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## OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT

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**Date Issued:** March 10, 2010

**IBA Report Number:** 10-25

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

**Item Number:** N/A

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# 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

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 CCDC 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 CCDC 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.

**[SIGNED]**

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Tom Haynes  
Fiscal & Policy Analyst

**[SIGNED]**

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Jeff Sturak  
Deputy Director

**[SIGNED]**

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APPROVED: Andrea Tevlin  
Independent Budget Analyst

Attachment A – Amended CCDC and SEDC Operating Agreements and Bylaws  
Reference Table

NOTE: Final draft versions of the revised CCDC and SEDC Operating Agreements and Bylaws can be found at <http://www.sandiego.gov/iba/reports/reports10.shtml> under IBA Report No. 10-25.