

**A RESOLUTION APPROVING THE CREATION OF THE UPPER KIRBY REDEVELOPMENT AUTHORITY; APPROVING THE ARTICLES OF INCORPORATION AND THE BYLAWS THEREOF; CONFIRMING THE APPOINTMENT OF THE INITIAL DIRECTORS AND CHAIRPERSON; AND CONTAINING FINDINGS AND OTHER PROVISIONS RELATING TO THE SUBJECT.**

\* \* \* \* \*

**WHEREAS**, Subchapter D of Chapter 431, Texas Transportation Code (the "Act"), authorizes the creation and organization of public non-profit local government corporations to act as a duly constituted authority of a city to aid and assist the city in the performance of one or more governmental functions; and

**WHEREAS**, the Act requires a local government corporation to be created pursuant to the provisions of Chapter 394, Texas Local Government Code ("Chapter 394"), and requires the local government corporation's articles of incorporation and bylaws to be in the form, and to be executed, approved, and filed in the manner, prescribed by Chapter 394; and

**WHEREAS**, a local government corporation may have and exercise all of the powers prescribed by the Act and Article 1396 of Texas Revised Civil Statutes Annotated (collectively, the "Acts"); and

**WHEREAS**, Chapter 394 requires as a condition to the creation of a local government corporation that at least three (3) residents of the city who are citizens of the

to promote the common good and general welfare of the Upper Kirby area of Houston and neighboring areas, as more particularly described in City of Houston, Texas, Ordinance No. 1999-767, and as the boundaries of Reinvestment Zone Number Nineteen, City of Houston, Texas, may be changed from time to time; to promote, develop, encourage and maintain employment, commerce and economic development in Houston; and to perform the other purposes described in the Articles of Incorporation.

**Section 3.** The City Council hereby approves the Articles of Incorporation of the Authority in substantially the form attached hereto as Exhibit "A" and authorizes the incorporators of the Authority to file such Articles of Incorporation with the Secretary of State of the State of Texas in the manner provided by law.

**Section 4.** The City Council hereby approves the Bylaws of the Authority in substantially the form attached hereto as Exhibit "B".

**Section 5.** The City Council hereby confirms the appointment of the directors listed in the Articles of Incorporation attached hereto. The City Council hereby confirms the appointment of Robert H. Schultz as the initial Chairperson of the Board of Directors. Subsequent chairpersons shall be designated as provided by the Bylaws.

**Section 6.** The City Council hereby finds, determines, recites, and declares that any notes, bonds, loans, debts or other obligations of the Authority shall not be deemed an indebtedness, liability, general or moral obligation or pledge of the faith or credit of the State of Texas, the City of Houston, or any other political subdivision or governmental unit, nor shall any such notes, bonds, loans, debts or other obligations constitute an

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Resolution is OCT 30 2001, 2001.

*Carla Russell*  
 \_\_\_\_\_  
 City Secretary

(Prepared by Legal Dept. *Clark Stockton Lord* Assistant City Attorney *jt*)  
 (CSL/csl October 2, 2001)  
 (Requested by Robert M. Litke, Director, Planning & Development Department)  
 L.D. No. 0619900057007

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AYE	NO	
✓		MAYOR BROWN
....	....	COUNCIL MEMBERS
✓		TATRO
✓		GALLOWAY
✓		GOLDBERG
	ABSENT	BONEY
✓		TODD
✓		ELLIS
✓		KELLER
✓		VASQUEZ
✓		CASTILLO
✓		PARKER
✓		QUAN
✓		SANCHEZ
✓		BELL
✓		ROBINSON
CAPTION	ADOPTED	

CAPTION PUBLISHED IN DAILY COURT  
 REVIEW  
 DATE: OCT 30 2001

**ARTICLES OF INCORPORATION**

**OF**

**THE UPPER KIRBY REDEVELOPMENT AUTHORITY**

We, the undersigned natural persons, each of whom is at least Eighteen (18) years of age or more, and a resident and a qualified voter of the City of Houston, Texas (the "City") and a citizen of the State of Texas, acting as incorporators of a corporation under the provisions of Subchapter D of Chapter 431, Texas Transportation Code (the "Act"), and Chapter 394, Vernon's Texas Codes Annotated, Texas Local Government Code (the "Local Government Code"), do hereby adopt the following Articles of Incorporation for such corporation:

**ARTICLE I**

The name of the corporation is UPPER KIRBY REDEVELOPMENT AUTHORITY (the "Authority").

**ARTICLE II**

The Authority is a public non-profit corporation.

**ARTICLE III**

The period of duration of the Authority shall be perpetual.

**ARTICLE IV**

The Authority is organized for the purpose of aiding, assisting, and acting on behalf of the City in the performance of its governmental functions to promote the common good and general welfare of the area included in Reinvestment Zone Number Nineteen, City of Houston, Texas (the "Upper Kirby Reinvestment Zone") and neighboring areas, as more particularly described in City Ordinance No.1999-767 and as the boundaries may be amended from time to time (the "Upper Kirby Area"); to promote, develop, encourage and maintain housing, educational facilities, employment, commerce and economic development in the City.

The Authority is further organized to aid, assist and act on behalf of the City and the Board of Directors of the Upper Kirby Reinvestment Zone:

(a) in the implementation of the Project Plan and a Financing Plan for the Upper Kirby Reinvestment Zone and the preparation and implementation of amendments thereto;

(b) in the development of a policy to finance development and redevelopment of residential, educational facilities, commercial, and park/open space properties in the Upper Kirby Area; and

If any of the following persons is not serving as a member of the Board, he or she or their designee shall serve as an ex-officio, non-voting member of the Board:

- (1) Chief of Staff, Mayor's Office;
- (2) Director of the City Department of Public Works and Engineering;
- (3) City Attorney;
- (4) Director of the City Planning and Development Department;
- (5) Chairman of the Board of the Metropolitan Transit Authority of Harris County; and
- (6) Chair of City Council Transportation, Technology and Infrastructure Committee.

In addition, the Board of Directors of the Authority may designate one or more representatives of the Houston Independent School District, Harris County or other political subdivisions as ex officio, non-voting members of the Board of Directors.

All other matters pertaining to the internal affairs of the Authority shall be governed by the Bylaws of the Authority, so long as such Bylaws are not inconsistent with these Articles of Incorporation, or the laws of the State of Texas.

## ARTICLE VII

The street address of the initial registered office of the Authority is 7322 Southwest Freeway, Suite 1470, Houston, Texas, 77074, and the name of its initial registered agent at such address is David Hawes.

## ARTICLE VIII

The number of Directors initially constituting the Board is seven (7). The names, addresses, and positions of the seven (7) initial Directors, each of whom resides within the City are as follows:

### Name and Address

Antoinette Jackson 1011 Fannin Street, Suite 800 Houston, Texas 77002	Position One
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Robert H. Schultz 1800 West Loop South, Suite 1323 Houston, Texas 77027	Position Two
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John Chiang	Position Three
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No Director shall be liable to the Authority for monetary damages for an act or omission in the Director's capacity as a Director, except for liability (i) for any breach of the Director's duty of loyalty to the Authority, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) for any transaction from which the Director received an improper benefit, whether or not the benefit resulted from an act taken within the scope of the Director's office, or (iv) for acts or omissions for which the liability of a Director is expressly provided by statute. Any repeal or amendment of this Article by the Directors shall be prospective only, and shall not adversely affect any limitation on the personal liability of a Director existing at the time of such repeal or amendment. In addition to the circumstances in which a Director is not personally liable as set forth in the preceding sentences, a Director shall not be liable to the fullest extent permitted by any amendment to the Texas statutes hereafter enacted that further limits the liability of a Director.

## ARTICLE XII

In accordance with the provisions of Section 501(c)(3) of the U.S. Internal Revenue Code of 1986, as amended (the "Code"), and regardless of any other provisions of these Articles of Incorporation or the laws of the State of Texas, the Authority: (a) shall not permit any part of the net earnings of the Authority to inure to the benefit of any private individual (except that reasonable compensation may be paid for personal services rendered to or for the Authority in effecting one or more of its purposes); (b) shall not devote more than an insubstantial part of its activities to attempting to influence legislation by propaganda or otherwise; (c) shall not participate in, or intervene in (including the publication or distribution of statements), any political campaign on behalf of any candidate for public office; and (d) shall not attempt to influence the outcome of any election for public office or to carry on, directly or indirectly, any voter registration drives. Any income earned by the Authority after payment of reasonable expenses, debt and establishing a reserve shall accrue to the City.

The City shall, at all times, have an unrestricted right to receive any income earned by the Authority, exclusive of amounts needed to cover reasonable expenditures and reasonable reserves for future activities. Unless otherwise directed by the City, any income of the Authority received by the City shall be deposited into the Reinvestment Zone Number Nineteen, City of Houston, Texas, Tax Increment Fund, or its successor. No part of the Authority's income shall inure to the benefit of any private interests.

If the Board of Directors determines by resolution that the purposes for which the Authority was formed have been substantially met and all bonds issued by and all obligations incurred by the Authority have been fully paid, the Board shall execute a certificate of dissolution which states those facts and declares the Authority dissolved in accordance with the requirements of Section 394.026 of Vernon's Texas Codes Annotated, Local Government Code, or with applicable law then in existence. In the event of dissolution or liquidation of the Authority, all assets will be turned over to the Finance and Administration Department of the City, or its successor, for deposit into the Reinvestment Zone Number Nineteen, City of Houston, Texas, Tax Increment Fund unless the City Council shall otherwise direct.

BEFORE ME, the undersigned authority, on this day personally appeared Antoinette Jackson, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the \_\_\_\_ day of \_\_\_\_\_, 2001.

Notary Public in and for  
The State of Texas

(SEAL)

THE STATE OF TEXAS

COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this day personally appeared Mary Jo Poindexter, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the \_\_\_\_ day of \_\_\_\_\_, 2001.

Notary Public in and for  
The State of Texas

(SEAL)

THE STATE OF TEXAS

COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this day personally appeared Judy Penner, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the \_\_\_\_ day of \_\_\_\_\_, 2001.

Notary Public in and for The State of Texas

(SEAL)

EXHIBIT

**BYLAWS**  
**OF THE**  
**UPPER KIRBY REDEVELOPMENT AUTHORITY**

A Texas Local Government Corporation  
(Created on behalf of the City of Houston)

Date of Adoption: \_\_\_\_\_, 2001

EXHIBIT

TABLER

12

<i>Section 3.</i>	<i>Acceptance of Gifts</i> .....	12
<i>Section 4.</i>	<i>Bribery</i> .....	12
<i>Section 5.</i>	<i>Nepotism</i> .....	12

ARTICLE VIII AMENDMENTS .....	12
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for which it was created, provided that the Authority shall not issue bonds without the consent of the City Council of the City.

The Authority is created as a local government corporation pursuant to the Act and shall be a governmental unit within the meaning of Subdivision (2), Section 101.001, Texas Civil Practice and Remedies Code. The operations of the Authority are governmental and not proprietary functions for purposes of the Texas Tort Claims Act, Section 101.001 et seq., Texas Civil Practice and Remedies Code. The Authority shall have the power to acquire land in accordance with the Act as amended from time to time.

## ARTICLE II

### BOARD OF DIRECTORS

*Section 1. Appointment, Classes, Powers, Number, and Term of Office.* All powers of the Authority shall be vested in the Board of Directors (the "Board"). The Board shall initially consist of seven (7) persons. The Directors of the Board shall be increased to the number of directors on the board of the Upper Kirby Reinvestment Zone in the event such board is increased to more than seven (7) directors. Directors of the Authority shall be appointed by position to the Board by the Mayor of the City with the consent and approval of City Council and shall be the same persons appointed to the corresponding position of the board of the Upper Kirby Reinvestment Zone. Appointment of a person to the corresponding position of the board of the Upper Kirby Reinvestment Zone shall constitute appointment of such person to the corresponding position of the Board by the City. Each taxing unit that appoints a director to the Upper Kirby Reinvestment Zone shall be assigned a position number on the Board corresponding to the position number of that taxing unit appointee on the board of the Upper Kirby Reinvestment Zone. Appointment of a person to the corresponding position of the board of the Upper Kirby Reinvestment Zone by any taxing unit shall constitute nomination of such person to the corresponding position of the Board by such taxing unit. The Chairman of the Board shall always be appointed by the Mayor of the City.

Each Director shall serve for a term which expires on the date set forth below for the position to which such person was appointed, or until his or her successor is appointed by the City unless such Director has been appointed to fill an unexpired term in which case the term of the Director shall expire on the expiration date of the term of the Director whose position he or she was appointed to fill. Any Director may be removed from office at any time, with or without cause, by the City Council. The number of Directors may only be increased or decreased by an amendment to the Bylaws with the consent of the City Council of the City.

The term of each position shall be coterminous with the term of the corresponding position on the board of the Upper Kirby Reinvestment Zone as established by City Ordinance No. 1999-767 as may be amended from time to time.

*Section 5. Special and Emergency Meetings.* Special and emergency meetings of the Board shall be held whenever called by the Chairperson of the Board or the Secretary or by a majority of the Directors who are serving duly appointed terms of office at the time the meeting is called.

The Secretary shall give notice of each special meeting in person, by telephone, fax, mail or telegraph at least three (3) days before the meeting to each Director and to the public in compliance with the Open Meetings Act. Notice of each emergency meeting shall also be given in the manner required of the City under Section 551.045 of the Open Meetings Act. Unless otherwise indicated in the notice thereof, any and all matters pertaining to the purposes of the Authority may be considered and acted upon at a special or emergency meeting. At any meeting at which every Director shall be present, even though without any notice, any matter pertaining to the purposes of the Authority may be considered and acted upon to the extent allowed by the Open Meetings Act.

*Section 6. Quorum.* A majority of the appointed positions of the Board shall constitute a quorum for the consideration of matters pertaining to the purposes of the Authority. If at any meeting of the Board there is less than a quorum present, a majority of those present may adjourn the meeting from time to time. The act of a majority of the Directors present and voting at a meeting at which a quorum is in attendance shall constitute the act of the Board, unless the act of a greater number is required by law, by the Articles of Incorporation, or by these Bylaws.

A Director who is present at a meeting of the Board at which any corporate action is taken shall be presumed to have assented to such action unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the Authority immediately after the adjournment of the meeting. Such right to dissent shall not apply to a Director who voted in favor of the action.

*Section 7. Conduct of Business.* At the meetings of the Board, matters pertaining to the purposes of the Authority shall be considered in such order as from time to time the Board may determine.

At all meetings of the Board, the Chairperson shall preside, and in the absence of the Chairperson, the Vice Chairperson shall preside. In the absence of the Chairperson and the Vice Chairperson, a chairperson shall be chosen by the Board from among the Directors present.

The Secretary of the Authority shall act as secretary of all meetings of the Board, but in the absence of the Secretary, the presiding officer may appoint any person to act as secretary of the meeting.

- (b) legal counsel, public accountants, or other persons as to matters the officer reasonably believes are within the person's professional or expert competence; or
- (c) a committee of the Board of which the Director is not a member.

### ARTICLE III

#### OFFICERS

*Section 1. Titles and Term of Office.* The officers of the Authority shall be a chairperson of the Board, one or more vice chairpersons of the Board, a president, one or more vice presidents, a secretary, a treasurer, and such other officers as the Board may from time to time elect or appoint. One person may hold more than one office, except that neither the Chairperson of the Board nor the President shall hold the office of Secretary. The term of office for each officer (other than the Chairperson) shall be two (2) years commencing with the date of the annual meeting of the Board at which each such officer is elected. The Chairperson shall serve for the term designated by the Mayor of the City.

All officers (other than the Chairperson) shall be subject to removal, with or without cause, at any time by a vote of a majority of the whole Board.

A vacancy in the office of any officer (other than the Chairperson) shall be filled by the Board.

*Section 2. Powers and Duties of the Chairperson.* The Chairperson shall be a member of the Board and shall preside at all meetings of the Board. The Chairperson shall be designated by the Mayor of the City. He or she shall have such duties as are assigned by the Board. The Chairperson may call special or emergency meetings of the Board.

*Section 3. Powers and Duties of the Vice Chairperson.* The Vice Chairperson shall be a member of the Board. The Vice Chairperson shall perform the duties and exercise the powers of the Chairperson upon the Chairperson's death, absence, disability, or resignation, or upon the Chairperson's inability to perform the duties of his or her office. Any action taken by the Vice Chairperson in the performance of the duties of the Chairperson shall be conclusive evidence of the absence or inability to act of the Chairperson at the time such action was taken.

*Section 4. Powers and Duties of the President.* The President shall be the principal executive officer of the Authority and, subject to the Board, he or she shall be in general charge of the properties and affairs of the Authority. In furtherance of the purposes of the Authority and subject to the limitations contained in the Articles of Incorporation, the President, Chairperson, or

*Section 9. Officer's Reliance on Consultant Information.* In the discharge of a duty imposed or power conferred on an officer of the Authority, the officer may in good faith and with ordinary care rely on information, opinions, reports, or statements, including financial statements and other financial data, concerning the Authority or another person, that were prepared or presented by:

(a) one or more other officers or employees of the Authority, including members of the Board; or

(b) legal counsel, public accountants, or other persons as to matters the officer reasonably believes are within the person's professional or expert competence.

## ARTICLE IV

### MISCELLANEOUS PROVISIONS

*Section 1. Fiscal Year.* The fiscal year of the Authority shall begin July 1 of each year.

*Section 2. Seal.* The seal of the Authority shall be such as from time to time may be approved by the Board.

*Section 3. Notice and Waiver of Notice.* Whenever any notice other than public notice of a meeting given to comply with the Open Meetings Act, is required to be given under the provisions of these Bylaws, such notice shall be deemed to be sufficient if given by depositing the same in a post office box in a sealed postpaid wrapper addressed to the person entitled thereto at his or her post office address, as it appears on the books of the Authority, and such notice shall be deemed to have been given on the day of such mailing. A waiver of notice, signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent thereto.

*Section 4. Resignations.* Any Director, officer or Advisory Director may resign at any time. Such resignations shall be made in writing and shall take effect at the time specified therein, or, if no time be specified, at the time of its receipt by the President or Secretary. The acceptance of a resignation shall not be necessary to make it effective, unless expressly so provided in the resignation.

*Section 5. Gender.* References herein to the masculine gender shall also refer to the feminine in all appropriate cases and vice versa.

*Section 2. Advance Payment.* The right to indemnification conferred in this Article V shall include the right to be paid in advance or reimbursed by the Authority the reasonable expenses incurred by a person of the type entitled to be indemnified under Section 1 who was, is or is threatened to be made a named defendant or respondent in a proceeding in advance of the final disposition of the proceeding and without any determination as to the person's ultimate entitlement to indemnification; provided, however, that the payment of such expenses incurred by any such person in advance of the final disposition of a proceeding, shall be made only upon delivery to the Authority of a written affirmation by such Director or officer of his or her good faith belief that he or she has met the standard of conduct necessary for indemnification under this Article V and a written undertaking, by or on behalf of such person, to repay all amounts so advanced if it shall ultimately be determined that such indemnified person is not entitled to be indemnified under this Article V or otherwise.

*Section 3. Indemnification of Employees and Agents.* The Authority, by adoption of a resolution of the Board, may indemnify and advance expenses to an employee or agent of the Authority to the same extent and subject to the same conditions under which it may indemnify and advance expenses to Directors and officers under this Article V; and the Authority may indemnify and advance expenses to persons who are not or were not Directors, officers, employees or agents of the Authority but who are or were serving at the request of the Authority as a Director, officer, partner, venturer, proprietor, trustee, employee, agent or similar functionary of another foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise against any liability asserted against him or her and incurred by him or her in such a capacity or arising out of his or her status as such a person to the same extent that it may indemnify and advance expenses to Directors under this Article V.

*Section 4. Appearance as a Witness.* Notwithstanding any other provision of this Article V, the Authority may pay or reimburse expenses incurred by a Director or officer in connection with his or her appearance as a witness or other participation in a proceeding involving the Authority or its business at a time when he or she is not a named defendant or respondent in the proceeding.

*Section 5. Non-exclusivity of Rights.* The right to indemnification and the advancement and payment of expenses conferred in this Article V shall not be exclusive of any other right which a Director or officer or other person indemnified pursuant to Section 3 of this Article V may have or hereafter acquire under any law (common or statutory), provision of the Articles of Incorporation of the Authority or these Bylaws, agreement, vote of shareholders or disinterested Directors or otherwise.

*Section 6. Insurance.* The Authority may purchase and maintain insurance, at its expense, to protect itself and any person who is or was serving as a Director, officer, employee or agent of the Authority or is or was serving at the request of the Authority as a Director, officer, partner, venturer, proprietor, trustee, employee, agent or similar functionary of another foreign or

**ARTICLE VII**  
**CODE OF ETHICS**

*Section 1. Policy and Purposes.*

(a) It is the policy of the Authority that Directors and officers conduct themselves in a manner consistent with sound business and ethical practices; that the public interest always be considered in conducting corporate business; that the appearance of impropriety be avoided to ensure and maintain public confidence in the Authority; and that the Board establish policies to control and manage the affairs of the Authority fairly, impartially, and without discrimination.

(b) This Code of Ethics has been adopted as part of the Authority's Bylaws for the following purposes: (a) to encourage high ethical standards in official conduct by Directors and corporate officers; and (b) to establish guidelines for such ethical standards of conduct.

*Section 2. Conflicts of Interest.*

(a) Except as provided in subsection (c), a Director or officer is prohibited from participating in a vote, decision, or award of a contract involving a business entity or real property in which the Director or the officer has a substantial interest, if it is foreseeable that the business entity or real property will be economically benefited by the action. A person has a substantial interest in a business (i) if his or her ownership interest is ten percent or more of the voting stock or shares of the business entity or ownership of \$15,000 or more of the fair market value of the business entity, or (ii) if the business entity provides more than ten percent of the person's gross income. A person has a substantial interest in real property if the interest is an equitable or legal ownership with a fair market value of \$2,500 or more. An interest of a person related in the second degree by affinity or the third degree by consanguinity to a Director or officer is considered a substantial interest.

(b) If a Director or a person related to a Director in the first or second degree by affinity or the first, second, or third degree by consanguinity has a substantial interest in a business entity or real property that would be pecuniarily affected by any official action taken by the Board, such Director, before a vote or decision on the matter, shall file an affidavit stating the nature and extent of the interest. The affidavit shall be filed with the Secretary of the Board.

(c) A Director who has a substantial interest in a business entity that will receive a pecuniary benefit from an action of the Board may vote on that action if a majority of the Board has a similar interest in the same action or if all other similar business entities in the Authority will receive a similar pecuniary benefit.

(c) any benefit as consideration for a violation of a duty imposed by law on the Director or officer.

*Section 5. Nepotism.* No Director or officer shall appoint, or vote for, or confirm the appointment to any office, position, clerkship, employment or duty, of any person related within the second degree by affinity (marriage relationship) or within the third degree of consanguinity (blood relationship) to the Director or officer so appointing, voting or confirming, or to any other Director or officer. This provision shall not prevent the appointment, voting for, or confirmation of any person who shall have been continuously employed in any such office, position, clerkship, employment or duty at least thirty (30) days prior to the appointment of the Director or officer so appointing or voting.

## ARTICLE VIII

### AMENDMENTS

A proposal to alter, amend, or repeal these Bylaws shall be made by the affirmative vote of a majority of the full Board at any annual or regular meeting, or at any special meeting if notice of the proposed amendment be contained in the notice of said special meeting. However, any proposed change or amendment to the Bylaws must be approved by the City Council of the City to be effective.