

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

Amendments Made to Bylaws and Operating Agreements for Improved Accountability and Oversight (March 2010)	CCDC and SEDC		Proposed Change	Civic San Diego Bylaws
	Operating Agreement	Corporate Bylaws		
<p>I. 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 Amendment (Sept. 8, 2009): Provide the Council the authority to terminate the President for cause with a two-thirds vote in the event the Mayor takes no action.</p>	N/A	Art. II, Section 4	<p>Changed process for appointing a president, due to complexity of previous process that resulted in the position being vacant for the past three years. The new process gives the Board of Directors the authority to initially select a president. The selected candidate is subject to approval of the Mayor and two-thirds vote of City Council.</p> <p>Retained termination requirements:</p> <ul style="list-style-type: none"> • Mayor’s right to terminate with or without cause. • The president’s right to appeal and City Council’s right to override the termination with two-thirds vote. • City Council’s right to terminate with cause. 	<p>8.3.1(b)</p> <p>8.3.1(d)</p>

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<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 member of Board Members, one at-large board member seat will be eliminated once his/her term expires.</p> <p>Council Amendment (Sept. 8, 2009): The Mayor and Council shall get one appointee each. Remove "citizen" from Council appointee requirement; however, appointee may not be a Councilmember.</p>	N/A	Art. 7, Section 2	Number of Board Members is set at nine and language relating to odd number is deleted.	3.2.1
			Language relating to Mayoral and Council appointees is retained.	3.2.2
<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 (Approved by Council March 22, 2010): Purchasing and Contracting Policy and finance and fiscal policies shall first be approved by the corporation boards, then submitted to the City Chief Financial Officer (CFO) for review and comment, and then submitted to the Agency Board for final review and approval.</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	Deleted references to adopting policies since these have already been adopted. Added language that the Corporation must be in compliance with existing Board-approved policies and these policies must be updated from time to time to ensure they reflect current best practices.	6.2.1
			Revised language for approval of policies:	6.2.2
			<ul style="list-style-type: none"> • Proposed changes are first submitted to the Board, • Then submitted to the CFO and City for comment, • And finally to the City Council for final approval. 	

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4. Open Records - The Redevelopment Agency and the City have 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.	Section 2.24	Art. 13, Section 3	Retained right to inspect all documents and records and 10-day timeline. Deleted references to Redevelopment Agency (RDA). The City's right to access and review records and keep this information in the strictest confidence is also included in the Consulting Agreements (4.2.1).	10.3
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.	Section 2.18	Art. 9, Section 8	Retained right to request that a performance audit be conducted by the City Auditor or a third party consultant. Deleted references to RDA. The City's right to audit is also included in the Consulting Agreements (4.2.2).	6.7
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.	Section 2.17(b)	Art. 13, Section 4	Retained requirement that the Corporation prepare annual financial statements which shall be audited by an independent certified public accountant and submitted to the City no later than nine months after the close of the fiscal year. Added reference to include subsidiary corporation (SEDC) in audited financial statements, and deleted references to RDA.	10.4
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.	Section 1.05-1.08 Section 2.07	Art. 9, Section 1	Deleted reference to following City Administrative Budget Policies since budget now follows Recognized Obligation Payment Schedule (ROPS) cycle. Retained language relating to review and approval: <ul style="list-style-type: none"> Proposed budget is first submitted to the 	6.1

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<p>Internal Working Group Change (Approved by Council March 22, 2010): 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>Board,</p> <ul style="list-style-type: none"> • Then submitted to the CFO and City for comment, • And finally to the City Council for final approval. 	
<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 Amendment (Sept. 8, 2009): 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>	N/A	Art. 7, Section 4(c)	<p>Retained Mayoral authority to remove a Director with or without cause with majority vote.</p> <p>Retained Council Authority to remove a Director with or without cause with two-thirds vote.</p>	<p>3.4.1(c)</p> <p>3.6</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>	Section 2.16	Art. 9, Section 13	Retained violation of policies provision, and deleted “the Agreement” since Operating Agreements are no longer being used.	6.10
<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>	Section 2.15	Art. 9, Section 7	Revised to require that officer and Board Members participate in training programs in ethics, fiduciary duties and corporate governance adopted by the Board. Retained requirement that certificates of compliance be submitted to CFO of the City at least every two years demonstrating compliance	6.6

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			with requirements.	
<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 (Approved by Council March 22, 2010): 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>	Section 2.12	Art. 9, Section 4	<p>Revised language for approval of fiscal policies giving Council final review and approval:</p> <ul style="list-style-type: none"> • Policies are first submitted to the Board, • Then submitted to the CFO and City for comment, • And finally to the City Council for final approval. 	6.2.1-6.2.2
<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>	Section 1.09	Art. 9, Section 1	Minor revision that any line item transfer of budgeted funds in the Consulting Services Budget approved by Council in excess of \$10,000 must be approved by the Board on a monthly basis.	6.1

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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.	N/A	Art. 11, Section 1 Art. 11, Section 4	Removes the Mayor from the role of reviewing the fairness of the compensation, performing the annual performance evaluation of the President and senior staff, and setting compensation for the President. This is being done to bring the Bylaws into compliance with the Government Code Section 12586(g) cited in that same paragraph. This section puts the responsibility for such review on the Board of Directors, as part of the California Nonprofit Integrity Act of 2004. According to CCDC's counsel that prepared the initial draft of the revised Bylaws, the Bylaws as they currently are were incorrect in including the language granting such oversight to the Mayor.	5.5-5.6 8.3.1(c)
14. Personnel Manual - Corporation Boards must develop and adopt Personnel Manuals that are updated annually.	Section 2.13	Art. 9, Section 5	Revised to require that the Corporation shall be in compliance with the Personnel Manual adopted by the Board. Retained requirement that the manual be updated annually.	6.4
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	Retained provision to require CFO, President, and Board review and certify Corporation financial statements. Replaced references to RDA with "Member." Note that the City is the sole member of the proposed Corporation.	10.4
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	Minor language changes to require that the Corporation prepare and file with the CFO unaudited financial statements of the Corporation and its Subsidiary Corporations subsidiary corporation. Added reference to consulting services budget.	10.5

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17. Redevelopment Law - Corporation Boards must comply with redevelopment law.	Section 2.22	N/A	Deleted all references to redevelopment law.	<i>Throughout</i>
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	Addition of including affordable housing experience as a requirement for Board Members and a requirement that that no more than two Directors on the Board shall represent each of the foregoing disciplines to ensure that all disciplines should be evenly represented.	3.2.3
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 Bylaws and policies.	Section 2.05	Art. 9, Section 9 Art. 9, Section 3 Art. 9, Section 4	Retained provision that Corporation must provide specific key documents and information, such as agenda and board minutes, to the public via website. Added minor language changes to reference consulting services budget. Retained requirements that all Corporate Policies be posted on the website.	6.8 6.2.1
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	Deleted strategic plan provision as it was a requirement to be in conformance with redevelopment law.	N/A
21. Audit Committee - Corporations are required to establish and maintain an Audit Committee.	Section 2.19	Art. 10, Section 4	Retained Audit Committee provision and added specific responsibilities, including: <ul style="list-style-type: none"> Board appoints Audit Committee which may be comprised of two or more persons and include a non-voting citizen member. Committee assists the Board to oversee the 	7.4.1-7.4.2

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			<p>integrity of the Corporation’s financial statements, internal control procedures, and compliance with legal and regulatory requirements.</p> <ul style="list-style-type: none"> • Committee recommends to the Board retention or termination of the independent auditor to prepare the audited financial statements. • Committee assists the Board in the selection, review of qualifications, supervision of the independent auditor’s management independence, and review of performance; and shall negotiate the independent auditor’s compensation on behalf of the Board. 	
<p>22. Closed Session - Corporations are required to follow City of San Diego closed session policies.</p>	Section 2.25	N/A	<p>Deleted specific references to following City of San Diego closed session policies, since these are covered under Brown Act requirements. Retained requirements that all meetings of the Board shall be held in compliance with the requirements of the Brown Act and any other applicable requirements.</p> <p>References to following closed session policies of the City of San Diego are included in CCDC’s Corporate Policies (Sub-Section 1.03, 5.6 and 5.7).</p>	4.1

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<p>23. Oversight of Agency Outside Legal Counsel - The City Attorney’s Office will exercise oversight control of attorneys hired by the Corporations.</p> <p>Council Amendment (March 22, 2010): City Attorney’s Office shall be authorized to approve, reject, or terminate all contracts for outside legal counsel retained by the corporation or agency and managed by the agency.</p>	N/A	Art. 9, Section 11	<p>Tightened up language to clarify that the City Attorney retains the same authority/right regarding oversight of outside council, but added explicit language that the City Attorney has (as it always had) no obligation to provide legal services for Civic San Diego unless he/she so chooses.</p> <p>The City Attorney’s right to exercise oversight of outside council is also included in the proposed Consulting Agreements (8.20).</p>	6.9
<p>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.</p>	N/A	Art. 11, Section 2 Art. 11, Section 4 Throughout	As indicated, no such references are included in the Bylaws.	N/A
<p>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.</p> <p>Council Amendment (Sept. 8, 2009): Apply lobbying prohibition to CCDC and SEDC Board members to no less than one year.</p>	Section 2.20	N/A	<p>Provision has not been included. This provision was previously included in the Operating Agreement which will not be used after it expires on July 1, 2012. The City will be using consulting agreements with Civic San Diego, rather than Operating Agreements. This provision is not included in the Consulting Agreements.</p> <p>CCDC’s Corporate Policies (Subsection 1.02, 5.4) require that Board Members comply with the conflict of interest provisions of the San Diego Ethics Ordinance (Section 27.3550), but the lobbying provision is specific for officials who receive compensation. Board Members are volunteers and do not receive compensation per</p>	N/A

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			the Bylaws.	
26. Council Amendment (Sept. 8, 2009): 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	Retained provision that 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 vacancy notification.	3.2.2