

ATTACHMENT A

**PROPOSED REVISIONS TO SEDC AND CCDC OPERATING
AGREEMENTS/BYLAWS (8/17/09)**

The proposed revisions outlined below are based on the following:

- Results of the September 2008 Performance Audit of the Southeastern Economic Development Corporation (SEDC) conducted by Macias Consulting Group
- Results of the July 2009 Performance Audit of the Centre City Development Corporation (CCDC) conducted by Sjoberg Evashenk
- Mayor's 3/20/09 Proposal as amended by Audit Committee on 3/23/09 and accepted by the Rules Committee on 3/25/09
- Mayor's 7/14/09 Proposal as amended and accepted by the Rules Committee on 7/15/09 (indicated by *underlined italics*)
- Responses provided by the SEDC and CCDC Boards of Directors
- City Attorney's recommendation presented to the Rules Committee on 4/22/09:
 - Item 23- Oversight of Outside Legal Counsel
- Additional revisions suggested by the CCDC Board:
 - Item 24- Bylaws Clarification of Corporation President and Board Chair
 - Item 25- New Lobbying Provision

Notes: References to the Corporate "CEO" in the original recommendations have been changed to "President" in this document pursuant to new Item 25 which clarifies the role of Corporation President and Corporation Board Chair within the Bylaws.

At the end of each item we have indicated if the proposed revision will need to be made to the Bylaws, the Operating Agreements (OA) or both.

ITEM DESCRIPTIONS

1. Appointment and Termination of Corporation Presidents

Mayor Appoints and Terminates Corporation Presidents in his role as chief executive officer of the City; the City being the sole member of the Corporation.

Appointment Process- Create a candidate selection committee comprised of a representative of the Mayor's Office, two from the City Council and two from the Corporation Board. The selection committee shall provide no less than three candidates to the Mayor who shall either appoint the President, subject to confirmation by the City Council which must be supported with two-thirds vote, or reject the selection committee's candidates and begin a new selection process. **(Bylaws)**

Termination- Provide the Mayor with the authority to suspend and terminate the President, with or without cause, subject to appeal to the Council which must be supported with a two-thirds vote. Provide the Council with the authority to terminate the President for cause in the event Mayor takes no such action. **(Bylaws)**

Interim President Replacement- Provide the Mayor with the authority to replace the President with an interim officer during the appeal process or upon termination. **(Bylaws)**

Areas of Disagreement:

This issue is the subject of the most debate. The current proposal closely mirrors the Mayor's proposal outlined in his March 20, 2009 memo to the Audit Committee as well as the COO's memo to the Rules Committee of July 14, 2009. On March 23, 2009 the Audit Committee endorsed the Mayor's Proposal but amended the selection committee to include only one Council member and one Corporation Board member rather than two from each to serve with the Mayor's representative. The COO's July 14 memo to the Rules Committee supported this revision. On July 15 the Rules Committee amended the proposal shown to restore selection committee membership to include two Council members and two Corporate Board members on the selection committee, as recommended by the IBA.

Also, the Mayor's original proposal and the Audit Committee's motion did not contemplate allowing the Council to terminate the President for cause in the event the Mayor fails to act. This amendment was made by the Rules Committee at their July 15 meeting.

*Also at the July 15 Rules meeting, Councilmember Todd Gloria requested staff to further research whether the "RDA Executive Director" should have the authority to hire and terminate the Corporation Presidents rather than the "Mayor". After significant research the answer is "no." According to the City Attorney, with the City being the sole member of the Corporation, only the Mayor, as the chief executive officer of the City, **OR** the City Council, as the City's legislative body can appoint, hire and terminate the Presidents of the Corporations with the appropriate Bylaw changes. The City Attorney also noted that under the current proposal with the Mayor being given this authority,*

additional amendments to Corporation Bylaws will be necessary to effectuate the City Council giving up its authority in this area and delegating it to the Mayor.

- 2. Expansion of Corporation Boards-** Expand the Corporation Boards 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. **(Bylaws)**

Areas of Disagreement:

This is the second area of significant disagreement. The Mayor's original 3/20/09 proposal recommended expanding the Corporation Boards "to include a voting member appointed as a Mayoral appointee and a voting member appointed by the City Council." On 3/23/09 the Audit Committee amended this to include only the Mayoral appointee. The COO's 7/14/09 memo to the Rules Committee supported this change.

At the July 15 Rules Committee this item was amended to provide for "a citizen voting member appointed as a City Council representative to the Board" in lieu of a Mayoral representative. To address Corporation concerns about size and number, a recommendation to eliminate one at-large board member seat was accepted. During deliberations on this item, the City Attorney also clarified that a City Council member could not sit as a voting member of the Corporation Board due to "incompatibility of office", in which a conflict could occur when two public offices are held by the same official.

- 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. **(OA/Bylaws)**
- 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. **(OA/Bylaws)**
- 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. **(OA/Bylaws)**

6. **Annual Financial Audits-** Corporations shall perform annual financial audits and submit them to the City no later than 135 days after the end of the fiscal year. **(OA/Bylaws)**
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. **(OA/Bylaws)**
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. **(Bylaws)**
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. **(OA/Bylaws)**
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. **(OA/Bylaws)**
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. **(OA/Bylaws)**
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. **(OA/Bylaws)**
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. **(Bylaws)**
14. **Personnel Manual-** Corporation Boards must develop and adopt Personnel Manuals that are updated annually. **(OA)**

15. **Board Review of Financial Statements-** Corporation Boards, the Corporation CFO and Corporation President are required to review and certify Corporation financial statements. **(OA/Bylaws)**
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. **(OA/Bylaws)**
17. **Redevelopment Law-** Corporation Boards must comply with redevelopment law. **(OA)**
18. **Board Expertise-** Require that two Corporation Board members have expertise in Finance, Real Estate Law, Economic Development, Redevelopment or Urban Design. **(Bylaws)**
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. **(OA/Bylaws)**
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. **(OA/Bylaws)**
21. **Audit Committee-** Corporations are required to establish and maintain an Audit Committee. **(OA/By laws)**
22. **Closed Sessions-** Corporations are required to follow City of San Diego closed session policies. **(OA)**
23. **Oversight of Agency Outside Legal Counsel-** The City Attorney's Office will exercise oversight control of attorneys hired by the Corporations. **(Bylaws)**

Note: The City Attorney presented this item to the Rules Committee on April 22, 2009, but the Committee took no action.
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.

Note: This item is new and was raised by the CCDC Board; the City Attorney’s Office proposed this revision to the Bylaws to address it.

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. **(OA)**

Note: This item is new and was proposed by the CCDC Board.

26. **The following recommendation from the Audit Committee was not endorsed by the Rules Committee or supported by the Mayor’s Office:** “Amend San Diego Municipal Code to prohibit the Comptroller from expending any tax payer funds on either agency when the board of that agency has less than two-thirds valid current Corporation Board appointments.” (N/A)