



THE CITY OF SAN DIEGO

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## OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT

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# Restructuring and Combining CCDC and SEDC Into Civic San Diego

## OVERVIEW

In January 2011 California Governor Edmund G. Brown put forward a plan for dissolving redevelopment agencies and distributing their funds to other local agencies. Assembly Bills (AB) 26 and AB 27 were passed by the California State Legislature and signed by Governor Brown in June 2011. AB 26 barred redevelopment agencies from engaging in new business and provided for their windup and dissolution by October 1, 2011. AB 27 provided an alternative whereby redevelopment agencies could continue to operate if the cities and counties that created them agreed to make payments into funds benefitting schools and special districts.

The California Redevelopment Agency, the League of California Cities, and other affected parties sought relief from the legislation, arguing that the constitutionality of each measure. The California Supreme Court partially stayed the measures while the case was heard. On December 29, 2011, the Court issued its final opinion upholding AB 26 as constitutional and striking down AB 27 as unconstitutional. The ruling set in motion short timeframes for agencies and legislative bodies to take necessary actions to comply with AB 26 dissolution and unwinding requirements.

In January 2012, the City Council designated the City of San Diego to serve as the Redevelopment Agency's successor agency for purposes of winding down its operations; making payments on enforceable obligations; and liquidating the agency's unencumbered assets for distribution to the county, school districts, and other local public agencies. The City also chose to retain the former Redevelopment Agency's affordable housing assets and assume related responsibilities. California Redevelopment Agencies were dissolved on February 1, 2012, and their rights, powers, duties, and obligations were vested in the successor agencies.

The City's Redevelopment Agency included three operating entities:

- **City's Redevelopment Department** - Administered the affordable housing program and

11 of the Redevelopment Agency's 14 project areas.

- **Centre City Development Corporation (CCDC)** - Administered two of the project areas—Centre City and Horton Plaza.
- **Southeastern Economic Development Corporation (SEDC)** - Administered the Southeastern San Diego merged project area.

The City's Redevelopment Department was not included in the FY 2013 Proposed Budget, since it underwent a reduction in force for all 24.00 classified positions which was completed on April 27, 2012. The City's Personnel Department reassigned staff to vacant positions in various City departments, such as Economic Development and Transportation & Storm Water, based on position classifications and related information.

An important component in winding down the affairs of the former Redevelopment Agency is the restructuring of the two non-profit corporations involved in redevelopment activities. The former Redevelopment Agency had operating agreements with CCDC and SEDC. With the winding down of redevelopment, it is no longer financially feasible for both corporations to continue to operate, and SEDC does not have a sufficient workload to continue operating independently. The Mayor's Office is proposing to combine and restructure these corporations which will require changes to their Articles of Incorporation and Bylaws and the replacement of operating agreements with consulting agreements.

### **Previous Revisions to CCDC and SEDC Operating Agreements and Bylaws to Improve Oversight and Accountability**

Following performance audits conducted on SEDC and CCDC in 2008 and 2009, respectively, which highlighted the need to strengthen their accountability and oversight, numerous City officials and stakeholders participated in a deliberative process to develop recommendations for improvement. On September 8, 2009, 26 recommended changes to the corporations' Bylaws and Operating Agreements were presented to City Council. Council approved the recommendations, including amendments to recommendations 1, 2, 8, 25, and 26 as part of the motion, and directed the IBA to work with the City Attorney's Office and Redevelopment staff to incorporate the proposed changes in the Bylaws and Operating Agreements. In March 2010, the IBA reported the results of an internal working group—including representatives from the IBA, City Attorney, City Redevelopment Agency, City Chief Operating Officer, and City Chief Financial Officer—to revise the Operating Agreements and Bylaws for both corporations to reflect these recommendations.<sup>1</sup> The new Agreements and Bylaws for CCDC and SEDC were approved by the City Council on March 22, 2010.

This report provides our review and analysis of the proposed revised Bylaws, Articles of Incorporation, and newly developed consulting agreements to ensure that the language relating to accountability and oversight that was incorporated into the previous versions of the documents has been retained. We are also providing an assessment of the Proposed FY 2013 Budget for the restructured non-profit corporation which will be presented to Council for approval with the

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<sup>1</sup> IBA, *Amendments to the SEDC and CCDC Operating Agreements and Corporate Bylaws*, 10-25 (San Diego, CA: March 10, 2010), and *Proposed Revisions to the SEDC and CCDC Operating Agreements and Corporation Bylaws*, 09-70 (San Diego, CA: Aug. 17, 2009).

restructuring proposal and revised documents on June 25, 2012.

## FISCAL/POLICY DISCUSSION

The Mayor’s proposed restructuring will transition CCDC into a non-profit public benefit corporation—Civic San Diego, with the City as the sole member. SEDC will become a subsidiary corporation of Civic San Diego. The new structure is intended to reduce the duplicative services and requirements and provide a cost-effective means for the corporations to share resources. Key changes to the corporate structure and operations of the new entity are included in the table below.

<b>Key Changes</b>	<b>Specific Amendments and Revisions</b>
New Name	<ul style="list-style-type: none"> <li>• Amending CCDC’s Articles of Incorporation to change the name to Civic San Diego with the City as the sole member.</li> </ul>
Parent and Subsidiary Corporations	<ul style="list-style-type: none"> <li>• Amending SEDC’s Articles of Incorporation and Bylaws to assign Civic San Diego as SEDC’s sole member, replacing the City.</li> <li>• Amending CCDC’s Articles of Incorporation and Bylaws to establish Civic San Diego as the parent corporation of SEDC.</li> </ul>
Board of Directors	<ul style="list-style-type: none"> <li>• Amending CCDC’s Bylaws to require that at least one but no more than four SEDC Board Members also service on Civic San Diego’s Board. <ul style="list-style-type: none"> <li>○ Currently CCDC’s Board has two vacancies which will be filled with SEDC Board members.</li> <li>○ Civic San Diego will fund and service the Board.</li> </ul> </li> <li>• Amending CCDC’s Bylaws relating to qualifications of Board members to reflect a spectrum of disciplines and fully represent the areas in which Civic San Diego will provide services. <ul style="list-style-type: none"> <li>○ Requiring that a Member be appointed that has experience in affordable housing.</li> </ul> </li> </ul>
Financial Statements	<ul style="list-style-type: none"> <li>• Amending CCDC’s and SEDC’s Bylaws establishing that SEDC will no longer be required to provide separate audited financial statements, since it will provide its financial statements to and be audited as part of Civic San Diego. <ul style="list-style-type: none"> <li>○ SEDC’s statements will be reported in Civic San Diego’s audited financial statements.</li> </ul> </li> </ul>
Process for Selecting a President	<ul style="list-style-type: none"> <li>• Amending CCDC’s Bylaws to revise the process to appoint a president, since the current process is overly complex. <ul style="list-style-type: none"> <li>○ Civic San Diego Board of Directors initially selects a president.</li> <li>○ Selection is subject to approval of the Mayor and two-thirds vote of City Council.</li> </ul> </li> </ul>

### **Proposed Changes to Civic San Diego Bylaws Related to Oversight and Accountability**

We reviewed the proposed changes to Civic San Diego’s Bylaws compared with 26 specific revisions made to the CCDC’s and SEDC’s Bylaws and Operating Agreements in March 2010 to improve accountability and oversight. Our analysis of these revisions is included in Attachment 1 to this report.

We found that the proposed changes generally address the previous recommendations and, in some cases, include more specific or updated language. For example, the Audit Committee provision now includes specific responsibilities for the Committee to assist the Board in

overseeing the integrity of the Corporation's financial statements, internal control procedures, and compliance with legal and regulatory requirements. In addition, the role of reviewing the fairness of compensation, performing the annual performance evaluation of the President and senior staff, and setting compensation for the President has been moved from the Mayor to the Corporation's Board of Directors. The City Attorney's Office specified that this change is being made to bring the Bylaws into compliance with the Government Code (Section 12586(g)).<sup>2</sup>

In one case, however, we found that a provision (recommendation 25) has not been included in the Bylaws or other relevant documents. The lobbying provision for Board Members was previously included in the Operating Agreements (Subsection 2.20) to prohibit all past members of the Board and prior officers of the Corporation from advocating, lobbying or otherwise attempting to influence the City for up to one year after leaving office. This provision was not part of the auditor's original recommendations, but was proposed by CCDC's Board of Directors and included as an amendment to Council's motion to approve the recommendations on September 8, 2009.

CCDC's Corporate Policies (Section 5.4) require that Board Members comply with the conflict of interest provisions of the San Diego Ethics Ordinance, but the lobbying provision is specific for officials who receive compensation. Board Members are volunteers and do not receive compensation per the Bylaws. The City Attorney's Office and CCDC's legal counsel recommended that if the City Council believes the provision should be documented, then it should be included in Civic San Diego's Corporate Policies. CCDC officials told us that they expect to update the Corporate Policies within two months following the Council's approval of the new corporate structure and then present them to the Board for approval.

### **New Purpose and Related Funding Sources**

Given that redevelopment activities were the primary function of the corporations, the restructuring will also provide a new purpose and functions for Civic San Diego, including planning and permitting functions and management of the Downtown Parking District which are currently carried out by CCDC. Changes related to the new purpose are included in the Articles of Incorporation, Bylaws, and in more detail in the two consulting agreements between the City and Civic San Diego. Previously, the City used operating agreements with the non-profit corporations to establish roles and responsibilities. Since the corporation is no longer going to be organized exclusively for redevelopment purposes, but will be retained to perform consulting services, the City Attorney's Office has stated that the use of consulting agreements is appropriate.

The format and legal language in the two consultant agreements between the City and Civic San Diego are essentially the same. The primary difference is the Scope of Services and related Exhibit A which are based on the specific services to be provided under each agreement. Note that the Scope of Services for both agreements is at the direction of the City. The Scope of Services is linked to funding sources, which have specific restrictions on how they can be used.

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<sup>2</sup> This section puts the responsibility for such review on the Board of Directors, as part of the California Nonprofit Integrity Act of 2004.

<b>Consulting Agreement</b>	<b>Scope of Services</b>	<b>Funding Source(s)</b>
<b>Successor Agency and Housing Success or Agency Services</b>	Continue the existing support provided by CCDC and SEDC to the Successor Agency related to the winding down of the former Redevelopment Agency: <ul style="list-style-type: none"> <li>• Confirm and process payments due on enforceable obligations.</li> <li>• Dispose and/or transfer ownership of assets and properties.</li> <li>• Provide project management and completion of ongoing projects.</li> <li>• Implement affordable housing functions.</li> </ul>	Revenues provided by Successor Agency from: <ul style="list-style-type: none"> <li>• Property tax revenue</li> <li>• Reserves of the former Redevelopment Agency</li> </ul>
<b>Administration of Certain Planned Districts, the Downtown Community Parking District, and Specified Economic Development Services</b>	Provide planning and development permitting for Downtown: <ul style="list-style-type: none"> <li>• Land use permitting services in accordance with the Center City Planned District Ordinance (PDO), Gaslamp Quarter PDO, and Marina PDO.</li> <li>• Management of the Downtown Community Plan and Centre City PDO.</li> </ul>	Permit application fees
	Manage the Downtown Parking Management District and implement the Comprehensive Downtown Parking Plan.	Parking Management District fees
	Provide specified economic development services within the project areas formerly managed by CCDC and SEDC. <ul style="list-style-type: none"> <li>• Identify new funding sources for projects.</li> </ul>	Potential “seed money” provided from the City’s General Fund

The Mayor’s Office is proposing that the City Council adopt a resolution authorizing the execution of a four-year agreement for each of the Agreements for Consulting Services.

**Proposed FY 2013 Budget for Civic San Diego**

As a result of the dissolution of the former Redevelopment Agency and to be more appropriately sized to its new purpose, function, and funding sources, the Proposed FY 2013 Budget for Civic San Diego is about 40% less than the combined budgets of CCDC and SEDC in FY 2012. The total Proposed Budget of \$5.9 million is a reduction of about \$4.0 million. This is partly attributable to a 44% decrease in personnel expenditures, including the reduction of 26.8 full-time equivalent (FTE) positions from FY 2012. The Proposed Budget includes 32.0 FTEs—28.0 from CCDC and 4.0 from SEDC.

The reduction in fringe benefits is partly due to a decrease in the CCDC employer retirement contribution from 24% to 12%. This change was approved by CCDC’s Board of Directors in June 2012, reducing the retirement benefit for employees by about \$300,000 in FY 2013. CCDC’s employer retirement contributions are now in line with SEDC’s, but are below other organizations with which they compete for staff, such as San Diego’s Regional Planning Agency (SANDAG) and the Housing Commission with 16% and 14% contributions, respectively.

<b>SUMMARY OF CHANGES IN EXPENDITURES BY CATEGORY</b>				
	<b>FY2012</b>	<b>FY 2013</b>	<b>DOLLAR</b>	<b>PERCENTAGE</b>
<b>Personnel</b>				
Salaries and Wages	\$ 4,779,600	\$ 2,800,000	\$ (1,979,600)	-41%
Fringe Benefits	2,326,400	1,180,000	(1,146,400)	-49%
<b>Personnel Subtotal</b>	<b>\$ 7,106,000</b>	<b>\$ 3,980,000</b>	<b>\$ (3,126,000)</b>	<b>-44%</b>
<b>Non-Personnel</b>	\$ 1,000,000	\$ 443,000	\$ (557,000)	-56%
Rent for Office Space	902,000	882,000	(20,000)	-2%
Legal, Audit, and Computer Support	875,000	590,000	(285,000)	-33%
<b>Non-Personnel Subtotal</b>	<b>\$ 2,777,000</b>	<b>\$ 1,915,000</b>	<b>\$ (862,000)</b>	<b>-31%</b>
<b>Total</b>	<b>\$ 9,883,000</b>	<b>\$ 5,895,000</b>	<b>\$ (3,988,000)</b>	<b>-40%</b>

Non-personnel expenditures decreased by 31% from about \$2.8 million in FY 2012 to \$1.9 million in FY 2013. Rent for office space is the largest expenditure in this category or about 46% of total non-personnel expenditures in FY 2013. While this has decreased only slightly by 2% from FY 2012, this is due to one-time expenditures anticipated in FY 2013 for broker's commissions and other costs related to:

- Efforts to sublease part of CCDC's office space in the Wells Fargo Building and
- Ongoing costs associated with the existing lease on the Downtown Information Center, which was closed in March 2012.

The leases for both of these properties expire in June 2015.

The Successor Agency Administrative Budget for ROPS 2 (July-December 2012) was approved by the City Council and Oversight Board on June 11 and June 14, 2012, respectively. As shown in the table below, Civic San Diego represents about 57% of the total Successor Agency Administrative Budget for FY 2013 of \$7.8 million. Revenues sources for successor agency functions include a cost allowance of 3% of funding from property tax trust fund revenues and the remaining funds are provided from reserves of the former Redevelopment Agency.

	<b>ADMINISTRATIVE</b>	<b>PROJECT MANAGEMENT</b>	<b>TOTAL</b>
ROPS 2 (July-December 2012)	\$ 2,162,000	\$ 1,310,000	\$ 3,472,000
Projected ROPS 3 (January-June 2013)	3,048,000	1,310,000	4,358,000
<b>Total</b>	<b>\$ 5,210,000</b>	<b>\$ 2,620,000</b>	<b>\$ 7,830,000</b>
Civic San Diego Portion of Successor Agency Budget	\$ 2,728,540	\$ 1,766,809	\$ 4,495,349
City's Portion of Successor Agency Budget	\$ 2,481,460	\$ 853,191	\$ 3,334,651

It is important to note that the FY 2013 Budget for Civic San Diego includes projected administrative and project management expenditures for ROPS 3 which is subject to approval of Council as the Successor Agency, the Oversight Board, and the State Department of Finance. The City continues to face unknowns and risks, including ongoing scrutiny of enforceable obligations by the oversight entities and the State Controller's order to unwind asset transfer not allowed by AB 26.

**Budget by Function**

**Successor Agency** - About \$4.5 million or 76% of Civic San Diego’s Proposed FY 2013 Budget is for continuing the existing support provided by CCDC and SEDC to the Successor Agency, including administration and project management. This proportion is expected to be reduced significantly over time as projects are completed and affairs of the former Redevelopment Agency wind down.

<b>SUMMARY OF CIVIC SAN DIEGO BUDGET BY FUNCTION</b>			
	<b>EXPENDITURES</b>	<b>PERCENTAGE</b>	<b>POTENTIAL REVENUE</b>
Successor Agency	\$ 4,495,349	76%	\$ 4,495,349
Permit Processing	961,529	16%	961,529
Parking District	358,050	6%	400,000
Economic Development/Other	80,072	1%	80,072
<b>TOTAL</b>	<b>\$ 5,895,000</b>	<b>100%</b>	<b>\$ 5,936,950</b>

Note that this action provides for advances to Civic San Diego for operating expenses of up to 15% of all non-permit (Successor Agency, Parking District, and Economic Development) services in the FY 2013 Budget which equates to about \$740,000. The purpose of the advances is to provide needed cash reserves for cash flow. It is anticipated that the advance would be provided from the \$2.4 million that the City received in residual property tax trust fund revenues from the June 1<sup>st</sup> County distribution. This action would also allow the use of other available City funds for the advance, as deemed appropriate by the Chief Financial Officer.

**Permit Processing** – Although CCDC has conducted planning and permitting functions since 1992, these activities were previously funded as part of Downtown redevelopment with Tax Increment Funding. To fund these activities post-redevelopment, the City Council approved a proposal for charging for these services and adopted a fee schedule on May 1, 2012. Once the fees are established, it is estimated that the Corporation will collect between \$800,000 and \$1.3 million in revenue.

This action provides for advances to Civic San Diego for operating expenses of up to 50% of all permit-related services in the FY 2013 Budget which equates to about \$481,000, which would also be provided from the \$2.4 million in residual property tax or other available City funds. The larger percentage for permit functions is due to the need to establish reserves, particularly since permitting has an uneven cash flow.

Per Council approval of the fee schedule, CCDC is required to provide a status report on six months of permit fee expenditures and revenues to its Board of Directors and City Council, likely in January 2013. If revenues are not coming in as anticipated, then expenditures will be adjusted.

**Parking District** – The FY 2013 Proposed Budget includes \$358,050 in expenditures for managing the Downtown Parking District. This is the first time that Civic San Diego will charge administrative time to the Downtown Parking District Budget, since this also was previously

funded as part of redevelopment projects through Tax Increment Funding. The City's Parking District Budget includes \$400,000 in parking meter revenue for administration of the Downtown Community Parking District. This budget will be presented to the Economic Development Committee on June 25<sup>th</sup> and is anticipated to go to the full Council in July.

**Economic Development** –As part of the IBA's Recommended Revisions to the Mayor's FY 2013 Budget, on June 11, 2012, Council approved \$250,000 in seed money for a successor agency to CCDC and SEDC or an internal agency to conduct economic development and neighborhood revitalization activities. These funds are currently in the Citywide Department within the Annual Fund. Civic San Diego's FY 2013 Proposed Budget includes \$80,000 of this amount for conducting economic development activities in the project areas formerly serviced by CCDC and SEDC. It is envisioned that Civic San Diego will use the seed money to identify new funding sources that can be used as a model in other San Diego communities. This action will so designate the funds for this purpose. Note that Civic San Diego's other three funding sources have specific limitations on use and the seed money is currently the only source of funds potentially available for conducting economic development activities.

Civic San Diego officials told us that their priority for use of the seed money is to seek new funding sources for targeted improvement projects in former redevelopment neighborhoods and identify a long-term revenue source for Civic San Diego's administration. The goal is to become a financially self-sustaining organization and not become reliant on the City's General Fund for administrative expenses. For example, officials are planning to meet with a syndicator of New Market Tax Credits to understand the criteria and structure for funding projects using this mechanism and then determine which priority projects in the City may qualify and benefit from this funding source. Officials also anticipate using a portion of this funding to continue to coordinate the Downtown Paradise in Progress program which helps to prevent street closures due to construction projects from impacting Downtown events.

### ***Budgetary Challenges***

As the newly structured corporation moves forward in FY 2013 with a new scope of services and tight limitations on funding sources, officials noted some challenges they will face.

- Funding for economic development will enable staff to conduct important activities relating to researching and identifying alternative funding sources to Tax Increment Funding that was available under Redevelopment Law. However, the funds may not be sufficient to allow staff to provide services that the Council or Mayor have previously relied on CCDC to perform, such as attending monthly Downtown Homelessness Leadership meetings or Chamber of Commerce committee meetings. In addition, unless Civic San Diego identifies a new funding source, it will not be able to perform special projects or long-range planning during the fiscal year, such as adaptive reuse studies.
- The projected budget for permitting functions is based on historical averages. If the volume of permitting applications received during FY 2013 fall short of this, the Corporation may have to reduce staff in the planning department to adjust operating costs to reflect the reduced fee revenue.



## CONCLUSION

Proposed changes to the corporate structure and operations of Civic San Diego reflect the intention to reduce the duplicative services and requirements and provide a cost-effective means for the corporations to share resources. We also found that the proposed changes to Civic San Diego's Bylaws generally address previous recommendations for improving accountability and oversight of CCDC and SEDC, and in some cases include more specific or updated language. The one exception is the inadvertent exclusion of the lobbying provision from the Bylaws or other relevant documents. This provision prohibiting all past members of the Board and prior officers of the Corporation from advocating, lobbying or otherwise attempting to influence the City for up to one year after leaving office, was previously included in the Operating Agreements (Subsection 2.20). Due to the change in purpose and scope of services, two Agreements for Consulting Services with Civic San Diego have been proposed and Operating Agreements will no longer be used with the corporations. The City Council may want to consider recommending that this provision be included in Civic San Diego's Corporate Policies, which will be revised in the next few months to reflect its new structure and functions.

The recommendations that have been retained and strengthened in the proposed revised Bylaws provide effective internal controls, oversight, and accountability for Civic San Diego. Also, the Successor Agency Administrative Budget and the ROPS—including the revenue used and the projects that are included—must be reviewed and approved every six months by the Successor Agency Board (City Council). This provides an additional level of oversight for the majority of Civic San Diego's Budget and operations. However, since this is a transitional period for the Corporation and its funding sources have specific limitations, Council may want to consider having Civic San Diego staff provide an annual or semiannual report on its budget and activities to the Economic Development Committee.

As a result of the dissolution of the former Redevelopment Agency and to be more appropriately sized to its new purpose, function, and funding sources, the Proposed FY 2013 Budget for Civic San Diego is about \$5.9 million or 40% less than the combined budgets of CCDC and SEDC in FY 2012. About \$4.4 million or 74% of Civic San Diego's Proposed FY 2013 Budget is for providing Successor Agency functions, including administration and project management. This proportion is expected to be reduced significantly over time as projects are completed and affairs of the former Redevelopment Agency wind down.

As part of the IBA's Recommended Revisions to the Mayor's FY 2013 Budget, on June 11, 2012, Council approved \$250,000 to be used by a successor agency to CCDC and SEDC or an internal economic development agency for economic development and neighborhood revitalization activities. Designating \$80,000 of this amount to Civic San Diego will provide seed money to enable staff to conduct research and identify new funding sources that can be used as a model in other San Diego communities. Given the limitations on the use of the Corporation's other three funding sources, the seed money is currently the only source of funds potentially available for this purpose. Further discussion is needed for use of the remaining \$170,000 of funds approved for economic development, which currently is in the Citywide Department within the Annual Fund.

## RECOMMENDATION

We are recommending that the City Council approve the:

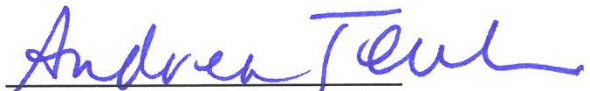
- Revisions to the (1) Articles of Incorporation of CCDC and SEDC, and (2) Certificate of Bylaws for Civic San Diego and SEDC.
- Agreements for Consulting Services with Civic San Diego for (1) Successor Agency and Housing Successor Agency Services and (2) Administration of Certain Planned Districts, the Downtown Community Parking District, and Specified Economic Development Services.
- FY 2013 Proposed Budget for Civic San Diego, including appropriating \$80,000 of the \$250,000 that is now in the Citywide Department for economic development activities in the Downtown and Southeastern San Diego communities.

We are also recommending that Council consider requiring that:

- The lobbying provision be included in Civic San Diego's Corporate Policies, which will be revised in the next few months to reflect its new structure and functions.
- Civic San Diego provide an annual or biannual report on its budget and activities to the City Council Economic Development and Strategies Committee.



Erin Noel  
Fiscal & Policy Analyst



APPROVED: Andrea Tevlin  
Independent Budget Analyst

Attachment:

1. Amendments Made to Bylaws and Operating Agreements to Improve Accountability and Oversight (March 2010) and Proposed Changes to Bylaws for Civic San Diego