

Regular 8-10-93  
Item # 9C  
CCM/R 93-93

**CITY COUNCIL MEMORANDUM**

**AGENDA ITEM**

**KILLEEN ECONOMIC DEVELOPMENT  
CORPORATION / BYLAW  
AMENDMENTS**

**ORIGINATING DEPARTMENT**

**CITY ATTORNEY**

**BACKGROUND INFORMATION**

During the May 11th City Council Meeting, Council members expressed concern over possible conflicting provisions in KEDC's Bylaws as a result of amendments the Council approved at said meeting. Staff was directed to forward Council's concerns to KEDC for further action.

**DISCUSSION/CONCLUSION**

On June 7, 1993, the KEDC Board of Directors voted to amend the Bylaws to address the Council's concerns relating to several Bylaw provisions, including the election of officers, the annual meeting date and presentation of an annual statement. These amendments are attached for Council's discussion and action. Section 3.06D has been amended to change the annual meeting of the Board of Directors from June to October. This change will also affect Sections 5.01 (Election of Officers) and Section 9.07 (Annual Statement Presentation).

**RECOMMENDATION**

The City Council approve the recommendation from the KEDC Board of Directors for amendment to its Bylaws.

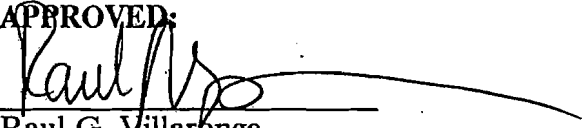
**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF KILLEEN:**

That the above stated staff recommendation is hereby approved and authorized.

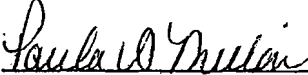
**PASSED AND APPROVED** at a regular meeting of the City Council of the City of Killeen, Texas this 10th day of August, 1993, at which meeting a quorum was present, held in accordance with the provisions of Article 6252-17, V.A.T.S.

CITY COUNCIL MEMORANDUM  
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APPROVED:

  
Raul G. Villaronga  
MAYOR

ATTEST:

  
Paula A. Miller  
CITY SECRETARY



CCM/R  
DAB:df  
93MEM256

Attachments:  
Resolution

APPROVED AS TO FORM:

  
D. A. Blackburn  
CITY ATTORNEY

City Secretary Distribution:

**KILLEEN ECONOMIC DEVELOPMENT CORPORATION**  
**(A Texas Non-Profit Corporation)**

**BYLAWS**

**ARTICLE I. GENERAL PROVISIONS**

Section 1.01. Nonprofit Corporation. The Corporation shall be a nonprofit corporation, and no part of its net earnings remaining after payment of its expenses shall inure to the benefit of any individual, firm or corporation, except that in the event the Board of Directors of the Corporation (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 issued to finance all or part of the cost of a project, then any net earnings of the Corporation thereafter accruing with respect to said project shall, upon corporate dissolution, be paid to the City of Killeen.

Section 1.02. "Governing Body" Defined. As used herein, "governing body" shall mean the City Council of the City of Killeen.

Section 1.03. Approval or Advice and Consent of the Governing Body. To the extent that these Bylaws refer to any approval by the Governing Body or refer to advice and consent by the Governing Body, such advice and consent shall be evidenced by a certified copy of a resolution, order or motion duly adopted by the Governing Body.

Section 1.04. Principal Offices. The principal office shall be in the City of Killeen, Bell County, Texas. The corporation may establish other offices in such other places as the Board of Directors may from time to time determine and as the affairs and activities of the corporation may require.

Section 1.05. Registered Office and Registered Agent. The corporation shall have and continuously maintain in the State of Texas a registered office, and a registered agent whose office is identical with the registered office, as required by the Texas Non-Profit Corporation Act. The registered office may be, but need not be, identical with the principal office of the corporation in the State of Texas, and the address of the registered office may be changed from time to time by the Board of Directors.

**ARTICLE II. MEMBERS**

Section 2.01. Classes of Members. The corporation shall have no members. All management and administration of the corporation shall be vested in its Board of Directors.

### ARTICLE III. DIRECTORS

Section 3.01. Powers. The business affairs and activities of the corporation shall be managed by its Board of Directors, which may exercise all powers of the corporation and do all such lawful acts and things as are not prohibited by statute, the Articles of Incorporation or these Bylaws.

Section 3.02. Number. The Board of Directors shall consist of nine (9) members. The number of directors may be increased or decreased by amendment of these Bylaws.

Section 3.03. Appointment. The nine (9) directors shall be appointed by the Governing Body as provided for herein. There shall be three (3) directors nominated by and representing each of the following organizations: Three (3) from the City of Killeen Mayor and City Council, three (3) from the Greater Killeen Chamber of Commerce, and three (3) from the Killeen Industrial Foundation.

Section 3.04. Term of Office. The nine (9) Directors shall initially serve for staggered terms: one director from each represented organization for one (1) year, one director from each represented organization for two (2) years, and one director from each represented organization for three (3) years. The initial term for directors within each represented organization shall be determined by drawing lots or some similar random selection method.

Subsequent Directors shall serve for a term of three (3) years or until his or her successor is duly elected and qualified. No Director shall serve more than two (2) consecutive terms.

The terms of the appointed representatives will expire September 30th and the new term to begin October 1st to coincide with the fiscal year of the city and so that we are in agreement with the committee terms of the Killeen City Council.

Section 3.05. Advisory Directors. Advisory Directors may be appointed by the Governing Body as ex-officio members of the Board of Directors. Advisory Directors shall be non-voting members of the Board and shall not be counted when considering the constitution of a quorum.

In accordance with Section 5.01, a Treasurer may be named by the Governing Body as an Advisory Director to serve as an ex-officio, non-voting advisory member of the Board of Directors and shall serve at the pleasure of the Governing Body for a term not less than one (1) year nor more than three (3) years.

Section 3.06. Meetings of Board of Directors.

(A) Open Meetings. All meetings of the Board of Directors shall be conducted in accordance with the Open Meetings Act, Article 6252-17, Vernon's Annotated Texas Civil Statutes, as amended.

(B) Place of Meetings. The Board of Directors may hold meetings, both regular and special, within the State of Texas.

(C) Regular Meetings. Regular meetings of the Board of Directors shall be held at least quarterly at such time and place as the Board or President shall determine. Written notice of regular meetings of the Board shall be given to each director at least ten (10) days prior to the meeting.

(D) Annual Meetings. The annual meeting of the Board of Directors shall be held in ~~June~~ October of each year.

(E) Special Meetings. Special meetings of the Board of Directors may be called by the President, by the Secretary upon the written request of twenty-five percent (25%) of the directors, or upon advice of or request by the Governing Body. Written notice of special meetings of the Board of Directors shall be given to each director at least five (5) days before the date of the meeting, if by mail, or at least forty-eight (48) hours if by telegraph or by facsimile transmission.

(F) Emergency Meetings. Emergency meetings of the Board of Directors may be called with an abbreviated notice period in cases of emergency or urgent public necessity in accordance with the Open Meetings Act, Article 6252-17, Vernon's Annotated Texas Civil Statutes, as amended. By law, cases of emergency or urgent public necessity are limited to imminent threats to public health and safety or reasonably unforeseeable situations requiring immediate action by the Board of Directors.

(G) Public Notice. Written notice of the date, hour, place and ~~subject~~ of each meeting of the Board of Directors shall be posted at such times and in such places as notice of each meeting of the Governing Body of the Unit is posted, all as prescribed by the Open Meetings Act, Article 6252-17, Vernon's Annotated Texas Civil Statutes, as amended.

Section 3.07. Vacancies. Any vacancy occurring among the members of the Board of Directors whether caused by death, disability, resignation, disqualification, removal from office, or any new Director position created by an increase in the authorized number of directors, or otherwise, may be filled by the Governing Body, and the directors so appointed shall hold office for the unexpired term of their predecessors or, if there be no predecessors, until their successors shall be duly appointed and qualified. The

replacement director shall be selected from the represented organizations so as to maintain the Board composition prescribed in Section 3.03.

Section 3.08. Removal. Any director may be removed from his position as a director by the Governing Body, for cause or at will.

Section 3.11. Quorum. At all meetings of the Board the presence of a majority of the Directors then in office shall be necessary and sufficient to constitute a quorum for the conduct of the affairs of the corporation and the act of a majority of such directors present at any meeting at which there is a quorum shall be the act of the Board of Directors, except as may be otherwise specifically provided by statute or by the Articles of Incorporation or by these Bylaws. If a quorum shall not be present at any meeting of the Board of Directors, the directors present there at may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

Section 3.12. Compensation. Directors, as such, shall not receive any stated compensation for their services as directors; provided, however, that nothing herein contained shall be construed to preclude any director from serving the corporation in any other capacity and from receiving compensation therefor, or from receiving reimbursement for all reasonable and necessary expenses as authorized by the Board of Directors.

Section 3.13. Procedure. Meetings shall be conducted in accordance with Robert's Revised Rules of Order, or such other rules of procedure as may be adopted from time to time by a majority vote of the Board. The President may designate a Parliamentarian to resolve questions of appropriate procedure. Unless otherwise specified in these Bylaws, or required by law, a simple majority of those directors present shall be required to constitute the action of the Board. Full minutes shall be kept of all motions, votes and resolutions, and, at the request of the President or of any director, of any other discussion or transaction. Negative votes on all ballots will be recorded. Any matters brought to the Board shall be disposed of as expeditiously as possible and shall remain on the agenda for each regular meeting until so disposed.

#### ARTICLE IV. COMMITTEES

Section 4.01. Executive Committee. The President, Vice-President, Secretary, Treasurer and any other directors so designated by the President shall constitute the Executive Committee. The President, or his designee, shall preside at all meetings of the Executive Committee. The Executive Committee shall, upon resolution adopted by a majority of the voting directors, have and may exercise all of the authority of the Board of Directors in the management of the corporation.

Section 4.02. Special Committees. The President may designate one or more special committees, each to have the name, membership, duties and responsibilities designated by the President. Special committees shall consist of a President and other members, none of whom need to be members of the Board except where otherwise directed at the time of the creation of any such committee.

## ARTICLE V. OFFICERS

Section 5.01. Enumeration and Election. The officers of the corporation shall be elected by the Board of Directors for the 1990-91 term at the initial meeting of the Board of Directors after its members have been duly constituted, and beginning in 1991, the officers shall be elected at the corporation's annual meeting. The officers shall consist of a President, Vice-President, a Secretary and a Treasurer. Where a majority of the Board is of the opinion that no current member is adequately qualified to serve as Treasurer, the Board of Directors may seek to have a Treasurer appointed by the Governing Body as an Advisory Director, to be a non-voting, ex-officio member of the Board in accordance with Section 3.05. Such other officers and assistant officers as may be deemed necessary may be elected by the Board of Directors. The officers shall be elected for a one (1) year term, which term shall commence upon the election of the officers and shall serve until their successors are duly elected. Any officer may be removed, with or without cause, at any time by a vote of the majority of the directors present and voting at a meeting at which a quorum exists, provided that notice of intention to act upon the question of removing such officer shall have been given to each director at least seven (7) days before the date of the meeting. Any vacancy occurring in any office by reason of death, resignation, removal or otherwise shall be filled by a vote of the majority of the directors present and voting at a meeting at which a quorum exists, provided that notice of intention to act upon the question of electing such officer shall have been given to each director at least seven (7) days before the date of the meeting.

Section 5.02. President. The President shall preside at all meetings of the Board of Directors and the Executive Committee, and he shall be an ex-officio member of all standing committees. He shall have the power to call special meetings of the directors, designate committees, chairmen, and members and special committees, make and sign deeds, mortgages, contracts and agreements in the name of and on behalf of the corporation, and he shall generally do and perform all acts incident to the office of President, all of which shall be subject to the direction and review of the Board of Directors. In addition to the powers and duties of this Section 5.02, the President shall perform such other duties as the Board of Directors shall prescribe.

Section 5.03. Vice-President. In the absence of the President or in the event of his inability to act, the Vice-President shall perform the duties of the President, and when so acting shall have all the powers of and be subject to all the restrictions upon the President. The Vice-President shall perform such other duties as from time to time may be assigned to him by the President or Board of Directors.

Section 5.04. Secretary. The Secretary shall attend all meetings of the Board of Directors and be responsible for recording all proceedings of the meetings of the corporation and of the Board of Directors in a book to be kept for that purpose and shall perform like duties for the standing committees when required. He shall give, or cause to be given, notice of special meetings of the Board of Directors and shall perform such other duties as may be prescribed by the Board of Directors or the President, under whose supervision he shall be. He shall keep in safe custody the seal of the corporation and, when authorized by the Board of Directors, affix the same to any instrument requiring it, and when so affixed, it shall be attested by his signature or by the signature of the Treasurer, which may be a facsimile. In general, he shall perform all duties incident to the office of Secretary and such other duties as may, from time to time, be assigned to him by the Board of Directors, or by the President.

Section 5.05. Treasurer. The Treasurer shall be the financial officer of the corporation; shall cause the Executive Director to keep full and accurate accounts of receipts and disbursements in books belonging to the corporation; and shall cause to be deposited all such funds and other valuable effects in the name of and to the credit of the corporation in such depositories as may be designated by the Board of Directors. In general, the Treasurer shall oversee all duties incident to the office of Treasurer, and such other duties as from time to time may be assigned to him by the Board of Directors or by the President.

## ARTICLE VI. NOTICES

Section 6.01. Notice. Whenever under the provisions of the statutes or of the Articles of Incorporation or of these Bylaws, notice is required to be given to any director, it shall not be construed to require personal notice, but such notice shall be given in writing, by mail or telegraph, 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 dispatched.

Section 6.02. Waiver of Notice. Whenever any notice is required to be given under the provisions of the statutes or of the Articles of Incorporation, or by 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.

Section 6.03. Public Notice. Written notice of the date, hour, place and subject of each meeting of the Board of Directors shall be posted at such times and in such places as notice of each meeting of the Governing Body of the Unit is posted, all as prescribed by the Open Meetings Act, Article 6252-17, Vernon's Annotated Texas Civil Statutes, as amended.



## ARTICLE VII. EXECUTIVE DIRECTOR

Section 7.01. Powers and Duties. The Board of Directors shall appoint an Executive Director who shall have the authority, power and responsibility to implement the policies and the actions of the Board, subject to the direction and review of the Board and who shall perform such other duties as the Board of Directors shall prescribe. The Executive Director shall receive such compensation as the Board of Directors shall determine, and the Executive Director may be removed at any time by the Board with or without cause.

The Executive Director shall not be a member of the Board, but shall, unless otherwise directed by the Board, attend meetings of the Board of Directors and Executive Committee in a non-voting or ex-officio capacity. He shall also meet with and advise the committees of the corporation, as appropriate.

## ARTICLE VIII. INDEMNIFICATION

### Section 8.01. Indemnification Procedure

(A) The corporation shall indemnify a person who was, is, or is threatened to be made a named defendant or respondent in a proceeding because the person is or was a director, officer, employee or agent of the corporation if it is determined in accordance with Subsection E of this Section that the person:

- (1) conducted himself in good faith;
- (2) reasonably believed:
  - (a) in the case of conduct in his official capacity as a director, officer, employee or agent of the corporation, that his conduct was in the corporation's best interests; and
  - (b) in all other cases, that his conduct was at least not opposed to the corporation's best interests; and
- (3) in the case of any criminal proceeding, had no reasonable cause to believe his conduct was unlawful.

(B) A person described in Subsection A of this Section shall not be indemnified for obligations resulting from a proceeding:

(1) in which the person is found liable on the basis that personal benefit was improperly received by him, whether or not the benefit resulted from an action taken in the person's official capacity; or

(2) in which the person is found liable to the corporation.

(C) The termination of a proceeding by judgment, order, settlement, or conviction or on a plea of nolo contendere or its equivalent is not of itself determinative that the person did not meet the requirements set forth in Subsection A of this Section.

(D) A person shall be indemnified under Subsection A of this Section against judgments, penalties (including excise and similar taxes), fines, settlements, and reasonable expenses actually incurred by the person in connection with the proceeding; but if the proceeding was brought by or in behalf of the corporation, the indemnification is limited to reasonable expenses actually incurred by the person in connection with the proceeding.

(E) A determination of indemnification under Subsection A of this Section must be made:

(1) by a majority vote of a quorum consisting of directors who at the time of the vote are not named defendants or respondents in the proceeding;

(2) if such a quorum cannot be obtained, by a majority vote of a committee of the Board of Directors, designated to act in the matter by a majority vote of all directors, consisting solely of two or more directors who at the time of the vote are not named defendants or respondents in the proceeding;

(3) by special legal counsel selected by the Board of Directors or a committee of the Board by vote as set forth in Paragraph (1) or (2) of this Subsection, or, if such a quorum cannot be obtained and such a committee cannot be established, by a majority vote of all directors; or

(4) by the members in a vote that excludes the vote of any directors who are named defendants or respondents in the proceeding.

(F) Authorization of indemnification and determination as to reasonableness of expenses must be made in the same manner as the determination that indemnification is permissible, except that if the determination that indemnification is permissible is made by special legal counsel, authorization of indemnification and determination as to reasonableness of expenses must be

made in the manner specified by Paragraph (3) of Subsection E of this Section for the selection of special legal counsel.

(G) The corporation shall indemnify directors, officers, employees and agents of the corporation against reasonable expenses incurred by them in connection with a proceeding in which they are named a defendant or respondent because they are or were acting in such capacity if they have been wholly successful, on the merits or otherwise, in the defense of the proceedings.

(H) If, in a suit for the indemnification required by Subsection G of this Section, a court of competent jurisdiction determines that the director, officer, agent or employee is entitled to indemnification under such Subsection, the court shall order indemnification and shall award to such person the expenses incurred in securing the indemnification.

(I) If, upon application of a director, officer, employee or agent of the corporation, a court of competent jurisdiction determines, after giving any notice the court considers necessary, that such person is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not he has met the requirements set forth in Subsection A of this Section or has been adjudged liable in the circumstances described by Subsection B of this Section, the court may order the indemnification that the court determines is proper and equitable. The court shall limit indemnification to reasonable expenses if the proceeding is brought by or in behalf of the corporation or if such person is found liable on the basis that personal benefit was improperly received by him, whether or not the benefit resulted from an action taken in the person's official capacity.

(J) Reasonable expenses incurred by a director, officer, employee or agent who was, is, or is threatened to be made a named defendant or respondent in a proceeding shall be paid or reimbursed by the corporation in advance of the final disposition of the proceeding after:

(1) the corporation receives a written affirmation by such person of his good faith belief that he has met the standard of conduct necessary for indemnification under this Section and a written undertaking by or on behalf of such person to repay the amount paid or reimbursed if it is ultimately determined that he has not met those requirements; and

(2) a determination that the facts then known to those making the determination would not preclude indemnification under this Section. Determinations and authorizations of payments under this Subsection must be made in the manner specified by Subsection E of this Section for determining that indemnification is permissible.

(K) As may be provided by specific action of the Board of Directors, the corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation against any liability asserted against him and incurred by him in such a capacity or arising out of his status as such a person, whether or not the corporation would have the power to indemnify him against the liability under this Section.

#### ARTICLE IX. GENERAL PROVISIONS SPECIAL CORPORATE ACTS

Section 9.01. Contracts. The Board of Directors may authorize any officer or officers, agent or agents of the corporation, in addition to the officers so authorized by these Bylaws, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the corporation. Such authority may be general or confined to specific instances.

Section 9.02. Endorsement of Securities. Subject always to the specific directions of the Board of Directors, any security or securities owned by the corporation may be endorsed for sale or transfer in the name of the corporation by the President and attested by the Secretary under the corporate seal.

Section 9.03. Voting of Securities Owned by Corporation. Subject always to the specific directions of the Board of Directors, any security or securities owned by the corporation may be voted at any stockholders' meeting of such other corporation by the President of the corporation. Whenever, in the judgment of the President, it shall be desirable for the corporation to execute a proxy or give a stockholder's consent with respect to any security or securities issued by any other corporation and owned by the corporation, such proxy or consent shall be executed in the name of the corporation by the President and shall be attested by the Secretary of the corporation under the corporate seal without necessity of any authorization by the Board of Directors. Any person or persons designated in the manner above stated as the proxy or proxies of the corporation shall have full right, power and authority to vote the security or securities issued by such other corporation and owned by the corporation, the same as such security or securities might be voted by the corporation.

Section 9.04. Checks and Drafts. All checks or demands for money and notes of the corporation shall be signed by such officer or officers or such other person or persons as the Board of Directors may from time to time designate. In the absence of such designation by the Board of Directors, such instruments shall be signed by any two officers of the corporation.

Section 9.05. Deposits. All funds of the corporation shall be deposited from time to time to the credit of the corporation in such banks, trust companies or other depositories as the Board may select.

Section 9.06. Gifts. The Board of Directors may accept on behalf of the corporation any contribution, gift, bequest or devise for the general purpose or for any special purpose of the corporation.

Section 9.07. Annual Statement. The President or Executive Director shall present at each annual meeting a full and clear statement of the business and condition of the corporation.

Section 9.08. Seal. The corporate seal shall have inscribed thereon the name of the corporation and may have inscribed thereon the words "Corporate Seal, Texas" and the year of its organization. The seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

Section 9.09. Fiscal Year. The fiscal year of the corporation shall end on September 30th.

Section 9.10. Audit. The accounts of the corporation shall be audited annually by independent public accountants selected by the Board of Directors.

Section 9.11. 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. All books and records of the corporation may be inspected by any director or his agent or attorney for any proper purpose at any reasonable time.

#### ARTICLE X. PROVISIONS REGARDING BYLAWS

Section 10.01. Effective Date. These Bylaws shall become effective only upon the occurrence of the following events:

- (1) the approval of these Bylaws by the Governing Body; and
- (2) the adoption of the Bylaws by the Board of Directors.

Section 10.02. Amendment to Bylaws. These Bylaws may be altered, amended or repealed at any regular or special meeting of the Board (provided notice of the proposed change is contained in the notice of such regular or special meeting) by the affirmative vote of two-thirds (2/3) of the members of the Board of Directors who are present and voting at such meeting at which a quorum is present; and provided further, however, that any such alteration, amendment or substitute Bylaws shall be consistent in all respects with the Articles of Incorporation of the corporation and shall be approved by the Governing Body.