

RESOLUTION NO. 84-2019

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE
APPROVING THE BYLAWS OF THE ABILENE CONVENTION
CENTER HOTEL DEVELOPMENT CORPORATION, A LOCAL
GOVERNMENT CORPORATION**

WHEREAS, the City of Abilene, Texas (the "City") is a duly created and existing municipality and political subdivision of the State of Texas; and

WHEREAS, the City Council approved the Certificate of Formation of the Abilene Convention Center Hotel Development Corporation, a local government corporation, at its March 28, 2019 meeting; and

WHEREAS, the Texas Transportation Code requires that the City Council also approve the Bylaws of a local government corporation; and

WHEREAS, the meeting at which this Resolution is considered is open to the public as required by law, and the public notice of the time, place and subject of said meeting was given as required by Tex. Gov't Code Ann. ch. 551.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS:

PART 1. That the form and substance of the proposed Bylaws of the Abilene Convention Center Hotel Development Corporation, a local government corporation, which is attached hereto as "Exhibit A" is hereby adopted and approved.

PART 2. That this Resolution shall become effective immediately upon adoption.

APPROVED AND ADOPTED this 11th day of April, 2019.

ATTEST:



Shawna Atkinson, Interim City Secretary



Anthony Williams, Mayor

APPROVED:



Stanley Smith, City Attorney



**BYLAWS OF THE
ABILENE CONVENTION CENTER HOTEL DEVELOPMENT CORPORATION**

ARTICLE 1

PURPOSE AND POWERS

Section 1.1. Purpose. The Abilene Convention Center Hotel Development Corporation (the "Corporation") is organized as a public, nonprofit corporation in accordance with Subchapter D of Chapter 431, Texas Transportation Code (the "Act") and the Texas Nonprofit Corporation Law, Chapter 22, Texas Business Organizations Code (the "TNCL"), and other applicable laws, for the purpose of aiding, assisting, and acting on behalf of the City of Abilene, Texas (the "City") in the performance of its governmental functions to promote the common good and general welfare of the City, including, without limitation, for the purpose of aiding, assisting, and acting on behalf of the City in the performance of its governmental functions to promote and accomplish the development of the geographic area of the City included at or in the vicinity of the Abilene Convention Center, in furtherance of the promotion, development, encouragement and maintenance of employment, commerce, convention and meeting activity, tourism and economic development in the City, including specifically, without limitation, the development and financing of a convention center hotel to be located within 1,000 feet of the Abilene Convention Center.

The Corporation is formed pursuant to the provisions of the Act as it now or may hereafter be amended, which authorizes the Corporation to assist and act on behalf of the City to accomplish any governmental purpose of the City and to engage in activities in the furtherance of the purposes for its creation and the TNCL.

The Corporation shall have and exercise all of the rights, powers, privileges, authority, and functions given by the general laws of the State of Texas to non-profit corporations incorporated under the Act including, without limitation, the TNCL. The Corporation shall have all other powers of a like or different nature not prohibited by law which are available to non-profit corporations in Texas and which are necessary or useful to enable the Corporation to perform the purposes for which it is created, including the power to issue bonds, notes or other obligations, and otherwise exercise its borrowing power to accomplish the purposes for which it was created.

The Corporation is created as a local governmental 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 Corporation 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 Corporation shall have the power to acquire land in accordance with the Act as amended from time to time.

The Corporation is a duly constituted authority and a public instrumentality within the meaning of the regulations of the United States Treasury Department and the rulings of the Internal Revenue Service prescribed and promulgated pursuant to Section 103 of the Internal Revenue Code of 1986 (26 U.S.C. Sec. 103), as amended, and the Corporation is authorized, and has as an additional specific purpose for its organization and operation, to act on behalf of the City as provided in the Corporation's Certificate of Formation. However, no agreements, bonds, debts or obligations of the Corporation are or shall ever be deemed to be the agreements, bonds, debts or obligations, or the lending of credit, or a grant of public money or thing of value, of or by the City, or any other political corporation, subdivision or agency of the State of Texas, or a pledge of the faith and credit of any of them.

ARTICLE II

BOARD OF DIRECTORS

Section 2.1. Powers, Number and Term of Office.

- (a) The property and affairs of the Corporation shall be managed and controlled by a Board of Directors (the "Board") and, subject to the restrictions imposed by law, by the Certificate of Formation, and by these Bylaws. The Board shall exercise all of the powers of the Corporation.
- (b) The Board shall consist of **five (5)** Directors, each of whom shall be appointed by the Mayor of the City and approved by the City Council of the City (the "City Council"). All members of the Board shall be persons who are residents of the City. **At least two (2) members of the Board shall be persons who are not members of the City Council and who are not employees or officers of the City.** Each Director, including the initial Directors, shall be eligible for reappointment.
- (c) The Directors constituting the first Board shall be those Directors named in the Certificate of Formation. Successor Directors shall serve for a term of **three (3)** years or until his or her successor has qualified and is appointed by the Mayor and approved by City Council.
- (d) Any Director may be removed from office by the City Council at any time with or without cause.
- (e) Any Director or officer may resign at any time. Such resignation 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.

- (f) Any vacancy occurring on the Board shall be filled by appointment by the Mayor with the approval of the City Council.

Section 2.2. Meetings of Directors. The Directors may hold their meetings at such place or places in the City as the Board may from time to time determine; provided, however, in the absence of any such determination by the Board, the meetings shall be held at the principal office of the Corporation as specified in Article V of these Bylaws.

Section 2.3. Notice of Meetings to Directors.

- (a) Regular meetings of the Board shall be held without the necessity of notice to Directors at such time and places as shall be designated from time to time by the Board.
- (b) Special meetings of the Board shall be held whenever called by the President, by the Secretary, by a majority of the Directors, by the Mayor of the City, or by a majority of the City Council.
- (c) The Secretary shall give or cause to be given notice to each Director of each special meeting in person or by mail, telephone or e-mail, at least two hours before the meeting. Unless otherwise indicated in the notice thereof, any and all matters pertaining to the purposes of the Corporation may be considered and acted upon at a special meeting.
- (d) Whenever any notice is required to be given to the Board, said 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 Corporation, and such notice shall be deemed to have been given on the day of such mailing. Attendance of a Director at a meeting shall constitute a waiver of notice of such mailing. Attendance of a Director at a meeting shall constitute a waiver of notice of such meeting, except where a Director attends a meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called or convened. Neither the business to be transacted at nor the purpose of any regular or special meeting of the Board need be specified in the notice to the Directors or waiver of notice of such meeting, unless required by the Board. A waiver of notice in writing, signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

Section 2.4. Open Meetings Act and Open Records Act.

All meetings and deliberations of the Board shall be called, convened, held, and conducted, and notice shall be given to the public, in accordance with the Texas Open Meetings Act, Chapter 551, Texas Government Code, as amended.

The Corporation and the Board are subject to Chapter 552, Texas Government Code, as amended.

Section 2.5. Quorum. A majority of the entire membership of the Board shall constitute a quorum for the conduct of the official business of the Corporation. The act of a majority of the Directors present at a meeting at which a quorum is in attendance shall constitute the act of the Board and of the Corporation, unless the act of a greater number is required by law.

Section 2.6. Conduct of Business.

(a) At the meetings of the Board, matters pertaining to the business of the Corporation shall be considered in accordance with rules of procedure as from time to time prescribed by the Board.

(b) At all meetings of the Board, the President shall preside; provided that in the absence of the President, the Vice President shall preside; and further provided that in the absence of the President and Vice President, the Directors present at the meeting may appoint a Director to preside at such meeting.

(c) The Secretary of the Corporation 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.

Section 2.7. Committees of the Board. The Board may designate two or more Directors to constitute an official committee of the Board to exercise such authority of the Board as may be specified by Board resolution. It is provided, however, that all final, official actions of the Corporation may be exercised only by the Board. Each committee so designated shall keep regular minutes of the transactions of its meetings and shall cause such minutes to be recorded in books kept for that purpose in the principal office of the Corporation.

Section 2.8. Compensation of the Directors. Directors shall not receive any salary or compensation for their services as Directors. However, they shall be reimbursed for their actual expenses incurred in the performance of their official duties as Directors.

ARTICLE III

OFFICERS

Section 3.1. Titles and Terms of Office.

business hours, and shall in general perform all duties incident to the office of Secretary subject to the control of the Board.

(b) The Board may appoint one or more persons to serve as an Assistant Secretary. The Assistant Secretary may perform any duty required of or granted to the Secretary in these Bylaws and/or in any resolution or order approved by the Board.

Section 3.5. Treasurer.

(a) The Treasurer shall have the responsibility to see to the handling, custody, and security of all funds and securities of the Corporation in accordance with these bylaws. When necessary or proper, the Treasurer may endorse and sign, on behalf of the Corporation, for collection or issuance, checks, notes and other obligations in or drawn upon such bank, banks or depositories as shall be designated by the Board consistent with these Bylaws. The Treasurer shall see to the entry in the books of the Corporation full and accurate amounts of all monies received and paid out on account of the Corporation. The Treasurer shall, at the expense of the Corporation, give such bond for the faithful discharge of his/her duties in such form and amount as the Board or the City Council may require. **The Treasurer need not be a member of the Board.**

(b) The Board may appoint one or more persons to serve as an Assistant Treasurer. The Assistant Treasurer may perform any duty granted to the Treasurer in these Bylaws and/or in any resolution or order approved by the Board.

Section 3.6. Board Positions. The President, the Vice President, and the Secretary shall be named from among the members of the Board. **The Treasurer and any Assistant Treasurer or Assistant Secretary may, at the option of the Board, be persons other than members of the Board, and may be employees of the City of Abilene.**

Section 3.7. Compensation. Officers who are members of the Board shall not receive any salary or compensation for their services, except that they shall be reimbursed for their actual expenses incurred in the performance of their official duties as officers.

ARTICLE IV

FUNCTIONAL CORPORATE DUTIES AND REQUIREMENTS

Section 4.1. General Corporate Duties and Authority.

(a) In carrying out its purposes, the Corporation shall be authorized to exercise all rights and powers granted under its Certificate of Formation, in the

Act, the TNCL and in other applicable law, subject to the limitations prescribed therein and herein and to the provisions thereof and hereof.

(b) The Board shall periodically, but at least annually, submit reports to the City Council as to the status of its activities in carrying out its obligations under this Section, **and, with respect to each project undertaken by the Corporation shall submit quarterly annual reports on the status and finances of such project.**

(c) Any and all agreements between the Corporation and other parties shall be authorized, executed, approved, and delivered in accordance with applicable law.

(d) All construction and other contracts let or entered into by the Corporation shall be let or entered into in accordance with the laws applicable to the letting or entering into of contracts by the City, unless applicable law permits otherwise.

Section 4.2. Annual Corporate Budget. At least ninety (90) days prior to the commencement of each fiscal year of the Corporation, the Board shall adopt a proposed budget of expected revenues and proposed expenditures for the next ensuing fiscal year. The budget shall contain such classifications and shall be in such form as may be prescribed from time to time by the City Council. **The budget shall not be effective until the same has been approved by the City Council.**

Section 4.3. Books, Records, Audits.

(a) The Corporation shall keep and properly maintain, in accordance with generally accepted accounting principles, complete books, records, accounts, and financial statements pertaining to its corporate funds, activities, and affairs.

(b) If approved by the City Council, the books, records, accounts and financial statements of the Corporation may be maintained for the Corporation by the accountants, staff, and personnel of the City.

(c) The Corporation, or the City if the option described in subsection (b) is selected, shall cause its books, records, accounts, and financial statements to be audited at least once each fiscal year by an outside, independent, auditing and accounting firm selected by the Corporation and approved by the City Council. Such audit shall be at the expense of the Corporation.

Section 4.4. Deposit and Investment of Corporate Funds.

(a) All proceeds from loans or from the issuance of bonds, notes, or other debt instruments ("Obligations") issued by the Corporation shall be deposited and invested as provided in the resolution, order, indenture, contract or other documents authorizing or relating to their execution or issuance.

(b) Subject to the requirements of contracts, loan agreements, indentures, contracts or other agreements securing Obligations, all other monies of the Corporation, if any, shall be deposited, secured, and/or invested in the manner provided for the deposit, security, and/or investment of the public funds of the City. The Board shall designate the accounts and depositories to be created and designated for such purposes, and the methods of withdrawal of funds therefrom for use by and for the purposes of the Corporation upon the signature of its Treasurer and such other persons as the Board shall designate. **The accounts, reconciliation, and investment of such funds and accounts shall be performed by the Department of Finance of the City.**

Section 4.5. Expenditures of Corporate Money. The monies of the Corporation, may be expended by the Corporation for authorized purposes of the Corporation. Proceeds of obligations issued or incurred by the Corporation shall be identified and described in the orders, resolutions, indentures, or other agreements in connection with such obligations. Other proposed expenditures shall be made in accordance with the annual budget required by Section 2 of this Article or in contracts meeting the requirements of Section 1 (d) of this Article.

Section 4.6. Issuance of Obligations. Prior to the consummation of the sale and delivery of any bonds, notes, or other forms of debt instruments, the Corporation shall obtain authority to sell bonds, notes or other forms of debt instruments from the City Council. The Corporation may not deliver obligations, including refunding Obligations, unless the City Council adopts a resolution or ordinance, **not earlier than the 90th day** before the date the Obligations are delivered, specifically approving the Corporation's resolution providing for the issuance of the Obligations.

Section 4.7. Appropriations and Grants. The Corporation shall have the power to request and accept any appropriation, grant, contribution, donation, or other form of aid from the federal government, the State, any political subdivision, or municipality in the State or from any other source.

ARTICLE V

MISCELLANEOUS PROVISIONS

Section 5.1. Principle Office.

- (a) The principle office and the registered office of the Corporation shall be **Abilene City Hall, 555 Walnut Street, Abilene, Texas 79601.**
- (b) The Corporation shall have and shall continually designate a registered agent at its registered office, as required by the Act.

Section 5.2. Fiscal Year. The fiscal year of the Corporation shall be the same as the fiscal year of the City, or such other consecutive twelve-month period determined by the Corporation and approved by the City.

Section 5.3. Seal. The seal of the Corporation shall be as determined by the Board.

Section 5.4. Approval or Advice and Consent of the City Council. To the extent that these bylaws refer to any approval by the City or refer to advice and consent by the City Council, such advice and consent shall be evidenced by a certified copy of a resolution, ordinance or motion duly adopted by the City Council.

Section 5.5. Services of City Staff and Officers. The Corporation shall have the right to utilize the services of the City Attorney, the City Clerk, City Finance Director and City Manager, provided (i) that the Corporation shall pay reasonable compensation to the City for such services, and (ii) the performance of such service does not materially interfere with the other duties of such personnel of the City.

Section 5.6. Indemnification of Directors, Officers and Employees.

(a) As provided in the Act and in the Certificate of Formation, the Corporation is, for the purposes of the Texas Tort Claims Act (Subchapter A, Chapter 101, Texas Civil Practices and Remedies Code), a governmental unit and its actions are governmental functions.

(b) The Corporation shall indemnify each and every member of the Board, its officers, and its employees, and each member of the City Council and each employee of the City, to the fullest extent permitted by law, against any and all liability or expense, including attorney's fees, incurred by any of such persons by reason of any actions or omissions that may arise out of the functions and activities of the Corporation.

(c) The Corporation may purchase and maintain insurance for the Corporation and on behalf of any person who is or was a Director, officer, employee or agent of the Corporation or who is or was serving at the request of the Corporation as a Director, officer, employee, agent or similar position, against any liability asserted against him or her or incurred by him or her in such capacity or arising out of his or her status as such, whether or not the Corporation would have the power to indemnify him or her against that liability under Chapter 8 of the Business Organizations Code. If such insurance is obtained, the insurance may be procured, maintained or established with an insurer deemed appropriate by the Board. In the absence of fraud, the judgment of the Board as to the terms and conditions of the insurance shall be conclusive.

(d) No dividends shall ever be paid by the Corporation and no part of its net earnings remaining after payment of its expenses (including payment of

indebtedness of the Corporation and payments to implement the purposes for which the Corporation has been created) shall be distributed to or inure to the benefit of its Directors or officers or any individual, firm, corporation or association, except that in the event the Board shall determine that sufficient provision has been made for the full payment of the expenses, bonds, and other obligations of the Corporation, then any net earnings of the Corporation thereafter accruing shall be paid to the City. No part of the Corporation's activities shall be carrying on propaganda, or otherwise attempting to influence legislation, and it shall not participate in, or intervene in, (including the publishing or distributing of statements), any political campaign on behalf of or in opposition to any candidate for public office.

(e) If the Corporation ever should be dissolved when it has, or is entitled to, any interest in any funds or property of any kind, real, personal or mixed, such funds or property or rights thereto shall not be transferred to private ownership, but shall be transferred and delivered to the City, after satisfaction or provision for satisfaction of debts and claims.

Section 5.7. Interpretation of Bylaws. These Bylaws and all the terms and provisions hereof shall be liberally construed to effectuate the purposes set forth herein. If any word, phrase, clause, sentence, paragraph, section or other part of these Bylaws, or the application thereof to any person or circumstance, shall ever be held to be invalid or unconstitutional by any court of competent jurisdiction, the remainder of these Bylaws and the application of such word, phrase, clause, sentence, paragraph, section or other part of these Bylaws to any other person or circumstance shall not be affected thereby.

ARTICLE VI

EFFECTIVE DATE, AMENDMENTS

Section 6.1. Effective Date. These Bylaws shall become effective upon the occurrence of the following events:

- (i) the approval of these Bylaws by the City Council; and
- (ii) the adoption of these Bylaws by the Board.

Section 6.2. Amendments to Bylaws. These Bylaws may be amended only by the Board with approval by the City Council.