



CITY OF HOUSTON

Executive Order

Subject: **Creation and Use of Non-Profit Corporations**

E. O. No:

1-29

Effective Date:

January 4, 2011

1. AUTHORITY

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

2. PURPOSE AND OBJECTIVES

- 2.1 To establish a uniform procedure for the incorporation of a non-profit corporation, including a local government corporation, to solicit funds or carry out other activities in support of a City department and its programs.
- 2.2 To require that any non-profit corporation created as a fund-raising entity and/or support a City department or its programs, adhere to the policies and procedures established herein by the Mayor.

3. SCOPE

- 3.1 This Executive Order shall apply to all City departments or divisions that have created or propose to create a non-profit corporation for any purpose related to the business or activities of the department or the City.

4. PROCEDURE FOR CREATION OF NEW CORPORATIONS

- 4.1 The creation of a non-profit corporation by any City department for any purpose shall require the prior approval of the Mayor.
- 4.2 Mayoral approval shall require the department head to submit a written request for the creation and use of the non-profit corporation which shall include, at a minimum, the following information:
- 4.2.1 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;
- 4.2.2 The names of the persons who are proposed to be named as the initial board of directors of the corporation;
- 4.2.3 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
- 4.2.4 If the corporation is intended to engage in fund-raising for the department, a description of the means and methods to be used in such efforts.

Approved:

Quinn D. Parker

Date Approved:

01/04/2011

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4.3 In addition to these requirements, if the proposal is to create a local government corporation, the incorporation process shall also follow the applicable procedures and requirements of Section 431.101 of the Texas Transportation Code and Chapter, Section 394 of the Local Government Code.

5. RESPONSIBILITIES

5.1 Upon approval by the Mayor of a request by a department director to form a non-profit corporation, the department head requesting such action shall provide a copy of the approved request to the City Attorney, the Director of Finance and the City Controller.

5.2 The initiating department head shall not file, or cause to be filed, any corporate formation document until the approvals of the City Attorney and the Director of Finance, as set forth in this policy, have been obtained.

5.3 The City Attorney shall:

5.3.1 Review and approve all corporate formation documents, including the corporation's certificate of formation and proposed bylaws.

5.3.2 Ensure that provisions are made in the certificate of formation and bylaws, as appropriate or necessary to:

5.3.2.1 Require the Mayor's approval of the initial board of directors of the corporation, the appointment or re-appointment of any director upon the end of a term and the filling of any vacancy on such board;

5.3.2.2 Require that no amendment to the certificate of formation, bylaws or other corporate instrument shall be effective without the prior approval of the Mayor;

5.3.2.3 Provide that the Mayor, or designee, shall be named as a non-voting ex officio member of the board;

5.3.2.4 Require the corporation to file, at least annually, an audited financial statement meeting the requirements set by the Director of Finance, prepared by an auditor or accounting firm approved by the Director of Finance;

5.3.2.5 Provide access to the books and records of the corporation upon request by the Mayor, the Director of Finance or the City Controller;

5.3.2.6 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

5.3.2.7 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.

5.4 The Director of Finance shall:

5.4.1 Specify, or review and approve, the methods and procedures to be utilized by the corporation to record and report its revenues and expenses;

5.4.2 Ensure that the corporation complies with all accounting or other financial record-keeping or reporting required by the director of finance 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;

5.4.3 Review the annual audited statement provided by the corporation and report any deficiencies found therein to the Mayor.

5.5 No document to create or establish the corporation, or methods of accounting of revenues and expenses of the corporation, shall be executed or filed with any governmental agency until the approvals of the City Attorney and Director of Finance required by this Executive Order have been obtained.