



# City of San Leandro

Meeting Date: March 3, 2014

## Staff Report

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**File Number:** 14-054

**Agenda Section:** CONSENT CALENDAR

**Agenda Number:** 8.D.

**TO:** City Council

**FROM:** Chris Zapata  
City Manager

**BY:** Cynthia Battenberg  
Community Development Director

**FINANCE REVIEW:** Not Applicable

**TITLE:** Staff Report for Nomination of a Member of the City Council to Serve on the Board of Directors of the San Leandro Improvement Association

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### SUMMARY AND RECOMMENDATIONS

Council consider adoption of a Minute Order nominating a member of the City Council to serve on the Board of Directors of the San Leandro Improvement Association, the governing body of the Downtown San Leandro Community Benefit District.

### BACKGROUND

On July 15, 2013, the City Council adopted Resolution 2013-102, approving the creation of the Downtown San Leandro Community Benefit District. An interim Board of Directors, comprised of members of the District formation steering committee, was self-appointed in September of 2013 to oversee creation and functioning of the District. The City's Business Development Manager currently serves as a member of the interim Board of Directors. The interim Board filed Articles of Incorporation with the California Secretary of State on November 25, 2013. The District was incorporated as the San Leandro Improvement Association on December 3, 2013.

The early work of the interim Board of Directors has been focused on the administrative work of establishing the corporation and on hiring an executive director or management company to serve as staff. Interviews for this position were held on February 3, 2014 after the issuance and distribution of a Request-for-Proposals in December. It is expected that an executive director or management company will be under contract by early March. At that time, the District will begin performing the services for which it was formed.

### ANALYSIS

The interim Board approved the attached By-Laws on October 3, 2013. According to the By-Laws, the Board of Directors will have between 9 and 25 members. At least two-thirds of

the Directors must be property owners within the District or representatives of property owners. The remaining seats can be filled by "Community at Large" members. As an owner of property within the District, it is appropriate for the City Council to nominate one of its members as a Director of the District.

Members of the Downtown San Leandro Community are eligible for nomination to the Board of Directors based upon:

1. Their active participation with the corporation including its committees, task forces or otherwise for a period of not less than one (1) year, and
2. Support for the policies and goals of the corporation.

The interim Board is intended to serve until qualifications for membership have been met, estimated to be by Summer 2014. Thereafter, and prior to November 2014, the first appointment of the Board of Directors will be made at the 2014 Annual meeting.

The By-Laws do not specify a procedure for adding members to the interim Board of Directors prior to the formation of a permanent Board. It is appropriate at this time that the City Council consider the nomination of a Councilmember to serve on the interim Board and the Board of Directors thereafter, and forward that nomination to the interim Board for consideration at their next meeting, scheduled for March 6, 2014.

### **Previous Actions**

On July 15, 2013, the City Council adopted Resolution 2013-102, approving the creation of the Downtown San Leandro Community Benefit District.

### **ATTACHMENT(S)**

- San Leandro Improvement Association By-Laws

**PREPARED BY:** Jeff Kay, Business Development Manager, Community Development Department

**BYLAWS OF  
SAN LEANDRO IMPROVEMENT ASSOCIATION  
  
A CALIFORNIA PUBLIC BENEFIT CORPORATION**

**ARTICLE 1  
OFFICES**

**SECTION 1. PRINCIPAL OFFICE**

The principal office of the corporation for the transaction of its business is located in Alameda County, California and Downtown San Leandro, as defined by the map attached as "Exhibit A" and incorporated in these Bylaws by reference.

**SECTION 2. CHANGE OF ADDRESS**

The county of the corporation's principal office can be changed only by amendment of these Bylaws and not otherwise. The Board of Directors may, however, change the principal office from one location to another within the County of Alameda. Any such change shall be noted by the Secretary in these Bylaws, but shall not be considered an amendment of these Bylaws.

**SECTION 3. OTHER OFFICES**

The corporation may also have offices at such other places, within or without the State of California, where it is qualified to do business, as its business may require and as the Board of Directors may, from time to time, designate.

**ARTICLE 2  
PURPOSES**

**SECTION 1. OBJECTIVES AND PURPOSES**

The primary objectives and purposes of this corporation shall be:

- A) To bring about the revitalization of the Downtown San Leandro Community and its surrounds.
- B) To bring about the investment of private and public capital within the Downtown San Leandro Community and its surrounds for public benefit and charitable purposes.
- C) To bring about the increased provision of quality public improvements and educational, cultural, artistic, charitable, and social services within Downtown San Leandro Community and its surrounds for public benefit and charitable purposes.

- D) To bring about the increased economic well being of residents, employees, and businesses within the Downtown San Leandro Community and its surrounds.
- E) To promote improvement within the Downtown San Leandro Community through activities which contribute to the economic and neighborhood well-being of the Downtown San Leandro Community.
- F) Upon the dissolution or winding up of this corporation, its assets remaining after payment, of all debts and liabilities of this corporation, shall be distributed to a nonprofit fund, foundation, or corporation which is organized and operated exclusively for charitable, educational and/or religious purposes and which has established its tax-exempt status under Internal Revenue Code section 501(c)(3).

### **ARTICLE 3**

#### **MEMBERSHIP**

##### **SECTION 1. NO MEMBERS**

- A) This Corporation shall have no members, as that term is defined in section 5056 of the California Nonprofit Corporation Law. Unless otherwise provided herein or in the California Nonprofit Public Benefit Corporation Law, any action which would otherwise require approval by a majority of all members shall require only approval of the Board of Directors. All rights which would otherwise vest in the members shall vest in the board of directors. Nothing in these Bylaws shall be construed as limiting the right of the Corporation to refer to persons associated with it, who participate in any activities of the Corporation, as "members" even though such persons are not members, as defined in section 5056 of the California Corporations Code. Such persons shall be deemed to be associated persons with respect to the corporation as that term is defined in section 5332 of the California Nonprofit Public Benefit Corporation Law, and no such reference shall constitute anyone a member of this Corporation.

### **ARTICLE 4**

#### **ELECTION OF DIRECTORS**

##### **SECTION 1. NOMINATION AND ELECTION**

- A) Not less than forty five (45) days before the date set forth for the Annual meeting of the Directors, the President shall request that the Board appoint at least three (3) members as the Nominating Committee which shall include the President and at least two of the Directors of the Corporation to solicit nominees for consideration and election as Directors, and the names, so proposed, shall be presented to the Board of Directors at its Annual meeting.

1. Any Director may, at such meeting, nominate any other qualified person(s) as nominees for the Board.
2. The Nominations Committee shall mail nomination forms to all eligible property owners consistent Article 4, Section 2 (b). The nomination forms shall be mailed out at least 35 days prior to the date set for the Annual meeting. A due date of at least 10 days prior to the Annual Meeting date shall be stated as the deadline for submitting nominations to the Nominations Committee;
3. The nominees, who have been deemed to be qualified, consistent with Article 4, Section 2, shall be presented to the Board for consideration of appointment to the Board at its Annual elections meeting.
4. The Board may vote to accept some or all of the nominees submitted by the Nominations Committee at the Annual Meeting based upon the conditions set forth in Article 4, Section 2 (a) and (b). The Board shall vote to accept all or some of the nominees based upon the seats allocated consistent with Article V, Section 1 (a) in the bylaws. Nominations may also be made from the floor by current Board members at the Annual meeting provided the nominees are qualified consistent with Article 4, Section 2.

## **SECTION 2. QUALIFICATION**

- A) Members of the Downtown San Leandro Community shall be eligible for nomination to the Board of Directors based upon:
1. their active participation with the corporation including its committees, task forces or otherwise for a period of not less than one (1) year, and
  2. support for the policies and goals of the corporation.

In addition, nominees shall only be eligible for election to those positions for which they qualify as a property owner or Community At Large member under Article 4, Section 2 (B).

An interim Board of Directors shall be self-appointed in September of 2013 to oversee creation and functioning of the corporation including the adoption of the articles of incorporation as well as the bylaws of the corporation. The interim Board shall serve until qualifications for membership have been met, estimated to be by June of 2014. Thereafter, and prior to November 2014, the first appointment of the Board of Directors shall be made at the 2014 Annual meeting.

- B) Eligibility shall be determined by:

- 1) *Property Owner Members*: full payment of property assessments by a property owner into the Downtown San Leandro Community Benefit District for the previous and current fiscal years that such assessments were due; or
- 2) *Community at Large Members*: a business tenant, or community member who resides and/or operates a business within the boundaries of the Downtown San Leandro CBD that the Board deems would be an important contributing member to implement the goals of the corporation and whose appointment shall allow the corporation to fulfill its goals as a public benefit corporation. Appointment of Community At Large members may also include those individuals who do not reside or operate a business within the Downtown San Leandro CBD but who the Board believes shall allow the corporation to fulfill its goals as a public benefit corporation.

## **ARTICLE 5 DIRECTORS**

### **SECTION 1. NUMBER AND TERM**

- A) The corporation shall have a minimum of nine (9) and a maximum of twenty-five (25) Directors and collectively they shall be known as the Board of Directors. The exact number of Directors shall be fixed from time-to-time by resolution and amendment of these bylaws by the Board of Directors. Subject to the foregoing provisions for changing the number of Directors, the following seats shall be allocated to the Board of Directors based upon their financial contribution, as a group, to the operation of the Association. The allocation of categories of Board seats shall be as follows:
- 1) At least two thirds (2/3) of the seats on the Board of Directors at all times and within a specific year, shall be filled by property owners, or representatives of property owners, who have fully paid into the current fiscal year of the Downtown San Leandro Community Benefit District;
  - 2) The balance of seats shall be filled by “Community at large” members, including business tenants, residential tenants, or other at community at-large members. The Directors shall be elected in accordance with Article 4, Sections 1 and 2 for two (2) year terms beginning on the date of election to replace those Directors whose terms are then expiring. During the first full nomination and election of the Board in the summer or Fall of 2014, 50% of the property owner directors shall serve two year terms and 50% shall serve one year terms. This staggering of seats will ensure that the entire Board is not replaced within one calendar year. Commencing 2015, and thereafter, all property owner seats shall serve 2 year terms from the date of the Annual Meeting.

### **SECTION 2. POWERS**

Subject to the provisions of the California Nonprofit Public Benefit Corporation law, and any limitations in the Articles of Incorporation and Bylaws relating to action required or permitted to be taken or approved by the members, if any, of this corporation, the activities and affairs of this corporation shall be conducted and all corporate powers shall be exercised by or under the direction of the Board of Directors.

### **SECTION 3. DUTIES**

It shall be the duty of the Directors to:

- A) Perform any and all duties imposed on them collectively or individually by law, by the Articles of Incorporation of this corporation, or by these Bylaws;
- B) Appoint and remove, employ and discharge, and, except as otherwise provided in these Bylaws, prescribe the duties and fix the compensation, if any, of all officers, agents and employees of the corporation;
- C) Supervise all officers, agents and employees of the corporation to assure that their duties are performed properly;
- D) Meet at such times and places as required by these Bylaws;
- E) Register their addresses with the Secretary of the corporation and notices of meetings mailed or telegraphed to them at such addresses shall be valid notices thereof.

### **SECTION 4. COMPENSATION**

The Directors shall serve without compensation except that they shall be allowed and paid their actual and necessary expenses incurred in attending Directors meetings, only after adoption of a written Board policy concerning this provision. In addition, they shall be allowed reasonable advancement or reimbursement of expenses incurred in the performance of their regular duties as specified in Section 3 of this Article. Directors may not be compensated for rendering services to the corporation in any capacity other than Director unless such other compensation is reasonable and is allowable under the provisions of Section 6 of this Article.

### **SECTION 5. RESTRICTION REGARDING INTERESTED DIRECTORS**

Notwithstanding any other provision of these Bylaws, not more than forty-nine percent (49%) of the persons serving on the board may be interested persons. For purposes of this Section, "interested persons" means either:

- A) Any person currently being compensated by the corporation for services rendered it within the previous twelve (12) months, whether as a full- or part-time officer or other employee, independent contractor, or otherwise, excluding any reasonable compensation paid to a

Director as Director. In any and all cases, a Board member who also happens to be an “interested person” shall not move, second or vote on any contract in which they have a financial interest or

- B) Any brother, sister, ancestor, descendant, spouse, brother-in-law, sister-in-law, son-in-law, daughter-in-law, mother-in-law, or father-in-law of any such person.

#### **SECTION 6. PLACE OF MEETINGS**

Meetings shall be held at the principal office of the corporation unless otherwise provided by the Board or at such place within or without the State of California which has been designated from time to time by resolution of the Board of Directors. In the absence of such designation, any meeting not held at the principal office of the corporation shall be valid only if held on the written consent of all Directors given either before or after the meeting and filed with the Secretary of the corporation or after all Board members have been given written notice of the meeting as hereinafter provided for special meetings of the Board. Any meeting, regular or special, may be held by conference telephone or similar communications equipment, so as long as all directors participating in such meeting can hear one another.

#### **SECTION 7. REGULAR AND ANNUAL MEETINGS**

A) Regular meetings of Directors shall be held at a time and place as set by the Board of Directors. The Board has the authority to alter the time and place of the monthly meetings upon majority vote provided notification of such change is made to the San Leandro Community.

B) If this corporation makes no provision for members, then, at the Annual meeting of Directors, Directors shall be elected by the Board of Directors in accordance with this section. Cumulative voting by directors for the election of Directors shall not be permitted.

#### **SECTION 8. SPECIAL MEETINGS**

Special meetings of the Board of Directors may be called by 50% or more of the officers of the corporation including the President, Chairperson, the Vice President, the Secretary, and Treasurer or by any five (5) Directors, and such meetings shall be held at the place, within the City of San Leandro, designated by the person or persons calling the meeting, and in the absence of such designation, at the principal office of the corporation.

#### **SECTION 9. NOTICE OF MEETINGS**

Regular meetings of the Board may be held with appropriate notice consistent with the open meetings provisions of the Ralph M. Brown Act. Regular meetings of the Board shall be held upon three (3) days' notice by first-class mail or seventy two (72) hours' notice delivered personally or by telephone fax or e-mail.. If sent by mail or fax, the notice shall be deemed to be delivered on its



deposit in the mails or on its delivery to the Director. Such notices shall be addressed to each Director at his or her address as shown on the books of the corporation. Notice of the time and place of holding an adjourned meeting needs to be given to absent Directors if the time and place of the adjourned meeting are fixed at the meeting adjourned and if such adjourned meeting is held no more than forty eight (48) hours from the time of the original meeting. Notice shall be given of any adjourned regular or special meeting to Directors absent from the original meeting if the adjourned meeting is held more than forty eight (48) hours from the time of the original meeting.

#### **SECTION 10. CONTENTS OF NOTICE**

Notice of meetings not herein dispensed with shall specify the place, day and hour of the meeting. The purpose of any Board meeting shall be specified in the notice.

#### **SECTION 11. WAIVER OF NOTICE AND CONSENT TO HOLDING MEETINGS**

The transactions of any meeting of the board, however called and noticed or wherever held, are as valid as though the meeting had been duly held after proper call and notice, provided a quorum, as hereinafter defined, is present and provided that either before or after the meeting each Director not present signs a waiver of notice, a consent to holding the meeting, or an approval of the minutes thereof. All such waivers, consents, or approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

#### **SECTION 12. QUORUM FOR MEETINGS**

A quorum shall consist of a majority of the sitting Board of Directors. Except as otherwise provided in these Bylaws or in the Articles of Incorporation of this corporation, or by law, no business shall be considered by the Board at any meeting at which a quorum, as hereinafter defined, is not present, and the only motion which the Chair shall entertain at such meeting is a motion to adjourn. However, a majority of the Directors present at such meeting may adjourn from time to time until the time fixed for the next regular meeting of the Board. The Directors present at a duly called and held meeting at which a quorum is initially present may continue to do business notwithstanding the loss of a quorum at the meeting due to a withdrawal of Directors from the meeting, provided that any action thereafter taken must be approved by at least a majority of the required quorum for such meeting or such greater percentage as may be required by law, or the Articles of Incorporation or Bylaws of this corporation.

#### **SECTION 13. MAJORITY ACTION AS BOARD ACTION**

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 is the act of the Board of Directors, unless the Articles of Incorporation or Bylaws of this corporation, or provisions of the California Nonprofit Public Benefit Corporation Law, particularly those provisions relating to appointment of committees (Section 5212), approval of contracts or transactions in which a Director has a material financial interest (Section 5233) and

indemnification of Directors (Section 5238e), require a greater percentage or different voting rules for approval of a matter by the Board.

**SECTION 14. CONDUCT OF MEETINGS**

Meetings of the Board of Directors shall be presided over by the President of the Board, or appointed Chairperson of the Board, or, in his or her absence, by the Vice President of the corporation or, in the absence of each of these persons, by a Chairperson chosen by a majority of the Directors present at the meeting. The Secretary of the corporation shall act as secretary of all meetings of the Board, provided that, in his or her absence, the presiding officer shall appoint another person to act as Secretary of the Meeting.

Meetings shall be governed by Roberts Rules of Order, as such rules may be revised from time to time, insofar as such rules are not inconsistent with or in conflict with these Bylaws, with the Articles of Incorporation of this corporation, or with provisions of law.

**SECTION 15. ACTION BY TWO THIRDS WRITTEN CONSENT WITHOUT MEETING**

Any action required or permitted to be taken by the Board of Directors under any provision of law may be taken without a meeting, if 2/3 (two thirds) of the members of the full Board shall individually or collectively consent in writing to such action. Each Board member shall be notified of the need for written consent without a meeting through first class mail, a fax, e-mail or phone call. Such written consent or consents shall be filed with the minutes of the proceedings of the Board. Such action by written consent shall have the same force and effect as the simple majority vote of the Directors. Any certificate or other document filed under any provision of law which relates to action so taken shall state that the action was taken by two-thirds written consent of the Board of Directors without a meeting and that the Bylaws of this corporation authorize the Directors to so act, and such statement shall be prima facie evidence of such authority.

**SECTION 16. VACANCIES AND REMOVAL:**

Any Board members with three (3) *unexcused* absences from a regularly scheduled Board meeting within a one year term of the Board shall be automatically removed from the Board, and a vote of the Board is not required for this removal. Board members who miss six (6) regular Board meeting within a one year Board term, whether excused or unexcused, shall be automatically removed from the Board.

Vacancies on the Board of Directors shall exist (1) on the death, resignation or removal of any Director, and (2) whenever the number of authorized Directors is increased.

The Board of Directors 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 been found by a final order or judgment of any court to have breached any duty under Section 5230 and following of the California Nonprofit Public Benefit Corporation Law.

If this corporation has any members, then, if the corporation has less than fifty (50) members, Directors may be removed without cause by a majority of all members, or, if the corporation has

fifty (50) or more members, by vote of a majority of the votes represented at a membership meeting at which a quorum is present.

If this corporation has no members, Directors may be removed without cause by a majority of the Directors then in office. Any Director may resign effective upon giving written notice to the Chairperson of the Board, the President, the Secretary, or the Board of Directors, unless the notice specifies a later time for the effectiveness of such resignation. No Director may resign if the corporation would then be left without a duly elected Director or Directors in charge of its affairs, except upon notice to the Attorney General.

Vacancies on the Board may be filled by approval of the Board or, if the number of Directors then in office is less than a quorum, by (1) the unanimous written consent of the Directors then in office, (2) the affirmative vote of a majority of the Directors then in office at a meeting held pursuant to notice or waivers of notice complying with this Article of these Bylaws, or (3) a sole remaining Director.

If this corporation has members, however, vacancies created by the removal of a Director may be filled only by the approval of the members. The members, if any, of this corporation may elect a Director at any time to fill any vacancy not filled by the Directors.

A person elected to fill a vacancy as provided by this Section shall hold office until the next annual election of the Board of Directors or until his or her death, resignation or removal from office.

#### **SECTION 17. NON-LIABILITY OF DIRECTORS**

The Directors shall not be personally liable for the debts, liabilities, or other obligations of the corporation.

#### **SECTION 18. INDEMNIFICATION BY CORPORATION OF DIRECTORS, OFFICERS, EMPLOYEES AND OTHER AGENTS**

To the extent that a person who is, or was, a Director, officer, employee or other agent of this corporation has been successful on the merits in defense of any civil, criminal, administrative or investigative proceeding brought to procure a judgment against such person by reason of the fact that he or she is, or was, an agent of the corporation, or has been successful in defense of any claim, issue or matter, therein, such person shall be indemnified against expenses actually and reasonably incurred by the person in connection with such proceeding.

If such person either settles any such claim or sustains a judgment against him or her, then indemnification against expenses, judgments, fines, settlements and other amounts reasonably incurred in connection with such proceedings shall be provided by this corporation but only to the extent allowed by, and in accordance with the requirements of, Section 5238 of the California Nonprofit Public Benefit Corporation Law.

**SECTION 19. INSURANCE FOR CORPORATE AGENTS**

The Board of Directors may adopt a resolution authorizing the purchase and maintenance of insurance on behalf of any agent of the corporation (including a director, officer, employee or other agent of the corporation) against any liability other than for violating provisions of law relating to self-dealing (Section 5233 of the California Nonprofit Public Benefit Corporation Law) asserted against or incurred by the agent in such capacity or arising out of the agent's status as such, whether or not the corporation would have the power to indemnify the agent against such liability under the provisions of Section 5238 of the California Nonprofit Public Benefit Corporation Law.

**ARTICLE 6  
OFFICERS**

**SECTION 1. NUMBER OF OFFICERS**

The officers of the corporation shall be a President, a Vice President, a Secretary, and a Chief Financial Officer who shall be designated the Treasurer. The corporation may also have, as determined by the Board of Directors, a Chairperson of the Board, one or more Vice Presidents, Assistant Secretaries, Assistant Treasurers, or other officers. Any number of offices may be held by the same person except that neither the Secretary nor the Treasurer may serve as the President or Chairperson of the Board.

**SECTION 2. QUALIFICATION, ELECTION, AND TERM OF OFFICE**

Any member of the Board of Directors may serve as an officer of this corporation. Officers shall be elected by the Board of Directors, at any time, and each officer shall hold office for a one year term or until he or she resigns or is removed or is otherwise disqualified to serve, or until his or her successor shall be elected and qualified, whichever occurs first. Officers shall be elected individually each year at the Annual Nominations and Election meeting of the Board of Directors. A Board member shall serve two full years prior to becoming eligible for nomination as a Board officer, (except during the first two years of the creation of the corporation, this will become effective in the Fall of 2015).

**SECTION 3. SUBORDINATE OFFICERS**

The Board of Directors may appoint such other officers or agents as it may deem desirable, and such officers shall serve such terms, have such authority, and perform such duties as may be prescribed from time to time by the Board of Directors.

## **SECTION 6. DUTIES OF PRESIDENT**

The President shall be the chief executive officer of the corporation and shall, subject to the control of the Board of Directors, supervise and control the affairs of the corporation and the activities of the officers. He or she shall perform all duties incident to his or her office and such other duties as may be required by law, by the Articles of Incorporation of this corporation, or by these Bylaws, or which may be prescribed from time to time by the Board of Directors. Unless another person is specifically appointed as Chairperson of the Board of Directors, he or she shall preside at all meetings of the Board of Directors. If applicable, the President shall preside at all meetings of the delegates. Except as otherwise expressly provided by law, by the Articles of Incorporation, or by these Bylaws, he or she shall, in the name of the corporation, execute such deeds, mortgages, bonds, contracts, checks, or other instruments which may from time to time be authorized by the Board of Directors.

## **SECTION 7. DUTIES OF VICE PRESIDENT**

In the absence of the President, or in the event of his or her inability or refusal to act, the Vice President shall perform all the duties of the President, and when so acting shall have all the powers of, and be subject to all the restrictions on, the President. The Vice President shall have other powers and perform such other duties as may be prescribed by law, by the Articles of Incorporation, or by these Bylaws, or as may be prescribed by the Board of Directors.

## **SECTION 8. DUTIES OF SECRETARY**

The Secretary shall:

- a. Certify and keep at the principal office of the corporation the original, or a copy of these Bylaws as amended or otherwise altered to date.
- b. Keep at the principal office of the corporation or at such other place as the board may determine, a book of minutes of all meetings of the directors, and, if applicable, meetings of committees of directors and of members, recording therein the time and place of holding, whether regular or special, how called, how notice thereof was given, the names of those present or represented at the meeting, and the proceedings thereof.
- c. See that all notices are duly given in accordance with the provisions of these Bylaws or as required by law.
- d. Be custodian of the records and of the seal of the corporation and see that the seal is affixed to all duly executed documents, the execution of which on behalf of the corporation under its seal is authorized by law or these Bylaws.
- e. Keep at the principal office of the corporation a membership book containing the name and address of each and any members, and, in the case where any membership has been terminated, he or she shall record such fact in the membership book together with the date on which such membership ceased.
- f. Exhibit at all reasonable times to any director of the corporation, or to his or her agent or attorney, on request therefore, the Bylaws, the membership book, and the

minutes of the proceedings of the directors of the corporation. San Leandro Community businesses shall have similar rights of inspection as provided by action of the Directors.

- g. In general, perform all duties incident to the office of Secretary and such other duties as may be required by law, by the Articles of Incorporation of this corporation, or by these Bylaws, or which may be assigned to him or her from time to time by the Board of Directors.

## **SECTION 9. DUTIES OF TREASURER**

Subject to the provisions of these Bylaws relating to the "Execution of Instruments, Deposits and Funds," the Treasurer shall:

- a. Have charge and custody of, and be responsible for, all funds and securities of the corporation, and deposit all such funds in the name of the corporation in such banks, trust companies, or other depositories as shall be selected by the Board of Directors or delegate such responsibilities to staff;
- b. Receive, and give receipt for, monies due and payable to the corporation from any source whatsoever.
- c. Disburse, or cause to be disbursed, the funds of the corporation as may be directed by the Board of Directors, taking proper vouchers for such disbursements.
- d. Keep and maintain adequate and correct accounts of the corporation's properties and business transactions, including accounts of its assets, liabilities, receipts, disbursements, gains and losses.
- e. Exhibit at all reasonable times the books of account and financial records to any director of the corporation, or to his or her agent or attorney, on request therefor. San Leandro Community businesses shall have similar rights of inspection as provided by action of the directors.
- f. Render to the President and Directors, whenever requested, an account of any or all of his or her transactions as Treasurer and of the financial condition of the corporation.
- g. Prepare, or cause to be prepared, and certify, or cause to be certified, the financial statements to be included in any required reports.
- h. In general, perform all duties incident to the office of Treasurer and such other duties as may be required by law, by the Articles of Incorporation of the corporation, or by these Bylaws, or which may be assigned to him or her from time to time by the Board of Directors.

## **SECTION 10. COMPENSATION**

No Director or Officer shall receive compensation or salary for their service on the Board of Directors.

## **ARTICLE 7 COMMITTEES**

### **SECTION 1. EXECUTIVE/ORGANIZATION COMMITTEE**

The Board of Directors may, by a majority vote of Directors, designate four (4) or more of its members (who may also be serving as officers of this corporation) to constitute an Executive/Organization Committee and delegate to such Committee any of the powers and authority of the Board in the management of the business and affairs of the corporation, **except** with respect to:

- a. The approval of any action which, under law or the provisions of these Bylaws, requires the approval of the majority of the Board of Directors.
- b. The filling of vacancies on the board or on any committee which has the authority of the Board.
- c. The amendment or repeal of Bylaws or the adoption of new Bylaws.
- d. The amendment or repeal or any resolution of the Board which by its express terms is not so amendable or repealable.
- e. The appointment of committees of the Board or the members thereof.
- f. The approval of any transaction to which this corporation is a party and in which one or more of the Directors has a material financial interest, except as expressly provided in Section 5233(d)(3) of the California Nonprofit Public Benefit Corporation Law.

By a majority vote of its members then in office, the Board may at any time revoke or modify any or all of the authority so delegated, increase or decrease but not below two (2) the number of its members, and fill vacancies therein from the members of the board. The Committee shall keep regular minutes of its proceedings, cause them to be filed with the corporate records, and report the same to the board from time to time as the Board may require.

### **SECTION 2. OTHER COMMITTEES AND TASK FORCES**

The corporation shall have such other committees and task forces as may from time to time be designated by resolution of the Board of Directors. Such other committees may consist of persons who are not also members of the Board. These additional committees shall act in an advisory capacity only to the Board and shall be clearly titled as "advisory/ committees or task forces.



**SECTION 3. MEETINGS AND ACTION OF COMMITTEES**

Meetings and action of committees shall be governed by, noticed, held and taken in accordance with the provisions of the Ralph M. Brown Act and these Bylaws concerning meetings of the Board of Directors, with such changes in the context of such Bylaw provisions as are necessary to substitute the committee and its members for the Board of Directors and its members, except that the time for regular meetings of committees may be fixed by resolution of the Board of Directors or by the committee. The time for special meetings of committees may also be fixed by the Board of Directors. The Board of Directors may also adopt rules and regulations pertaining to the conduct of meetings of committees to the extent that such rules and regulations are not inconsistent with the provisions of these Bylaws.

**ARTICLE 8  
EXECUTION OF INSTRUMENTS, DEPOSITS AND FUNDS**

**SECTION 1. EXECUTION OF INSTRUMENTS**

The Board of Directors, except as otherwise provided in these Bylaws, may by resolution authorize any officer or agent of the corporation to enter into any contract or execute and deliver any instrument in the name of and on behalf of the corporation, and such authority may be general or confined to specific instances. Unless so authorized, 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 monetary for any purpose or in any amount.

**SECTION 2. CHECKS AND NOTES**

Except as otherwise specifically determined by resolution of the Board of Directors, or as otherwise required by law, checks, drafts, promissory notes, orders for the payment of money, and other evidence of indebtedness of the corporation shall be signed by the Treasurer and countersigned by the President of the corporation.

**SECTION 3. DEPOSITS**

All funds of the corporation shall be deposited from time to time to the credit of the corporation in such banks, trust companies, or other depositories as the Board of Directors may select.

**SECTION 4. GIFTS**

The Board of Directors may accept on behalf of the corporation any contribution, gift, bequest, or devise for the charitable or public purposes of this corporation.

**ARTICLE 9**  
**CORPORATE RECORDS, REPORTS AND SEAL**

**SECTION 1. MAINTENANCE OF CORPORATE RECORDS**

The corporation shall keep at its principal office in the State of California and shall be available or public review consistent with the open meetings and public records sections of the Ralph M. Brown Act:

- A) Minutes of all meetings of Directors, committees of the Board and, if this corporation has members, of all meetings of members, indicating the time and place of holding such meetings, whether regular or special, how called, the notice given, and the names of those present and the proceedings thereof;
- B) Adequate and correct books and records of account, including accounts of its properties and business transactions and accounts of its assets, liabilities, receipts, disbursements, gains and losses;
- C) A record of its members, if any, indicating their names and addresses and, if applicable, the class of membership held by each member and the termination date of any membership;
- D) A copy of the corporation's Articles of Incorporation and Bylaws as amended to date, which shall be open to inspection by San Leandro Community property owners, residents businesses or the members, if any, of the corporation at all reasonable times during office hours.

**SECTION 2. CORPORATE SEAL**

The Board of Directors may adopt, use, and at will alter, a corporate seal. Such seal shall be kept at the principal office of the corporation. Failure to affix the seal to corporate instruments, however, shall not affect the validity of any such instrument.

**SECTION 3. DIRECTORS' INSPECTION RIGHTS**

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.

**SECTION 4. INSPECTION RIGHTS**

San Leandro Community members shall have the following inspection rights, for a purpose reasonably related to such person's interest as a member:

- A) To inspect and copy the record of all members' names, addresses and voting rights, at reasonable times, upon five (5) business days' prior written demand on the corporation,

which demand shall state the purpose for which the inspection rights are requested.

- B) To obtain from the Secretary of the corporation, upon written demand and payment of a reasonable charge, an alphabetized list of the names, addresses and voting rights of those members entitled to nominate and vote for the appointment of Directors as of the most recent record date for which the list has been compiled or as of the date specified by the member subsequent to the date of demand. The demand shall state the purpose for which the list is requested. The membership list shall be made available on or before the later of ten (10) business days after the demand is received or after the date specified therein as of which the list is to be compiled.
- C) To inspect at any reasonable time the books, records, or minutes of proceedings of the members or of the board or committees of the board, upon written demand on the corporation by the member, for a purpose reasonably related to such person's interests as a member.

#### **SECTION 5. RIGHT TO COPY AND MAKE EXTRACTS**

Any inspection under the provisions of this Article may be made in person or by agent or attorney and the right to inspection includes the right to copy and make extracts.

#### **SECTION 6. ANNUAL REPORT**

The Board shall cause an annual report to be furnished not later than one hundred and twenty (120) days after the close of the corporation's fiscal year to all Directors of the corporation and, if this corporation has members, to any member or delegate who requests it in writing, which report shall contain the following information in appropriate detail:

- A) The assets and liabilities, including the trust funds, of the corporation as of the end of the fiscal year;
- B) The principal changes in assets and liabilities, including trust funds, during the fiscal;
- C) The revenue or receipts of the corporation, both unrestricted and restricted to particular purposes, for the fiscal year;
- D) The expenses or disbursements of the corporation, for both general and restricted purposes, during the fiscal year;
- E) Any information required by Section 7 of this Article.

The annual report 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.

If this corporation has members, then, if this corporation receives TWENTY-FIVE THOUSAND DOLLARS (\$25,000), or more, in gross revenues or receipts during the fiscal year, this corporation shall automatically send the above annual report to all members, in such manner, at such time, and with such contents, including an accompanying report from independent accountants or certification of a corporate officer, as specified by the above provisions of this Section relating to the annual report.

#### **SECTION 7. ANNUAL STATEMENT OF SPECIFIC TRANSACTIONS TO MEMBERS**

This corporation shall mail or deliver to all Directors and any and all members a statement within one hundred and twenty (120) days after the close of its fiscal year which briefly describes the amount and circumstances of any indemnification or transaction of the following kind:

- A) Any transaction in which the corporation, or its parent or its subsidiary, was a party, and in which either of the following had a direct or indirect material financial interest:
- B) Any Director or officer of the corporation, or its parent or subsidiary (a mere common directorship shall not be considered a material financial interest); or
- C) Any holder of more than ten percent (10%) of the voting power of the corporation, its parent or its subsidiary.

The above statement need only be provided with respect to a transaction during the previous fiscal year involving more than FIFTY THOUSAND DOLLARS (\$50,000) or which was one of a number of transactions with the same persons involving, in the aggregate, more than FIFTY THOUSAND DOLLARS (\$50,000).

Similarly, the statement need only be provided with respect to indemnifications or advances aggregating more than TEN THOUSAND DOLLARS (\$10,000) paid during the previous fiscal year to any director or officer, except that no such statement need be made if such indemnification was approved by the members pursuant to Section 5238(e)(2) of the California Nonprofit Public Benefit Corporation Law.

Any statement required by this Section shall briefly describe the names of the interested persons involved in such transactions, stating each person's relationship to the corporation, the nature of such person's interest in the transaction and, where practical, the amount of such interest, provided that in the case of a transaction with a partnership of which such person is a partner, only the interest of the partnership need be stated.

If this corporation has any members and provides all members with an annual report according to the provisions of Section 6 of this Article, then such annual report shall include the information required by this Section.

**ARTICLE 10  
FISCAL YEAR**

**SECTION 1. FISCAL YEAR OF THE CORPORATION**

The fiscal year of the corporation shall begin on the December 1 and end on November 30th in each year.

**ARTICLE 11  
AMENDMENT OF BYLAWS**

**SECTION 1. AMENDMENT**

Subject to any provision of law applicable to the amendment of Bylaws of public benefit nonprofit corporations, these Bylaws, or any of them, may be altered, amended, or repealed and new Bylaws adopted as follows:

- A) Subject to the power of members, if any, to change or repeal these Bylaws under Section 5150 of the Corporations Code, by approval of the Board of Directors unless the Bylaw amendment would materially and adversely affect the rights of members, if any, as to voting or transfer, provided, however, if this corporation has admitted any members, then a Bylaw specifying or changing the fixed number of directors of the corporation, the maximum or minimum number of directors, or changing from a fixed to variable board or vice versa, may not be adopted, amended, or repealed except as provided in subparagraph (b) of this Section; or
- B) By approval of the majority action of the sitting Board of Directors;

**ARTICLE 12  
AMENDMENT OF ARTICLES**

**SECTION 1. AMENDMENT OF ARTICLES BEFORE ADMISSION OF MEMBERS**

Before any members have been admitted to the corporation, any amendment of the Articles of Incorporation may be adopted by approval of the Board of Directors.

**SECTION 2. AMENDMENT OF ARTICLES AFTER ADMISSION OF MEMBERS**

After members, if any, have been admitted to the corporation, amendment of the Articles of Incorporation may be adopted by the approval of the Board of Directors and by the approval of the members of this corporation.

**SECTION 3. CERTAIN AMENDMENTS**

Notwithstanding the above sections of this Article, this corporation shall not amend its Articles of Incorporation to alter any statement which appears in the original Articles of Incorporation of the names and addresses of the first directors of this corporation nor the name and address of its initial agent, except to correct an error in such statement or to delete either statement after the corporation has filed a "Statement by a Domestic Non-Profit Corporation" pursuant to Section 6210 of the California Nonprofit Corporation Law.

**ARTICLE 13  
PROHIBITION AGAINST SHARING CORPORATE PROFITS AND ASSETS**

**SECTION 1. PROHIBITION AGAINST SHARING CORPORATE PROFITS AND ASSETS**

No member, Director, officer, employee, or other person connected with this corporation, or any private individual, shall receive at any time any of the net earnings or pecuniary profit from the operations of the corporation, provided, however, that this provision shall not prevent payment to any such person of reasonable compensation for services performed for the corporation in effecting any of its public or charitable purposes, provided that such compensation is otherwise permitted by these Bylaws and is fixed by resolution of the Board of Directors; and no such person or persons shall be entitled to share in the distribution of, and shall not receive, any of the corporate assets on dissolution of the corporation. All members, if any, of the corporation shall be deemed to have expressly consented and agreed that on such dissolution or winding up of the affairs of the corporation, whether voluntarily or involuntarily, the assets of the corporation, after all debts have been satisfied, shall be distributed as required by the Articles of Incorporation of this corporation and not otherwise.

**ARTICLE 14  
MEMBERS**

**SECTION 1. DETERMINATION OF MEMBERS**

If this corporation makes no provision for members, then, pursuant to Section 5310(b) of the Nonprofit Public Benefit Corporation Law of the State of California, any action which would otherwise, under law or the provisions of the Articles of Incorporation or Bylaws of this corporation, require approval by a majority of all members or approval by the members, shall only require the approval of the Board of Directors.

## ARTICLE XV

### PROHIBITED TRANSACTIONS

#### SECTION 1: Loans.

Except as permitted by Section 5236 of the Code, the Corporation shall not make any loan of money or property to, or guarantee the obligation of, any Director or officer; *provided, however*, that the Corporation may advance money to a Director or officer of the Corporation or any subsidiary for expenses reasonably anticipated to be incurred in performance of the duties of such officer or Director so long as such individual would be entitled to be reimbursed for such expenses absent that advance.

#### SECTION 2: Self-Dealing Transactions.

Except as provided in Section 3, below, the Board shall not approve or permit the Corporation to engage in any self-dealing transaction. A self-dealing transaction is a transaction to which the Corporation is a party and in which one or more of its Directors has a material financial interest, unless the transaction is described in Section 5233(b) of the Code.

#### SECTION 3: Approval.

This Corporation may engage in a self-dealing transaction if the transaction is approved by a court or by the Attorney General. This Corporation also may engage in a self-dealing transaction if the Board determines, before the transaction, that (1) the Corporation is entering into the transaction for its own benefit; (2) the transaction is fair and reasonable to the Corporation at the time; and (3) after reasonable investigation, the Board determines that it could not have obtained a more advantageous arrangement with reasonable effort under the circumstances. Such determinations must be made by the Board in good faith, with knowledge of the material facts concerning the transaction and the interest of the Director or Directors in the transaction, and by a vote of a majority of the Directors then in office, without counting the vote of the interested Director or Directors.

## ARTICLE XVI

### CONSTRUCTION AND DEFINITIONS

Unless the context otherwise requires, the general provisions, rules of construction, and definitions contained in the Code as amended from time to time shall govern the construction of these Bylaws. Without limiting the generality of the foregoing, the masculine gender includes the feminine and neuter, the singular number includes the plural and the plural number includes the singular, and the term "person" includes a corporation as well as a natural person.

## ARTICLE XVII

### CONFLICT OF INTEREST AND COMPENSATION APPROVAL POLICIES

#### SECTION 1. PURPOSE OF CONFLICT OF INTEREST POLICY

The purpose of this conflict of interest policy is to protect this tax-exempt corporation's interest when it is contemplating entering into a transaction or arrangement that might benefit the private interest of an officer or Director of the corporation or any "disqualified person" as defined in Section 4958(f)(1) of the Internal Revenue Code and as amplified by Section 53.4958-3 of the IRS Regulations and which might result in a possible "excess benefit transaction" as defined in Section 4958(c)(1)(A) of the Internal Revenue Code and as amplified by Section 53.4958 of the IRS Regulations. This policy is intended to supplement but not replace any applicable state and federal laws governing conflict of interest applicable to nonprofit and charitable organizations.

#### SECTION 2. DEFINITIONS

a. Interested Person. Any Director, principal officer, member of a committee with governing Board delegated powers, or any other person who is a "disqualified person" as defined in Section 4958(f)(1) of the Internal Revenue Code and as amplified by Section 53.4958-3 of the IRS Regulations, who has a direct or indirect financial interest, as defined below, is an interested person.

b. Financial Interest. A Director has a financial interest if the person has, directly or indirectly, through business, investment, or family:

- (1) an ownership or investment interest in any entity with which the corporation has a transaction or arrangement, or
- (2) a compensation arrangement with the corporation or with any entity or individual with which the corporation has a transaction or arrangement, or
- (3) a potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the corporation is negotiating a transaction or arrangement.

Compensation includes direct and indirect remuneration as well as gifts or favors that are not insubstantial.

A financial interest is not necessarily a conflict of interest. Under Section 3, paragraph B, a person who has a financial interest may have a conflict of interest only if the appropriate governing Board or committee decides that a conflict of interest exists.



### **SECTION 3. CONFLICT OF INTEREST AVOIDANCE PRODEDURES**

a. Duty to Disclose.

In connection with any actual or possible conflict of interest, an interested person must disclose the existence of the financial interest and be given the opportunity to disclose all material facts to the Directors and members of committees with governing Board delegated powers considering the proposed transaction or arrangement.

b. Determining Whether a Conflict of Interest Exists.

After disclosure of the financial interest and all material facts, and after any discussion with the interested person, he/she shall leave the governing Board or committee meeting while the determination of a conflict of interest is discussed and voted upon. The remaining Board or committee members shall decide if a conflict of interest exists.

c. Procedures for Addressing the Conflict of Interest.

An interested person may make a presentation at the governing Board or committee meeting, but after the presentation, he/she shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement involving the possible conflict of interest.

The chairperson of the governing Board or committee shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.

After exercising due diligence, the governing Board or committee shall determine whether the corporation can obtain with reasonable efforts a more advantageous transaction or arrangement from a person or entity that would not give rise to a conflict of interest.

If a more advantageous transaction or arrangement is not reasonably possible under circumstances not producing a conflict of interest, the governing Board or committee shall determine by a majority vote of the disinterested Directors whether the transaction or arrangement is in the corporation's best interest, for its own benefit, and whether it is fair and reasonable. In conformity with the above determination, it shall make its decision as to whether to enter into the transaction or arrangement.

d. Violations of the Conflicts of Interest Policy.

If the governing Board or committee has reasonable cause to believe a Director or committee member has failed to disclose actual or possible conflicts of interest, it shall inform the individual of the basis for such belief and afford the member an opportunity to explain the alleged failure to disclose.

If, after hearing the member's response and after making further investigation as warranted by the circumstances, the governing Board or committee determines the member has failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

#### **SECTION 4. RECORDS OF BOARD AND BOARD COMMITTEE PROCEEDINGS**

The minutes of meetings of the governing Board and all committees with Board delegated powers shall contain:

- a. The names of the persons who disclosed or otherwise were found to have a financial interest in connection with an actual or possible conflict of interest, the nature of the financial interest, any action taken to determine whether a conflict of interest was present, and the governing Board's or committee's decision as to whether a conflict of interest in fact existed.
- b. The names of the persons who were present for discussions and votes relating to the transaction or arrangement, the content of the discussion, including any alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection with the proceedings.

#### **SECTION 5. STATEMENTS**

Each Director, principal officer, and member of a committee with governing Board-delegated powers may sign a statement upon election that affirms such person:

- a. has received a copy of the conflicts of interest policy,
- b. has read and understands the policy,
- c. has agreed to comply with the policy, and
- d. understands the corporation is charitable and in order to maintain its federal tax exemption it must engage primarily in activities which accomplish one or more of its tax-exempt purposes.

#### **SECTION 6. PERIODIC REVIEWS**

To ensure the corporation operates in a manner consistent with charitable purposes and does not engage in activities that could jeopardize its tax-exempt status, periodic reviews shall be

conducted. The periodic reviews shall, at a minimum, include the following subjects:

- a. Whether compensation arrangements and benefits are reasonable, based on competent survey information, and the result of arm's-length bargaining.
- b. Whether partnerships, joint ventures, and arrangements with management organizations conform to the corporation's written policies, are properly recorded, reflect reasonable investment or payments for goods and services, further charitable purposes, and do not result in inurement, impermissible private benefit, or in an excess benefit transaction.

#### **SECTION 8. USE OF OUTSIDE EXPERTS**

When conducting the periodic reviews as provided for in Section 6, the corporation may, but need not, use outside advisors. If outside experts are used, their use shall not relieve the governing Board of its responsibility for ensuring periodic reviews are conducted.

#### **CERTIFICATE OF SECRETARY**

I, the undersigned, certify that I am the currently elected and acting Secretary of San Leandro Improvement Association, a California nonprofit corporation, and the above Bylaws, consisting of 24 pages, are the Bylaws of the Corporation as adopted at a meeting of the Board held in October 10<sup>th</sup>, 2013.

Dated: October 10<sup>th</sup>, 2013

Executed at San Leandro, California

Robert Jones,  
Secretary



# City of San Leandro

Meeting Date: March 3, 2014

## Minute Order - Council

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**File Number:** 14-053

**Agenda Section:** CONSENT CALENDAR

**Agenda Number:**

**TO:** City Council

**FROM:** Chris Zapata  
City Manager

**BY:** Cynthia Battenberg  
Community Development Director

**FINANCE REVIEW:** Not Applicable

**TITLE:** MOTION Nominating a Member of City Council to Serve on the Board of Directors of the San Leandro Improvement Association (nominates a Councilmember to the governing body of the Downtown San Leandro Community Benefit District)

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