

CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM

CITY CLERK DEPT.
2018 JUL 18 PM3:58

Item 1
Board
mtg

DEPARTMENT: Capital Improvement Department

AGENDA DATE: July 23, 2018

CONTACT PERSON/PHONE: Sam Rodriguez, P.E., City Engineer, 212-0065

DISTRICT(S) AFFECTED: ALL

STRATEGIC GOAL: No. 4: Enhance El Paso's Quality of Life through Recreational, Cultural, and Educational Environments

SUBJECT:

Resolution of the Board of Directors of the El Paso Children's Museum Development Corporation (the "Corporation") approving the Corporation's bylaws and ratifying the articles of incorporation; and containing other related provisions.

BACKGROUND / DISCUSSION:

On November 6, 2012, the voters of El Paso approved the Quality of Life Bond, which included funding for new and improved amenities around El Paso. One of the projects which funding was included for was a new Children's Museum to be located within the City. On March 6, 2018, El Paso City Council approved the Memorandum of Understanding (MOU) by and between the City and EPC Museum, a Texas nonprofit corporation, to continue to negotiate the El Paso Children's Museum, and to direct the production of definitive documents for City Council's consideration to allow for the public-private partnership to construct and operate the El Paso Children's Museum. The El Paso Children's Museum Development Corporation (the Local Government Corporation or LGC) was created on March 20, 2018, which named the El Paso City Council as the Directors. This proposed resolution, among others, provides for the approval of the proposed bylaws of the LGC.

SELECTION SUMMARY:

N/A

PROTEST

- ☐ No protest received for this requirement.
- ☐ Protest received.

COUNCIL REPRESENTATIVE BRIEFING:

Was a briefing provided? ☒ Yes or ☐ Not Applicable (Routine)
If yes, select the applicable districts.

- ☐ District 1
- ☐ District 2
- ☐ District 3

- ☐ District 4
- ☐ District 5
- ☐ District 6
- ☐ District 7
- ☐ District 8
- ☒ All Districts

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PRIOR COUNCIL ACTION:

March 6, 2018 – El Paso City Council approved the Memorandum of Understanding

March 20, 2018 – El Paso Children's Museum Local Government Corporation was created, naming the El Paso City Council as the Directors

AMOUNT AND SOURCE OF FUNDING:

N/A

BOARD / COMMISSION ACTION:

N/A

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:



RESOLUTION OF THE BOARD OF DIRECTORS OF THE EL PASO CHILDREN'S MUSEUM DEVELOPMENT CORPORATION (THE "CORPORATION") APPROVING THE CORPORATION'S BYLAWS AND RATIFYING THE ARTICLES OF INCORPORATION; AND CONTAINING OTHER RELATED PROVISIONS

WHEREAS, on March 20, 2018, pursuant to the authority granted by Subchapter D of Chapter 431, Texas Transportation Code, as amended ("*Chapter 431*"), and Chapter 394, Texas Local Government Code ("*Chapter 394*," and, together with Chapter 431, the "*Act*"), the City Council of the City of El Paso, Texas (the "*Council*") authorized the creation of a nonprofit corporation to act as a duly constituted authority of a city to aid and assist the city in the performance of one or more of the city's governmental functions; and

WHEREAS, the Act requires the Corporation to take certain actions at the initial organization meeting of the Corporation; and

WHEREAS, this meeting is open to the public as required by law, and public notice of the time, place and purpose of this meeting was given as required by Chapter 551, Texas Government Code, as amended;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE EL PASO CHILDREN'S MUSEUM GOVERNMENT CORPORATION:

Section 1. The findings and declarations contained in the preamble of this Resolution are incorporated herein as part of this Resolution.

Section 2. The Board hereby approves the Bylaws of the Corporation, in accordance with the Act.

Section 3. The Board hereby appoints the following persons to serve as officers of the Board:

_____	President
_____	Vice President
_____	Secretary

Section 4. This Resolution shall take effect immediately from and after its adoption.

PASSED AND APPROVED this ____ day of June, 2018.

**EL PASO CHILDREN'S MUSEUM
GOVERNMENT CORPORATION:**

President, Board of Directors
El Paso Children's Museum
Government Corporation

ATTEST:

Secretary, Board of Directors
El Paso Children's Museum
Government Corporation

**BYLAWS OF THE
EL PASO CHILDREN'S MUSEUM DEVELOPMENT CORPORATION**

ARTICLE I

OFFICES

The principal office of the *EL PASO CHILDREN'S MUSEUM DEVELOPMENT CORPORATION* (the "Corporation") shall be at the office of the City Clerk, City of El Paso, Texas (the "City"), which is located at the El Paso City Hall, 300 N. Campbell, El Paso, Texas 79901.

ARTICLE II

DIRECTORS

SECTION 2.01. BOARD OF DIRECTORS. The affairs of the Corporation shall be managed by a nine (9) member board of directors (the "Board") which shall be composed in its entirety of the City Council of the City, and whose terms of office shall be coterminous with each representative's term on City Council. All directors shall be residents of the City.

SECTION 2.02. FILLING VACANCIES. Vacancies on the Board, including vacancies to be filled by reason of an increase in the number of directors, shall be filled for the unexpired term by the appointment of successor directors by the City Council.

SECTION 2.03. POWERS OF CORPORATION TO BE EXERCISED BY BOARD. The property and business of the Corporation shall be managed by the Board which may exercise all powers of the Corporation and do all lawful acts.

SECTION 2.04. PLACE OF BOARD MEETINGS. Meetings of the Board may be held at such place or places in the State of Texas as the Board from time to time may determine; provided, however, in the absence of any such determination by the Board of Directors, the meetings shall be held at City Hall.

SECTION 2.05. REGULAR BOARD MEETINGS. Regular meetings of the Board may be held on such dates and at such time and places as shall from time to time be determined by the Board; provided, however, in the absence of any such determination by the Board, the meetings shall be held at City Hall. Public notice of such regular meetings shall be provided as required by Section 3.01 herein below, a copy of which notice shall be given to the City Clerk of the City.

SECTION 2.06. SPECIAL BOARD MEETINGS. Special meetings of the Board may be called by the President on three days' notice to each director, and upon public notice as provided in Section 3.01 herein below, and shall be called by the President or Secretary also on three days' notice to each director, and upon public notice as provided in Section 3.01 herein below, on the written request of two directors. Emergency meetings shall be called by the President on two hours' notice, but only upon compliance with the public notice requirements as provided in Section 3.01 herein below.

SECTION 2.07. QUORUM. At all meetings of the Board the presence of a majority of the directors shall be necessary and sufficient to constitute a quorum for the transaction of business and the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board, except as may be otherwise specifically provided by these Bylaws.

SECTION 2.08. NO COMPENSATION PAID TO DIRECTORS. Directors, as such, shall receive no compensation for services rendered as directors, but shall be reimbursed for all reasonable expenses incurred in performing their duties as directors.

SECTION 2.09. COMMITTEES. The Board may by resolution or resolutions adopted by the Board, establish one or more committees, each committee to consist of two or more of the directors of the Corporation. Such committee or committees shall have such name or names, and such powers, as may be determined from time to time by resolution adopted by the Board.

SECTION 2.10. COMMITTEE MINUTES. The committees shall keep regular minutes of their proceedings and report the same to the Board when required.

SECTION 2.11. INDEMNIFICATION. The Corporation shall have the power to indemnify any director or officer or former director or former officer of the Corporation for expenses and costs (including attorneys' fees) actually and necessarily incurred by such director or officer in connection with any claim asserted against such director or officer by action in court of otherwise by reason of such director's being or having been a director or officer, except in relation to matters as to which such director or officer shall be guilty of negligence or misconduct in respect of the matter in which indemnity is sought. If the Corporation has not fully indemnified such director or officer, the court in the proceeding in which any claim against such director or officer has been asserted or any court having the requisite jurisdiction of an action instituted by such director or officer on such director's or officer's claims for indemnity may assess indemnity against the Corporation, its receiver, or trustee for the amount paid by such director or officer (including attorneys' fees) in satisfaction of any judgment or in compromise of any such claim (exclusive in either case of any amount paid to the Corporation), actually and necessarily incurred by such director or officer in connection therewith to the extent that the court shall deem reasonable and equitable; provided, nevertheless, that indemnity may be assessed under this Section only if the court finds that the person indemnified was not guilty of negligence or misconduct in respect of the matter in which indemnity is sought.

ARTICLE III

NOTICES

SECTION 3.01. OPEN MEETINGS ACT. The Board, all actions of the Board, all meetings of the Board, whether regular, special, or emergency, and all meetings of committees of the Board shall be subject to the public notice requirements of the Texas Open Meetings Act, Chapter 551, Texas Government Code.

SECTION 3.02. NOTICE TO DIRECTORS. Whenever under the provisions of any statute or these Bylaws, notice is required to be given to any director, it shall not be construed to mean personal notice, but such notice may be given in writing, by mail, addressed to such director at

such address as appears on the books of the Corporation, and such notice shall be deemed to be given at the time when the same shall be thus mailed.

SECTION 3.03. WAIVER OF NOTICE BY DIRECTORS. Whenever any notice is required to be given to a director under the provisions of any statute or of these Bylaws, a waiver thereof in writing signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent thereto.

ARTICLE IV

OFFICERS

SECTION 4.01. SELECTION OF VARIOUS OFFICERS. The officers of the Corporation shall be chosen by the Board. The Board shall choose from its members a President and a Vice President. The City Clerk of the City may serve as the Secretary of the Corporation until another is elected or appointed, and the Mayor Pro Tem of the City may serve as the Treasurer of the Corporation until another is elected or appointed. Any two or more offices may be held by the same person, except the offices of President and Secretary.

SECTION 4.02. APPOINTMENT OF OTHER OFFICERS AND AGENTS. The Board may appoint such other officers and agents as it shall deem necessary, who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board.

SECTION 4.03. REMOVAL OF OFFICERS. Any officer elected or appointed by the Board may be removed at any time by the affirmative vote of a majority of the whole Board. If the office of any officer becomes vacant for any reason, the vacancy shall be filled by the Board.

SECTION 4.04. EXECUTIVE DIRECTOR OF CORPORATION. The City Manager of the City shall serve as the Executive Director of the Corporation, who shall be the Chief Administrative Officer of the Corporation and shall exercise such powers and perform such duties as shall be determined from time to time by the Board.

THE PRESIDENT

SECTION 4.05. The President shall preside at all meetings of the directors.

SECTION 4.06. The President shall be ex-officio a member of all standing committees, shall have general supervision of the management of the business of the Corporation, and shall see that all orders and resolutions of the Board are carried into effect.

SECTION 4.07. The President shall execute bonds, mortgages and other contracts, except where required or permitted by law to be otherwise signed and executed and except where the signing and execution thereof shall be expressly delegated by the Board to some other officer or agent of the Corporation.

THE VICE PRESIDENT

SECTION 4.08. The Vice President shall, in the absence or disability of the President, perform the duties and exercise the powers of the President, and shall perform such other duties as the Board shall prescribe.

THE SECRETARY

SECTION 4.09. The Secretary shall attend all sessions of the Board and record all votes and the minutes of all proceedings in a book to be kept for that purpose and shall perform like duties for the standing committees when required. The Secretary shall give, or cause to be given, notice of all meetings of the Board and shall perform such other duties as may be prescribed by the Board or the President. The Secretary shall keep in safe custody the seal of the Corporation and, when authorized by the Board, affix the same to any instrument requiring it, and, when so affixed, it shall be attested by the Secretary's signature. When the corporate seal is required as to instruments executed in the course of ordinary business, the Secretary shall attest to the signature of the President or Vice President and shall affix the seal thereto. The Board may appoint one or more persons to serve as an Assistant Secretary, which person may, but need not be, a director. The Assistant Secretary may perform any duty granted to the Secretary in these Bylaws and/or in any resolution approved by the Board.

THE TREASURER

SECTION 4.10. To the extent not otherwise provided by the Board, by rules or regulations, in resolutions relating to the issuance of bonds, or in any financing documents relating to such issuance, the Treasurer shall have the custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation and shall deposit all moneys and other valuable effects in the name and to the credit of the Corporation in a depository as shall be designated by the Board. The Treasurer shall disburse the funds of the Corporation as may be ordered by the Board, taking proper vouchers for such disbursements and shall render to the President and directors, at the regular meetings of the Board, or whenever they may require it, an account of all transactions performed as Treasurer and of the financial condition of the Corporation. The Board may appoint one or more persons to serve as an Assistant Treasurer, which person may, but need not be, a director. The Assistant Treasurer may perform any duty granted to the Treasurer in these Bylaws and/or in any resolution approved by the Board.

SECTION 4.11. SURETY BONDS. The Board may require the President, Vice President, the Secretary, any Assistant Secretary, the Treasurer, and any Assistant Treasurer to give the Corporation bonds in such sums and with such surety or sureties as shall be satisfactory to the Board for the faithful performance of the duties of their office and for the restoration to the Corporation, in case of such person's death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in such person's possession or under such person's control belonging to the Corporation.

SECTION 4.12. FACSIMILE SIGNATURES. The provisions of the Texas Uniform Facsimile Signature of Public Officials Act shall be applicable to the Corporation, which is a duly constituted instrumentality of the City, a political subdivision of the State of Texas.

ARTICLE V

FISCAL PROVISIONS

SECTION 5.01. RESTRICTIONS ON PAYMENT OF FUNDS. No dividends shall ever be paid by the Corporation and no part of its net earnings remaining after payment of its expenses shall be distributed to or inure to the benefit of its directors or officers or any individual, firm, corporation, or association, except that in the event the board of directors shall determine that sufficient provision has been made for the full payment of the expenses, bonds, and other obligations of the Corporation, then any net earnings of the Corporation thereafter accruing shall be paid to the City. No part of the Corporation's activities shall be carrying on propaganda, or otherwise attempting to influence legislation, and it shall not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of or in opposition to any candidate for public office.

SECTION 5.02. EXECUTION OF FINANCIAL INSTRUMENTS. All checks, demands for money, withdrawals of money, notes, time and demand deposits and certificates of deposit shall be signed by the Treasurer or his designee or such other person or persons as the Board of Directors from time to time may designate by resolution or other action of the Board of Directors or as may be designated in any financing documents relating to the issuance of bonds or other obligations of the Corporation, provided that in the case of checks at least one of the authorized signatories shall be an officer of the Corporation.

SECTION 5.03. FISCAL YEAR. The fiscal year of the Corporation shall be the same as the fiscal year of the City.

SECTION 5.04. BOOKS AND RECORDS. The Corporation shall keep correct and complete books and records of account and shall also keep minutes of the proceedings of the Board and committees having any of the authority of the Board. All books and records of the Corporation shall be kept at the principal office of the Corporation where they shall be available to the public in accordance with the applicable provisions of the Open Records Act (Chapter 552, Tex. Government Code, as amended).

SECTION 5.05. ADMINISTRATIVE FUNCTIONS. Administrative functions for the Corporation may be performed by the City as directed by the City Council of the City. The Corporation shall pay, to the extent funds of the Corporation are legally available, the amount of costs for such services from fees collected by it, as from time to time shall be billed to the Corporation by the City.

ARTICLE VI

SEAL

The corporate seal, if any, shall be circular and shall have inscribed in the outer circle "El Paso Children's Museum Development Corporation". Said seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

ARTICLE VII

AMENDMENT AND INTERPRETATION OF BYLAWS

SECTION 7.01. AMENDMENT OF BYLAWS. These Bylaws may be amended at any time and from time to time by majority vote of the Board with approval of the City by resolution of the City Council of the City.

SECTION 7.02. INTERPRETATION OF BYLAWS. These Bylaws and all the terms and provisions hereof shall be liberally construed to effectuate the purposes set forth herein. If any word, phrase, clause, sentence, paragraph, section or other part of these Bylaws, or the application thereof to any person or circumstance, shall ever be held to be invalid or unconstitutional by any court of competent jurisdiction, the remainder of these Bylaws and the application of such word, phrase, clause, sentence, paragraph, section or other part of these Bylaws to any other person or circumstance shall not be affected thereby.

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ADOPTED AND APPROVED this the ____ day of June, 2018.

**EL PASO CHILDREN'S MUSEUM
GOVERNMENT CORPORATION:**

President, Board of Directors
El Paso Children's Museum Development
Corporation

ATTEST:

Secretary, Board of Directors
El Paso Children's Museum Development
Corporation