

Meeting Date: 6/14/2016

Report Type: Consent

Report ID: 2016-00627

Title: Amendment to Bylaws for the Sacramento Employment and Economic Development Corporation

Location: Citywide

Recommendation: Pass a Motion consenting to the amendment of Article IV of the bylaws of the Sacramento Employment and Economic Development (SEED) Corporation.

Contact: Veronica A. Smith, Senior Project Manager, (916) 808-7233, Economic Development Department

Presenter: None

Department: Economic Development Dept

Division: Citywide Development

Dept ID: 18001031

Attachments:

1-Description/Analysis

2-SEED Corp Bylaws (Redline)

City Attorney Review

Approved as to Form

Michael Sparks

6/8/2016 4:44:21 PM

Approvals/Acknowledgements

Department Director or Designee: Larry Burkhardt - 6/1/2016 2:22:26 PM

Description/Analysis

Issue Detail: On July 24, 2007, the City Council adopted a resolution establishing the Sacramento Employment and Economic Development (SEED) Corporation. The SEED Corporation was established with the intent of being a vehicle for investing in economic development projects and programs with the goal of directing resources that promote economic vitality throughout the City. While SEED Corporation was established over 8 years ago it was never officially activated due to recession-related factors, at the time, and lack of private sector interests and participation. Today, staff has successfully recruited qualified board member prospects, partners, and advisors to support the activation and startup of the Corporation.

Staff has spent the past 12 months conducting research and outreach on the viability of reactivating the SEED Corporation. Although not legally required to comply with the Brown Act (Gov. Code, §54950 et seq.), the SEED Corporation voluntarily chose to subject itself to the Brown Act when it was originally established, through Article IV of the SEED Corporation bylaws. The research and outreach that staff conducted included analysis of the governance structures and bylaws of other community development corporations with a similar purpose. The SEED Corporation bylaws require City Council approval for amendments to Article IV. In order to position SEED Corporation as an effective, nimble, and responsive organization, it is respectfully recommended that Council consent to the amendment of Article IV of the SEED Corporation bylaws to remove the requirement that the SEED Corporation comply with the Brown Act.

Policy Considerations: Support of the SEED Corporation is consistent with the goals spelled out in the Five-Year Economic Development Strategy adopted by City Council in 2013. The Strategy specifically spells out and directs staff to identify options to leverage and maximize the SEED Corporation.

Economic Impacts: The activation of SEED Corporation is the first step in a process that will lead to development and investment in economically disadvantaged neighborhood commercial corridors in the City. SEED Corporation programs and projects can facilitate providing significant employment opportunities and increasing the tax base for the City.

Environmental Considerations:

California Environmental Quality Act (CEQA): This report concerns administrative activities and government fiscal activities that do not constitute a “project” as defined by the CEQA Guidelines Sections 15378(b)(2) and 15378(b)(4) and are not subject to the provisions of CEQA (CEQA Guidelines 15060(c)(3)).

Sustainability: SEED Corporation projects and programs will be in direct alignment with the City’s goal of supporting sustainable growth and change through orderly and well-

planned development that provides for the needs of existing and future residents and businesses.

Commission/Committee Action: Not applicable.

Rationale for Recommendation: These actions are supported by the Five-Year Economic Development Strategy adopted by City Council in 2013 and the Mayor's 2016 Economic Development 3.0 Initiative.

Financial Considerations: Reactivation of the SEED Corporation has been supported thus far by City staff. General Funds to support its reactivation have been included in the FY2016/17 Proposed Budget in the amount of \$150,000. Future projects and programs pursued by the SEED Corporation will require future Council actions, including approval of agreements for the use of City resources.

Local Business Enterprise (LBE): Not applicable.

BYLAWS OF
THE SACRAMENTO ECONOMIC AND EMPLOYMENT DEVELOPMENT
CORPORATION

a California Nonprofit Public Benefit Corporation

ARTICLE I
NAME

The name of this corporation shall be: The Sacramento Economic and Employment Development Corporation (the “Corporation”).

ARTICLE II
PRINCIPAL OFFICE

Section 1. Principal Office. The principal office for the transaction of the business of the Corporation (“principal executive office”) shall be fixed and located at Sacramento, California, or at such other place as the Board of Directors (“Board”) shall determine. The directors may change the principal office from one location to another. Any change of this location shall be noted by the Secretary on these bylaws opposite this section, or this section may be amended to state the new location.

Section 2. Other Offices. The Board may at any time establish branch or subordinate offices at any place or places where the Corporation is qualified to do business.

ARTICLE III
MEMBERSHIP

Section 1. Members. The Corporation shall have no members. Any action which would otherwise require approval by a majority of all members or approval by the members shall require only approval of the Board. All rights which would otherwise vest in the members shall vest in the Board.

Section 2. Associates. Nothing in this Article III shall be construed as limiting the right of the Corporation to refer to persons associated with it as “members” even though such persons are not members, and no such reference shall constitute anyone a member, within the meaning of Section 5056 of the California Nonprofit Corporation Law. The Corporation may confer by amendment of its articles or of these bylaws some or all of the rights of a member, as set forth in the California Nonprofit Corporation Law, upon any person or persons who do not have the right to vote for the election of directors or on a disposition of substantially all of the assets of the Corporation or on a merger or on a dissolution or on changes to the Corporation's articles or bylaws, but no such person shall be a member within the meaning of said Section 5056.

ARTICLE IV DIRECTORS

Section 1. Powers. Subject to limitations of the articles and these bylaws, the activities and affairs of the Corporation shall be conducted and all corporate powers shall be exercised by or under the direction of the Board. The Board may delegate the management of the activities of the Corporation to any person or persons, a management company, or committees, however composed, provided that the activities and affairs of the Corporation shall be managed and all corporate powers shall be exercised under the ultimate direction of the Board. Without prejudice to such general powers, but subject to the same limitations, it is hereby expressly declared that the Board shall have the following powers in addition to the other powers enumerated in these bylaws or statute:

(a) To select and remove all the other officers, agents, and employees of the Corporation, prescribe powers and duties for them as may not be inconsistent with law, the articles, or these bylaws, fix their compensation, and require from them security for faithful service.

(b) To conduct, manage, and control the affairs and activities of the Corporation and to make such rules and regulations therefor not inconsistent with law, the articles, or these bylaws, as they may deem best.

(c) To adopt, make, and use a corporate seal and to alter the form of such seal from time to time as they may deem best.

(d) To borrow money and incur indebtedness for the purposes of the Corporation, and to cause to be executed and delivered therefor, in the corporate name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecations, or other evidences of debt and securities therefor.

(e) To carry on a business at a profit and apply any such profit that results from the business activity to any activity in which it may lawfully engage as a tax exempt Corporation. No part of the earnings or profits of this Corporation shall inure to the benefit of any of its directors, trustees, officers, members, or to individuals.

(f) The Incorporator appointed two (2) interim directors (the “Interim Directors”) who may only perform actions necessary or appropriate to perfect the organization of the Corporation (e.g., adopt Bylaws, appoint Officers, select tax year, and file applications for recognition of tax-exempt status with the relevant taxing authorities), and shall be replaced by the City when it appoints the regular Board of Directors pursuant to Sections 3 and 4 of this Article IV.

Section 2. Number of Directors. The Board shall consist of five members.

Section 3. Selection and Term of Office.

(a) The Incorporator shall appoint the initial directors, referred to as Interim Directors. Thereafter, the directors shall be appointed and removed as provided in Sections 3 and 4 of this Article IV. The directors shall be designated and appointed by the City of Sacramento (the "City") through action of the City Council. Such designation and appointment may be evidenced by the delivery to this corporation of written notification from the City Clerk of the City (the "Appointment Notice") which shall be filed in the minute books of this corporation and such appointment shall be effective as of the specified future date in the Appointment Notice or if no date is specified the date of receipt by this corporation of the Appointment Notice. In selecting the individuals to serve as the directors of the Corporation, the City may take into account the individual's requisite experience in financial and real estate matters as well as experience in economic development. Two City Council members may serve as non-voting ex-officio members of the Board in addition to the five voting Board members. In addition, as set forth in Section 4 of this Article IV, any director may be removed at any time, with or without cause, by the City through action of the City Council.

(b) Unless earlier removed hereunder, each director shall hold office for four (4) years and until a successor has been appointed by the City and qualified; provided, however, that two (2) of the initial five (5) directors appointed by the City shall hold office for two (2) years and until a successor has been appointed by the City and qualified. Individuals may serve no more than two (2) consecutive terms as a director, and may be appointed to subsequent terms as a director after an absence from the Board of a four (4) year term. Service as an Interim Director shall not be considered a term for purposes of the two (2) term limitation in this Section 3(b).

Section 4. Vacancies. Subject to the provisions of Section 5226 of the California Nonprofit Public Benefit Corporation Law, any director may resign effective upon giving written notice to either the President, the Secretary, or the Board. In addition, any director may be removed at any time, with or without cause, by the City through an action of the Council. The removal of a director may be evidenced by the delivery to this corporation of written notification from the City Clerk of the City (the "Removal Notice") which shall be filed in the minute books of this corporation, and such removal shall be effective as of the specified future date in the Removal Notice or if no date is specified the date of receipt by this corporation of the Removal Notice.

A vacancy or vacancies in the board shall be deemed to exist in case of the death, resignation, or removal of any director. The Board may declare vacant the office of a director who has been declared of unsound mind by a final order of court, or convicted of a felony, or found by a final order of judgment of any court to have breached any duty arising under Article 3 of Chapter 2 of the California Nonprofit Public Benefit Corporation Law. Vacancies in the board shall be filled by the City designating and appointing a director to fill the vacancy. Such designation and appointment may be evidenced by the delivery to this corporation of the Appointment Notice which shall be filed in the minute books of this corporation and such appointment shall be effective as of the date of receipt by this corporation of the Appointment Notice.

No reduction of the authorized number of directors shall have the effect of removing any director before that director has been removed by the City or resigns.

Section 5. Place of Meetings. Meetings of the Board shall be held at the principal office of the Corporation unless a different place is designated in the notice of such meeting.

Section 6. ~~Ralph M. Brown Act. All meetings of the Board and its appointed Committees of the Board, including, without limitation, regular, adjourned regular, emergency, special, and adjourned special meetings shall be called, noticed, held and conducted in accordance with the provisions of the Ralph M. Brown Act (commencing with Section 54950 of the Government Code of the State of California), or any successor legislation hereinafter enacted (the "Brown Act").~~ Reserved.

Section 7. Regular Meetings. The Board shall provide for its regular meetings; provided, however, it shall hold at least one regular meeting each year. The date, hour and place of the holding of the regular meetings shall be fixed by resolution of the Board. ~~To the extent permitted by the Brown Act, such meetings may be held by telephone conference.~~

Section 8. ~~Special Meetings. Special meetings of the Board or its Committees of the Board may be called in accordance with the provisions of Section 54956 of the Government Code of the State of California. To the extent permitted by the Brown Act, such meetings may be held by telephone conference.~~ Reserved.

Section 9. Quorum. A majority of the authorized number of directors shall constitute a quorum for the transaction of business, except to adjourn as provided in Section 11 of this Article IV. Every act or decision done or made by a majority of the directors present at a meeting duly held at which a quorum is present shall be regarded as the act of the Board, unless a greater number is required by law or by the articles, except as provided in the next sentence. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting.

Section 10. Waiver of Notice. ~~Subject to Section 6 of this Article IV, n~~Notice of a meeting need not be given to any director who signs a waiver of notice or a written consent to holding the meeting or an approval of the minutes thereof, whether before or after the meeting, or who attends the meeting, without protesting, prior thereto or at its commencement, the lack of notice to such director. All such waivers, consents, and approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

Section 11. Adjournment. ~~Subject to Section 6 of this Article IV, a~~majority of the directors present, whether or not constituting a quorum, may adjourn any meeting to another time and place. Notice of the time and place of holding an adjourned meeting need not be given to absent directors if the time and place is fixed at the meeting adjourned, except as provided in the next sentence. If the meeting is adjourned for more

than 24 hours, notice of any adjournment to another time or place shall be given prior to the time of the adjourned meeting to the directors who were not present at the time of the adjournment and others requesting notification of the Board meetings in writing to the Corporation.

Section 12. Rights of Inspection. Every director shall have the absolute right at any reasonable time to inspect and copy all books, records, and documents of every kind and to inspect the physical properties of the Corporation of which such person is a director.

Section 13. Fees and Compensation. Except with respect to directors who are employees of the City or other governmental body, directors and members of committees may receive reasonable compensation for their services as determined by the Board, in amounts fixed or determined by the Board; provided, however, that all directors may receive reimbursement for reasonable expenses incurred in performance of duties as may be fixed or determined by the Board.

Section 14. Conflict of Interest. Members of the Board shall be subject to the State of California conflict of interest laws including the The Political Reform Act (Gov. Code sections 81000 et seq.) and the City's conflict of interest code adopted pursuant to that Act; and the City's supplemental conflict of interest, set forth in City code Chapter 2.16. For purposes of this provision, directors shall be considered to be members of an appointed board or commission subject to Chapter 2.16.

ARTICLE V COMMITTEES

Section 1. Committees of the Board. The Board may appoint one or more committees, each consisting of two (2) or more directors and no persons who are not directors, and delegate to such committees any of the authority of the Board except with respect to:

- (a) the taking of any final action on matters which, under the Nonprofit Corporation Law of California, also requires members' approval or approval of a majority of all the members;
- (b) the filling of vacancies on the Board or in any committee;
- (c) the fixing of compensation of the directors for serving on the Board or on any committee;
- (d) the amendment or repeal of bylaws or adoption of new bylaws;

(e) the amendment or repeal of any resolution of the Board which by its express terms is not so amendable or repealable;

(f) the appointment of any other committees of the Board or the members of these committees.

(g) the expenditure of corporate funds to support a nominee for director after there are more people nominated for director than can be elected; or

(h) the approval of any self-dealing transaction, as such transactions are defined in Section 5233(a) of the California Nonprofit Public Benefit Corporation Law.

Any such committee must be created, and the members thereof appointed, by resolution adopted by a majority of the authorized number of directors then in office, provided a quorum is present, and any such committee may be designated by such name as the Board shall specify. The Board may appoint, in the same manner, alternate members of any committee who may replace any absent member at any meeting of the committee. The Board shall have the power to prescribe the manner in which proceedings of any such committee shall be conducted. In the absence of any such prescription, such committee shall have the power to prescribe the manner in which its proceedings be conducted. Unless the Board or such committee shall otherwise provide, the regular and special meetings and other actions of any such committee shall be governed by the provisions of Article IV applicable to meetings and actions of the Board. Minutes shall be kept of each meeting of each committee.

Section 2. Advisory Committees. Other committees may be appointed from time to time by the Board. These committees' membership may consist of both directors and non-directors or non-directors only. These committees have no legal authority to act for the Corporation but shall report their findings and recommendations to the Board.

Section 3. Fees and Compensation. Except with respect to members of committees who are employees of the City or other governmental body, members of committees may receive nominal compensation of up to an amount to be determined by the Board; provided, however, that all members of committees may receive reimbursement for reasonable expenses incurred in performance of duties as may be fixed or determined by the Board;

ARTICLE VI OFFICERS

Section 1. Officers. The officers of the Corporation shall be a President, Secretary, and Chief Financial Officer. Members of the Board may serve as officers of the Corporation. The Corporation may also have, at the discretion of the Board, a chairman of the board, an executive director, one or more vice presidents, one or more assistant secretaries, one or more assistant chief financial officers, and such other officers

as may be appointed in accordance with the provisions of Section 3 of this Article VI. Any number of offices may be held by the same person, except as provided in the articles or in these bylaws and except that neither the Secretary nor the Chief Financial Officer may serve concurrently as the President.

Section 2. Election. The officers of the Corporation shall be chosen annually by the Board, and each shall serve at the pleasure of the Board, subject to the rights, if any, of an officer under any contract of employment.

Section 3. Subordinate Officers. The Board may appoint, and may authorize the President or another officer to appoint, any other officers the business of the Corporation may require, each of whom shall have the title, hold office for the period, have the authority, and perform the duties specified in the bylaws or determined from time to time by the Board.

Section 4. Removal and Resignation. Any officer may be removed, with or without cause, by the Board at any time or, except in the case of an officer chosen by the Board, by an officer on whom such power of removal may be conferred by the Board. Any such removal shall be without prejudice to the rights, if any, of the officer under any contract of employment of the officer.

Any officer may resign at any time by giving written notice to the Corporation. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice; and, unless otherwise specified in that notice, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of the Corporation under any contract to which the officer is a party.

Section 5. Vacancies. A vacancy in any office because of death, resignation, removal, disqualification, or any other cause shall be filled only in the manner prescribed in these bylaws for regular election or appointment to that office, provided that such vacancies shall be filled as they occur and not on an annual basis.

Section 6. President. The President shall preside at meetings of the Board and exercise and perform such other powers and duties as may be from time to time assigned to him by the Board or prescribed by the bylaws. In the absence of the President, another officer or a director of the Corporation may preside at a meeting of the Board.

Section 7. Secretary. The Secretary shall attend to the following:

(a) Book of minutes. The Secretary shall keep or cause to be kept, at the principal executive office or such other place as the Board may direct, a book of minutes of all meetings and actions of directors, and committees of directors, with the time and place of holding, whether regular or special, and, if special, how authorized, the notice given, the names of those present at such meetings, and the proceedings of such meetings.

(b) Notices, seal and other duties. The Secretary shall give, or cause to be given, notice of all meetings of the Board required by the bylaws to be given. The

Secretary shall keep the seal of the Corporation in safe custody. The Secretary shall have such other powers and perform such other duties as may be prescribed by the Board or the bylaws.

Section 8. Chief Financial Officer. The Chief Financial Officer shall attend to the following:

(a) Books of account. The Chief Financial Officer shall keep and maintain, or cause to be kept and maintained, adequate and correct books and records of accounts of the properties and business transactions of the Corporation, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital, retained earnings, and other matters customarily included in financial statements. The books of account shall be open to inspection by any director at all reasonable times.

(b) Deposit and disbursement of money and valuables. The Chief Financial Officer shall deposit all money and other valuables in the name and to the credit of the Corporation with such depositories as may be designated by the Board; shall disburse the funds of the Corporation as may be ordered by the Board; shall render to the directors, whenever they request it, an account of all transactions as Chief Financial Officer and of the financial condition of the Corporation; and shall have such other powers and perform such other duties as may be prescribed by the Board or the bylaws.

Section 9. Compensation. Except with respect to officers who are employees of the City or other governmental body, officers may receive such reasonable compensation, if any, for their services as may be fixed or determined by the board; provided, however, that all officers may receive reimbursement for reasonable expenses incurred in performing their officer duties.

ARTICLE VII RECORDS AND REPORTS

Section 1. Corporate Records. The Corporation shall keep:

- (a) Adequate and correct books and records of accounts;
- (b) Written minutes of the proceedings of its Board and committees of the Board; and
- (c) The original or a copy of the articles of incorporation and bylaws, as amended, to date.

Section 2. Public Records Act. The records of the Corporation shall be available to the public as required by the California Public Records Act (commencing with Section 6250 of the Government Code of the State of California)

Section 3. Annual Report .

(a) Financial statements shall be prepared as soon as reasonably practicable after the close of the fiscal year. The financial statements shall contain in appropriate detail the following:

(1) The assets and liabilities, including trust funds, of this Corporation as of the end of the fiscal year;

(2) The principal changes in assets and liabilities, including trust funds, during the fiscal year;

(3) The revenue or receipts of this Corporation, both unrestricted and restricted to particular purposes, for the fiscal year;

(4) The expenses or disbursements of this Corporation, for both general and restricted purposes during the fiscal year;

(5) Any transaction during the previous fiscal year involving Forty Thousand Dollars (\$40,000.00) or more to which this Corporation or a subsidiary was a party and in which any directors or officers of the Corporation or subsidiary had or has a direct or indirect material financial interest. The report must disclose the names of the interested persons involved in such transaction, stating such person's relationship to the Corporation, the nature of such person's interest in the transaction and, where practicable, the amount of such interest; and

(6) The amount and circumstances of any indemnification or advances aggregating more than Ten Thousand Dollars (\$10,000.00) paid during the fiscal year to any officer or director of the Corporation.

(b) Such financial statements shall be accompanied by any report thereon of independent accountants, or, if there is no such report, the certificate of an authorized officer of the Corporation that such statements were prepared without audit from the books and records of the Corporation.

(c) (c) A report including the financial statements prescribed above shall be furnished annually to all directors of the Corporation and the City of Sacramento.

ARTICLE VIII
OTHER PROVISIONS

Section 1. Endorsement of Documents; Contracts. Subject to the provisions of applicable law, any note, mortgage, evidence of indebtedness, contract, conveyance, or other instrument in writing and any assignment or endorsement thereof executed or entered into between the Corporation and any other person, when signed by the President, the Secretary or the Chief Financial Officer must be authorized by the Board to be valid and binding on the Corporation. Any such instruments may be signed by any other person or persons and in such manner as from time to time shall be authorized by the Board, and, unless so authorized by the Board, no officer, agent, or employee shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or amount.

Section 2. Representation of Shares of Other Corporations. The President or any other officer or officers authorized by the Board or such other persons as authorized by the board and permitted by law, are each authorized to vote, represent, and exercise on behalf of the Corporation all rights incident to the ownership of any equity interests held by this Corporation in another entity.

Section 3. Construction and Definitions. Unless the context otherwise requires, the general provisions, rules of construction, and definitions contained in the General Provisions of the California Nonprofit Corporation Law and in the California Nonprofit Public Benefit Corporation Law shall govern the construction of these bylaws.

Section 4. Amendments. These bylaws may be amended or repealed by the vote of a majority of the Board, except that neither Article IV nor Article VIII, Section 7 may be amended or repealed without the written consent of the City Council.

Section 5. Fiscal Year. The fiscal year of this Corporation shall be determined by resolution of the Board.

Section 6. Corporate Seal. This Corporation may have a seal which shall be specified by resolution of the Board of Directors.

Section 7. City Review of Annual Budget. The annual budget of this Corporation shall be delivered to the City Manager of the City for review before the budget is adopted by the Corporation. The City Manager shall have no legal authority to act for this Corporation, but the Board shall in good faith review any recommendations made by the City Manager regarding the annual budget to be adopted by this Corporation.

Section 8. Excess Revenues. This Corporation may distribute its excess revenues to the City or the Redevelopment Agency of the City of Sacramento (the "Agency") for purposes related to public purposes, including economic development. For this purpose, excess revenues shall mean an amount of money which the Board considers to be available after taking into account all debts, liabilities, and obligations of this Corporation and other amounts which the Board considers necessary for this Corporation's operations (including but not limited to debt service and additions to any reserves for bond

commitments, and any other set-asides necessary to comply with financial covenants or for debt retirement). A representative of the City shall be permitted to examine the books and records and financial reports of this Corporation.

Section 9. Materials Provided by the City. The City shall have a right to deliver any material or other information to the Corporation for consideration by the Board, which material or information the Board shall review and consider in good faith.

ARTICLE IX INDEMNIFICATION

Section 1. Right of Indemnity. To the fullest extent permitted by law, this Corporation shall indemnify its directors, officers, employees, and other persons described in Section 5238(a) of the California Corporations Code, including persons formerly occupying any such position, against all expenses, judgments, fines, settlements and other amounts actually and reasonably incurred by them in connection with any “proceeding,” as that term is used in that Section, and including an action by or in the right of the Corporation, by reason of the fact that the person is or was a person described in that Section. “Expenses,” as used in this bylaw, shall have the same meaning as in Section 5238(a) of the California Corporations Code.

Section 2. Approval of Indemnity. On written request to the Board by any person seeking indemnification under Section 5238(b) or Section 5238(c) of the California Corporations Code, the Board shall promptly determine under Section 5238(e) of the California Corporations Code whether the applicable standard of conduct set forth in Section 5238(b) or Section 5238(c) has been met and, if so, the Board shall authorize indemnification. If the Board cannot authorize indemnification because the number of directors who are parties to the proceeding with respect to which indemnification is sought prevents the formation of a quorum of directors who are not parties to that proceeding, the court in which such proceeding is or was pending upon application made by the Corporation or the agent or the attorney or other person rendering services in connection with the defense, whether or not such application by the agent, attorney, or other person is opposed by the Corporation, shall determine under Section 5238(e) of the California Corporations Code whether the applicable standard of conduct set forth in Section 5238(b) or Section 5238(c) has been met and, if so, the court shall authorize indemnification.

Section 3. Advancement of Expenses. To the fullest extent permitted by law and except as otherwise determined by the Board in a specific instance, expenses incurred by a person seeking indemnification under Sections 1 and 2 of this Article IX in defending any proceeding covered by those sections shall be advanced by the Corporation before final disposition of the proceeding, on receipt by the Corporation of a promise by or on behalf of that person that the advance will be repaid unless it is ultimately determined that the person is entitled to be indemnified by the Corporation for those expenses.

Section 4. Insurance. The Corporation shall have the right to purchase and maintain insurance to the full extent permitted by law on behalf of its officers, directors,

employees, and other agents, against any liability asserted or incurred by any officer, director, employee, or agent in such capacity or arising out of the officer's, director's, employee's, or agent's status as such.

ARTICLE X
CERTIFICATE OF SECRETARY

I, the undersigned, certify that I am the presently elected and acting Secretary of THE SACRAMENTO ECONOMIC AND EMPLOYMENT DEVELOPMENT CORPORATION, a California nonprofit corporation, and the above bylaws, consisting of 12 pages (including this page) are the bylaws of this Corporation as adopted at a meeting of the Board held on _____, ~~2007~~2016.

DATED: _____, ~~2007~~2016

Secretary