

# **REDEVELOPMENT IN THE CITY OF SAN DIEGO – A CALL FOR TRANSPARENCY**

## ***SUMMARY***

In 1958 the City of San Diego (City) created the Redevelopment Agency of the City of San Diego (Redevelopment Agency or Agency) to direct redevelopment in the City. The Agency has a budget for the fiscal year ending June 30, 2009, of approximately \$320 million (and an additional \$359 million in “carryover funds”<sup>1</sup>). The Agency is a separate legal entity from the City, with the power, among others, to enter binding contracts. It operates through contracts with the City (service level agreements for administrative services, and operating agreements for managing redevelopment project areas), and contracts with two nonprofit corporations (operating agreements for managing redevelopment project areas), Centre City Development Corporation, Inc. (CCDC) and Southeastern Economic Development Corporation (SEDC), formed by the City.

Concerned about the conduct of public redevelopment activities in the City, the 2008/2009 San Diego County Grand Jury undertook a study to assess the state of financial and operational accountability in those activities. The Grand Jury did not find convincing the notion, advanced by some official interviewees, that redevelopment law and practice are so arcane that successful implementation of the City’s public redevelopment projects requires ceding operational and financial control to real estate developers and consultants. To the contrary, the Grand Jury believes that fully informed ordinary citizens and appropriately trained public servants can readily comprehend and effectively manage public redevelopment efforts.

The Grand Jury’s study led to findings that publicly funded redevelopment activities in the City of San Diego are carried out through an organizational structure marked by confusing lines of operational and financial authority and responsibility; that the information and tools currently available to the Redevelopment Agency of the City of San Diego, the City Council, and the Mayor to oversee the City’s redevelopment activities are inadequate to ensure effective operational and financial accountability; and that essential information about the finances and operations of the publicly funded redevelopment activities in the City of San Diego is not made available to the public on a timely basis. Based on the foregoing findings, the Grand Jury recommends that the City Council, acting both for the Redevelopment Agency and for the City, clarify the lines of operational and financial authority and responsibility in the City’s redevelopment organizations, and add provisions to Agency operating agreements and to the bylaws of CCDC and SEDC requiring specific financial and operational reporting to the City Council, the Mayor’s Office, the Redevelopment Agency, the Office of the Independent Budget Analyst (IBA), and the public.

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<sup>1</sup> Funds previously allocated, but not yet expended.

## ***PURPOSE AND BACKGROUND***

Many knowledgeable people in San Diego agree that there has been a dearth of effective oversight and a lack of transparency in the operations and finances of the City's redevelopment activities. Those sharing this view include City Council members, senior City officials, and, according to media reports, members of the public. The widespread perception that there is presently no meaningful financial or operational accountability for the City's redevelopment activities has been fostered by publication of the recently completed performance audit of the SEDC<sup>2</sup> and by repeated media accounts of compensation controversies and conflict of interest allegations at both the SEDC and the CCDC.

Last year's Grand Jury (2007/2008) issued a report which principally addressed the relationship between the Agency and CCDC, and the issue of repayment to the City of funds loaned to the Agency. That report concluded, among other things, that there should be more oversight of the CCDC by the Agency. The City Council responded to the 2007-2008 Grand Jury report on September 16, 2008, stating, in part, that "[t]he City agrees with the finding" that there should be more oversight of CCDC by the Agency, and that "[t]he City agrees with the finding" that the lack of audited Agency financial statements hinders public oversight of the collection and expenditure of funds by the Agency.

The current Grand Jury undertook the present study to ascertain whether the public perception of a lack of financial and operational accountability in the City's redevelopment activities is well founded; and, if it is, to determine what is needed to change both the perception and the reality of redevelopment accountability. The goal was to identify what steps, if any, should be taken to improve governance, to increase transparency, and to encourage effective internal controls in the City's redevelopment activities. The Grand Jury's concern is not with assigning individual responsibility for past problems, but with what may be done institutionally to ensure effective oversight and transparency going forward. This report does not purport to address whether particular redevelopment projects make sense as a matter of good public policy or whether particular redevelopment financing practices serve the public interest.

## ***PROCEDURES***

The Grand Jury reviewed official documents and media reports related to the City's redevelopment activities, and interviewed elected officials and senior City administrators responsible for those activities and related City operations.

The following documents and reports, among others, were reviewed by the Grand Jury:

- City Council resolutions and ordinances relating to the Agency, CCDC, and SEDC;
- Organizational documents and bylaws for the Agency;

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<sup>2</sup> Macias Consulting Group, Inc., *Final Report – Southeastern Economic Development Corporation Performance Audit of Operations* (September 8, 2008).

Articles of Incorporation and bylaws for CCDC and SEDC;  
Organization charts for the Agency and the City;  
Operating agreements between the Agency and the City, CCDC, and SEDC;  
Annual Reports and financial audit reports for the Agency, CCDC, and SEDC;  
Annual budgets for the Agency, CCDC, and SEDC;  
Federal tax returns for CCDC and SEDC;  
SEDC Performance Audit Report and responses thereto;  
City communications to the City Council's Audit Committee; and  
Reports of the Office of the IBA.

Among the interviews conducted by the Grand Jury were the following:

Elected City officials, including council members;  
Senior City administrators responsible for operations, finance, audit, budget, planning, and redevelopment;  
Staff of the City's Planning and Development department, including its Economic Development and Redevelopment offices; and  
City Ethics officials.

## ***DISCUSSION***

Community Redevelopment Law gives cities and counties the authority to establish redevelopment agencies with the principal mission of eliminating blight in their communities. The Act was codified in 1951 in California Health and Safety Code Sections 33000, *et seq.* In 1958 the City created the Redevelopment Agency of the City of San Diego. As authorized by California Health and Safety Code Section 33203, the City Council at that time determined that its members would constitute the legislative body (or board) of the Agency. Nevertheless, the Agency is a separate legal entity from the City Council, with the power, among others, to execute binding contracts.

Prior to 2006 the Mayor, as a member of the City Council, also was a member of the board of the Redevelopment Agency, with voting rights. The City Manager served as the Executive Director. Under the strong-mayor form of city government, implemented in San Diego in 2006 on a five-year trial basis, the Mayor is no longer a member of the Agency's board. To address this fact, the Agency amended its bylaws to authorize appointment of the Mayor as Executive Director of the Agency, and to give the Mayor veto powers over actions approved by a vote of the Agency's board. Subsequently, the Agency periodically has reappointed the Mayor as the Executive Director of the Agency. The Executive Director is responsible for general supervision of the administration of the business and affairs of the Agency, but has no vote. Consequently, the Mayor now has a veto power over actions approved by the Agency board<sup>3</sup> even though the Mayor has no voting rights.

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<sup>3</sup> The veto power does not extend to what are essentially Agency personnel management actions.

There are other issues regarding the long-term role of the Mayor in the Agency, ensuing in part from the fact that the authorizing proposition for the new form of municipal government did not address the role of the Mayor in the City's redevelopment activities. The Mayor, elected citywide, is responsible for executive direction of planning and economic development for the City. Where, however, the interests of a city and the interests of a redevelopment agency differ, a strong mayor who also serves as the chief administrative officer of a redevelopment agency will have a conflict of interest. Apparently owing to such possibilities, the present Mayor of San Diego, although appointed as the Executive Director of the Agency, effectively performs little or no duties for the Agency.

The Agency has no direct employees. It operates through contracts with the City (service level agreements for administrative services, and operating agreements for managing redevelopment project areas), and through operating agreements with two nonprofit corporations, CCDC and SEDC, formed by the City solely to contract with the Agency to manage other Agency redevelopment project areas. Management of Agency project areas assigned to the City is performed by employees of the City's redevelopment office. The compensation of City employees who work full time on Agency work is paid by the Agency. Other City employees bill the Agency for specific work performed under various service level agreements.<sup>4</sup> CCDC and SEDC are creatures of the City, not the Agency. Each corporation operates under its own articles of incorporation and bylaws. Each entity is governed by a board of directors (seven members for CCDC, nine members for SEDC<sup>5</sup>) elected by the City Council.

### ***Current Redevelopment Oversight***

If the Agency lacks direct employees, what means are in place to ensure that the Agency and/or the City can conduct effective oversight of and the public can be fully informed about, the operational and financial aspects of redevelopment activities in the City? Are there contract provisions or other mechanisms which permit accountability and promote transparency?

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<sup>4</sup> City employees currently manage eleven redevelopment project areas (Barrio Logan, City Heights, College Community, College Grove, Crossroads, Grantville, Linda Vista, Naval Training Center, North Bay, North Park, and San Ysidro) and provide administrative support for six other project areas managed by the two public, nonprofit corporations, CCDC (Horton Plaza and Centre City) and SEDC (Central Imperial, Gateway Center West, Mount Hope, and Southcrest). The Mayor's principal executive role regarding the City's redevelopment activities is oversight of the City employees managing specific redevelopment project areas for, or providing support services to, the Agency.

<sup>5</sup> Although SEDC's bylaws provide for nine directors, its Articles of Incorporation specify not less than five nor more than seven directors.

With respect to the administrative services and redevelopment project area management services provided by the City, contracts between it and the Agency contain terms which require that such services be carried out in accordance with Agency regulations and policies where they exist, otherwise City regulations and policies apply. In particular, the agreements mandate that the “City shall let contracts by following standard City procedures for consultant selection, competitive bidding or other practices as appropriate.” Additionally, contract administration and work is to be “performed in accordance with City standards.” Under these agreements, the Agency also retains the right to inspect pertinent accounts of the City.

According to City officials, CCDC and SEDC were created in large part to avoid the limitations of civil service requirements when hiring redevelopment project management staff, and to make inapplicable the city’s “inflexible” contracting rules and procedures. SEDC was formed in 1980 to address redevelopment in southeastern San Diego. CCDC was formed in 1975. It assumed responsibility for the then-existing Horton Plaza redevelopment area, and subsequently contracted to manage other project areas in downtown San Diego.

The articles of incorporation of SEDC and CCDC are, not surprisingly, very similar. In the articles of incorporation the “specific and primary purpose” of each entity is identified as providing economic development services in specific areas which can “be done by contract with the Redevelopment Agency of the City of San Diego.” The articles also state for each corporation that the City of San Diego is the “sole member” of the corporation. The bylaws of each corporation also contain further common provisions. For both SEDC and CCDC, the City Council elects the members of the corporation’s board of directors, a director can be removed upon a two-thirds vote of the City Council, the report of a yearly financial audit by a “competent accountant” is to be made available to the City upon request, accounting books and records are to be maintained and made available for inspection by the City, and the City Council has the power to amend the bylaws or adopt new bylaws.

The operating agreements for both CCDC and SEDC contain many similar terms. The principal provisions require the corporations to: make their accounting books and records available for inspection by the Agency; submit to the Agency annually a report of a financial audit by an independent Certified Public Accountant; get approval from the Agency for transfers of funds between budget categories; submit to the Agency monthly vouchers for reimbursement of expenditures; and submit to the Agency a monthly statement of income and expenses (CCDC only). Project information must be provided to the public, and conflicts of interest must be disclosed. Either party to these contracts may terminate the agreement, without cause, after giving ninety days’ written notice.

### ***Redevelopment Finances***

The total budget for the Agency for FY09 (the year ending June 30, 2009) is about \$320.3 million (plus approximately \$359.2 million in carryover funds), with \$64.9

million allocated for City administrative support and management of redevelopment projects (plus approximately \$70.7 million in carryover funds), \$235.5 million allocated for the CCDC (plus approximately \$258.2 million in carryover funds), and \$19.9 million allocated for the SEDC (plus approximately \$30.3 million in carryover funds). Overall redevelopment funding sources include: tax increment funds; federal Community Development Block Grants (CDBG); bond proceeds; and loans from the City.<sup>6</sup>

The central component of redevelopment funding is tax increment revenue (subject to sharing with other taxing entities). This concept is based on the assumption that redevelopment increases property values and thereby increases property taxes collected in a project area. When a geographic area is established as a redevelopment project area, a base year assessed value for property tax purposes is established for property in that area. Tax increment revenue consists of the amount of taxes collected annually due to any increase in the tax value of the real property above the base assessment in the project area. As a condition of receiving the tax increment funds, the project area must have debt greater than the total of the tax increment allocated to the area. The requirement that a redevelopment project area incur debt in order to receive tax increment funds is the principal reason for loans to the Agency by the City when a project area is first established.

Loans from the City to the Agency are subordinate to the Agency's pledge of tax increment funds for bonds or other long-term indebtedness incurred to carry out redevelopment in a project area. When a loan is made from the City's General Fund, the City can use repayments of the loan for general fund purposes. Repayments of a loan by the City using CDBG funds, however, can only be spent on CDBG-eligible activities.<sup>7</sup>

Under California Health and Safety Code Sections 33080, *et seq.*, a redevelopment agency must submit an annual report including an independent financial audit report (completed by a Certified Public Accountant or a public accountant licensed by the State of California) to both its legislative body and the State Controller within six months of the close of the agency's fiscal year. Project area financial information is a required component of the Agency's annual report, but information about the financial position of CCDC and SEDC is not included. For several years, the required reports for the Agency were not filed timely, in part due to the City's failure to complete its audited financial statements for those years. Although the Agency's report for Fiscal Year 2008 was timely filed on December 31, 2008, it was submitted using un-audited financial information.

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<sup>6</sup> For a detailed discussion of the Agency budget, *see* Office of the Independent Budget Analyst Report Number 08-50, *Redevelopment Agency Fiscal Year 2009 Budget* (May 16, 2008).

<sup>7</sup> For a discussion of redevelopment financing, *see* Office of the Independent Budget Analyst Report Number 08-105, *An Overview of Redevelopment Agency Debt* (October 9, 2008).

Virtually all of the funds allocated for City redevelopment activities are held in City-controlled accounts. As noted above, both CCDC and SEDC are required, under the terms of their operating agreements with the Agency, to obtain authorization for reimbursement of expenditures from the City's Comptroller (acting as the Agency's Comptroller) monthly. Both entities also are required to obtain prior approval of the Agency for transfers of funds between budget categories. Until recently, the Comptroller's Office received little backup detail with which to validate claimed expenses or transfers. The Comptroller's Office is now requiring substantially more detailed supporting documentation before approval of expense payments submitted by SEDC and CCDC.

### ***Public Information***

Examination of the internet sites maintained by the Agency, CCDC, and SEDC reveals a wide variation in the information made available to the public about redevelopment finances and operations. The content presented on the several sites follows no discernible pattern or logical consistency. Each site presents basic organizational information such as: identification of directors and officers; office locations; contact information; general descriptions of redevelopment; and somewhat more detailed descriptions and maps of project areas. Also included is information about meeting agendas and minutes. What is missing or fragmented is operational and financial information about the redevelopment entities themselves.

The Agency site has links to the proposed Fiscal Year 2009 budgets for itself, for CCDC, for SEDC, and for the City's redevelopment office. The information provided for CCDC and SEDC includes an informative Administrative Budget for each, with a line-item breakdown of expenditures. The Agency site, however, does not indicate when or whether the proposed budgets were approved. Nor does the Agency site include primary documents such as the operating agreements between it and CCDC or SEDC. The Agency site includes a link to its Annual Reports, although that information is subject to the limitations discussed above.

The CCDC site includes information about the proposed budget for CCDC project areas for the current fiscal year, but not about the general and administrative budget for CCDC. There is, however, a link to budget information at the Agency site described above. The CCDC site includes important organizational documents – its Articles of Incorporation and Bylaws – but not a copy of its operating agreement with the Agency. There is a link to a “2007 Annual Report” which, as of March 11, 2009, was inoperative.

The SEDC site is confusing, at best. It presents an approved budget, but that budget is for Fiscal Year 2007 not the current year, 2009. Also available is a copy of an SEDC operating agreement, but it is a 1981 agreement with the City and not the current operating agreement with the Agency. The site includes a copy of an August 17, 2007 report of a performance audit commissioned by SEDC, but not a copy of the September 8, 2008 report of the performance audit ordered by the City. Nevertheless, the SEDC posts on the site its November 24, 2008 response to the City-ordered audit. Finally, the

heading “Reports” on the site leads to un-audited, but informative financial reports, including: a statement of revenues and expenditures for the first six months of the current fiscal year (compared to the approved budget); a statement of budget variances for expenditures for that period; a list of consultant contracts (with details of type service, amount, expenditures to date, etc.) for the period; and a statement of expenditures for City services.<sup>8</sup>

### ***Additional Redevelopment Oversight***

The Grand Jury is aware that proposals are being considered by the City Council and the Mayor to reorganize the City’s redevelopment office into an independent agency or to move its functions directly into the Agency.<sup>9</sup> The Grand Jury takes no position regarding the relative merits of the possible organizational models for the City’s redevelopment activities. Reorganization, however, is not a magic cure for all that ails redevelopment in the City. Whatever the final organizational structure for the City’s redevelopment activities, every independent component should incorporate oversight measures to minimize problems such as those which have arisen with CCDC and SEDC (salary abuse, conflicts of interests, and audit failures resulting from ineffective or nonexistent financial and operational oversight).

Redevelopment in the City has long been identified principally with the CCDC. Redevelopment projects in the Horton Plaza shopping venue, the Marina District, Little Italy, the Gaslamp Quarter, and the East Village have been cited proudly as examples of successful efforts to revitalize blighted downtown areas. During interviews with the Grand Jury, however, City officials readily acknowledged awareness of the widespread public perception that redevelopment in San Diego is an insider’s game played behind closed doors. Many public officials and employees also agreed that there is a lack of effective oversight of the operational and financial aspects of the City’s redevelopment activities, exacerbated by insufficient transparency.

A report published in *The San Diego Union-Tribune* on March 1, 2009, is indicative of the continuing problems. That article identified a \$13 million CCDC park project that was proceeding under a \$228,000 planning and design contract, apparently without CCDC board members’ knowledge of the contract or even the park project itself. Little more than two weeks later the same newspaper reported that CCDC has continued to award contracts worth up to \$250,000 without the approval of any board member (totaling more than \$3 million since July) despite public assurances that its contracting policies had been strengthened to require greater oversight.<sup>10</sup>

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<sup>8</sup> The financial information appears to have been posted subsequent to the September 8, 2008 Performance Audit Report concerning SEDC.

<sup>9</sup> For additional information regarding possible reorganization, see Office of the Independent Budget Analyst Report Number 08-37, *Redevelopment Agency Organization and Structure* (April 10, 2008) and Office of the Independent Budget Analyst Report Number 06-31, *Redevelopment Restructuring* (July 27, 2006).

<sup>10</sup> *The San Diego Union-Tribune*, March 19, 2009.



In general, the City's redevelopment activities lack distinct lines of responsibility and authority. City employees are often unsure whether the official chain of command is the same as the *de facto* chain through which they carry out their redevelopment duties. The structure was described by one senior City official as a "legal construct" that is hard to follow even by those who are part of it. There is also substantial duplication of staff in the operations of the City's redevelopment office, the CCDC, and the SEDC.

Directors of both the CCDC and the SEDC are elected by the City Council. The City Council also has the authority to remove a director of either corporation by a two-thirds vote. The Mayor, however, has no authority to remove or replace directors for any reason. Nor does the Mayor have authority over the daily operations of the two corporations. City officials acknowledge that after the City Council (acting as the Agency's board) approves the budgets for CCDC and SEDC those entities operate with autonomy, essentially as independent organizations over which neither the Agency nor the City exercises effective oversight.

Even the fundamental CCDC and SEDC budget review and approval process has been routinely hindered by those organizations' production of necessary information so late in the process as to preclude meaningful assessment. Review of the redevelopment agencies' budgets by the IBA, for example, typically has had to be accomplished during the two or three days preceding the City Council's final consideration. After budgets were approved, the entities were able to spend money without effective oversight, so long as the entity's total budget was not exceeded.

According to the SEDC Performance Audit Report, that organization's governing board failed to exercise its oversight authority and frequently failed even to convene for regular sessions. While the performance audit of the CCDC has yet to be completed, the public has adequate cause to be concerned about unaddressed conflicts of interests, inflated compensation, inappropriate spending, and inadequate reporting at both the SEDC and the CCDC. Board members of both entities have acknowledged their responsibility for not providing effective board-driven management for their organizations. The public's concern is further justified by the near consensus among City officials and administrators interviewed by the Grand Jury that the oversight tools currently available to ensure accountability in the operations and finances of the City's redevelopment activities are inadequate for the task.

As noted above, state law requires a redevelopment agency to file an annual report with an independent financial audit report within six months of the end of its fiscal year. The reports and audits for the Redevelopment Agency were not timely filed in the past. Even a properly filed Agency report, however, provides little financial and operational information about CCDC and SEDC other than details regarding their project area activities. As a consequence, public information about the finances and operations of CCDC and SEDC has been limited to whatever those entities have chosen to make public, augmented by the information in federal tax returns which are available to the public through other sources. Some information is available on the various internet sites,

as set out above, but the transparency which would empower the public to ascertain what is happening behind the closed doors of redevelopment activities in the City is sorely lacking.

It may well be that politics will always have a substantial impact on the conduct of redevelopment activities in the City. But, the fact that politics drives many redevelopment issues makes even more compelling the need for making available to the public apolitical means to assess the financial and operational foundation for those redevelopment activities. If the tools currently available to the City Council, City officials, and the public to ensure transparency and accountability in the City's redevelopment activities are inadequate, what is needed? At a minimum, there is a need to establish clear lines of operational authority and responsibility for redevelopment activities. There is also a compelling need to establish public reporting and other oversight measures in the operating agreements between the Agency and the nonprofit corporations that will promote the meaningful transparency necessary for accountability.

The articles of incorporation for both CCDC and SEDC state that their corporate purpose is to provide redevelopment services which can be done by contract with the Redevelopment Agency. Put another way, without operating agreements with the Agency, SEDC and CCDC would be empty shells. The existing operating agreements give the Agency the power to terminate the contracts, without cause, after providing ninety days' written notice. With the power to terminate contracts and/or to control funding, the Agency has the practical ability to effect by negotiation any desired amendments to its existing operating agreements with SEDC and CCDC. The critical question then is what precisely to include in operating agreements to achieve effective oversight and transparency. What changes will result in timely, detailed, public disclosure of financial, administrative, and operational information?

The bylaws of both CCDC and SEDC provide that the City, as the sole "member" of the individual corporations, has the power to adopt new bylaws or amend bylaws. Because the existing bylaws predate the current strong-mayor form of government, they explicitly (CCDC) or implicitly (SEDC) provide that the City will act through the City Council. Thus, the means exist for the City Council to make operational changes at SEDC and CCDC to ensure clear lines of authority and responsibility for the City's redevelopment activities. Whatever new measures are adopted, City officials and administrators agree that those measures should apply to both SEDC, CCDC, and to any new, independent city redevelopment entity.

To date, the City's principal response to the public's concerns about malfeasance and misfeasance in City redevelopment activities has consisted of the Mayor's request for performance audits of SEDC (completed) and CCDC (not yet available to the public or Grand Jury). Reorganization alternatives apparently also are being considered by both the Mayor and the City Council, and proposals for modifying the Agency operating agreements with SEDC and CCDC, as well as the bylaws of both, have been presented recently by the Mayor's Office and the IBA.

The IBA issued a report on January 13, 2009, discussing a few recommended changes for the SEDC operating agreement with the Agency and amendments to the SEDC bylaws in response to the SEDC performance audit.<sup>11</sup> The IBA proposal most pertinent to public oversight calls for amending the SEDC bylaws to require Agency confirmation of the SEDC board's selection of a President/Chief Operating Officer.

By a memorandum dated March 20, 2009, the Mayor sent to the City Council's Audit Committee a set of seventeen recommendations for amendments to the Agency operating agreements with CCDC and SEDC, and to the bylaws and articles of incorporation of both CCDC and SEDC.<sup>12</sup> As noted above, only the City Council, acting as the Redevelopment Agency's board can renegotiate the terms of its operating agreements with the nonprofit corporations, and only the City Council, acting for the City can amend the bylaws of the nonprofit corporations. The Mayor's recommendations include organizational changes: giving the Mayor the power to appoint each corporation's chief executive officer (subject to City Council confirmation) and to terminate that officer (with "appeal rights" to the City Council); and expanding the board of directors of each corporation by two voting members (one appointed by the Mayor and another appointed by the City Council). The Mayor also seeks the authority to "suspend and recommend removal by the City Council" of any corporation director, "based upon any breach of operating agreement [*viz.* any violation of City policies]." Collectively, the avowed purpose of the Mayor's recommendations is "to increase oversight and accountability." The recommendations, however, do little or nothing to address public access to fundamental information about the operations and finances of the corporations.

In a September 8, 2008 letter to City Auditor Luna responding to the report of the SEDC performance audit, the Mayor's Office agreed with virtually all of the auditor's thirty-three recommendations for corrective actions. The SEDC board responded on November 24, 2008, acceding to all but a few of the audit recommendations, at least "in principle". The SEDC performance audit report and the responses thereto, however, mostly address particular internal governance issues. With some exceptions the recommendations and responses fail to address the public's concerns about operational and financial accountability and transparency.

Both the Mayor's Office and the SEDC board agree with the performance audit recommendation that SEDC should submit a monthly financial report to its board, showing current actual expenditures for each budget line item and comparing them with the budgeted amounts. Several senior City representatives, however, assert that requiring presentation of that monthly report also to the Mayor's Office, the City Council, and the

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<sup>11</sup> See Office of the Independent Budget Analyst Report Number 09-01, *Recommended Changes for SEDC Operating Agreement* (January 13, 2009).

<sup>12</sup> See Memorandum from Mayor Jerry Sanders to Audit Committee dated March 20, 2009. The purposes of the recommended amendments range from the very general (number 17, for example states "Corporation Boards must follow redevelopment law.") to the very specific (number 5 states "City has right to order a performance audit, to be paid for in full by corporation, no more than once per year.").

IBA is necessary to build public confidence in the transparency of the operations and finances of the City's redevelopment activities. There is also widely shared agreement among City officials and administrators that CCDC and SEDC should be required to undergo regularly scheduled, independent financial and/or performance audits, with the ensuing reports made available to the public. In fact, the terms of the current Agency operating agreements with both SEDC and CCDC already require submission to the Agency by each nonprofit entity of certified financial statements and a detailed report of audit by an independent Certified Public Accountant within 120 days of the close of the entities' fiscal years.

The Mayor's Office and the SEDC board also agree that SEDC should submit a monthly consulting report to its board, disclosing consultant contracts entered into in the preceding month and related information. Requiring presentation of such a monthly report by SEDC and CCDC, including details of consultant compensation for the period, also to the Mayor's Office, the City Council, and the IBA would build public confidence in the transparency of the redevelopment process. Making that report available to the public would also enhance public confidence.

City officials and employees expressed widespread agreement in interviews with the Grand Jury that training on California redevelopment law for all public representatives and employees involved in the City's redevelopment activities should be mandatory. Training in fiduciary duties should be an additional requirement for board members of the City's redevelopment agencies. Independent Budget Analyst Report 09-01 states the standard for board training succinctly: "On a frequent and routine basis, the Board [should] receive training that shall, at a minimum, cover the Board's fiduciary responsibilities, general redevelopment and redevelopment-related finance." The Mayor's March 20, 2009 Memorandum to the City Council's Audit Committee also recommends that "Corporation Board member training in ethics, fiduciary duties and governance shall occur every 2 years."

### ***Conclusion***

Unfortunately the public perception of the City's redevelopment activities today is one of dysfunctional organizations, weak governance, and opaque operations. Many public officials and employees agree that there is a lack of effective oversight of the operations and finances of the City's redevelopment activities, exacerbated by insufficient transparency. In general, the City's redevelopment activities lack distinct lines of responsibility and authority. City employees are often unsure whether the official chain of command is the same as the *de facto* chain through which they carry out their redevelopment duties. The Mayor is not a member of the board of the Redevelopment Agency and cannot vote on its decisions, but the Mayor is Executive Director of the Agency and has a veto over those decisions. The Mayor, however, serves as Executive Director and holds a veto power solely at the pleasure of the Agency's board -- the City Council. Further, out of concerns for possible conflicts of interests or other uncertainties, the Mayor in fact performs little or no work for the Agency. The legal instruments -- bylaws and operating agreements -- on which the Agency and the City's redevelopment

corporations (SEDC and CCDC) base their operations have not been modified effectively, if at all, to reflect the realities of the strong-mayor form of government. The present structure is, in short, a “legal construct” that is hard to follow even by those who are part of it. These circumstances make a strong case for basic organizational changes to clarify the lines of responsibility and authority for the redevelopment activities of the City.

A fundamental characteristic of the operational and financial aspects of the City’s present redevelopment activities is opacity. The inevitable result of opacity is the inability of City officials and the public to assess performance confidently -- to measure efficiency and effectiveness with certainty. It is the sense of the Grand Jury that, however much reorganization may be needed, the most important step toward minimizing the recurrence of the reported problems with the City’s redevelopment activities is not reorganization, but the institutionalization of consistent measures to increase transparency in those activities. Without transparency, there can be no realistic prospect of effective oversight, whatever the organizational structure. In short, the remedy for the widely-held perception that there is little or no accountability in the City’s redevelopment activities is “sunshine” -- the assurance of transparency with respect to the operations and finances of the City’s redevelopment organizations.

### ***FACTS AND FINDINGS***

**Fact:** The City of San Diego (City) created the Redevelopment Agency of the City of San Diego (Redevelopment Agency or Agency) in 1958, with the City Council constituting the members or board of the Agency.

**Fact:** The Redevelopment Agency is an independent legal entity, separate from the City.

**Fact:** Since 2006 the City Council, acting as the Redevelopment Agency board, has appointed the Mayor of the City to successive terms as the Executive Director of the Redevelopment Agency.

**Fact:** As the Executive Director of the Redevelopment Agency, the Mayor has no vote on matters decided by the Agency’s board, but the Mayor has been given a veto over development- related actions approved by the Agency’s board.

**Fact:** The Redevelopment Agency has no direct employees; it operates through contracts with the City (service level agreements for administrative services, and operating agreements for managing redevelopment project areas) and contracts with two nonprofit corporations, Centre City Development Corporation (CCDC) and Southeastern Economic Development Corporation (SEDC) (operating agreements for managing redevelopment project areas).

**Fact:** The City created both the CCDC and the SEDC as independent, nonprofit agencies of the City for the purpose of providing economic development services which can be done under contract with the Redevelopment Agency.

**Fact:** The principal terms in the Redevelopment Agency's current operating agreements with SEDC and CCDC relating to operational or financial oversight (other than those relating to budget submissions) require the corporations to: make their accounting books and records available for inspection by the Agency; submit to the Agency annually a report of a financial audit by an independent Certified Public Accountant; get approval from the Agency for transfers of funds between budget categories; submit to the Agency monthly vouchers for reimbursement of expenditures; and submit to the Agency a monthly statement of income and expenses (CCDC only).

**Fact:** The City Council, acting as the board of the Redevelopment Agency, has the power under the operating agreements with SEDC and CCDC to terminate those agreements after giving ninety days' notice.

**Fact:** The City Council has the power under the bylaws of both CCDC and SEDC to elect the directors of the corporations and to remove directors by a two-thirds vote.

**Fact:** The principal provisions of the current bylaws of SEDC and CCDC relating to operational or financial oversight state that: SEDC and CCDC will make their accounting books and records available for inspection by the City of San Diego; SEDC will submit to the City an annual report of financial information; SEDC and CCDC will supply annually to the City, upon request, financial statements based on an audit by an independent accountant.

**Fact:** The City of San Diego is the sole member of both CCDC and SEDC, and under the bylaws of both CCDC and SEDC, the City (acting through the City Council) has the power to amend, or to adopt new, bylaws for both corporations.

**Fact:** Audit reports and annual reports of the Redevelopment Agency have not been timely filed with the State of California in the past.

**Fact:** The information available to the public through the internet sites of the Redevelopment Agency, CCDC, and SEDC relating to the entities' operations and finances is limited, inconsistent, incomplete, out of date, and sometimes erroneous.

**Finding #01:** Publicly funded redevelopment activities in the City of San Diego are carried out through an organizational structure marked by confusing lines of operational and financial authority and responsibility.

**Finding #02:** The information and tools currently available to the Redevelopment Agency of the City of San Diego, the City Council, and the Mayor to oversee the city's redevelopment activities are inadequate to ensure effective operational and financial accountability.

**Finding #03:** Essential information about the finances and operations of the publicly funded redevelopment activities in the City of San Diego is not made available to the public on a timely basis.

### ***RECOMMENDATIONS***

The 2008/2009 San Diego County Grand Jury recommends that the City Council of the City of San Diego:

- 09-04:** In its capacity as the board of the Redevelopment Agency of the City of San Diego, establish clear lines of authority and responsibility for the operational and financial management of the redevelopment activities of the Agency.
- 09-05:** In its capacity as the board of the Redevelopment Agency of the City of San Diego, appoint an Executive Director for the Agency other than the Mayor of San Diego, in order to avoid possible conflicts of interest.
- 09-06:** In its capacity as the board of the Redevelopment Agency of the City of San Diego, modify the bylaws of the Agency to establish a formal, long-term role for the Mayor of San Diego through which the Mayor can meaningfully influence the Agency's redevelopment activities in the City.
- 09-07:** In its capacity as the board of the Redevelopment Agency of the City of San Diego, renegotiate or negotiate new operating agreements for the management of redevelopment areas by other entities (such as CCDC and SEDC) to include terms requiring those entities to submit to the Agency, the Mayor's Office, and the Office of the Independent Budget Analyst, and make readily available to the public: (a) an annual report of the entity's operational and financial activities and condition; (b) financial statements and a report of an independent financial audit thereon by a certified public accountant, annually; (c) a written, monthly financial report showing actual expenditures to date for each budget line item compared to the approved budget; and (d) a written, monthly report of consultant contracts showing the contractor's name, date contract entered, contract purpose, dollar amount of the contract, and actual expenditures to date per contract.
- 09-08:** In its capacity as the board of the Redevelopment Agency, file the Agency's Annual Report, including the independent financial audit report, with the State Controller's Office within six months of the close of the Agency's fiscal year, as required by California law.
- 09-09:** In its capacity as the San Diego City Council adopt and amend the bylaws of CCDC and SEDC to require that directors be elected by the City Council from nominations submitted by the Mayor and that

removal of directors by the city council be by two-thirds vote upon a request by the Mayor.

- 09-10:** In its capacity as the San Diego City Council adopt and amend the bylaws of CCDC and SEDC to require confirmation by the City Council of the selection of a president/chief operating officer/chief executive officer by each corporation's board of directors and authorizing removal of such officers by a two-thirds vote of the City Council upon a request by the Mayor.
- 09-11:** In its capacity as the San Diego City Council adopt and amend the bylaws of CCDC and SEDC to require that those entities submit to the City Council, the Mayor's Office, and the Office of the Independent Budget Analyst, and make readily available to the public: (a) an annual report of the entity's operational and financial activities and condition; (b) financial statements and a report of an independent financial audit thereon by a certified public accountant, annually; (c) a written, monthly financial report showing actual expenditures to date for each budget line item compared to the approved budget; and (d) a written, monthly report of consultant contracts showing the contractor's name, date contract entered, contract purpose, dollar amount of the contract, and actual expenditures to date per contract.
- 09-12:** In its capacity as the San Diego City Council adopt and amend the bylaws of CCDC and SEDC to require that each entity make readily available to the public and publish on its internet site: (a) its articles of incorporation; (b) its bylaws; (c) its operating agreements with the Redevelopment Agency of the City of San Diego; (d) its annual report; (e) its budget (proposed and approved); (f) its most recent independent audit report; (g) its most recently filed federal tax return (Form 990); (h) its most current monthly statement of expenditures to date for each budget line item compared to the approved budget; (i) its most current monthly report of consultant contracts showing the contractor's name, date contract entered, contract purpose, dollar amount of the contract, and actual expenditures to date per contract; (j) the statements of financial interests (Form 700) filed by its directors, officers, and employees; and (k) its current conflict of interest policy.
- 09-13:** In its capacity as the San Diego City Council adopt and amend the bylaws of CCDC and SEDC to require their directors and staff to undergo training on California redevelopment law and on corporate fiduciary duties.



**09-14: In its capacity as the San Diego City Council require training of city council members and city redevelopment staff on California redevelopment law.**

***REQUIREMENTS AND INSTRUCTIONS***

The California Penal Code §933(c) requires any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the agency. Such comment shall be made *no later than 90 days* after the Grand Jury publishes its report (filed with the Clerk of the Court); except that in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such comment shall be made *within 60 days* to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code §933.05(a), (b), (c), details, as follows, the manner in which such comment(s) are to be made:

- (a) As to each grand jury finding, the responding person or entity shall indicate one of the following:
  - (1) The respondent agrees with the finding
  - (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.
- (b) As to each grand jury recommendation, the responding person or entity shall report one of the following actions:
  - (1) The recommendation has been implemented, with a summary regarding the implemented action.
  - (2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
  - (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the grand jury report.
  - (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.
- (c) If a finding or recommendation of the grand jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the grand jury, but the response of the Board

of Supervisors shall address only those budgetary or personnel matters over which it has some decision making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with the Penal Code §933.05 are required from the:

<b><u>Responding Agency</u></b>	<b><u>Recommendations</u></b>	<b><u>Date</u></b>
<b>City Council, City of San Diego</b>	<b>09-04 through 09-14</b>	<b>8/4/09</b>