



RBA:
CITY OF AUSTIN
RECOMMENDATION FOR BOARD ACTION

AGENDA ITEM NO: 5
AGENDA DATE: 5/14/2009
PAGE: 1 OF 1

SUBJECT: Approve the adoption of new by-laws for the Austin Housing Finance Corporation.

AMOUNT & SOURCE OF FUNDING:

FISCAL NOTE: There is no unanticipated fiscal impact. A fiscal note is not required.

REQUESTING
DEPARTMENT: Austin Housing Finance Corporation

DIRECTOR'S
AUTHORIZATION: _____

FOR MORE INFORMATION CONTACT: Margaret R. Shaw, Treasurer, Austin Housing Finance Corporation, 974-3184

PRIOR BOARD ACTION:

PRIOR COUNCIL ACTION:

The Austin Housing Finance Corporation (AHFC) Board is requested to approve the adoption of new by-laws, attached as Exhibit "A." The AHFC's Articles of Incorporation provide that its By-laws may be amended by majority vote of the Board of Directors. The AHFC is amending its old By-laws by adopting these new By-laws. The new By-laws are organized similarly to the format requested by the City Clerk for the City's boards and commissions. In addition, the By-laws provide explicit delegation of signature authority to enable continuity in the business of the corporation in the absence of certain corporate officers. The new By-laws also reference the policies and procurement processes for the AHFC as well as the annual budget (and amendments thereto), thereby referencing all documents governing the operations of the corporation.

Exhibit A

BY-LAWS OF THE AUSTIN HOUSING FINANCE CORPORATION

ARTICLE 1. NAME.

The name of the corporation is the Austin Housing Finance Corporation (Corporation).

ARTICLE 2. PURPOSE AND DUTIES.

Section 1. Purpose. The purpose of the Corporation is to carry out the purposes of the Texas Housing Finance Corporations Act, Chapter 394, Texas Local Government Code (Act), by providing a means of financing the cost of residential ownership and development that will provide decent, safe and sanitary housing for residents of the City of Austin, a home-rule municipal corporation situated in Hays, Travis and Williamson counties (City) at prices they can afford. In order to implement this purpose, the Corporation shall issue obligations to finance all or part of the cost of residential developments for persons of low or moderate income.

Section 2. Duties. The Corporation shall keep correct and complete books and records of accounts and shall also keep minutes of all proceedings of its Board of Directors and committees having any of the authority of the Board of Directors. All books and records of the Corporation may be inspected by any director or director's agent or attorney for any proper purpose during regular business hours of the Corporation's principal office, and are subject to the Public Information Act, Chapter 552 of the Texas Government Code. Similarly, the Board of Directors and the governing body of the City (Governing Body) may have access to the books and records of the Corporation and shall be entitled to approve all programs of the Corporation exceeding two thousand dollars (\$2,000) and approve all expenditures in accordance with the Corporation's adopted procurement policy. A copy of the Corporation's annual report, including a balance sheet and income statement, shall be filed with the City Clerk.

ARTICLE 3. MEMBERSHIP.

Section 1. Board of Directors. 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, the Articles of Incorporation and these By-Laws, the Board shall exercise all of the powers of the Corporation.

- (A) The Board shall consist of seven (7) directors, each of whom shall be appointed by the Governing Body. Any director may be removed from office by the Governing Body for cause or at will.

- (B) Directors shall serve for a term as approved by the Governing Body or until their successor is duly elected and qualified.
- (C) Vacancies in the Board, including vacancies to be filled by an increase in the number of directors, shall be filled by the Governing Body for terms of no more than three (3) years.
- (D) An individual Board member may not act in an official capacity except through the formal and noticed action of the entire Board.

Section 2. Action of the Board.

- (A) Four members of the Board shall constitute a quorum. If a quorum is not present, the directors may recess the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present. Meetings may be held at any place not prohibited by law.
- (B) To be effective, a Board action must be adopted by affirmative vote of not less than four members.
- (C) The Board shall allow citizens to address the Board on agenda items and during a period of time set aside for citizens' communication. The president, or presiding director in the president's absence, may limit a speaker to three (3) minutes.
- (D) Board minutes shall be prepared and must include the vote of each member on each item before the Board and indicate whether a member is absent or failed to vote on any item.
- (E) The secretary of the Corporation shall retain all official Board documents. The documents are public records under Texas Government Code, Chapter 552.

Section 3. Executive Committee. The Board, by resolution passed by a majority of directors in office, may designate two or more directors to constitute an executive committee, which shall have and may exercise all of the authority of the Board as set forth in the resolution in the management of the Corporation, except where action of the Board is specified by law.

Such an Executive Committee shall act in the manner provided in the resolution forming the committee. The president shall be the liaison of the Executive Committee, if any, with the treasurer.

The Executive 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 office of the Corporation, and shall report the same to the Board.

Section 4. Compensation of Directors. Directors as such 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 duties hereunder.

Section 5. Procurement Rules and Procedures. These policies and procedures of the Corporation set forth what contracts specifically require Board approval as do the Corporation's annual budget resolution and any amendments thereto.

ARTICLE 4. OFFICERS AND DUTIES OF OFFICERS.

Section 1. Titles and Terms of Office. The officers of the Corporation shall consist of a president, a vice president, a general manager, a secretary, a treasurer, a general counsel and such other officers as the Board may from time to time elect or appoint. One person may be both a director and an officer simultaneously, may hold more than one office, except that the president shall not hold the office of secretary. Terms of office shall not exceed three (3) years.

All officers are subject to removal from office, with or without cause, at any time by the Board. A vacancy in any office shall be filled by the Board.

Section 2. President. The president shall be the chief executive officer of the Corporation and, subject to the Board, be in general charge of the properties and affairs of the Corporation. The president shall preside at all meetings of the Board.

Section 3. Vice-President. The vice president shall have such powers and duties as may be assigned by the Board and shall exercise the powers of the president during that officer's absence or inability to act. Any action taken by the vice president in the performance of duties as the president shall be conclusive evidence of the absence or inability to act of the president at the time such action was taken.

Section 4. General Manager. The general manager shall be the chief operating officer of the Corporation and, subject to the Board, be in general charge of the operations of the Corporation. The general manager or a designee may sign and execute all contracts, conveyances, franchises, bonds, deeds, assignments, mortgages, notes and other instruments in the name of the Corporation.

Specifically, documents relating to the down payment assistance program may be executed by an AHFC division manager; contracts for less than one million dollars may be executed by the treasurer or in the treasurer's absence a designee of the treasurer; and, contracts in excess of one million dollars (\$1,000,000) may be signed by the chief of staff or an assistant city manager for the City.

Section 5. Treasurer.

- (A) The treasurer shall have custody of all funds and securities of the Corporation. When necessary and proper, the treasurer or in the treasurer's absence, a designee of the treasurer, may endorse on behalf of the Corporation, any checks, notes or other obligations and shall deposit same to the credit of the Corporation.

- (B) The treasurer or in the treasurer's absence a designee of the treasurer shall, under the general supervision of the general manager, conduct the day to day business of the Corporation.
- (1) Funds and monies of the Corporation shall be placed in a Trust and Agency Account held by the City. Checks and drafts drawn on this account for proper corporation purposes may be jointly signed by any two officers of the City who are bonded for the faithful discharge of their duties as City officers.
 - (2) Corporation funds, monies, securities, and negotiable instruments shall be kept in such lawful depositories as the officers administering the Trust and Agency Account deem proper.
- (C) The treasurer or in the treasurer's absence a designee of the treasurer, may sign all receipts and vouchers for payment made to the Corporation. Whenever required by the Board, the treasurer shall tender a statement of the cash account. The treasurer shall regularly enter or cause to be entered in the books of the Corporation, kept by the treasurer for that purpose, full and accurate accounts of all monies received and paid out on account of the Corporation.

Section 6. Secretary. The secretary shall keep the minutes of all meetings of the Board in books provided for this purpose, and shall attend to the giving and serving of all notices on behalf of the Corporation. The secretary may attest to the signature of the officers of the Corporation on all contracts, conveyances, franchises, bonds, deeds, assignments, mortgages, notes and other instruments of the Corporation.

The secretary shall have charge of the corporate books, records, documents and instruments, except the books of account and financial records and securities of which the treasurer shall have custody and charge, and such other books and papers as the Board may direct, all of which shall, at all reasonable times, be open to inspection upon application at the office of the Corporation during regular business hours.

The secretary shall in general perform all duties incident to the office of secretary subject to the general supervision of the general manager and the control of the Board.

Section 7. General Counsel. The general counsel shall act as the attorney for the Corporation and may appoint one or more deputies. A deputy counsel, if any, is an assistant officer and may act fully in the place and stead of the general counsel.

Section 8. Compensation. Officers as such shall not receive any salary or compensation for their services, except that they shall be reimbursed for their actual expenses, approved by the treasurer, incurred in the performance of their duties hereunder.

ARTICLE 5. PARLIAMENTARY AUTHORITY.

The rules contained in the current edition of Robert's Rules of Order shall govern the Board in all cases to which they are applicable, except when inconsistent with these by-laws or with special rules of order which the Board or Governing Body may adopt.

ARTICLE 6. ARTICLES OF INCORPORATION AND BY-LAWS.

Section 1. Amendments to Articles of Incorporation and By-laws.

- (A) The Articles of Incorporation may at any time and from time to time be amended, provided that the Board files with the Governing Body a written application requesting the Governing Body approve such amendment to the Articles of Incorporation, specifying in such application the amendment or amendments proposed to be made and explaining the necessity of such amendment(s). If the Governing Body by appropriate resolution finds and determines that it is advisable that the proposed amendment(s) be made, authorizes the same to be made and approves the form of the proposed amendment(s), the Board shall proceed to amend the Articles of Incorporation as provided in the Act.

The Articles of Incorporation may also be amended at any time by the Governing Body at its sole discretion by adopting an amendment to the Articles of Incorporation of the Corporation by resolution of the Governing Body and delivering the Articles of Amendment to the Secretary of State as provided in the Act.

- (B) These by-laws may be amended by majority vote of the Board.

Section 2. Interpretation of By-laws. These by-laws and all the terms and provision contained herein shall be liberally construed to give effect to the purposes set forth herein. If any word, phrase, clause, sentence, paragraph, section or other part of these by-laws, or the application thereof to any person or circumstance is ever held to be invalid or unconstitutional by a court of competent jurisdiction, the remainder of these by-laws and the application of such word, phrase, clause, sentence, paragraph, section or other part of these by-laws to any other person or circumstance shall not be affected thereby.

ARTICLE 7. GENERAL PROVISIONS

Section 1. Principal Office. The principal office of the Corporation shall be located at 301 W. 2nd Street, Suite 100, Austin, Texas 78701.

The Corporation shall have and continuously maintain in the State of Texas a registered office, and a registered agent whose business office is identical with such registered office, as required by the Act. The registered office may be, but need not be, identical with the principal office for the Corporation, and the address of the registered office may be changed from time to time by the Board, pursuant to the requirements of the Act.

Section 2. Fiscal Year. The fiscal year for the corporation shall be from Oct 1st of a given year through September 30th of the following year.

Section 3. Notice and Waiver of Notice. Whenever any additional notice is required to be given to a director under the provisions of the Articles of Incorporation or these by-laws, such notice shall be deemed sufficient if given by depositing same in a post office box in a

stamped addressed envelope to the person entitled to the notice at their last known address or as it appears in the books of the Corporation, if to a holder of corporate bonds, and such notice shall be deemed to have been given on the day of such mailing.

Section 4. Seal. The corporate seal shall be in any form that the Board approves but shall have "Austin Housing Finance Corporation" inscribed predominantly on it. Said seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise accomplished.

Section 5. Resignations. Any director or officer may resign at any time. Such resignation shall be made in writing and shall take effect at the time specified in the writing, or, if no time is 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 provided for in the resignation.

Section 6. Approval or Advice and Consent of the Governing Body. To the extent that these by-laws refer to any such 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 7. Organizational Control. The Governing Body may, at its sole discretion, and at any time, alter or change the structure, organization, programs or activities of the Corporation (including the power to terminate the Corporation), subject to any limitation in the Act on the impairment of contracts entered into by the Corporation.

Section 8. Dissolution of the Corporation. Upon dissolution of the Corporation, title to or other interests in any real or personal property owned by the Corporation at such time shall vest in the Governing Body.

Section 9. Other Net Earnings Restrictions. No dividends shall ever be paid by the Corporation and no part of its net earnings (beyond that necessary for retirement of the indebtedness of the Corporation or to implement the public purpose of the Governing Body for which the Corporation has been created) shall be distributed to or inure to the benefit of its directors or officers or any private person, firm, corporation, or association except in reasonable amounts for services rendered. No substantial 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), and any political campaign on behalf of or in opposition to any candidate for public office.

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 issued to finance all or part of the cost of a Corporation-financed project, then the net earnings of the Corporation thereunder accruing with respect to the project shall be paid to the City or its successor.