Guide to forming a Merchants Association
preparing for the Merchants of Woodlawn
by the
Kingsbridge-Riverdale-Van Cortlandt Development Corporation/KRVC

Sources:
State Senator Jeff Klein’s Office
Bronx Overall Economic Development Corporation
NYC Department of Small Business Services
Lawyers Alliance for New York
West Brighton Community Local Development Corporation

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Organization and Milestones

Membership development / Alternative sources of funding development
Monthly membership meetings
Membership accounting
Business Plan
Fundraising event planning
Fiscal Sponsorship
Incorporation / Bylaws
Non-profit status (c)(3) vs. (c)(6) [vs. (c)(4)]

The Basics

Develop a Membership Database—include very store on the block and mark level of participation/interest in merchant organizing initiative

Develop a Data base that reflects:
Businesses owner contact information
Note if it the property is owner occupied
Property owner contact information
Block and Lot information
Vacancy and condition information
Size of the property
Other Not-For-Profit organizations in the neighborhood

The database provides a template for:
Direct mail/email
Tracking interaction within the community

Assess Business Conditions and Services:
General perception of the community
Cleanliness
Road Conditions
Sidewalk Conditions
Parking
Streetlights, Traffic signals
Drainage/ Sewers
Public Transportation
General Public Services
General Small Business Assistance
**Sample Security Issues:**
- Break-in/ Burglary
- Vandalism
- Shoplifting
- Robbery
- Loitering
- Homelessness
- Drug dealing
- Graffiti

**Promotion**
- Signage
- Holiday lights
- Events
- Directory

**Sanitation**
- Sidewalk
- Graffiti

**Safety/Security**
- Day/night/both
- Buddy buzzer systems
- Informational campaign
Key Legal Issues to Consider

Legal formats - should your group incorporate?
Benefits of incorporation
Better governance
Limits liability
Corporate identity

What kind of corporation will your organization be?
Will your organization seek tax exempt status?

501(c)(3) vs. 501(c)(6) vs. 501(c)(4)

Generally, the IRS recognizes a 501(c)(3) designation for nonprofit organizations that are organized and operated “exclusively” for charitable purposes.

The IRS recognizes a 501(c)(6) designation for nonprofit organizations that share a common business interest but are not organized for profit and do not provide any part of their net earnings to the benefit of any private participant/individual. If the organization would only be exempt under section 501(c)(6) of the Internal Revenue Code, it may not be worth seeking federal tax-exempt status unless the organization needs that to be eligible for funding.

A 501(c)(4) is a social welfare organization that may pursue educational, lobbying, and some limited political activities.

Types of Corporations

Type A designations are intended for professional, commercial, industrial, trade or service associations.

Type B designations are for organizations with charitable, educational, religious, cultural, scientific, or literary purposes.

Type C designations are for organizations with a lawful business purpose to achieve a lawful public or quasi-public objective.

Type D organizations are formed under other New York corporate laws for any business or non-business, or pecuniary or non-pecuniary, purpose or purposes specified by other such laws, whether these purposes are also within types A, B, C, or D.

Importance of Purposes in Certificate of Incorporation

Slight differences in the way that the purposes of a corporation are phrased in a Certificate of Incorporation can impact whether an organization is granted a type A, B or C status.

Organizations that receive a type A designation are unlikely to be recognized by the IRS as a 501(c)(3), and would more likely be recognized by the IRS as 501(c)(4) or (6).

Organizations that receive a type B or type C designation may be successful in being recognized by the IRS as 501(c)(3)
**Tips on Drafting Purposes**

Be explicit if your organization is intended exclusively for charitable purposes and how your organization’s purposes are intended to benefit the wider community, and not just the membership of your organization.

If your organization’s charitable purpose is to encourage economic revitalization, be specific in detailing the way that it will achieve this. Some activities are viewed as more aligned to a type B or C status than others. For example, marketing would not be viewed as favorably as a basis for 501(c)(3) recognition as job creation and training.

Identify how your organization is contributing to the community in a way that is exclusively charitable, and would not likely be seen as a commercial activity.

The IRS has identified activities that lessen the government’s burden in providing services as charitable purposes (e.g., improving sanitation, security, street lighting, maintaining public amenities such as benches and bicycle parking, and improving sidewalks). If your organization plans to do this, state that in the corporate purposes.

**A Note re: Classification of Merchants Associations Generally**

At the NYS corporations level, there appears to be a trend to classify merchants associations as Type A non-profit corporations.

The IRS is increasingly insisting on recognizing only 501(c)(6) status for merchants associations (as opposed to 501(c)(3) status).

The IRS will look to if the organization details the specific charitable activities it will engage in. For example, a group of merchants may form an organization which, among other activities, implements a clean streets program and provides holiday street lights. While these activities are certainly charitable in nature, the IRS is likely to view them, at least initially - unless there are also other activities, as aligned with the business interests of the merchants (as clean streets and holiday lights are likely to attract customers) and will not grant the organization 501(c)(3) status on the basis of these activities alone. The organization would also have to show a commitment to benefitting the community in ways that are not directly linked to the business interests of participants in the organization in order to be considered for 501(c)(3) status. Because of these trends, it is very important pay attention to the way the organization’s purposes are drafted.
<table>
<thead>
<tr>
<th><strong>501(c)(3)</strong></th>
<th><strong>501(c)(4)</strong></th>
<th><strong>501(c)(6)</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>• Assets must be dedicated to charitable purposes</td>
<td>• No requirement to dedicate assets</td>
<td>• No requirement to dedicate assets</td>
</tr>
<tr>
<td>• Social activities must be insubstantial</td>
<td>• Social activity may be anything less than primary</td>
<td>• Social activity may be anything less than primary</td>
</tr>
<tr>
<td>• Legislative activity must be insubstantial</td>
<td>• No limit on legislative activity as long as the activity furthers the exempt purpose and does not constitute the organization's primary activity</td>
<td>• No limit on legislative activity as long as the activity furthers the exempt purpose and does not constitute the organization's primary activity</td>
</tr>
<tr>
<td>• Absolute prohibition on political activity</td>
<td>• Political activity permitted, but taxed</td>
<td>• Political activity permitted, but taxed</td>
</tr>
<tr>
<td>• Must serve public purposes</td>
<td>• Can serve community purposes, can be somewhat narrower than (c)(3)</td>
<td>• Can serve the business purposes of the members</td>
</tr>
<tr>
<td>• Donations are deductible as charitable contributions by donors on their tax returns</td>
<td>• Donations not deductible as charitable contributions</td>
<td>• Donations not deductible as charitable contributions</td>
</tr>
</tbody>
</table>
Planning For A Successful Future

- Where Are We Now?

- Where Do We Want To Be At A Future Date?
  A. In 1 Year?
  B. In 3 Years?
  C. In 5 Years?

- How Will We Get There?

- What is Our Operational Plan?

- What is Our Marketing Plan?

- What is Our Membership Plan?

- What is Our Financial Plan?

"Success is a journey, not a destination."
Business Survey

Business ________________________________
Contact __________________ Phone _______ Fax _______ Email ____________
Address ________________________________ Zip ________________
Business Type ___________________________

Business Characteristics

Years Established _______ Years at Current Location _______ Block # _______ Lot # _______
# of Locations in NYC _______ Headquartered in NYC? □ Yes □ No
□ Minority-owned □ Woman-owned □ Other
# of Employees _______ Estimated Employees Hired Annually _______ Estimated Turnover _______

Real Estate Information

□ Own □ Rent
If rental, current rent ___________ Current lease term ___________ Sq. Ft.? ___________
Landlord _______________________

Which District Issues Are of Greatest Concern? Rate 1 -5, where 1 = greatest, 5 = least
__ Sanitation Issues __ Security __ Police Presence
__ Traffic/Parking Regulations Stifling Business __ Con Edison __ Lighting
__ Other issues impacting business ____________________________

Which of These Business Services Would You Be Most Likely to Take Advantage Of?

□ Workshops □ Energy Efficiency
□ Financing __ Workforce Development:
□ Navigating Government Regulations □ Recruiting and Screening Employees
□ Business Planning / Production Processes □ Human Resources Support
□ Technology Assistance □ Other ____________________________

Notes

________________________________________________________________________________
________________________________________________________________________________

Date __________________

The Bronx Overall Economic Development Corporation

WEED AND SEED LOGO HERE
The name of the organization/agency/group shall be [Name]

I. Board of Directors
1. The Board of Directors shall serve without pay and consist of [number of] members.
2. [Eligibility criteria, if any.]
3. Board members shall serve [number of years, usually two to four] terms. Vacancies shall be filled by the Board, with the recommendation of the Executive Director. Board members with [number] of absences shall dismissed from the Board.*

II. Officers
The officers of the board shall consist of a Chair, Vice Chair, Secretary, and Treasurer nominated by the Board.
1. Elected officers will serve a term of one year.
   (a) The Chair shall preside at all Board meetings, appoint committee members, and perform other duties as associated with the office. (b) The Vice-Chair shall assume the duties of the Chair in case of the Chair’s absence. (c) The Secretary shall be responsible for the minutes of the Board, keep all approved minutes in a minute book, and send out copies of minutes to all. (d) The Treasurer shall keep record of the organization’s budget and prepare financial reports as needed.

III. Committees
The Board may appoint standing and ad hoc committees as needed.

IV. Meetings
1. Regular meetings shall be held on [frequency and time of meetings]
2. Special meetings may be held at any time when called for by the Chair or a majority of Board members. Agendas shall be provided at least [number of days] in advance.

V. Voting
1. (a) A majority of board members constitutes a quorum. (b) In absence of a quorum, no formal action shall be taken except to adjourn the meeting to a subsequent date. Passage of a motion requires a simple majority (ie, one more than half the members present). [Or whatever your board’s decision-making process is]

VI. Conflict of Interest
Any member of the board who has a financial, personal, or official interest in, or conflict (or appearance of a conflict) with any matter pending before the Board, of such nature that it prevents or may prevent that member from acting on the matter in an impartial manner, will offer to the Board to voluntarily excuse him/herself and will vacate his seat and refrain from discussion and voting on said item.

VII. Fiscal Policies
The fiscal year of the board shall be [start date to end date]

VIII. Amendments
These by-laws may be amended by a two-third vote of Board members present at any meeting, provided a quorum is present and provide a copy of the proposed amendment(s) are provided to each Board member at least one week prior to said meeting.
ARTICLE I - NAME

The name of this entity shall be the North Riverdale Merchant & Business Association (NR MBA). The governing body shall be the duly elected Officers.

ARTICLE II - MISSION STATEMENT

The North Riverdale Merchant & Business Association is established to join together the merchants and business professionals of North Riverdale in an effort to improve customer relations as well as expanding the economic growth of the North Riverdale community.

The mission of the NR MBA is founded upon organizing a strong network of local businesses dedicated to customer service and committed to building value for the neighborhood. Provide an outreach to the community through organized events, promotions and beautification in an effort to build a community friendly shopping area. Additionally, to give businesses a voice on issues that may impact them and their community.

The association will:

- Stimulate awareness of the businesses and services available in North Riverdale.
- Unify member businesses, recognizing there is strength in numbers.
- Develop a calendar of events to promote members and their businesses.
- Participate in shaping the current and emerging business environment to promote high-quality products and services.
- Strive to attract additional businesses to North Riverdale.

ARTICLE III - STRUCTURE AND REPRESENTATION

Section 1 - Eligibility

Any business in the North Riverdale area having interest will be eligible to apply for membership. The North Riverdale area is defined as the area from the Monument on W 239th St north to the Yonkers Border, and from Van Cortlandt Park west to the Hudson River.

Section 2 - Members and Dues

The North Riverdale Merchant & Business Association (NR MBA) shall consist of the representatives from the active membership in good standing. Membership dues shall be at a rate voted by a majority vote.
The current dues structure is still yet to be determined. Annual dues are due and payable January 1. Any member failing to pay dues within 60 days shall be terminated from the active member list. However, members may join at any time during the year and their membership will be prorated. This is a non-profit organization. No dividends will be paid, and no part of the income of this Association will be distributed to its Members or Officers.

Section 3 - Meetings

The North Riverdale Merchant & Business Association shall hold regular membership meetings. Location may vary at the discretion of the Officers. Special meetings may be called by the President (or his/her designate) as deemed necessary to conduct business or deal with urgent matters. A quorum is necessary to vote any matters coming before the association.

Section 4 – Quorum

Unless otherwise provided, at any meeting of members, the presence in person or by proxy of members entitled to cast a majority of the votes thereat shall constitute a quorum. In the absence of a quorum the members present in person or by proxy, by majority vote and without notice other than by announcement, may adjourn the meeting from time to time until a quorum shall attend. At any such adjourned meeting at which a quorum shall be present, any business may be transacted which might have been transacted at the meeting as originally notified.

Section 5 - Voting Rights

Each member of the Association shall be entitled to one vote for each full annual dues paid. No fractional votes shall be permitted.

Section 6 – Proxies

Any member may vote either in person or by proxy or representative designated in writing by such member.

Section 7 - Attendance

A Merchant Association member may choose not to attend meetings, although active participation and support is encouraged of all members.

Section 8 - Officers and Board Members

The Officers of the North Riverdale Merchant & Business Association shall consist of four: President, Vice President, Secretary, and Treasurer as duly elected by the membership in good standing. Terms of the office shall be one year commencing on January 1st and ending December 31st. Nominations for office shall be made from the floor in November and ballots for office cast in December. The President’s duties will be to set agendas for and preside at all meetings, to coordinate the work of committees, and to make necessary decisions between meetings. The Vice President will assist the President, and act as President when the President is unable to function. The Secretary will keep and maintain minutes and keep an active membership list. The Treasurer will receive and maintain an account of all monies that accumulate for the Association and disperse monies at the direction of the membership.
The Board of the North Riverdale Merchant & Business Association will consist of the four officers and the chair of each of the four Standing Committees.

Section 9 - Committees

There shall be four Standing Committees: Governance, Marketing, Parking & Transportation and Environmental Quality.

Additional committees may be appointed by the Board as needed.

Committees shall be composed of at least one Association Member and shall have such powers as expressly delegated to them. Meetings of committees shall be decided on by committee members. Notice of these meetings shall be communicated to all committee members on a timely basis. No actions of Committees are final and binding unless such actions have specifically been previously approved by the Board, or are subsequently approved by the Board.

Section 10 – Friends of the North Riverdale Merchant & Business Association

Friends of the NR MBA are individuals or organizations that may attend association meetings, but shall have no voting or membership rights. Friends of the NR MBA shall serve to have an active voice and maintain a mutually beneficial relationship between the NR MBA, its board and themselves. Such Friends may consist of, but not limited to, local politicians, political groups, schools and religious centers.

ARTICLE IV-AMENDMENTS/DISSOLUTION

Section 1 - These by-laws may be amended, altered, repealed by any affirmative vote of the membership at any regular meeting. However, they will be reviewed at a minimum of once a year at the annual meeting.

Section 2 - The Association shall use funds only to accomplish the objectives and purposes specified in the by-laws. On dissolution of the Association, any funds remaining shall be distributed to one or more organized and qualified charitable or educational organizations selected by the Board.
CERTIFICATE OF INCORPORATION
OF

North Riverdale Merchants and Business Association

(Insert Corporation Name)

Under Section 402 of the Not-for-Profit Corporation Law

FIRST: The name of the corporation is:
North Riverdale Merchants and Business Association

SECOND: The corporation is a corporation as defined in subparagraph (a)(5) of Section 102 (Definitions) of the Not-for-Profit Corporation Law.

THIRD: The purpose or purposes for which the corporation is formed are as follows (type or print clearly):
The North Riverdale Merchant & Business Association is established to join together the merchants and business professionals of North Riverdale in an effort to improve customer relations as well as expanding the economic growth of the North Riverdale community.

The mission of the NR MBA is founded upon organizing a strong network of local businesses dedicated to customer service and committed to building value for the neighborhood. Provide an outreach to the community through organized events, promotions and beautification in an effort to build a community friendly shopping area. Additionally, to give businesses a voice on issues that my impact them and their community.

The association will: (1) Stimulate awareness of the businesses and services available in North Riverdale. (2) Unify member businesses, recognizing there is strength in numbers. (3) Develop a calendar of events to promote members and their businesses. (4) Participate in shaping the current and emerging business environment to promote high-quality products and services. (5) Strive to attract additional businesses to North Riverdale.
FOURTH: The corporation shall be a Type A corporation pursuant to Section 201 of the Not-for-Profit Corporation Law. (Please insert Type A, B, C or D, as appropriate.)

FIFTH: The office of the corporation is to be located in the County of Bronx, State of New York.

SIXTH: The names and addresses of the initial directors of the corporation are (a minimum of three are required):

NEED TO DECIDE THESE

SEVENTH: The Secretary of State is designated as agent of the corporation upon whom process against it may be served. The address which the Secretary of State shall mail a copy of any process accepted on behalf of the corporation is:

North Riverdale Merchants and Business Association
c/o Riverdale Neighborhood House
5521 Mosholu Avenue
Bronx, NY 10471

EIGHTH: (Corporations seeking tax exempt status may include language required by the Internal Revenue Service in this paragraph. See instructions, paragraph eighth.)

The purpose for which the corporation is formed is to be a merchant and business association for the owners of businesses in North Riverdale. The organization will conduct activities, develop initiatives, plan events and address issues for the benefit of its members.