991, at which time this Constitution shall take precedence and the By-Law will no longer be in force.

PASSED by the members and sealed with the corporate seal on the

_____ day of _____ in the year _____.

SIGNATURES

President

Name

Vice-President

Name

Treasurer

Name