

(O-2003-139)

ORDINANCE NUMBER O- 19171 (NEW SERIES)

ADOPTED ON MAY 06 2003

AN ORDINANCE OF THE COUNCIL OF THE CITY OF
SAN DIEGO AUTHORIZING THAT THE SAN DIEGO
REGIONAL REVOLVING LOAN FUND BOARD MEMBERS
BE INDEMNIFIED FROM PERSONAL LIABILITY WHEN
SERVING WITHIN THE SCOPE OF THEIR DUTIES.

WHEREAS, on July 8, 2002, the City Council authorized the City Manager to apply for
and accept a grant in the amount of \$1.2 million from the Federal Economic Development
Administration [EDA] to establish the San Diego Regional Revolving Loan Fund [SDRRLF];
and

WHEREAS, on September 5, 2003, the EDA decided to award the City an additional
\$300,000 of funding for the SDRRLF; and

WHEREAS, the purpose of the EDA grant is to establish a revolving loan fund pursuant
to Title IX of the Public Works and Economic Development Act of 1965, P.L. 89-136, as
amended (42 U.S.C. § 3121), which was funded by EDA in a total amount of \$1.5 million with a
\$1.2 million match from Redevelopment Agency loan repayments; and

WHEREAS, pursuant to EDA grant application requirements, the City submitted an Administrative Plan to EDA fully describing the establishment and operating guidelines for the revolving loan fund to be known as the San Diego Regional Revolving Loan Fund [SDRRLF] and the Administrative Plan was approved by EDA and must be followed in administering the grant; and

WHEREAS, the Administrative Plan calls for the creation of the SDRRLF Board consisting of volunteer members of the local private sector with expertise in commercial credit and ending, corporate finance, law, accounting, and relevant emerging technologies; and

WHEREAS, the Administrative Plan describes the duties of the SDRRLF Board as having responsibility for reviewing loan applications and make recommendations to the City Manager concerning funding of SDRRLF loans; and

WHEREAS, the City Manager has solicited and appointed members to the SDRRLF Board which is now ready to begin consideration of loan applications; and

WHEREAS, the SDRRLF Board has and will be devoting countless hours of their time and substantial private resources in assisting the City in administering the SDRRLF Program; and

WHEREAS, the voluntary efforts of the professionals serving as members of the SDRRLF Board are of inestimable value to the citizens of the City of San Diego; and

WHEREAS, concerns expressed by members of the SDRRLF Board about personal exposure to liability and litigation are jeopardizing the ability of the City Manager to retain quality professionals as members of the SDRRLF Board; and

WHEREAS, Section 40 of the San Diego Charter provides, inter alia, that the City Attorney shall perform such other duties of a legal nature as the City Council may by ordinance require; and

WHEREAS, the Council of the City of San Diego finds and declares that the provision of legal services by the City Attorney and the indemnification against damages resulting from a judgment against any member of the SDRRLF Board serving and acting in such capacity would constitute expenditure of public funds which serves the highest public interest and purpose;
NOW THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. Except as hereinafter provided, the Office of the City Attorney shall defend and the City of San Diego shall indemnify the SDRRLF Board as established pursuant to the Administrative Plan of the SDRRLF Program against any claim or action against such board or member if all of the following circumstances exist:

- A. The person seeking the indemnification is a duly recognized member of the SDRRLF Board appointed by the City Manager; and
- B. The alleged act or omission occurred during a lawful meeting of the SDRRLF Board; and
- C. The alleged act or omission was within the reasonable scope of duties of the SDRRLF Board as described in the Administrative Plan and the Standard Terms and Conditions for administration of revolving loan fund grants, published by EDA; and

- D. The member has made a request in writing to the City for defense and indemnification within five working days of having been served such legal papers; and
- E. The member has performed his or her duty in good faith with such care, including reasonable inquiry, as an ordinarily prudent person or persons in a like position would use under similar circumstances.

Section 2. The City of San Diego may decline to represent a member or a board that would otherwise be entitled to defense and indemnification under this ordinance if either of the following circumstances exist:


- A. The member does not reasonably cooperate with the City Attorney in the defense of the claim or action; or
- B. The member acted or failed to act because of fraud, corruption, actual malice, or bad faith; or
- C. The alleged act or omission relates to a legal obligation of the member to comply with state or local conflict of interest laws, including any disclosure or disqualification requirements under The Political Reform Act of 1974 or California Government Code section 1090.

Section 3. In the event the City Attorney determines that a member or the board is not entitled to or should not receive a defense and indemnification under this ordinance, the City Attorney shall advise the City Council and the member or board.

Section 4. That a full reading of this ordinance is dispensed with prior to its final passage, since a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 5. This ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: CASEY GWINN, City Attorney

By 
Lisa A. Foster
Deputy City Attorney

LAF:jab
4/03/03
Or.Dept:Comm&EconDev.
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