

**TOWN OF LEESBURG
NOTICE OF PUBLIC HEARING**

**TO CONSIDER ENACTING A TOWN CODE ORDINANCE
ESTABLISHING AN ENDOWMENT FUND FOR THE PURPOSE OF SUPPORTING A
LIBRARY OWNED OR OPERATED BY THE TOWN**

Pursuant to Virginia Acts of Assembly—2013 Session, Chapter 528, the **LEESBURG TOWN COUNCIL** will hold a public hearing on **TUESDAY, NOVEMBER 26, 2013, at 7:30 p.m.**, in the Council Chambers at Town Hall, 25 West Market Street, Leesburg, Virginia, 20176, to consider enacting an ordinance establishing an endowment fund for the purpose of supporting a library owned or operated by the town. An ordinance, including the following, will be proposed:

Balch Library Endowment

The Town of Leesburg may establish an endowment fund for the purpose of supporting a library owned or operated by the town. The endowment may receive all gifts, grants, or contributions designated for inclusion in the endowment. No part of the endowment shall revert to the general fund of the town. The endowment shall be established and administered by the governing body of the town or by a nonprofit entity created or approved by the governing body for such purpose.

A copy of the proposed ordinance is available from the Town Clerk, located in Town Hall. Additional information regarding these proposed amendments is available in the Executive Department, located on the first floor of the Leesburg Town Hall, 25 West Market Street, Leesburg, Virginia, during normal business hours (Monday-Friday, 8:30 a.m. to 5:00 p.m.), or by calling Lee Ann Green, Clerk, at 703-731-2733.

At this hearing, all persons desiring to express their views concerning these matters will be heard. Persons requiring special accommodations should contact the Clerk of Council at 703-771-2733, three days in advance of the meeting. For TTY/TDD service, use the Virginia Relay Center by dialing 711.

11/22/13



Date of Council Meeting: November 25, 2013

**TOWN OF LEESBURG
TOWN COUNCIL MEETING**

Subject: Endowment for the Thomas Balch Library (TBL)

Staff Contact: Jeanette A. Irby, Town Attorney
Alexandra S. Gressitt, Thomas Balch Library Director

Recommendation: To ordain the amendment to the Town Code for the endowment for the Thomas Balch Library (hereinafter TBL) in a structure as set forth in the ordinance to use the funds that have been donated and collected for the benefit of the TBL.

Fiscal Analysis: Included.

Current Status: The general assembly approved legislation at the request of the Town giving the Town the authority to set up an endowment. Council would retain some control with respect to the funds that have been gifted to the Town for the support of the TBL via participation on the endowment board or committee set up for that purpose. The “Friends of Thomas Balch Library (FTBL), Inc.” (a separate 501 (C) (3)), who support the library with fund-raising, collection and program planning) and the “Thomas Balch Library Commission” (TBLC) have been briefed on the status of the endowment and requested to provide input as to the proposed structure. Staff requested from Council over the past several months input as to the structure of the endowment as well as comments concerning the proposed structures as set out in previous memos and reports to Council.

Town Council initiated the amendment to the Town Code in June of 2013 after authorization was provided by the General Assembly due to the efforts of Delegate Minchew and Senator Black. During the past several months the Director of the Balch, the Town Attorney and the Town Manager met with the TBLC and members and the FTBL to discuss, propose and agree upon the structure of the board that would administer the endowment. Both groups discussed and both groups have agreed upon a corporate structure and by-laws during their meetings over the past several months.

The stake holders have recommended the following structure:

- One member appointed by Council
- One member represented by the Balch Advisory Commission
- One member represented by the Friends of the Balch
- One member at large
- Director of the Balch

The board would have rotating and term limited membership. The mission as set forth in the by-laws states:

”Foundation’s mission is to support programs and outreach services of the Thomas Balch Library..., but not to include support for the Library’s operating budget.”

STATE THE MISSION

It is anticipated that the funds the Town is holding and designated for the Balch would be “transferred” to the endowment account in addition to approximately _____ from the FTBL from their fundraising efforts would be also transferred. The endowment account would be held for and invested by the Director of Finance.

The endowment would be responsible to formally establish and administer the endowment and other funds as they become available that have restrictions for their use. The draft of the proposed by laws are attached as well as the ordinance

Financial Information: The endowment would be funded with monies that have been collected and restricted for the benefit the TBL. Gifts to the TBL have been donated with restrictions, including the original trust. Beginning in 2008 the Friends, comprised of volunteers from throughout Loudoun County, have sponsored a highly successfully and well received fundraising event for TBL. Some of the funds raised have been earmarked for an endowment for the library. Visit their website at www.balchfriends.org.

The proposed endowment would accept the funds from the Friends which are presently holding in excess of \$45,000 from five fundraisers (2008-12) specifically earmarked for the endowment with the possibility of additional funding of \$60,000 for a total of \$105,000. The Town has received from donations in the amount of \$628,247 that are restricted for the benefit of the TBL. Additionally, the Town has \$101,228 in funds from the original Thomas Balch Trust. This trust transfers to the Town approximately \$4,000 annually in investment earnings.

Historical Background: TBL is a history and genealogy library owned and operated by the Town of Leesburg. Collections focus on Loudoun County, regional and Virginia history, genealogy, military history with special emphasis on the American Civil War, and ethnic history. It is designated as an Underground Railroad research site.

The library was established and dedicated May 13, 1922 as a memorial tribute to Thomas Balch (1821-1877), a native of Leesburg. Initially, the library operated with money from an endowment established by Thomas Willing Balch and Edwin Swift Balch, sons of Thomas Balch. In the late 1960’s it became a branch of the Loudoun County Public Library system serving the community as a full service public library.

In 1994 the county transferred ownership of the library to the Town of Leesburg to be operated as a history and genealogy library. The original building was designed by noted Washington DC architect Waddy B. Wood. In 2000 renovations and a sympathetic two floor addition, designed by Bowie Gridley doubled the library’s size. Interior enhancements include murals depicting local history, portraits of distinguished local figures and Thomas Moser furniture. Should the Town not maintain the library the building becomes the property of the Town, but the collection at the time of the conveyance returns to the county.

One of the library's missions is collecting and preserving printed, manuscript, photographic, cartographic and genealogical documentation of Leesburg, Loudoun County and the surrounding region. The library actively seeks and welcomes donations of original business records, diaries, correspondence and photographs (with identification) documenting the life, culture and history of Leesburg and Loudoun County.

At the present time the Library collections include over sixty-two thousand books and periodicals, maps, visual collections, newspapers, and manuscripts. The library offers lectures on history and genealogy, classes, and exhibits. Group tours and orientations are available on request and books about local history are available for purchase on-site.

ENDOWMENT FOR THE BALCH LIBRARY
Bylaws and Rules of Procedure

ARTICLE I

Name

Thomas Balch Library Endowment Foundation (TBLEF) hereinafter referred to as the Foundation or TBLEF.

ARTICLE II

Mission Statement

The Foundation's mission is to support programs and outreach services of the Thomas Balch Library (hereinafter also referred to as the Library), but not to include support for the Library's operating budget.

ARTICLE III

Membership

The Board of Directors of the Foundation (hereinafter also referred to as the Board) constitute the sole membership of the TBLEF

ARTICLE IV

Fiscal Year

The fiscal year of the Foundation shall correspond to the fiscal year of the Town of Leesburg, Virginia (hereinafter also referred to as the Town).

ARTICLE V

Board of Directors

1. The number of directors shall be five (5). One (1) shall be the Library Director of Thomas Balch Library. The other four (4) shall be an elected representative from the Thomas Balch Library Advisory Commission, an elected representative from the Friends of the Thomas Balch Library Board of Directors, a representative appointed by the Leesburg Town Council and a member at large appointed by a majority of the Board. The member at large must meet the following criteria to be considered:

- A. A resident of Loudoun County, with

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- B. A demonstrated interest in and knowledge of local history and special collection libraries, and
 - C. A commitment to support the mission of the Foundation.
 2. A member of the Board having agreed to serve the Foundation and duly authorized to serve on the Board must:
 - A. Be committed to the mission of the Foundation.
 - B. Attend and participate in discussions at meetings of the Board.
 - C. Ensure compliance with the Foundation's Articles of Incorporation, By-Laws and other policies adopted by the Board.
 - D. Consult with and advise the Leesburg Town Council, the Thomas Balch Library Advisory Commission, the Friends of the Thomas Balch Library and other relevant parties on issues pertaining to the Foundation.
 - E. Represent the Foundation at functions related to the Library when so requested.
 - F. Assist in the development and assessment of endowment mission and implementation of strategies, the assessment of those strategies and the publication of their success.
 - G. Assist in identifying and soliciting prospects for gifts to the Foundation for the enhancement and growth of the endowment.
 - H. Other roles as may be determined by the Board.
 3. Members of the Board or its committees shall not be personally liable for any act or failure to act by its investment advisers, custodians or agents, or for any action taken or omitted by the Board in reliance upon the advice of such persons. Directors and Officers (D&O) Insurance shall be carried by the Foundation and premiums for such insurance shall be borne by the Foundation and not by the Board members personally.
 4. It shall be the responsibility of the Board to make recommendations for removal of any director should he/she fail to attend two (2) meetings in a twelve (12) month period.
 5. Telephonic attendance by one or more director shall be permitted at normally scheduled meetings as long as a quorum is in attendance at the meeting site.
 6. Telephonic meetings of the full Board may be held in situations where it is not possible to assemble the entire Board and immediate action of the Board is required.

ARTICLE VI**Term and Election of the Board**

- Members of the Board are elected to two-year terms and may serve up to three successive terms on the Board. The term of office begins immediately following election to the Board.
- Vacancies created by the death or resignation of a director, or for any cause other than expiration of the term of a director, may be filled by a representative of the organization which elected or appointed that director or in the event the vacancy continues for a period in excess of 60 days by a vote of a majority of the remaining directors.
- Initial terms of the members shall be as follows to permit a staggered rotation of members:
 - Member Appointed by Town Council – beginning with a one year term.
 - Member at Large – beginning with a one year term.
 - Friends of the Thomas Balch Library Board of Director’s Member – beginning with a two year term.
 - Thomas Balch Library Advisory Commission Member – beginning with a two year term.
 - Thomas Balch Library Director –membership is based upon position and not election.

ARTICLE VII**Rights and Powers of the Board**

The conduct and management of the affairs of the Foundation shall be and at all times shall remain with the Board. Each elected director shall be entitled to one vote on any and every matter; provided, however, that no director shall be entitled to vote upon any matter in which he/she may have a direct or indirect personal interest, or a conflict of interest as defined by the Conflict of Interest Act as set forth in the Code of The Commonwealth of Virginia. The directors shall serve as such without compensation, but may be reimbursed for their actual and reasonable expenses incurred in the performance of their official duties and as approved by the Board.

ARTICLE VIII**Election of Officers**

At each Annual Meeting, the Board shall elect a president, a vice president, and a secretary treasurer from among the directors, all of whom shall serve until the end of their term

of office or until their successors have been elected, and none of whom shall receive any compensation.

ARTICLE IX

Officers

1. The president shall preside at all meetings of the directors at which he/she is present, and shall have executive responsibility for the performance of the functions of the Foundation in conformity with action of the Board.

2. The Vice President shall act as president in the absence of the president

3. In addition to and/or in the absence of an elected/appointed secretary treasurer, the Director of the Thomas Balch Library shall have custody of the Foundation's business and financial records.

4. The secretary treasurer, subject to the direction of the Board, shall work with the Library Director and the finance director and/or fiscal agent of the Town of Leesburg, to maintain the care and custody of the assets and financial documents of the Foundation, and shall have and exercise under the supervision of the Board all the powers and duties commonly incident to his/her office. The secretary treasurer shall ensure all appropriate fiduciary responsibilities are fulfilled.

A. The Designated Library Director and the Town of Leesburg Financial Agent shall serve as the Foundation bookkeeper and shall keep accurate books of the account of the Foundation's transactions which shall be subject at all times to the inspection and control of the secretary treasurer, the Board, and the Leesburg Town Council or their designee. The secretary treasurer and president shall, on a monthly basis, review and approve Foundation financial expenses.

B. The secretary treasurer shall present a treasurer's report to the Foundation board at each Foundation Board meeting. Day to day financial transactions of the Foundation shall be accomplished through the Town of Leesburg's fiscal agent.

5. Other officers. The Board may appoint one or more other officers as they may deem appropriate, all of whom shall perform such duties as may be prescribed by the Board or the president of the Foundation.

ARTICLE X

Annual, Quarterly and Special Meetings

The Board shall meet a minimum of four (4) times a year. One meeting shall be held for the purposes of conducting necessary annual business of the Foundation, and shall be referred to as the "Annual Meeting." Three (3) additional meetings, one each quarter shall be regularly

scheduled at the Annual Meeting. Special meetings of the Board may be held at the call of the president, or any two members of the Board. Notice of meetings shall be given to each member of the Board by letter, email or telephone at least ten (10) and not more than sixty (60) days in advance of the meeting

ARTICLE XI

Quorum and Voting

1. A majority of the Board shall constitute a quorum and action taken upon an affirmative vote of a majority of the directors present and voting shall constitute action of the Board save where, under the terms of any gift or donation, or trust instrument under which the Foundation may have received trust funds, a larger affirmative vote is required.

2. The By-Laws may be amended and/or the Dissolution of the Foundation approved only by a four-fifths vote of the Board.

ARTICLE XII

Committees

1. The Finance Committee shall be composed of the Town of Leesburg director of finance through the fiscal agent provided by the Town, the Director of the Thomas Balch Library and the Foundation's secretary treasurer. They shall:

- A. Bring recommendations for investment opportunities to the Board.
- B. When necessary, act on investment decisions between regularly scheduled Board meetings.
- C. Ensure all investment policy decisions comply with prudent investment policies.
- D. Review an annual audit, file IRS form 990-N within four months of the end of the fiscal year and present them to the Board for approval.
- E. The Board may from time to time appoint one or more investment advisers, custodians and other agents to handle the funds of the Foundation on such agency or discretionary terms as may then be approved by the Board. Members of the Board or its committees shall not be personally liable for any act or failure to act by its investment advisers, custodians or agents, or for any action taken or omitted by the Board in reliance upon the advice of such persons.

2. Development Committee

- A. Review and advise the Board regarding gifts which merit consideration.
- B. Serve as a guiding committee for the Board with regard to fundraising activities by the Foundation or related organizations in support of the programs of the Library.
- C. Review and recommend the appropriate use of the endowment funds for the benefit of the Library and its programs.

ARTICLE XIII

Indemnification

1. To the extent that any such person has been successful on the merits or otherwise in defense of any action, suit or this ARTICLE XIII, or in defense of any claim or matter therein, he/she shall be indemnified against expenses (including attorney's fees) actually and reasonably incurred by him/her in connection therewith.

2. For the purposes of this ARTICLE XIII, every reference to director or officer shall include former directors or officers, and their respective heirs, executors and administrators. The right of indemnification hereby provided shall not be exclusive of any other rights to which any director or officer may be entitled, including any rights under policies of insurance that may be purchased and maintained by the Foundation or others, with respect to claims, issues or matters in relation to which the Foundation would not have the power to indemnify such directors or officers under the provisions of this ARTICLE XIII.

ARTICLE XIV

Dissolution

If, for any reason, the Foundation is formally dissolved, custodianship of all assets shall revert to the general fund of the Town of Leesburg to be used for the benefit of the Thomas Balch Library.

PRESENTED: November 26, 2013

ORDINANCE NO. _____

ADOPTED: _____

AN ORDINANCE: ESTABLISHING AN ENDOWMENT FUND FOR THE PURPOSE OF SUPPORTING A LIBRARY OWNED OR OPERATED BY THE TOWN

WHEREAS, pursuant to Virginia Acts of Assembly, 2013 Session, Chapter 528, the Virginia General Assembly approved an Act authorizing the Town to establish an endowment fund for the propose of supporting a library owned or operated by the town; and

WHEREAS, the act authorizes the fund to receive all gifts, grants, or contributions designated for inclusion in the endowment; and

WHEREAS, the act authorizes that the endowment shall be established and administered by the town council or by a nonprofit entity created or approved by the town council for such purpose and if administered by a nonprofit entity then any nonprofit shall be governed by a board appointed by the town council. The town council shall grant such powers and authority as may be necessary to administer the endowment; and

WHEREAS, the act mandates that no part of the endowment shall revert to the general fund of the town.

THEREFORE, the Council of the Town of Leesburg in Virginia hereby ordains:

SECTION I. That Town Code, Part II, Chapter 2 (Administration), Article IV (Finance), Section 2-165 be enacted and shall read as follows:

Section 2-165. Thomas Balch Library Endowment Fund.

- (a) Created and Established. The Thomas Balch Library Endowment Fund is hereby created and established.
- (b) Purpose. The purpose of the Fund is to support the programs, mission and collections of the Balch Library.
- (c) The Fund may receive all gifts, grants or contributions designated for inclusion in the endowment.

AN ORDINANCE: ESTABLISHING AN ENDOWMENT FUND FOR THE PURPOSE OF SUPPORTING A LIBRARY OWNED OR OPERATED BY THE TOWN

- (d) The Fund shall be administered by the Thomas Balch Library Endowment Foundation which is hereby established subject to approval of articles of organization and by-laws by the town council.
- (e) The Foundation shall file the appropriate articles of incorporation and enact by-laws both of which must be approved by the town council.
- (f) The Board shall consist of five members which shall include the Director of the Thomas Balch Library, an elected representative from each of the following: the Thomas Balch Library Advisory Commission, Friends of the Thomas Balch Library, Leesburg Town Council, and a member at large appointed by the remaining board members.
- (g) All monies contained in the fund shall be held in a designated account separate from the town's general fund.
- (h) This separate account shall be maintained by town under the supervision of the Director of Finance or his/her fiscal agent for investment purposes.
- (i) The Secretary/Treasurer of the Board of Directors of the Foundation shall work with the Director of Finance or his/her fiscal agent to maintain the care and custody of the assets and financial documents of the Fund.
- (j) The Library Director and the Director of Finance or his/her fiscal agent shall serve as the Foundation's bookkeeper and shall keep accurate books of the Fund's accounts.
- (k) All transactions and books of the Fund and Foundation shall be subject at all times to the inspection and control of the Secretary/Treasurer of the Board, the Director of Finance or his/her fiscal agent and the town council or its designee.
- (l) No part of the endowment shall revert to the general fund of the town.
- (m) Members of the Board shall serve for 2 year terms and may serve up to 3 successive terms and the initial terms shall be as set forth in the By-Laws as approved by Council.

SECTION II. The By Laws dated November 21, 2013 are hereby included and approved as part of this ordinance.

SECTION III. All prior ordinances in conflict herewith are hereby repealed.

SECTION IV. Severability. If a court of competent jurisdiction declares any provision of this ordinance invalid, the decision shall not affect the validity of the ordinance as a whole or any remaining provisions of the Leesburg Town Code.

AN ORDINANCE: ESTABLISHING AN ENDOWMENT FUND FOR THE PURPOSE OF
SUPPORTING A LIBRARY OWNED OR OPERATED BY THE TOWN

SECTION V. This ordinance shall be effective upon its adoption.

PASSED this _____ day of _____, 2013.

Kristen C. Umstattd, Mayor
Town of Leesburg

ATTEST:

Clerk of Council