



# CITY OF HOUSTON

## Administrative Procedure

Subject: **City Nonprofit and Local Government Corporations**

A.P. No:

**2-10**

Effective Date:

**March 5, 2014**

### 1. AUTHORITY

- 1.1 Article VI, Section 7a, of the Charter of the City of Houston.

### 2. PURPOSE

- 2.1 To establish uniform procedures for the creation of a Corporation, as well as procedures for the operation of any such entity including, but not limited to, submission of financial and other reports to the City by the Corporation.

### 3. OBJECTIVES

- 3.1 To insure that a Corporation whether currently existing or created hereunder as a fund-raising entity and/or to support a City department or its programs, adheres to the policies and procedures established herein.
- 3.2 The establishment of clear lines of responsibilities for persons engaged in the management, operation or administration of a Corporation.
- 3.3 The promulgation and issuance of procedures by the Finance Department (Finance) relating to financial matters, including reports to be used by both City departments and a Corporation.
- 3.4 The establishment of roles and responsibilities of City departments relating to documenting and reporting of all financial activities for Corporations.
- 3.5 The development of internal controls to provide guidance and oversight relating to administrative and financial reports required herein.

### 4. DEFINITIONS

*Certificate of Formation* – The form promulgated by the Texas Secretary of State for the creation or establishment of a Corporation.

*Corporation* – A nonprofit corporation or local government corporation (LGC) created to solicit funds or carry out other activities in support of a City department and/or City programs.

*Director* – The director of a Sponsoring Department.

*Finance Director* – The director of the City's Department of Finance.

*Sponsoring Department* – The City department responsible for the creation and operational oversight of a Corporation.

Approved:

Date Approved:

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## 5. PROCEDURE FOR CREATION OF NEW CORPORATIONS

- 5.1 The creation of a Corporation by a Sponsoring Department for any purpose shall require the prior written approval of the Mayor.
- 5.2 In order to secure Mayoral approval, a Director shall submit a written request for the creation and use of the Corporation. This request shall include, at a minimum, the following information:
  - 5.2.1 The proposed name of the Corporation and a listing of the specific purposes for which it is to be created and used by the department;
  - 5.2.2 The names of the corporations' organizers;
  - 5.2.3 The names and resumes of the persons to be named as the initial board of directors of the Corporation;
  - 5.2.4 Whether the Corporation will seek tax-exempt status from the Internal Revenue Service (IRS) and if so, the section of the IRS Code under which the exemption will be claimed; and
  - 5.2.5 If the Corporation is intended to engage in fund-raising for the Sponsoring Department, a description of the means and methods to be used in such efforts and the expected program recipients.
- 5.3 In addition to these requirements, if the proposal is to create a local government corporation, the incorporation process shall also comply with the applicable procedures and requirements of Section 431.101, *et seq.* of the Texas Transportation Code and Chapter 394 of the Texas Local Government Code.
- 5.4 No action to create or establish a Corporation shall proceed until the Director has received the written approval of the Mayor.

## 6. RESPONSIBILITIES

- 6.1 Upon approval by the Mayor of a request by a Director to form a Corporation, the Director shall provide a copy of the approved request to the City Attorney, the Finance Director and the City Controller.
- 6.2 The Director shall not file, or cause to be filed, any corporate formation document until the City Attorney has approved the corporate formation documents and the Finance Director has approved the portion of the corporate formation documents relating to the reporting of financial or other matters.
- 6.3 The City Attorney shall:
  - 6.3.1 Review and approve all corporate formation documents, including the Corporation's Certificate of Formation and proposed bylaws.
  - 6.3.2 Ensure that provisions are made in the Certificate of Formation and bylaws, as appropriate or necessary to:
    - 6.3.2.1 Require the Mayor's approval of the appointment or re-appointment of any director of the Corporation upon the end of a term or the filling of any vacancy on the board;

- 6.3.2.2 Require that no amendment to the Certificate of Formation, bylaws or other corporate instrument shall be effective without the prior approval of the Mayor and the City Attorney, or as otherwise required by law;
- 6.3.2.3 Provide that the Mayor, or designee, shall be named as a non-voting ex officio member of the board;
- 6.3.2.4 Require the Corporation to file, at least annually, audited financial statements meeting the requirements set by the Finance Director and prepared by an auditor or accounting firm approved by the Finance Director;
- 6.3.2.5 Provide for access to the books and records of the Corporation, or any person or entity providing financial or other services to it, including, but not limited to, accounting, bookkeeping or other financial services, upon request by the Mayor, the Finance Director or the City Controller;
- 6.3.2.6 Require that all meetings of the Corporation's board of directors, or any committee thereof, be held in conformity with the Texas Open Meetings Law, Chapter 551, Texas Government Code; and
- 6.3.2.7 Require that all books and records of the Corporation be made available for inspection by any member of the public, in conformity with the Texas Public Information Act, Chapter 552, Texas Government Code.
- 6.3.2.8 If the Corporation receives money from private donors, provide a quarterly report to the Mayor, the Finance Director, or their designees that contains the following:
  - (1) Name of donor;
  - (2) Amount of donation; and
  - (3) Purpose of donation.

6.4 The Finance Director shall:

- 6.4.1 Specify, or review and approve, the methods and procedures to be utilized by the Corporation to record and report its revenues and expenses;
- 6.4.2 Ensure that the Corporation complies with all accounting or other financial reporting record keeping or reporting required or approved by the Finance Director necessary to qualify the Corporation as a component unit of the City for all accounting purposes through periodic audits or inspection of the Corporation's books of account, including the books or records of any entity providing such services to each Corporation; and
- 6.4.3 Review the annual audited statements provided by the Corporation and report any deficiencies found therein to the Mayor.

6.5 The Chair, Chief Executive Officer (CEO) and Chief Financial Officer (CFO) of a Corporation shall, unless otherwise provided in a contract between the City and the Corporation:

- 6.5.1 Ensure that no document to create or establish any Corporation, or methods of accounting of revenues and expenses of a Corporation, is executed or filed with any government agency without the review and approval of the City Attorney and the Finance Director. There will be no exception to this provision except as may be approved in writing by the Mayor in advance;
- 6.5.2 Ensure all fiscal year dates coincide with the City of Houston fiscal year, currently July 1 through June 30. If the fiscal year for the City of Houston changes, the Corporation's fiscal year shall be changed to be consistent with the City's fiscal year;
- 6.5.3 Ensure the City is named as an insured, beneficiary, or indemnified person, as applicable, on all types of insurance, bonds and indemnities relating to the Corporation;
- 6.5.4 Establish and maintain resources and procedures so that the financial operations are amenable to (a) periodic audits by the Finance Director and the Corporation's Independent (External) Auditor in accordance with generally accepted accounting principles (GAAP) and with generally accepted government auditing standards (GAGAS) and (b) inclusion in the City's Comprehensive Annual Financial Report (CAFR);
- 6.5.5 Submit to the Finance Director, no later than March 1 of each year, a draft budget approved by the Board of the Corporation for the fiscal year beginning on July 1 of such year and submit the final approved budget by June 30 of each year. The Corporation shall present the budget to the City Council Budget and Fiscal Affairs Committee if requested by the Chair of that Committee;
- 6.5.6 Submit monthly financial statements including projections and actual values for the period reported to the Finance Director or his designee, no later than 45 days after the end of the reported month. A Corporation engaged in fund-raising activities must submit, with the monthly report, details on the fund-raising efforts and the funds allocated to the specific cause of those efforts;
- 6.5.7 Submit to the Finance Director, or his designee, no later than 2 days after audited financials are complete, annual audited financial statements in accordance with GAAP;
- 6.5.8 Submit annual reports to the Director of the Office of Business Opportunity regarding the Corporation's efforts to comply with the City's MWBE program goals; and
- 6.5.9 Ensure the Corporation adopts all requirements of this policy in the Corporation's bylaws. If bylaws require the board to approve these policies, the Corporation shall pass a motion or resolution to that effect.

## 7. CONFLICT AND REPEAL

- 7.1 This Administrative Procedure supersedes Executive Order 1-29, Creation and Use of Non-Profit Corporations, signed January 4, 2011, which shall be of no further force or effect. In any circumstance or case where compliance with former Executive Order 1-29 was required or made a condition in any regard, this requirement shall be deemed to include this Administrative Procedure 2-10 and any future amendments thereto.