

**CITY of NOVI CITY COUNCIL**

**Agenda Item F  
July 12, 2010**

**SUBJECT: Approval to adopt changes to the Articles of Incorporation of the Building Authority and to adopt a Resolution approving amendments to the Articles of Incorporation of the Novi Building Authority.**

**SUBMITTING DEPARTMENT: City Clerk** *CTB*

**CITY MANAGER APPROVAL:** *[Signature]*

**BACKGROUND INFORMATION:** In order to extend the lapsing terms for the City Engineer and Library Director until December 1, 2010, the attached resolution and amendments to the Articles of Incorporation are being presented for Council consideration. It was originally anticipated that construction would be largely completed by December 1, 2009. The library opened June 1, 2010 and it is expected that any remaining items will be concluded by December 1, 2010.

**RECOMMENDED ACTION:** Approval to adopt changes to the Articles of Incorporation of the Building Authority and to adopt a Resolution approving amendments to the Articles of Incorporation of the Novi Building Authority.

	1	2	Y	N
Mayor Landry				
Mayor Pro Tem Gatt				
Council Member Crawford				
Council Member Fischer				

	1	2	Y	N
Council Member Margolis				
Council Member Mutch				
Council Member Staudt				

AMENDMENTS TO  
ARTICLES OF INCORPORATION  
OF THE  
NOVI BUILDING AUTHORITY

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These Amendments to Articles of Incorporation of the Novi Building Authority (the “Authority”) are adopted, signed, and acknowledged by the City of Novi, County of Oakland, and State of Michigan (the “Incorporating Unit”), for the purpose of amending its Articles of Incorporation originally adopted on March 6, 1995, as amended on August 28, 2000, and August 13, 2007, which formed a nonprofit municipal building authority under the provisions of Act 31, Public Acts of Michigan, 1948 (First Extra Session), as amended. Sections 1 and 2 Article V of the Articles of Incorporation are amended to read as follows:

ARTICLE V

GOVERNING BODY OFFICERS:

Section 1. The Authority shall be directed and governed by a Board of Commissioners of known as the “Commission.” Effective October 30, 2007, the Board shall have seven (7) members, one member to be the City Manager, one member to be the Finance Director, one member to be the Community Development Director, one member to be the City Engineer, one member to be the Library Director, and two additional members to be elected by the City Council of the City of Novi, which two additional members shall be residents of the City of Novi. No member of the legislative body of the incorporating unit shall be eligible for membership or appointment to the Authority. Effective December 1, ~~2009~~2010, on the lapsing of the terms of the City Engineer and the Library Director as set forth in Section 2 below, the membership shall be reduced to five members, which shall be the City Manager, the Community Development Director, the Finance Director, and the two residents appointed by the City Council.

Section 2. The terms of the seven (7) commissioners as of the date of this amendment shall be:

The Community Development Director's term shall end on March 1, ~~2008~~2011.

The Finance Director's term shall end on March 1, ~~2009~~2012.

The City Manager's term shall end on March 1, ~~2010~~2013.

The City Engineer's term shall end on December 1, ~~2009~~2010.

The Library Director's term shall end on December 1, ~~2009~~2010.

One citizen representative's term shall end on March 1, ~~2009~~2012 and the other on March 1, 2013.

Thereafter, succeeding Commissioners shall serve for three year terms; provided, however, that effective December 1, ~~2009~~2010, on the lapsing of the terms of the City Engineer and the Library Director, the membership shall be reduced to five members, which shall be the City Manager, the Community Development Director, the Finance Director, and the two residents elected by the City Council; and further provided that, at the expiration dates provided above, the terms of the Community Development Director, Finance Director, and City Manager shall automatically extend to another three-year term unless the City Council, by resolution passed at least 30 days prior to such expiration, determines otherwise.

These Amendments to Articles of Incorporation shall become effective and to be in full force and effect upon publication.

IN WITNESS WHEREOF, the Incorporating Unit has adopted and authorized to be executed these Amendments of Articles of Incorporation by the Mayor and City Clerk of the City of Novi, County of Oakland, and State of Michigan.

CITY OF NOVI

BY: \_\_\_\_\_  
DAVID B. LANDRY, Mayor

BY: \_\_\_\_\_  
MARYANNE CORNELIUS, Clerk

The foregoing Amendments to the Articles of Incorporation were adopted and authorized to be executed on behalf of the City of Novi, a municipal corporation of the State of Michigan, by the Mayor and City Clerk of the City of Novi, at a meeting duly held on the \_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
MARYANNE CORNELIUS, Clerk

1449364

**CITY OF NOVI**  
**COUNTY OF OAKLAND, MICHIGAN**

**RESOLUTION APPROVING AMENDMENTS TO THE**  
**ARTICLES OF INCORPORATION OF THE NOVI BUILDING AUTHORITY**

Minutes of a regular meeting of the City Council of the City of Novi, County of Oakland, State of Michigan, held in the City Hall in said City on the \_\_\_\_ day of \_\_\_\_\_, 2007, at 7:00 o'clock p.m., prevailing Eastern Time.

PRESENT: Councilmembers \_\_\_\_\_  
\_\_\_\_\_

ABSENT: Councilmembers \_\_\_\_\_  
\_\_\_\_\_

The following preamble and Resolution were offered by Councilmember \_\_\_\_\_ and supported by Councilmember \_\_\_\_\_.

WHEREAS, the City Council (the "Council") of the City of Novi, County of Oakland, State of Michigan (the "City"), deems it advisable and necessary and in the best interests of the City to amend the Articles of Incorporation of the Novi Building Authority (the "Authority") previously created and established by the City under the provisions of Act 31, Public Acts of Michigan, 1948 (First Extra Session), as amended, relating to the officers of the Authority; and

WHEREAS, Amendments to the Articles of Incorporation of the Authority under said Act have been prepared and carefully reviewed by the Council.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Amendments to the Articles of Incorporation of the Novi Building Authority are hereby approved and adopted.

2. The Mayor and the City Clerk of the City are hereby authorized and directed to execute said Amendments to the Articles of Incorporation.

3. The City Clerk of the City shall cause the executed Amendments to the Articles of Incorporation to be published in a newspaper of general circulation in the City.

4. The City Clerk shall deliver a certified copy of the Amendments to the Articles of Incorporation to the County Clerk of the County of Oakland for filing and to the Michigan Secretary of State of filing along with two newsprint copies of the Amendments to the Articles of Incorporation with publisher's affidavit of publication attached.

5. All resolutions and parts of resolutions insofar as they conflict with the provisions of the resolution be and the same hereby are rescinded.

AYES:

NAYS:

RESOLUTION DECLARED ADOPTED.

\_\_\_\_\_  
MARYANNE CORNELIUS, CITY CLERK

### **CERTIFICATION**

I hereby certify that the foregoing is a true and complete copy of a resolution adopted by the City Council of the City of Novi, County of Oakland, and State of Michigan, at a regular meeting held this \_\_\_\_ day of \_\_\_\_\_, 2010, and that public notice of said meeting was given pursuant to and in full compliance with Act No. 267, Public Acts of Michigan, 1976, and that the minutes of said meeting have been kept and made available to the public as required by said Act.

\_\_\_\_\_  
MARYANNE CORNELIUS, CITY CLERK

June 23, 2010

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Clay Pearson, City Manager  
City of Novi  
45175 W. Ten Mile Road  
Novi, MI 48375

Re: *Building Authority Membership Issue*

Dear Mr. Pearson:

You asked me to outline briefly the situation involving the change of membership of the Building Authority. The City Council "reconstituted" the Building Authority for the library construction project back in 2007. It amended the Articles of Incorporation of the Authority to change the membership. In addition to the existing four members—two resident members (Mr. Czekaj and Mr. Sturing), the Finance Director, and the City Manager—three *additional* positions were added: the Community Development Director, the Library Director, and the City Engineer. These last two, however, were added *on a temporary basis*. More specifically, under the 2007 amendments to the Articles of Incorporation, their membership expressly lapsed after December 1, 2009. )) \*

Until recently, however, both the Library Director and the City Engineer (now DPS Director) continued to participate on the Authority and in its decisions beyond December 1, 2009 and until the scheduled lapse in membership was pointed out for us. Ms. Farkas and Mr. Hayes have not participated in Authority decisions since that time, and the five remaining members of the Authority voted at its last meeting to ratify any decisions made by the Authority since December 1, 2009.

Providing for the lapsing of the two additional members may have been on the expectation that the work of the Authority would be winding down by then. In fact, it will continue for awhile as the project is closed out and the construction and punch list items are completed (likely to the end of this year). You raised the question of how the City could continue the membership of Mr. Hayes and Ms. Farkas through December 1, 2010. The answer is that the Articles of Incorporation would need to be amended again to extend the term for those two )) \*

6/24/10  
To: Mayor & City  
Council Members

For throwing topic  
for consideration

Clay Pearson, City Manager  
June 23, 2010  
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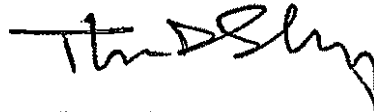
officers—essentially by changing the December 1, 2009 date to a later date (e.g., December 1, 2010). The amendment would be accomplished by bringing the proposed changes before the City Council for approval and then publishing notice of the amendment following Council approval. We are not aware of any other projects anticipated for 2010 that would be inconsistent with continuing the full 7-member complement of the Authority, and there is some logic in retaining the same composition throughout the entire project.

On a related note, at the same time the composition of the Authority was raised, a question came up whether, under the attached Articles of Incorporation, the City employee members require regular “re-appointment” in the same manner as the two citizen members, since their terms (at least on the face of the document) have beginning and ending dates. As I indicated to you verbally, after researching the matter through the City Clerk’s office, it appears that since the inception of the Authority the Council has never brought those positions forward for re-appointment. That is consistent with the fact that the Articles identify the governmental members by reference to a *position*, not an individual name, and state that such positions “shall” be members. That form of appointment worked to accomplish the transition on the Authority of the Community Development Director from Steve Rumble to Charles Boulard without requiring specific Council action.

By contrast, the two citizen members are “to be elected by the City Council,” clearly triggering the need for occasional Council action. We did not recommend the change to the prior practice, but that might be something worth clarifying if other amendments to the Articles are in fact made.

If you have any questions, please call me.

Very truly yours,



Thomas R. Schultz

TRS/jec

1447280



CITY OF NOVI

COUNTY OF OAKLAND, MICHIGAN

RESOLUTION APPROVING AMENDMENTS TO THE  
ARTICLES OF INCORPORATION OF THE NOVI BUILDING AUTHORITY

Minutes of a regular meeting of the City Council of the City of Novi, County of Oakland, State of Michigan, held in the City Hall in said City on the 13th day of August, 2007, at 7:00 o'clock p.m., prevailing Eastern Time.

PRESENT: Council Members Landry, Capello, Gatt, Margolis, Mutch and Paul

ABSENT: Council Member Nagy

The following preamble and Resolution were offered by Council Member Margolis and supported by Council Member Gatt.

WHEREAS, the City Council (the "Council") of the City of Novi, County of Oakland, State of Michigan (the "City"), deems it advisable and necessary and in the best interests of the City to amend the Articles of Incorporation of the Novi Building Authority (the "Authority") previously created and established by the City under the provisions of Act 31, Public Acts of Michigan, 1948 (First Extra Session), as amended, relating to the officers of the Authority; and

WHEREAS, Amendments to the Articles of Incorporation of the Authority under said Act have been prepared and carefully reviewed by the Council.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Amendments to the Articles of Incorporation of the Novi Building Authority are hereby approved and adopted.

2. The Mayor and the City Clerk of the City are hereby authorized and directed to execute said Amendments to the Articles of Incorporation.

3. The City Clerk of the City shall cause the executed Amendments to the Articles of Incorporation to be published in a newspaper of general circulation in the City.

4. The City Clerk shall deliver a certified copy of the Amendments to the Articles of Incorporation to the County Clerk of the County of Oakland for filing and to the Michigan Secretary of State of filing along with two newsprint copies of the Amendments to the Articles of Incorporation with publisher's affidavit of publication attached.

5. All resolutions and parts of resolutions insofar as they conflict with the provisions of the resolution be and the same hereby are rescinded.

AYES: Council Members Landry, Capello, Gatt and Margolis

NAYS: Council Members Mutch and Paul

RESOLUTION DECLARED ADOPTED.

  
\_\_\_\_\_  
MARYANNE CORNELIUS, CITY CLERK

**CERTIFICATION**

I hereby certify that the foregoing is a true and complete copy of a resolution adopted by the City Council of the City of Novi, County of Oakland, and State of Michigan, at a regular meeting held this 13th day of August, 2007, and that public notice of said meeting was given pursuant to and in full compliance with Act No. 267, Public Acts of Michigan, 1976, and that the minutes of said meeting have been kept and made available to the public as required by said Act.

  
\_\_\_\_\_  
MARYANNE CORNELIUS, CITY CLERK

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ARTICLES OF INCORPORATION  
OF THE  
NOVI BUILDING AUTHORITY

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ARTICLE V

GOVERNING BODY OFFICERS:

Section 1. The Authority shall be directed and governed by a Board of Commissioners of known as the "Commission." Effective October 30, 2007, the Board shall have seven (7) members, one member to be the City Manager, one member to be the Finance Director, one member to be the Community Development Director, one member to be the City Engineer, one member to be the Library Director, and two additional members to be elected by the City Council of the City of Novi, which two additional members shall be residents of the City of Novi. No member of the legislative body of the incorporating unit shall be eligible for membership or appointment to the Authority. Effective December 1, 2009, on the lapsing of the terms of the City Engineer and the Library Director as set forth in Section 2 below, the membership shall be reduced to five members, which shall be the City Manager, the Community Development Director, the Finance Director, and the two residents appointed by the City Council.

Section 2. The terms of the seven (7) commissioners as of the date of this amendment shall be:

The Community Development Director's term shall end on March 1, 2008.

The Finance Director's term shall end on March 1, 2009.

The City Manager's term shall end on March 1, 2010.

The City Engineer's term shall end on December 1, 2009.

The Library Director's term shall end on December 1, 2009.

One citizen representative's term shall end on March 1, 2009 and the other on March 1, 2010.

Thereafter, succeeding Commissioners shall serve for three year terms; provided, however, that effective December 1, 2009, on the lapsing of the terms of the City Engineer and the Library Director, the membership shall be reduced to five members, which shall be the City Manager, the Community Development Director, the Finance Director, and the two residents elected by the City Council.

These Amendments to Articles of Incorporation shall become effective and to be in full force and effect upon publication.

IN WITNESS WHEREOF, the Incorporating Unit has adopted and authorized to be executed these Amendments of Articles of Incorporation by the Mayor and City Clerk of the City of Novi, County of Oakland, and State of Michigan.

CITY OF NOVI

BY:

  
\_\_\_\_\_  
DAVID B. LANDRY, Mayor

BY:

  
\_\_\_\_\_  
MARYANNE CORNELIUS, Clerk

The foregoing Amendments to the Articles of Incorporation were adopted and authorized to be executed on behalf of the City of Novi, a municipal corporation of the State of Michigan, by the Mayor and City Clerk of the City of Novi, at a meeting duly held on the 13th day of August, 2007.

  
MARYANNE CORNELIUS, Clerk

**BUILDING AUTHORITIES (EXCERPT)**  
**Act 31 of 1948 (1st Ex. Sess.)**

**123.956 Articles of incorporation; publication; statement; filing; effective date; presumption.**

Sec. 6.

(1) The officer designated in the articles of incorporation shall cause a copy of the articles of incorporation or a summary of the articles to be published once in a newspaper designated in the articles of incorporation and circulating within the incorporating units accompanied by a statement that the right exists to question the incorporation in court as provided in this section. The officer shall file with the county clerk of the county designated under section 5(1)(h) and the secretary of state a certified copy of the articles of incorporation with a certificate of the date and newspaper of publication. The officer shall file with the recording officer of the authority, when selected, the original articles of incorporation with a certificate of the date and newspaper of publication.

(2) The authority shall become effective at the time provided in the articles of incorporation.

(3) The validity of the incorporation shall be conclusively presumed unless questioned in a court of competent jurisdiction within 60 days after the filing of the certified copies with the secretary of state and the county clerk.

History: 1948, 1st Ex. Sess., Act 31, Imd. Eff. May 10, 1948 ;-- CL 1948, 123.956 ;-- Am. 1973, Act 110, Imd. Eff. Aug. 19, 1973 ;-- Am. 1995, Act 147, Imd. Eff. July 11, 1995

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**BUILDING AUTHORITIES (EXCERPT)**  
**Act 31 of 1948 (1st Ex. Sess.)**

**123.960 Amendment of articles of incorporation.**

Sec. 10.

Amendments may be made to articles of incorporation if adopted by the legislative body of each incorporating unit: Provided, That no such amendment shall impair the obligation of any bond or other contract. Any city or village which is the county seat of a county incorporating an authority under the provisions of this act, may become an incorporating unit of the authority by amendment to the articles of incorporation adopted by the legislative body of such city or village and by the legislative body of the county. Any such city or village shall thereafter be deemed to be an incorporating unit. Each amendment shall be adopted, executed and published, and certified printed copies filed, in the same manner as above specified for the original articles of incorporation, in so far as applicable.

History: 1948, 1st Ex. Sess., Act 31, Imd. Eff. May 10, 1948 ;-- CL 1948, 123.960

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