



# CITY OF HOUSTON

Legal Department

**Sylvester Turner**

Mayor

Ronald C. Lewis  
City Attorney  
Legal Department  
P.O. Box 368  
Houston, Texas 77001-0368  
City Hall Annex  
900 Bagby, 4<sup>th</sup> Floor

T. 832.393.6491  
F. 832.393.6259  
[www.houstontx.gov](http://www.houstontx.gov)

## **Comments of the City of Houston Submitted to the Parliamentary Committee of the North American Energy Standards Board**

**September 17, 2018**

The North American Energy Standards Board (NAESB) has tasked its Parliamentary Committee with reviewing the NAESB Certificate of Incorporation and other governance documents for consistency with current Delaware corporate law and internal consistency with each other.

Currently, Article IV, Section 2, Clause 1, of the NAESB Certificate reads as follows:

The voting members of NAESB shall be individuals, partnerships, firms or corporations, which shall apply for membership in one or more Segments and are in good standing in accordance with the procedures of their Segment(s).

While Article IV, Section 1, leaves the precise criteria for membership to the By-Laws, Section 2 limits voting members to being either an individual, partnership, firm, or corporation. It does not expressly allow for municipalities or other government entities to be voting members. This shortcoming is made more obvious by the explicit allowance in Article IV, Section 3, that a "governmental entity" may be a non-voting member of NAESB.

### Recommendation:

**Therefore, I am proposing that the term "governmental entity" be added to the list of entities eligible to be voting members in Article IV, Section 2, Clause 1.**

### Analysis:

Turning to a quick search of Delaware law, I found the following definitions:

- "Individual" means any natural person; provided, however, that the term "individual" shall not include any natural person who is affected by a regulation in such person's capacity as an officer, director or employee of an organization which is not a small business. 29 Del.C. § 10403(4) (Regulatory Flexibility Act).

- “Partnership” means an association of 2 or more persons formed under § 15-202 of this title, predecessor law or comparable law of another jurisdiction to carry on any business, purpose or activity. 6 Del.C. § 15-101(11) (Delaware Revised Uniform Partnership Act).
- “Firm” means a sole proprietorship, partnership, corporation or any other entity authorized under Delaware law or a similar statute of another state. 24 Del.C. § 102(10) (Professions and Occupations).

I could not locate a Delaware statutory definition of “corporation.” Admittedly, in some jurisdictions the term “corporation” is interpreted broadly to include “municipal corporations,” however, the prevailing interpretation is that they are not the same. Generally, “A corporation is a creature of statute, and it is limited to the rights and powers given it by the statutory authority that created it.” 18 Am. Jur. 2d Corporations § 2 (2018). By comparison, municipalities with sovereign rights are creatures of the state. For example, under Texas law, the City of Houston is not a creation of the Legislature or any state statute, but a “home-rule” municipality deriving its authority from the Texas Constitution. *Lower Colorado River Auth. v. City of San Marcos*, 523 S.W.2d 641, 643 (Tex. 1975).

Turning to the more artfully drafted Texas statute, we find clarity that, “A municipality may not be considered a corporation under a state statute governing corporations unless the statute extends its application to a municipality by express use of the term ‘municipal corporation,’ ‘municipality,’ ‘city,’ ‘town,’ or ‘village.’” Tex. Local Gov’t Code §5.904(a); see also, Tex. Utilities Code §11.003(7) (explicitly excluding from the term “corporation” municipal corporations and electric cooperatives, except as expressly provided).

None of the current definitions of voting members openly embrace a municipality like the City of Houston, or any other governmental entity or subdivision. **Therefore, I propose adding the term “governmental entity” to the list of entities eligible to be voting members in Article IV, Section 2, Clause 1.**

Another quick search of Delaware law produces the following definition which reinforces the benefit sought will be realized, at least for municipalities:

- “Governmental entity” means any municipality, town, county, administrative entity or instrumentality created pursuant to Chapter 8 of Title 22 or Title 9, any municipality created by a special act of the General Assembly, any housing authority created pursuant to Chapter 43 of Title 31, any parking authority created pursuant to Chapter 5 of Title 22, any municipal business improvement district authority created pursuant to Chapter 15 of Title 22 and all registered volunteer fire companies and volunteer rescue squads. 10 Del.C. § 4010(2) (Torts Claims Act).

Respectfully Submitted:  
James Cargas  
Senior Assistant City Attorney

**Disclaimer:** This is provided for informational purposes only as I am not licensed to practice in Delaware and do not offer this a legal advice. NAESB and its members should consult with counsel licensed by the State Bar of Delaware before relying anything proposed here.