

TEXAS HIGHER EDUCATION FACILITIES CORPORATION

AGENDA FORM

Meeting Date: 03-16-15

Agenda item: 3.1

Prepared by: Bill Hill

Reviewed by: Bill Hill

AGENDA ITEM DESCRIPTION:

3.1 Discussion / action – Resolution No R-2015-001 – adopting amendments to the Articles of Incorporation and to the Bylaws of the City of Shavano Park, Texas Higher Education Facilities Corporation to revise references to statutory authority pursuant to which the Corporation is organized to reflect statutory changes approved by the Texas Legislature in 2005 and revise qualifications for appointment to the Board permitted by statutory amendments in 2009

X

Attachments for Reference:

- 1) Proposed Resolution
- 2) Exhibit A - Amended Articles
- 3) Exhibit B - Amended Bylaws

BACKGROUND / HISTORY:

Mr. Bill Avila, Bond Attorney, Partner for Bracewell and Giuliani LLP will be at the meeting to explain in detail and answer questions.

Previously, the Council will have taken action to consider an ordinance which makes minor admin changes to Articles and Bylaws

In this action, the Education Board then passes resolution accepting changes to the Articles and Bylaws

NOTE: The action to approve the bond issuance for the Montessori School of San Antonio & Jefferson Bank Loan will occur on March 23, 1st at CoSP Higher Education Facilities Corporation Board meeting, and 2nd at the regular City Council meeting following the Board meeting.

In 1999, when CoSP formed the Board and created our charter/bylaws it was authorized by Texas Education Code, Chapter 53. In 2005, Texas Legislature amended the original act so that Chapter 53 only covers funding of PUBLIC education Facilities and Texas created a Chapter 53A that governs the funding of PRIVATE education Facilities.

Our Board and the actions we need to take to approve bond issue involve PRIVATE education facilities. In order to proceed with future bond issuance, City Council must authorize amendment by the Board of the Charter and Bylaws and the Board needs to approve amendments and place on file with the Tx Sec of State prior to the approval of the bond (scheduled 23 Mar Council Meeting).

DISCUSSION:

This action assumes that City Council approved an ordinance amending the Board's Articles and Bylaws and directs the CoSP TX Higher Education Facilities Board to approve the amendment by resolution and to file the amended charter with the TX Sec of State.

The Articles of Amendment do two things: 1) changes the statutory reference for the Corporation to Chapter 53A (the new law), and 2) removes the prohibition of other officers and employees of the City from serving as Board members of the Corporation.

(ii) *Proposed Amendments to Articles of Incorporation* . . . At a minimum, Article II and Article VII should be amended to address the following:

1. Amend Article II to provide as follows:

“The Corporation is a nonprofit corporation created under the Act Chapter 53A, Texas Education Code, as amended (the “Act”) by ordinance of the governing body of the City pursuant to the Act. In addition to the provisions of the Act specified in Section 53.35A(b) of the Act, the Corporation shall be subject to the provisions of the Texas Non-Profit Corporation Act, Chapter 22, Texas Business Organization Code (the “Non-Profit Corporation Act”). Lastly, for purposes of the Texas Tor Claims Act, as amended (Subchapter A, Chapter 101, Texas Civil Practices and Remedies Code), the Corporation is a governmental unit and its actions are governmental function.”

The double-underlined language is the new language. The language that has the strikethrough is the deleted language and is already provided for in the statute.

2. Amend Article VII to provide as follows:

Section 53.34 of the Texas Education Code authorizes the Corporation, as a corporation created by the City pursuant to Section 53.35(b), to issue revenue bonds to loan or otherwise provide funds to a borrower if, among other things:

“All powers of the Corporation shall be vested in a board of directors consisting of not less than seven nor more than eleven directors, as may be fixed by the bylaws of the Corporation, each of whom shall be appointed by the governing body of the City. Each director shall serve for a term of two years or until his or her successor is appointed by the governing body of the City. ~~No officer or employee of the City is eligible for appointment as a director.~~ Directors are not entitled to compensation for services but are entitled to reimbursement for expenses incurred in performing such services. Any director may be removed for office at any time, with or without cause, by written ordinance of the governing body of the City. All vacancies, from whatever cause, shall be filled by governing body of the City. Each director shall have the right to resign at any time upon written notice thereof to the Mayor of the City and the President or Secretary of the Corporation. Unless otherwise specified in notice, the resignation shall take effect upon receipt thereof, and the acceptance of such resignation shall not be necessary to make it effective.”

The amendment to the Bylaws is similar to the first amendment of the Charter (53 vs. 53A).

COURSES OF ACTION: Approve or Disapprove the Resolution

FINANCIAL IMPACT: Potential Future Fees Receivable

STAFF RECOMMENDATION: Approve Resolution No R-2015-001 – adopting amendments to the Articles of Incorporation of the City of Shavano Park, Texas Higher Education Facilities Corporation

A RESOLUTION

ADOPTING AMENDMENTS TO THE ARTICLES OF INCORPORATION AND TO THE BYLAWS OF THE CITY OF SHAVANO PARK, TEXAS CORPORATION HIGHER EDUCATION FACILITIES CORPORATION TO REVISE REFERENCES TO STATUTORY AUTHORITY PURSUANT TO WHICH THE CORPORATION IS ORGANIZED TO REFLECT STATUTORY CHANGES APPROVED BY THE TEXAS LEGISLATURE IN 2005 AND REVISE QUALIFICATIONS FOR APPOINTMENT TO THE BOARD PERMITTED BY STATUTORY AMENDMENTS IN 2009

WHEREAS, the CITY OF SHAVANO PARK, TEXAS (the “City”) created the CITY OF SHAVANO PARK, TEXAS HIGHER EDUCATION FACILITIES CORPORATION (the “Corporation”) pursuant to Chapter 53, Texas Education Code, as amended (the “Original Act”); and

WHEREAS, in 2005, during the Regular Session of the 79th Texas Legislature, the Texas Legislature amended the Original Act and re-codified the provisions therein relating to financings for private schools into a new “Chapter 53A” of the Texas Education Code (known as the “Higher Education Facility Authority for Private Schools Act”); and

WHEREAS, Chapter 53A, Texas Education Code, is referred to herein as the “Act”, and the Corporation is deemed to be operating and existing pursuant to the Act, particularly Section 53A.35B thereof; and

WHEREAS, in order to reflect such legislative change, the Board of Directors of the Corporation hereby determines that it is necessary and desirable to approve the form of an amendment to Article II of the Articles of Incorporation in order to reflect current law resulting from such statutory change approved by the Texas Legislature in 2005, and to request the City Council of the City to approve the form and content of an amendment to Article II to the Articles of Incorporation, as required by law and the Articles of Incorporation of the Corporation; and

WHEREAS, when the Corporation was created in 1999 by the City, the Original Act (which was carried over in the Act) prohibited any office of employee of the City from serving on the Board of Directors of the Corporation (the “*Board of Directors*”); consequently, since its inception, the Board of Directs has been composed of residents of the City who are not officers or employees of the city; and

WHEREAS, in 2009, the Texas Legislature approved Senate Bill 2240 which, among other things, removed the provision that prohibited the officers and employees of the City from serving as directors of the Corporation; and

WHEREAS, the City Council of the City has found it necessary and proper, and in furtherance of more efficient administration, for the City Council and other officers or employees of the City to serve as the board of directors of any non-profit “conduit issuers” that have been created by the City for the purpose of issuing tax-exempt bonds, notes or other obligations on behalf of the City for the benefit of private entities for various public purposes as authorized by law; and

WHEREAS, in order to implement such change in the Board of Directors membership as determined by the City, directed by the City Council, and now permitted by the Act, the Board of Directors of the Corporation hereby determines that it is necessary and proper to approve the form and content of an amendment to Article VII of the Articles of Incorporation (which together with the amendments to Article II are contained in the attached Articles of Amendment (the "Articles of Amendment") and to approve Bylaws Amendments; and

WHEREAS, on March 16, 2015, the City Council of the City adopted an ordinance approving the Articles of Amendment and Bylaws Amendments in the form being approved by this Resolution and directing this Board of Directors to amend the same and to file such Articles of Amendment with the Secretary of State; therefore, no further action of the City Council will be required to implement the Articles of Amendment other than filing the Articles of Amendment and Bylaws Amendments with the Secretary of State; and

WHEREAS, it is hereby officially found and determined that the meeting at which this Resolution was passed was open to the public, and public notice of the time, place, and purpose of said meeting was given, all as required by Chapter 551, Texas Government Code; NOW, THEREFORE:

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CITY OF SHAVANO PARK, TEXAS:

SECTION 1. AUTHORIZATION AND APPROVAL OF AMENDMENTS TO THE ARTICLES OF INCORPORATION AND THE BYLAWS. The Board of Directors of the Corporation hereby authorizes and approves (i) amendment to its Articles of Incorporation, and authorizes and approves the Articles of Amendment attached hereto, in substantially final form, as Exhibit A, and (ii) amendment to its Bylaws attached hereto, in substantially final form, as Exhibit B, for the purpose of making a technical change to conform the Corporation's statutory authority referenced in the Articles of Incorporation to reflect a statutory change enacted by the Legislature in 2005, and for the further purpose of providing for members of the City Council and any other officers or employees of the City to serve as the members of the board of directors of the Corporation as permitted by amendment to the Act approved by the Texas Legislature in 2009. The City Council of the City is hereby requested to approve such Articles of Amendment as required by Article XII of the Articles of Incorporation of the Corporation. Upon approval by the City Council, the Articles of Amendment are authorized to be executed by the President and Secretary of the Corporation and filed in the Office of the Secretary of State of Texas as required by law.

SECTION 2. DESIGNATION OF HEARING OFFICER. The Board hereby ratifies and approves the designation of Ralph Huber as the Hearing Officer to be held on March 20, 2015 regarding the Notes and the Project.

SECTION 3. INCORPORATION OF RECITALS. The Board of Directors of the Corporation hereby finds that the statements set forth in the recitals of this Resolution are true and correct, and the Board of Directors hereby incorporates such recitals as a part of this Resolution.

SECTION 4. SEVERABILITY. If any provision of this Resolution or the application thereof to any circumstance shall be held to be invalid, the remainder of this Resolution and the application thereof to other circumstances shall nevertheless be valid, and this governing body hereby declares that this Resolution would have been enacted without such invalid provision.

SECTION 5. EFFECTIVE DATE. This Resolution shall be effective immediately upon its adoption.

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PASSED AND ADOPTED BY THE BOARD OF DIRECTORS OF THE CITY OF SHAVANO PARK, TEXAS HIGHER EDUCATION FACILITIES CORPORATION THIS 16TH DAY OF MARCH.

President, Board of Directors

Attest:

Secretary, Board of Directors

(Seal)

EXHIBIT A

ARTICLES OF AMENDMENT
TO
THE ARTICLES OF INCORPORATION OF THE

CITY OF SHAVANO PARK, TEXAS HIGHER EDUCATION
FACILITIES CORPORATION

Pursuant to the provisions of (i) Chapter 53A, Texas Education Code, as amended (the “Act”), formerly known as Chapter 53, Texas Education Code when the CITY OF SHAVANO PARK, TEXAS HIGHER EDUCATION FACILITIES CORPORATION (the “Corporation”) was initially created in 1999 by the City of Shavano Park, Texas (the “City”), particularly Section 53A.35(b) of the Act (formerly known as Section 53.35(b), Texas Education Code, when the Corporation was initially created in 1999 by the City), (ii) Chapter 3 and Section 22.107, Texas Business Organizations Code (formerly known as Articles 1396-4.02 of the Texas Non-Profit Corporation Act), and (iii) Article XII of the Articles of Incorporation of the Corporation, the Corporation adopts the following Articles of Amendment to the Articles of Incorporation of the Corporation for the purpose of revising the reference to the statutory authority pursuant to which the Corporation is organized in order to reflect current law resulting from a statutory change approved by the Texas Legislature in 2005, and for the further purpose of providing for members of the City Council and any other officers or employees of the City to serve as the members of the board of directors of the Corporation (as permitted by amendment to the Act approved by the Texas Legislature in 2009).

ARTICLE ONE

NAME OF THE CORPORATION

The name of the Corporation is CITY OF SHAVANO PARK, TEXAS HIGHER EDUCATION FACILITIES CORPORATION.

ARTICLE TWO

AMENDMENT TO ARTICLES OF INCORPORATION

The following amendment to the Articles of Incorporation was adopted by the City Council of the City of Shavano Park, Texas on March 16, 2015, and adopted by Board of Directors of the Corporation pursuant to direction of the City Council on March 16, 2015:

Section 1. Article II of the Articles of Incorporation of the Corporation is hereby amended so as to read as follows:

Article II

The Corporation is a nonprofit corporation created under Chapter 53A, Texas Education Code, as amended (the "Act") by order of the governing body of the City pursuant to the Act.

Section 2. Article VII of the Articles of Incorporation of the Corporation is hereby amended so as to read as follows:

Article VII

All powers of the Corporation shall be vested in a board of directors consisting of not less than seven nor more than eleven directors, as may be fixed by the bylaws of the Corporation, each of whom shall be appointed by the governing body of the City. Each director shall serve for a term of two years or until his or her successor is appointed by the governing body of the City. Directors are not entitled to compensation for services but are entitled to reimbursement for expenses incurred in performing such services. Any director may be removed for office at any time, with or without cause, by written ordinance of the governing body of the City. All vacancies, from whatever cause, shall be filled by governing body of the City. Each director shall have the right to resign at any time upon written notice thereof to the Mayor of the City and the President or Secretary of the Corporation. Unless otherwise specified in notice, the resignation shall take effect upon receipt thereof, and the acceptance of such resignation shall not be necessary to make it effective.

ARTICLE THREE

ADOPTION BY MAJORITY VOTE OF DIRECTORS
AND CITY COUNCIL OF THE CITY OF SHAVANO PARK

The amendment was adopted in the following manner:

3. As authorized by Article XII of the Articles of Incorporation, the amendments were adopted, pursuant to Ordinance No. _____, at a special meeting of the City Council of the City held on March 16, 2015, and received the vote of a majority of the members of the City Council, which ordinance directed the Board of Directors adopt such amendments.

4. The amendments were adopted, pursuant to a Resolution, at a special meeting of the Board of Directors held on March 16, 2015, at the direction of the City Council of the City of Shavano Park, Texas (the "City") as required by Article XII of the Articles of Incorporation, and received the vote of a majority of the directors in office, there being no members having voting rights in respect thereof.

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DATED: _____

CITY OF SHAVANO PARK, TEXAS
HIGHER EDUCATION FACILITIES
CORPORATION

By: _____
Name: _____
Title: _____

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

Before me, the undersigned Notary Public, on this day personally appeared _____, who being by me first duly sworn, declared that he/she is the _____ of the CITY OF SHAVANO PARK, TEXAS HIGHER EDUCATION FACILITIES CORPORATION, a Texas nonprofit corporation, that he/she signed the foregoing document as _____ of said corporation, and that the statements therein contained are true and correct.

Given under my hand and seal of office this _____ day of March.

(Printed or Stamped Name)
Notary Public – State of Texas
My Commission Expires:

(Notary Seal)

EXHIBIT B
BYLAWS AMENDMENTS
OF
CITY OF SHAVANO PARK, TEXAS
HIGHER EDUCATION FACILITIES CORPORATION

Pursuant to the provisions of Section 3 of Ordinance No. 700-01-99 of the City Council (the "City Council") of the City of Shavano Park, Texas (the "City"), passed and adopted on October 19, 1999, and Article IV, Section 4.2 of the Bylaws (the "Bylaws") of the City of Shavano Park, Texas Higher Education Facilities Corporation (the "Corporation"), the following Amendments to the Bylaws of the Corporation were adopted by the unanimous vote of the governing body (the "Board of Directors") of the Corporation, at a Special Meeting of the Board of Directors held on March 16, 2015, with the approval of the City Council by unanimous vote of the City Council at a Special Meeting of the City Council held on March 16, 2015.

ARTICLE ONE
AMENDMENTS TO THE BYLAWS

Section 1.1 of Article I of the Bylaws is hereby amended to read in its entirety as follows:

Section 1.1. Financing of Projects. In order to implement the purposes for which the City of Shavano Park, Texas Higher Education Facilities Corporation (the "Corporation") was formed as set forth in the Articles of Incorporation and in the Articles of Amendment adopted on March 16, 2015, by the Board of Directors of the Corporation with the approval of the City Council of the City, the Corporation shall issue obligations to finance or refinance all or part of the costs of one or more projects pursuant to the provisions of Section 53A.35(b), Texas Education Code, as amended (the "Act").

ARTICLE TWO
STATEMENT AND DATE OF AUTHORIZATION OF AMENDMENT

The amendments stated herein and these Bylaws Amendments were adopted and approved by unanimous vote of the Board of Directors of the Corporation at a Special Meeting on March 16, 2015.

SIGNATURES TO FOLLOW

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EXECUTED THIS 16TH DAY OF MARCH, 2015.

CITY OF SHAVANO PARK, TEXAS HIGHER
EDUCATION FACILITIES CORPORATION

By: _____
Name: David A. Marne
Title: President, Board of Directors

Attest:

_____, Secretary Board of Directors
City of Shavano Park, Texas Higher Education Facilities Corporation

(CORPORATE SEAL)