

CITY COUNCIL MEMORANDUM FOR RESOLUTION

DATE: January 9, 2018
TO: Ronald L. Olson, City Manager
VIA: Kathy Davis, City Attorney
FROM: Traci S. Briggs, Deputy City Attorney
SUBJECT: Revisions to the KEDC bylaws

BACKGROUND AND FINDINGS:

On August 14, 1990, the Killeen City Council authorized the creation the Killeen Economic Development Corporation (KEDC), a nonprofit corporation to act on behalf of the city to promote and develop commercial, industrial and manufacturing enterprises that promote and encourage employment and the public welfare. (90-65R)

KEDC staff approached city staff to develop revisions to the bylaws. Following are the substantive changes:

- Section 3.02 is modified so that the number of directors can be increased or decreased by the city council rather than by amending the bylaws.
- In various sections, the timeframes for notice of a meeting are reduced to seventy-two (72) hours rather than five to ten days. Also, the legal reference to the Texas Open Meetings Act is updated.
- Section 5.02 clarifies that the KEDC chairman has the authority to designate members of committees.
- Section 5.05 directs the Treasurer to cause the Executive Director to keep full and accurate accounts, rather than having the Secretary do so.
- Revised section 6.01 allows notices to be sent by email.

The KEDC bylaws provide that they may only be amended or altered if approved by a vote of two-thirds (2/3) of the KEDC directors attending the meeting where revisions are presented, and further approved by the City Council. The KEDC Board of Directors approved the proposed amendments at a regular meeting on October 31, 2017.

THE ALTERNATIVES CONSIDERED:

The options are to approve the revisions approved by the KEDC Board of Directors, reject the revisions or propose additional revisions.

Which alternative is recommended? Why?

Staff recommends approving the revisions approved by the KEDC Board of Directors. Staff was able to review the changes before they went to the Board and was able to make suggestions, which the Board accepted. Staff believes the revisions are fairly minor and is does not believe any further revisions are needed at this time.

CONFORMITY TO CITY POLICY:

The revisions to the KEDC bylaws conform to city policy.

FINANCIAL IMPACT:

What is the amount of the expenditure in the current fiscal year? For future years?

There is no fiscal impact associated with this action.

Is this a one-time or recurring expenditure?

N/A

Is this expenditure budgeted?

N/A

If not, where will the money come from?

N/A

Is there a sufficient amount in the budgeted line-item for this expenditure?

N/A

RECOMMENDATION:

The KEDC Board of Directors and city staff recommend approval of the proposed revisions to the KEDC bylaws.

DEPARTMENTAL CLEARANCES:

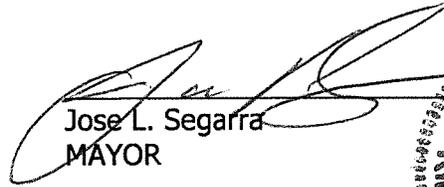
City Attorney

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

That the above stated recommendation is hereby approved and authorized.

PASSED AND APPROVED at a regular meeting of the City Council of the City of Killeen, Texas, this the 16th day of January, 2018, at which meeting a quorum was present, held in accordance with the provisions of V.T.C.A., Government Code, § 551.001 *et seq.*

APPROVED



Jose L. Segarra
MAYOR



APPROVED AS TO FORM:



Kathryn H. Davis
CITY ATTORNEY

ATTEST:



Dianna Barker
CITY SECRETARY

**KILLEEN ECONOMIC DEVELOPMENT CORPORATION (KEDC)
(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 shall determine that sufficient provision has been made for the full payment of the expenses, bonds and other obligations of the Corporation issued 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 in these Bylaws, "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. ADMINISTRATION

Section 2.01. Class 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 Corporation shall consist of nine (9) directors. The number of directors may be increased or decreased by the Governing Body.

Section 3.03. Appointment. The nine (9) directors shall be appointed by the Governing Body as provided for in these Bylaws. 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 will begin October 1st to coincide with the fiscal year of the city and so that KEDC is in agreement with the committee terms of the Killeen City Council.

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

In accordance with Section 5.01, if no director is qualified to serve as Treasurer, a Treasurer may be named by the Governing Body as an Advisory Director to serve as an ex officio, non-voting advisory member of KEDC and shall serve at the pleasure of the Governing Body for a term not less than one (1) year or more than three (3) years.

Section 3.06. Meetings.

- (A) Open Meetings. All meeting of the Board of Directors shall be conducted in accordance with the Texas Open Meetings Act, Chapter 551, Texas Government Code, 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 of Directors or President shall determine. Notice of meetings of the Board shall be given at least seventy-two (72) hours before the meeting and notice may be by mail or e-mail.
- (D) Annual Meetings. The annual meeting of the Corporation shall be in October of each year.
- (E) Special Meetings. Special meetings of the Corporation may be called by the President, or by the Secretary, or upon the written request of twenty-five percent (25%) of the directors, or upon advice of or request by the Governing Body. Notice of special meetings shall be given at least seventy-two (72) hours prior to a meeting in writing or by e-mail.
- (F) Emergency Meetings. Emergency meetings may be called with an abbreviated notice period in cases of emergency or urgent public necessity in accordance with the Texas Open Meetings Act, Chapter 551, Texas Government Code, 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 Corporation has to be posted at such times and in such places as notice of each meeting of the Governing Body is posted, all as prescribed by the Texas Open Meetings Act, Chapter 551, Texas Government Code, as amended..

Section 3.07. Vacancies. Any vacancy occurring among 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 director 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 member shall be selected from the represented organizations so as to maintain the Board of Director composition prescribed in Section 3.03.

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

Section 3.09. Quorum. At all meetings of the Board of Directors, 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 may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

Section 3.10. Compensation. Directors, as such, shall not receive any stated compensation for their services as directors; provided, however, that nothing in these Bylaws shall be construed to preclude any director from serving the Corporation in any other capacity and from receiving compensation or reimbursement for all reasonable and necessary expenses as authorized by the Board of Directors.

Section 3.11. 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 of Directors. 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 of Directors. 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 of Directors 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 director 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 chairman and other members, none of whom needs to be directors of KEDC 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 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 of Directors are 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 of Directors 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. Notice of the meeting where an officer is to be removed or to fill the vacancy of an officer shall be given at least seventy-two (72) hours before 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 seventy-two (72) hours 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 shall be an ex officio member of all other committees that may be created. The President shall have the power to call special meetings of the Board of Directors, designate and populate committees, appoint committee chairs, make and sign deeds, mortgages, contracts and agreements in the name of and on behalf of the corporation, and 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 the President's 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 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 and retaining all proceedings of the meetings of the Corporation and of the Board of Directors and shall perform like duties for the standing committees when required. The Secretary shall give, or cause to be given, notice of special meetings of the Board of Directors and shall perform such other as may be prescribed by the Board of Directors or the President, under whose supervision the Secretary shall be. The Secretary shall insure that the seal is kept in safe custody. When authorized by the Board of Directors, affix the same to any instrument requiring it, and when so affixed, it shall be attested by the Secretary's signature or by the signature of the Treasurer, which may be a facsimile. In general, the Secretary shall perform all duties incident to the office of Secretary and such other duties as may, from time to time, be assigned to the Secretary by the Board of Directors, or by the President. In the absence of the Secretary, the President may appoint a director present to act in the Secretary's place for that meeting.

Section 5.05. Treasurer. The Treasurer shall cause the Executive Director to keep full and accurate accounts. 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 the Treasurer by the 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 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 regular mail or by e-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 same 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 the Articles of Incorporation, or by these Bylaws, a waiver in writing signed by the person or persons entitled to said notice, whether before or after the time stated, shall be deemed equivalent.

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 the notice of each meeting of the Governing Body of the organization is posted, all as prescribed by the Texas Open Meetings Act, Chapter 551, Texas Government Code, 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 of Directors, subject to the direction and review of the Board of Directors, 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 of Directors with or without cause.

The Executive Director shall not be a member of the Board of Directors, but shall, unless otherwise directed by the Board of Directors, attend meetings in a non-voting or ex officio capacity. The Executive Director 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 interest; 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 that person, 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 of Directors 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 directors 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 expense 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 the 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 indemnification in view of all the relevant circumstances, whether or not that director has met the requirements set forth in Subsection A of this Section or has been adjudged liable in the 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 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 when 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 that director and incurred by that director in such a capacity or arising out of that director's status as such a person, whether or not the Corporation would have the power to indemnify that director against the liability under this Section.

ARTICLE IX. GENERAL PROVISIONS: SPECIAL CORPORATE ACT

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 an 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 of Directors 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 on it the name of the corporation and may have inscribed on it the word, "Corporate Seal, Texas" and the year of the Corporation's 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, or subjected to a financial review, 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 of Directors. 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.

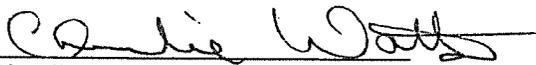
ARTICLE X. PROVISIONS REGARDING BYLAWS

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

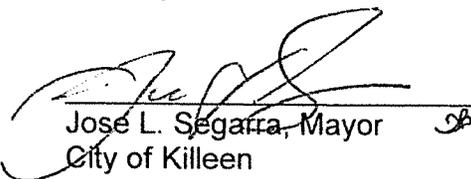
- (1) the approval of these Bylaws by the Governing Body; and,
- (2) the adoption of these Bylaws by the Board of Directors.

Section 10.02. Amendment of the Bylaws. These Bylaws may be altered, amended or repealed at any regular or special meeting of the Board of Directors (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 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 be consistent in all respects with the Articles of Incorporation of the Corporation and shall be approved by the Governing Body.

AMENDED & APPROVED


Charlie Watts, President
Killeen Economic Development Corporation

ACCEPTED & APPROVED
By the Killeen City Council
January 16, 2018


Jose L. Segarra, Mayor
City of Killeen