



THE CITY OF SAN DIEGO

OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT

Date Issued: March 10, 2010

IBA Report Number: 10-25

City Council/Redevelopment Agency Meeting Date: March 22, 2010

Item Number: N/A

Amendments to the SEDC and CCDC Operating Agreements and Corporation Bylaws

OVERVIEW

Following the release of the September 2008 performance audit of the Southeastern Economic Development Corporation by Macias Consulting Group, numerous City officials and stakeholders participated in a deliberative and public process to develop a set of recommendations to effectuate greater oversight and accountability of the non-profit corporation redevelopment entities – Southeastern Economic Development Corporation (SEDC) and Centre City Development Corporation (CCDC).

A performance audit of CCDC by Sjoberg and Evashenk, released in July 2009, further confirmed the need to strengthen oversight of the corporations. Based on the findings of the corporation performance audits, twenty five recommended changes to the Operating Agreements and/or Bylaws (See IBA Report 09-70) were presented to the City Council on September 8, 2009. At that meeting, the Council voted 6-1 to adopt the recommended changes with amendments to recommendations #1, #2, #8, and directed the IBA to work with Redevelopment staff and the City Attorney's Office to make the proposed changes and to include standard legal provisions/recommended revisions deemed necessary and then return to the City Council and Redevelopment Agency for approval.

Over the past several months, an internal working group including representatives from the IBA, City Attorney, City Redevelopment Agency, City Chief Operating Officer, and the City Chief Financial Officer, have worked to develop proposed Operating Agreements and Corporation Bylaws that reflect the conceptual changes approved by the City Council on September 8, 2009. The proposed Operating Agreements and Bylaws



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also include changes related to corporation legal provisions suggested by the City Attorney's Office.

Draft versions of the revised Operating Agreements and Bylaws were provided to CCDG and SEDC staff for review and comment in December 2009 and again in January 2010. The internal working group met separately with representatives from each corporation to discuss any recommended changes. The internal working group then reviewed and considered the changes suggested by CCDG and SEDC, and incorporated a number of them into the revised Operating Agreements and Bylaws that are currently before the City Council/Agency Board.

Final drafts of the revised Operating Agreements and Bylaws were provided to the corporations on March 2, 2010 in order to allow time for them to obtain feedback from community groups and the corporate boards prior to the March 22, 2010 City Council/Agency Board meeting. The corporations were asked to provide any comments related to the final Operating Agreements and Bylaws to the City Council/Agency Board via memorandum prior to the March 22, 2010 meeting.

FISCAL/POLICY DISCUSSION

Attachment A to this report provides a matrix that outlines the twenty-five items approved by the City Council on September 8, 2009, including the amendments to recommendations #1, #2, and #8 made as part of the Council motion. Attachment A also references the sections in the Operating Agreements and/or Bylaws where each of these items is addressed. In addition, Report RC-2010-10 from the City Attorney's Office provides an overview of the standard legal provisions that are included in the revised Operating Agreements and Bylaws.

The 25 conceptual changes approved by the City Council on September 8, 2009 have been incorporated into the revised Operating Agreements and Bylaws as closely as possible. While the majority of these conceptual changes have been incorporated exactly as approved, there were a few instances where practical or logistical concerns required the internal working group to make a judgment call and modify the changes approved by Council. However, we believe that the language included in the revised Operating Agreements and Bylaws for these few exceptions still achieves the intent of the September 8, 2009 City Council action. These exceptions are described below:

Policies and Procedures and City CFO Approval of Fiscal Policies

On September 8, 2009, the City Council approved the following recommendations regarding Policies and Procedures and City CFO approval of Fiscal Policies:

Recommendation #3 – Policies and Procedures

“Corporation Boards shall adopt purchasing and contracting policies that establish limits for staff level approval of contracts and provide for timely public disclosure

of such executed contracts. Require Board adoption of policies and procedures for personnel matters, finance, budget, expenditure allowances, ethics, “gifts” and records retention. Require systematic review and update to remain current with best practices.”

Recommendation #11 – City CFO Approval of Fiscal Policies

“The Corporation Board must approve all Corporation fiscal policies before submission to the City CFO for approval. City CFO will have oversight of Corporation policies but contracts will be overseen by the Corporations and be in conformance with City CFO approved Corporation policies.”

The original intent of these recommendations was to ensure that the Corporations adopted certain fiscal and other policies, and to allow the City CFO to exercise oversight by approving these policies. However, after further discussion by the internal working group, it was determined that it may be inappropriate for the City CFO to approve corporate policies. The corporation boards have a responsibility to govern corporate operations and hold management accountable, and by approving corporate policies, the City CFO would essentially be acting in a management oversight capacity that should ultimately belong with the Agency Board. As a result, the role of the City CFO has been modified from “approval” to “review and comment” on fiscal policies.

However, the internal working group believed that this change in role of the City CFO was inconsistent with the level of oversight intended by the Council, and the approved changes reflected in Recommendation 11. To address this, the revised Operating Agreements and Bylaws establish an approval process for certain corporation policies whereby the policy is first approved by the corporation board, then submitted to the City CFO for review and comment, and then submitted to the Agency Board for final review and approval. Under the revised Operating Agreement and Bylaws, this approval process applies to the Purchasing and Contracting Policy, and other finance and fiscal policies.

For policies related to Ethics, Personnel, and Record Retention, the approval would remain with the corporation boards. This is consistent with the recommendations approved on September 8, 2009 by the City Council.

Budget Submissions to the City

On September 8, 2009 the City Council approved the following recommendation regarding corporation budget submissions to the City:

Recommendation #7 – Budget Submission to City

“Corporations must follow City administrative budget policies in any administrative budget submissions. Any submission must first be submitted to the City CFO for review prior to submission to the Redevelopment Agency.”

The original intent of this recommendation was to ensure that the corporation budgets are submitted according to a process that is consistent with the City's budget process, and to provide oversight of the corporation budgets by the City CFO. After further discussion on this item, the City CFO and the Comptroller recommended that the budget submittal process be amended to allow the City CFO to provide input on the corporation budgets prior to adoption by the corporate boards. As a result, the revised Operating Agreements and Bylaws establish a budget submittal process whereby the corporation budgets are first reviewed and approved by corporation management, then submitted to the City CFO for review and comment, then submitted to the corporation board for review and approval, and finally submitted to the Agency Board for review and approval.

Council Appointment of Board Member if Mayor does not Appoint within 90 Days

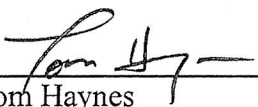
As part of the motion approved on September 8, 2009 the City Council directed the City Attorney to "review item #26 in IBA Report No. 09-70 to look at adding language that if the Mayor does not appoint within 90 days, Council may appoint a Board Member." To address this direction, the revised Bylaws include the following language:

Bylaws, Article 7, Section 2


The Council may elect directors to fill a vacant director position, except for the director position that represents the Mayor's office, in the event that the Mayor does not submit any candidates to fill any such vacancies for ratification by the Council within 90 days of the notification of any such vacancy.

RECOMMENDATION

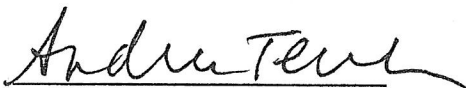
The IBA recommends that the City Council approve the Amended Articles of Incorporation and Amended Bylaws, and that the Redevelopment Agency approve the associated Amended Operating Agreements for the Centre City Development Corporation and Southeastern Economic Development Corporation.



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APPROVED: Andrea Tevlin
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Amended CCDC and SEDC Operating Agreement and Bylaws Reference Table

Recommendation (numbered according to IBA Report No. 09-70) - Reflects amendments per September 8, 2009 Council Motion and Internal Working Group changes	Operating Agreement	Corporate Bylaws
<p>1. Appointment and Termination of Corporation Presidents - Mayor appoints Corporation President subject to two-thirds vote of the City Council. A candidate selection committee, comprised of one representative from the Mayor's Office, two from the City Council and two from the Corporation Boards, shall provide no less than three candidates to the Mayor, who shall either appoint the President subject to Council approval or reject the selection committee's candidates and begin a new selection process. The Mayor may suspend and terminate the President, with or without cause, subject to appeal to the City Council, which must be supported with a two-thirds vote. The Council may terminate the President for cause in the event the Mayor takes no such action. The Mayor may replace the President with an interim officer during the appeal process or upon termination.</p> <p>** Council Motion: <i>Provide the Council the authority to terminate the President for cause with a two-thirds vote in the event the Mayor takes no action.</i></p>	N/A	Art. 1.1, Section 4
<p>2. Expansion of Corporation Boards - Expand the Corporation Board of Directors to include a citizen voting member appointed as a City Council representative to the Board. To ensure an odd number of Board Members, one at-large board member seat will be eliminated once his/her term expires.</p> <p>** Council Motion: <i>The Mayor and Council shall get one appointee each. Remove "citizen" from Council appointee requirement; however, appointee may not be a Council member.</i></p>	N/A	Art. 7, Section 2
<p>3. Policies and Procedures - Corporation Boards shall adopt purchasing and contracting policies that establish limits for staff level approval of contracts and provide for timely public disclosure of such executed contracts. Require Board adoption of policies and procedures for personnel matters, finance, budget, expenditure allowances, ethics, "gifts" and records retention. Require systematic review and update to remain current with best practices.</p> <p>** Internal Working Group Change: <i>Purchasing and Contracting Policy and finance and fiscal policies shall first be approved by the corporation boards, then submitted to the City CFO for review and comment, and then submitted to the Agency Board for final review and approval.</i></p>	Section 2.10(b) Section 2.11 Section 2.12	Art. 9, Section 2 Art. 9, Section 3 Art. 9, Section 4 Art. 9, Section 9
<p>4. Open Records - The Redevelopment Agency and the City has the right to inspect all documents and records, including but not limited to financial records and personnel records, at a reasonable time to be established but no later than 10 days after written request by the Redevelopment Agency.</p>	Section 2.24	Art. 13, Section 3
<p>5. Performance Audits - The Redevelopment Agency has the right to order a performance audit, to be paid for in full by the corporations, no more than once per year.</p>	Section 2.18	Art. 9, Section 8
<p>6. Annual Financial Audit - Corporations shall perform annual financial audits and submit them to the City no later than 135 days after the end of the fiscal year.</p>	Section 2.17(b)	Art. 13, Section 4

ATTACHMENT A

Recommendation (numbered according to IBA Report No. 09-70) - Reflects amendments per September 8, 2009 Council Motion and Internal Working Group changes	Operating Agreement	Corporate Bylaws
<p>7. Budget Submissions to City - Corporations must follow City administrative budget policies in any administrative budget submissions. Any submission must first be submitted to the City CFO for review prior to submission to the Redevelopment Agency.</p> <p>** Internal Working Group Change: Corporation budgets shall first be reviewed and approved by corporation management, then submitted to the City CFO for review and comment, then submitted to corporate board for review and approval, and finally submitted to the Agency Board for review and approval.</p>	<p>Section 1.05-1.08 Section 2.07</p>	<p>Art. 9, Section 1</p>
<p>8. Removal of Corporation Board Members - The Mayor has the right to suspend and recommend removal by the City Council of any corporation board members, based upon any breach of the operating agreements or Bylaws.</p> <p>** Council Motion: The Mayor has the right to suspend and recommend removal of any Board Member with a simple majority vote of the City Council. The Council may also remove any Board member with or without cause with a two-thirds vote.</p>	<p>N/A</p>	<p>Art. 7, Section 4(c)</p>
<p>9. Violation of Policies - A violation of an adopted Corporation policy or an applicable City policy constitutes a material violation of the Operating Agreement. In the absence of a City CFO-approved Corporation policy, the applicable City policy shall apply.</p>	<p>Section 2.16</p>	<p>Art. 9, Section 13</p>
<p>10. Corporation Board Member and Executive Officer Training - Board member and Executive Officer training in ethics, fiduciary duties and governance shall occur every two years with submission to City CFO of training certificate.</p>	<p>Section 2.15</p>	<p>Art. 9, Section 7</p>
<p>11. City CFO Approval of Fiscal Policies - The Corporation Board must approve all Corporation fiscal policies before submission to City CFO for approval. City CFO will have oversight of Corporation policies but contracts will be overseen by the Corporations and be in conformance with City CFO-approved Corporation policies.</p> <p>** Internal Working Group Change: Purchasing and Contracting Policy and finance and fiscal policies shall first be approved by the corporation boards, then submitted to the City CFO for review and comment, and then submitted to the Agency Board for final review and approval.</p>	<p>Section 2.12</p>	<p>Art. 9, Section 4</p>
<p>12. Transfer of Budgeted Funds - Any line item transfer of budgeted funds in excess of \$10,000 must be approved by Corporation Boards on a monthly basis.</p>	<p>Section 1.09</p>	<p>Art. 9, Section 1</p>
<p>13. President Performance Review/ Senior Staff Compensation - Corporation Boards must approve total compensation for senior officers annually including salary, benefits and performance pay. The Mayor shall perform the annual performance evaluation and set compensation for the President and consult with the Council and Corporation Board of Directors. The Board of Directors should review and approve compensation annually for all other executive officers other than the President.</p>	<p>N/A</p>	<p>Art. 11, Section 1 Art. 11, Section 4</p>

ATTACHMENT A

Recommendation (numbered according to IBA Report No. 09-70) - Reflects amendments per September 8, 2009 Council Motion and Internal Working Group changes	Operating Agreement	Corporate Bylaws
14. Personnel Manual - Corporation Boards must develop and adopt Personnel Manuals that are updated annually.	Section 2.13	Art. 9, Section 5
15. Board Review of Financial Statements - Corporation Boards, the Corporation CFO and Corporation President are required to review and certify Corporation financial statements.	N/A	Art. 13, Section 4
16. Monthly Financial Statements - Corporation Boards are to review and approve monthly financial statements presented by the Corporation's CFO, comparing actual to budget with any variance fully disclosed and explained. These statements are to be submitted to the City CFO.	Section 2.17(a)	Art. 13, Section 5
17. Redevelopment Law - Corporation Boards must comply with redevelopment law.	Section 2.22	N/A
18. Board Expertise - Require that two Corporation Board members have expertise in Finance, Real Estate Law, Economic Development, Redevelopment or Urban Design.	N/A	Art. 7, Section 2 Art. 9, Section 10
19. Public Information - Corporations must provide key documents and information to the public via website including Board and Board committee agendas, reports and minutes; current adopted budget; annual financial reports; Corporation by-laws and policies.	Section 2.05	Art. 9, Section 9 Art. 9, Section 3 Art. 9, Section 4
20. Strategic Plan - Corporations are required to develop a five-year strategic plan with performance goals and metrics that reflect the needs of the community as determined through extensive community outreach and that line up with the vision of the City. This Strategic Plan along with annual performance results must be reported to and approved by the Redevelopment Agency annually in accordance with Redevelopment Law.	Section 2.23	Art. 9, Section 12
21. Audit Committee - Corporations are required to establish and maintain an Audit Committee.	Section 2.19	Art. 10, Section 4
22. Closed Session - Corporations are required to follow City of San Diego closed session policies.	Section 2.25	N/A
23. Oversight of Agency Outside Legal Counsel - The City Attorney's Office will exercise oversight control of attorneys hired by the Corporations.	N/A	Art. 9, Section 11
24. Clarification of the Positions and Powers of Corporation Presidents and Corporation Board Chairmen - In order to clarify the duties and powers of the Corporation Presidents and the Chairmen of the Boards of Directors, delete any reference to "Chief Executive Officer" from the Bylaws.	N/A	Art. 11, Section 2 Art. 11, Section 4 Throughout
25. New Lobbying Provision - No past Corporation Board member will be allowed to lobby, within their Corporation's jurisdiction, the Corporate Board, the Redevelopment Agency or the City Council, regarding proposed projects, programs and/or related funding for up to one year after leaving office. ** Council Motion: Apply lobbying prohibition to CCDC and SEDC Board members to no less than one year.	Section 2.20	N/A
26. Council Motion: Have the City Attorney look at adding language that if the Mayor does not appoint a Board member within 90 days then the Council may appoint a Board member.	N/A	Art. 7, Section 2