By-laws of the Friends of Portland Adult Education

Adopted ________, 2012

Article I: Name
This organization shall be known as the Friends of Portland Adult Education.

Article II: Purposes
The Friends of Portland Adult Education is an independent, nonprofit public benefit corporation organized for charitable and educational purposes as described under section 501(c)(3) of the Internal Revenue Code, as amended, or the corresponding section of any future federal tax code. These purposes include helping adult learners reach their educational and employment goals by raising resources to support adult learning opportunities that fall outside the school budget, raising awareness of the needs of adult learners, and promoting collaboration with community organizations.

Article III
Board of Directors

Section 1. Number and Election. The governance of the Corporation and the management and control of its affairs shall be vested in a Board of Directors, which shall consist of a number of persons established by the Board of Directors within the limits specified in the Articles of Incorporation. Directors shall be chosen at the annual meeting of the directors. At each annual meeting of the directors, the then-serving Directors shall elect the Directors for the year then commencing. The Directors elected shall include one Director designated by the Portland, Maine, Director of Adult Education. Each Director so elected shall hold office for an initial term of 2 years and until his or her successor is elected and qualified; provided that approximately one-half of the Directors designated by the Incorporator shall have initial terms of 1 year so as to stagger the terms of the initial Board of Directors. The number of Directors shall be initially determined in the Articles of Incorporation. The initial Directors shall be designated by the Incorporator. Thereafter, the number of Directors may be increased or decreased, within the limits specified in the Articles of Incorporation, at any special or annual meeting of the Directors. No decrease in the number of Directors shall have the effect of shortening the term of any incumbent Director.

Section 2. Vacancies. Whenever there shall be a vacancy in the membership of the Board of Directors, the remaining Directors may fill the vacant position until the next annual meeting of the Directors at any regular meeting or special meeting called for that purpose. No person shall be elected to the Board of Directors to fill such vacant position except by vote of at least a majority of the Directors entitled to vote.

Section 3. Limited on Terms Served. After the initial two-year term, Directors may be reelected at the annual meeting of the Directors to serve successive two-year terms without limit.

Section 4. Removal. Any member of the Board of Directors may be removed with or without cause by a two-thirds vote of the Directors then in office at any properly called special meeting of the Directors.
Section 5. **Powers.** The Board of Directors shall manage the property and affairs of the Corporation.

Section 6. **Meetings.** The Board of Directors shall hold its annual meeting for election of officers during the month of June of each year. The date, time and place of the annual meeting may be determined by the Board of Directors, or if the Board has not so determined, by the President. Unless notice is waived in the manner prescribed by law, notice of the annual meeting of the Board of Directors shall be given by regular U.S. first class mail, hand delivery, facsimile or by electronic means (such as e-mail) in a manner that provides substantially instantaneous transmission. Notice mailed to a Director's usual or last known place of business or residence at least ten (10) days before the day of the meeting shall be sufficient notice thereof. Notice delivered in hand or sent by facsimile or electronic means to a Director's usual or last known place of business or residence at least seven (7) days before the time of the meeting shall be sufficient notice thereof.

Regular meetings of the Board of Directors shall be held in such places and at such time as the Board may determine, and if so determined, no notice thereof need be given.

Special meetings of the Board of Directors may be held at any time or place, whenever called by the President or on the written request of two members of the Board of Directors, reasonable notice thereof being given by the office calling the meeting to each Director, or at any time without formal notice, provided all the Directors are present or those not present have waived notice thereof. Unless notice is waived in the manner prescribed by law, notice of a special meeting of the Board of Directors shall be given in the same manner as is notice of the annual meeting, except that notice given by mail must be mailed at least five (5) days before the day of the meeting and notice delivered in hand or sent by facsimile or electronic means must be given at least two (2) days before the time of the meeting. Such special meetings shall be held at such times and places as the notice thereof or waiver shall specify.

Section 7. **Quorum.** A majority of the Board of Directors then in office shall constitute a quorum for the transaction of the business, but a lesser number may adjourn any meeting from time to time, and the same may be held as adjourned without further notice. When a quorum is present at any meeting a majority of the Directors present shall decide any question brought before such meeting, except as specifically required by these Bylaws, the Corporation’s Articles of Incorporation or applicable law.

Section 8. **Unanimous Action.** Any action required to be taken at a meeting of the Directors, or any action which may be taken at a meeting of the Directors, may be taken without a meeting if all the Directors sign written consents setting forth the action taken or to be taken, at any time before or after the intended effective date of such action. Such consents shall be filed with the minutes of Directors’ meetings and shall have the same effect as a unanimous vote.

Section 9. **Committees.** The Board by vote of a majority of the whole Board may designate an executive committee or one or more other committees, each committee to consist of two or more of the Directors, which, to the extent provided in said vote or in these bylaws and allowed by law, shall have and may exercise the powers of the Board in the management of the affairs of the Corporation, and may have power to authorize the seal of the Corporation to be affixed to all papers which may require it. Such committee
or committees shall have such name or names as may be stated in these bylaws or as may be determined from time to time by vote of the Board. Such committees shall keep regular minutes of their proceedings and report the same to the Board on a regular basis.

**Article IV: Officers and Duties**

**Section 1. President:** There shall be a President, elected from among and by the Board of Directors, who shall preside at all business meetings, appoint action teams not otherwise provided, and generally carry out the duties of this office. The President shall be a member ex officio of all action teams or committees.

**Section 2. Vice President:** There shall be a Vice President, elected from among and by the Board of Directors, to assume the duties of the President in his/her (the President’s) absence.

**Section 3. Secretary:** There shall be a Secretary, elected from among and by the Board of Directors, who shall keep an accurate record of each business meeting, conduct the correspondence and generally carry out all of the usual duties required of the Secretary. At the discretion of the Board, these functions may be performed by the Executive Director.

**Section 4. Treasurer:** There shall be a Treasurer, elected from among and by the Board of Directors, who will oversee the receipt and distribution of monies coming to this Corporation, ensure an accurate accounting of receipts and disbursements, make a report thereof at the annual meeting of the Corporation, and generally carry out all of the usual duties required of the treasurer.

**Section 5. Action Teams:** Action Teams may be appointed by the President, with the approval of the Board of Directors.

**Section 6. Executive Committee:** The Executive Committee shall consist of the President, Vice President, Secretary, and Treasurer. The Executive Committee shall, during intervals between Board meetings, have the power to act on behalf of the Board, subject to the limitations set forth in section 709 of the Maine Nonprofit Corporation Act, 13-B M.R.S.A. section 709. Actions shall be limited to those of an emergency or unanticipated nature. The Executive Committee may not authorize expenditure of any funds in excess of current budget outlines. Meetings of the Executive Committee do not require notice and may be conducted in person, via the U.S. mail, or by electronic means.

**Article V: Staff**

This Corporation may hire personnel, under the direction and the supervision of the Executive Committee, to carry out the purposes of this organization.

**Article VI: Financial Management**

The Board of Directors shall be responsible for the solicitation of donations from the public or from such other sources as it deems appropriate for the purpose of providing for the needs of the Corporation. No donations shall be solicited or accepted in any manner inconsistent with the requirements of a tax-exempt organization under the Internal Revenue Code of 1986, as amended, as the same may be subsequently amended from time to time.
The Corporation may conduct other revenue producing activities for the purpose of supporting its primary purposes, provided such activities are consistent with the requirements of a tax-exempt organization.

Article VII: Conflicts of Interest.
Section 1. General: The Corporation has a strong interest in assuring that its interests are not adversely affected by conflicts of interest among its Directors, officers, persons sitting on committees with Board-delegated powers, or certain executive employees. The corporation’s Conflict of Interest Policy, attached to these Bylaws as Exhibit A, is incorporated here by reference.

Section 2. Annual Statements: Annually, all Directors shall sign a statement that acknowledges understanding of the corporation’s Conflict of Interest Policy.

Article VIII: Indemnification of the Board of Directors
Each and every member of the Board of Directors, including any member whose term of office has expired, shall be indemnified by Friends of Portland Adult Education against any and all expenses actually and necessarily incurred by such member in connection with the defense of any action, suit, or proceeding in which such member is made a party by reason of being or having been a member of the Board of Directors, provided that no indemnification shall be provided to any person with respect to any matter as to which he or she shall have been finally adjudicated in any action, suit or proceeding not to have acted in good faith in the reasonable belief that his or her action was in the best interests of the Corporation or, with respect to any criminal action or proceeding, to have had reasonable cause to believe that his or her conduct was unlawful; and such right of indemnification shall not be deemed exclusive of any other rights to which such director may be entitled under any agreement, vote of the members otherwise.

Article IX: Amendments
Any changes or additions to these bylaws shall be made only by a vote of two-thirds (2/3) of the members of the Board of Directors present and voting at any meeting of this Corporation. Notice of the proposed changes shall be given to each Board member at least twenty-one (21) days prior to the meeting at which the vote will be taken.

Article X: Dissolution
In the event of the dissolution or liquidation of the Corporation, after payment or provision for the payment of all liabilities of the corporation, all of the assets of the corporation shall be disposed of to one or more corporations, societies or organizations (i) that have similar purposes and are engaged in similar activities as the Corporation, (ii) that qualify for exemption from taxation under Code section 501(c)(3), and (iii) that would qualify as public benefit corporations within the meaning of Title 13-B of the Maine Revised Statutes, as amended. Such organizations need not be organized under the laws of the state of Maine. Any assets not disposed of in this manner by the corporation shall be distributed in accordance with an order of a court of competent jurisdiction in the county where the principal office of the corporation is located, exclusively for such purposes or to such organizations as said court shall determine,
provided that such organizations shall have similar purposes and be exempt from taxation under the provisions of said Code section 501(c)(3).

THE END
EXHIBIT A TO CORPORATE BYLAWS
of
Friends of Portland Adult Education
(A Maine Nonprofit Public Benefit Corporation)

CONFLICT OF INTEREST POLICY

Article 1. Purpose

The purpose of this conflict of interest policy is to protect the interests of Friends of Portland Adult Education (the “Corporation”) when it is contemplating entering into a transaction or arrangement that might benefit the private interest of an officer or director or Executive Director of the Corporation or that might result in a possible excess benefit transaction. This policy shall be interpreted in a manner consistent with the requirements of Section 718 of the Maine Nonprofit Corporation Act, 13-B M.R.S.A. section 101, et seq. It shall supplement but not replace any other applicable state and federal laws governing conflict of interest applicable to nonprofit and charitable organizations.

Article 2. Definitions

2.1 Conflict of Interest Transaction: A “Conflict of Interest Transaction” is a transaction or arrangement in which an Interested Person has a Financial Interest.

2.2 Interested Person: An “Interested Person” is any person who serves the Corporation as a director, officer, member of a committee with board-delegated powers, or as Executive Director. If a person is an Interested Person with respect to any Affiliated Organization (as hereinafter defined), then that person is also an Interested Person with respect to the Corporation.

2.3 Financial Interest: An Interested Person has a “Financial Interest” in a transaction or arrangement if the person has, through business, investment, or family:

(a) A direct financial interest in the transaction or arrangement.

(b) An ownership, investment or other material interest, or an interest as a general partner, director, officer or trustee, in any entity with which the Corporation has an arrangement or that is a party to the transaction,

(c) A compensation arrangement with the Corporation or with any entity or individual with which the Corporation has a transaction or arrangement, or

(d) A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the Corporation is negotiating a transaction or arrangement.
Compensation includes direct and indirect remuneration as well as gifts or favors that are not insubstantial.

2.4 **Affiliated Organization**: An “Affiliated Organization” shall mean the Corporation, any corporation that controls the Corporation, the Portland Public Schools and any legal entity or organization that controls, or is controlled by, any Affiliated Organization. An organization shall be understood to control another if it has the right (directly or indirectly) to elect or appoint a majority of the people who have voting rights serving on the governing board of such other organization; provided, however, that ex officio members of a governing board shall be treated as if elected or appointed by the organization referenced in their ex officio appointment.

**Article 3. Procedures**

3.1 **Duty to Disclose**: In connection with any actual or possible Conflict of Interest Transaction, an Interested Person must disclose the existence of the Financial Interest and be given the opportunity to disclose all material facts to the directors and members of committees with board-delegated powers considering the proposed transaction or arrangement.

3.2 **Determining Whether A Transaction is a Conflict of Interest Transaction**: After disclosure of the Financial Interest and all material facts, and after any discussion with the Interested Person, the Interested Person shall leave the Board of Directors or committee meeting while the determination of a conflict of interest is discussed and voted upon. The remaining board or committee members shall decide if the transaction constitutes a Conflict of Interest Transaction.

3.3 **Procedures for addressing the Conflict of Interest**:

(a) The President of the Board of Directors or committee shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed Conflict of Interest Transaction.

(b) After exercising due diligence, the Board of Directors or committee shall determine whether the Corporation can obtain with reasonable efforts a more advantageous transaction or arrangement from a person or entity that would not give rise to a conflict of interest.

(c) If a more advantageous transaction or arrangement is not reasonably possible under circumstances not producing a conflict of interest, the Board or committee shall determine by a majority vote of the directors who have no direct or indirect interest in the transaction whether the Conflict of Interest Transaction is in the Corporation’s best interest, for its own benefit, and whether it is fair, reasonable and equitable to the Corporation as of the date the transaction is authorized, approved or ratified. A Conflict of Interest Transaction may not be approved by a single director. The party asserting the
fairness of a Conflict of Interest Transaction shall have the burden of establishing fairness. In conformity with the above determination the Board or committee shall make its decision as to whether to enter into the Conflict of Interest Transaction.

(d) The Corporation's Board of Directors may request approval of any Conflict of Interest Transaction from the Maine Attorney General or by the Superior Court in an action in which the Attorney General is joined as a party. If the Corporation's Board of Directors is unable to make a decision about any Conflict of Interest Transaction, one or more directors or officers may request approval from the Maine Attorney General or the Superior Court as provided above.

3.4 Violation of the Conflicts of Interest Policy:

(a) If the Board or committee has reasonable cause to believe that an Interested Person has failed to disclose an actual or possible Conflict of Interest Transaction, it shall inform the Interested Person of the basis for such belief and afford him or her an opportunity to explain the alleged failure to disclose.

(b) If, after hearing the Interested Person's response and after making further investigation as warranted by the circumstances, the Board of Directors or committee determines the person has failed to disclose an actual or possible Conflict of Interest Transaction, it shall take appropriate disciplinary and corrective action.

Article 4. Records of Proceedings

4.1 Minutes: The minutes of the Board and all committees with board-delegated powers shall contain:

(a) The names of the persons who disclosed or otherwise were found to have a financial interest in connection with an actual or possible Conflict of Interest Transaction, the nature of the Financial Interest, any action taken to determine whether a conflict of interest was present, and the Board's or committee's decision as to whether a Conflict of Interest Transaction in fact existed.

(b) The names of the persons who were present for discussion and votes relating to the Conflict of Interest Transaction, the content of the discussion, including any alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection with the proceedings.
Article 5.  Compensation

5.1  Recusal of Directors Required: A voting member of the Board who receives compensation, directly or indirectly, from the Corporation for services is precluded from voting on matters pertaining to that director’s compensation.

5.2  Recusal of Certain Committee Members Required: A voting member of any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Organization for services is precluded from voting on matters pertaining to that member’s compensation.

5.3  Information May Be Presented: No voting member of the Board or any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Corporation, either individually or collectively, is prohibited from providing information to any committee regarding compensation.

5.4  Specific Arrangements: The Board of Directors will approve all compensation arrangements over which it has authority in advance of paying compensation. All compensation arrangements for the Corporation shall be in writing, and shall at a minimum note the date and basic terms of the arrangement.

Article 6.  Annual Statements

6.1  Signed Statements Required: Each director, principal officer and member of a committee with board-delegated powers shall annually sign a statement that affirms such person:

(a) Has received a copy of this Conflicts of Interest Policy;

(b) Has read and understands the policy;

(c) Agrees to comply with the policy; and

(d) Understands the Corporation is charitable and, in order to maintain its federal tax exemption, it must engage primarily in activities that accomplish one or more of its tax-exempt charitable purposes.

Article 7.  Periodic Reviews

7.1  Review Procedure: To ensure the Corporation operates in a manner consistent with charitable purposes and does not engage in activities that could jeopardize its tax-exempt status, periodic reviews shall be conducted. The periodic reviews shall, at a minimum, include the following subjects:
(a) Whether compensation arrangements and benefits are reasonable, based on competent survey information, and the result of arm’s length bargaining.

(b) Whether partnerships, joint ventures, and arrangements with management organizations conform to the Corporation’s written policies, are properly recorded, reflect reasonable investment or payments for goods and services, further charitable purposes and do not result in inurement, impermissible private benefit or in an excess benefit transaction.

7.2 Use of Outside Experts: When conducting the periodic reviews as provided for in Section 7.1, the Corporation may, but need not, use outside advisors. If outside experts are used, their use shall not relieve the Board of its responsibility for ensuring periodic reviews are conducted.