RR
10/15/15
Item No. 18

AN ORDINANCE 2015-10-15-0880

APPROVING THE FISCAL YEAR 2016 AND AMENDED AND RESTATED BYLAWS FOR THE SAN ANTONIO ECONOMIC DEVELOPMENT CORPORATION ("SAEDC").

* * * * * *

WHEREAS, the City of San Antonio (the "City") established the San Antonio Economic Development Corporation (the "SAEDC"), a Type B corporation as authorized by the Development Corporation Act, Title 12, Subtitle C1, as amended, Texas Local Government Code, for the purpose of undertaking certain economic development projects approved by the City's governing board; and

WHEREAS, in accordance with the SAEDC Bylaws, an annual budget must be approved by the SAEDC Board of Directors and approved by the City Council prior to adoption; and

WHEREAS, City Council approval is also required to amend the SAEDC Bylaws; and

WHEREAS, SAEDC staff has created and prepared the Fiscal Year 2016 annual budget and has made recommendations to amend the SAEDC Bylaws to reflect changes made to the City Council Committees and to appoint the Mayor as the SAEDC Chair; and

WHEREAS, the Fiscal Year 2016 budget and amendments to the Bylaws were approved by the SAEDC Board of Directors on September 24, 2015; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The SAEDC Fiscal Year 2016 Budget and amended and restated Bylaws, set out in Attachments I and II, are approved and adopted by the City Council in accordance with the SAEDC Bylaws.

SECTION 2. This Ordinance shall become effective immediately upon its passage by eight (8) affirmative votes of the City Council.

PASSED AND APPROVED this 15th day of October 2015.

M A Y O R
For Ivy R. Taylor

ATTEST:

Leticia M. Vacek
City Clerk

APPROVED AS TO FORM:

Martha G. Sepeda
Acting City Attorney

Agenda Item:	**18 (in consent vote: 5, 6, 8, 9, 10, 11A, 11B, 12, 15, 16, 17, 18, 19, 20, 22A, 22B)**
Date:	10/15/2015
Time:	10:51:02 AM
Vote Type:	Motion to Approve
Description:	An Ordinance approving the proposed FY 2016 Budget, and Amended and Restated Bylaws for the San Antonio Economic Development Corporation. [Lori Houston, Assistant City Manager; Rene Dominguez, Director, Economic Development]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy R. Taylor	Mayor		x				
Roberto C. Treviño	District 1		x				x
Alan Warrick	District 2		x			x	
Rebecca Viagran	District 3	x					
Rey Saldaña	District 4	x					
Shirley Gonzales	District 5	x					
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x				
Michael Gallagher	District 10		x				

Attachment I

PROPOSED FY 2016 SAEDC BUDGET

As of September 25, 2015

Revenues:	2016 Proposed Budget	Notes
Projected Beginning Balance:	$ 81,846	
COSA General Fund – Admin Support	200,000	
COSA Grant for SAEDC Investment Fund2	500,000	
Rental Fees– T3DC (2 months)	10,800	
Total	**$ 792,646**	
Expenses:		
SAEDC Investment Fund[2]	500,000	
Lease Expense for InCube & T3DC (2 months)	45,153	
Executive Director (ED) Salary	80,738	
Expenses incurred by ED[1]	15,000	Note 1
Event Sponsorships[1]	20,000	Note 1
Professional Services[1]	20,000	Note 1
Insurance[1]	1,909	Note 1
Audit Expenses[1]	12,000	Note 1
Legal Expenses[1]	45,000	Note 1
Bank Charges[1]	350	Note 1
Total Expenses	**$ 740,150**	
Projected Ending Balance:	**$ 52,496**	

Note 1: The Executive Director is authorized to move funds between discretionary accounts as needed.
Note 2: City Council approved $500,000 in the City's FY14 Budget for the SAEDC Investment Fund.

Prepared by EDD Staff

Attachment II

AMENDED AND RESTATED
BYLAWS
OF
SAN ANTONIO ECONOMIC DEVELOPMENT CORPORATION

WHEREAS, on May 12, 2010, the City Council of San Antonio approved the Bylaws and Certificate of Formation authorizing the creation of the San Antonio Economic Development Corporation ("SAEDC" or the "Corporation), and the Certificate of Formation for the Corporation was filed with the Texas Secretary of State on June 15, 2010; and;

WHEREAS. The Board of Directors of the Corporation desires to amend and restate the Bylaws as set forth in these Amended and Restated Bylaws of the San Antonio Economic Development Corporation.

NOW, THEREFORE, in accordance with Section 11.02 of the Bylaws, from and after the Effective Date hereof the Bylaws shall be superseded and replaced in their entirety with these Amended and Restated Bylaws of the San Antonio Economic Development Corporation, and thereafter all references to the Bylaws shall be deemed to refer to these Amended and Restated Bylaws.

Accordingly these Amended and Restated Bylaws of the San Antonio Economic Development Corporation govern the affairs of the San Antonio Economic Development Corporation, a public instrumentality and a nonprofit corporation created under the Development Corporation Act, Title 12, Subtitle C1, as amended, Texas Local Government Code, starting at section 501.001 *et seq* (the "Act"), and other applicable laws.

Article One. Purpose

1.01 Purpose of Corporation. The Corporation is organized by the City of San Antonio, Texas (the "City") to promote, assist, and enhance economic development activities for the City as provided by the Act. The Corporation has no members and is a non-stock corporation.

Article Two. Registered Office and Agent

2.01 Place of Office. The registered office of the Corporation shall be maintained at the Office of the City Clerk, 100 Military Plaza, San Antonio, Bexar County, Texas 78205, where the Corporation shall maintain a registered office and the registered agent as provided in the Act. The Board of Directors (the "Board") is authorized to establish additional offices and to change the location of any office of the Corporation, including the registered office, which may be changed at any time, with the consent of the City Council of the City ("City Council", by the Board but shall at all times be within the city limits of the City.

Article Three. Board of Directors

3.01 Management of the Corporation and General Powers. The affairs of the Corporation shall be managed by a Board of Directors appointed by the San Antonio City Council (the "City Council"). All voting rights shall be vested solely in the Board, whose members shall serve without compensation. In addition to the powers and authorities expressly conferred upon them by these Bylaws, the Board may, with the approval of the City Council,

exercise all such powers of the Corporation and do all lawful acts and things as are permitted by the Act or by the Corporation's Certificate of Formation.

3.02 Composition. The Board shall be composed of seven (7) Directors (the "Directors") who shall serve at the pleasure of the City Council and shall include the City's Mayor, the Chair of the City Council Economic and Human Development Committee, the Chair of the City Council Transportation, Technology and Utilities Committee and the City Manager of the City, all serving as voting members of the Board in an ex officio capacity. If the City subsequently revises the names and/or functions of either or both of the two above referenced City Council Committees, then the Chairs of the two City Council Committees designated by the Mayor as being primarily responsible for policies and programs related to economic development and infrastructure supporting economic development shall serve as voting ex officio members of the Board in lieu of the Chair(s) of the previously referenced City Council Committee(s) whose name(s) and/or function(s) were revised. Three Board members must be persons who are not employees or officers of the City or members of the City Council and may be selected based upon their interest in the work of the Corporation, special expertise, and civic service. All Directors must be residents of the City. Any director who is a member of the City Council or serves as the City Manager when appointed shall cease to be a director at the time such person ceases to be a member of the City Council or the City Manager.

3.03 Terms of Office. Three of the initial members of the Board shall be appointed to terms ending May 31, 2011 and four of the initial members of the Board shall be appointed to terms ending May 31, 2012. After the initial appointments, Board members shall be appointed for a term of two (2) years, expiring on May 31 of odd-numbered and even-numbered years, respectively. Directors may be appointed to succeed themselves.

3.04 Vacancies. In accordance with the provisions of the City Code Chapter 2, Article IX, all vacancies occurring in the Board shall be filled by appointment by the City Council, for the remainder of the unexpired term of the member vacating the position.

3.05 Board Attendance and Removal. Unless special consideration is granted by the Board to accommodate Directors who are temporarily inactive for good cause, any director other than the Mayor, City Council members and the City Manager of the City, who is absent from three consecutive regular or special meetings of the Board may, by vote of the Board, be removed as a member of the Board. The City Council may also remove a director at any time with or without cause.

3.06 Duties of Directors. Directors shall exercise ordinary business judgment in managing the affairs of the Corporation. Directors shall act as fiduciaries with respect to the interests of the citizens of the City. In acting in their official capacity as Directors of this Corporation, Directors shall act in good faith and take actions they reasonably believe to be in the best interests of the Corporation and that are not unlawful. In all other instances, the Board shall not take any action that they should reasonably believe would be opposed to the Corporation's best interests or would be unlawful. A director shall not be liable if the director acts in good faith relying on written financial and legal statements provided by an accountant or attorney retained by the Corporation.

3.07 Acts Requiring City Council Consent.

a. To the extent the following actions involve the expenditure of City Funds or interest earned from the Corporation's investment of City funds, the consent of the City Council shall be required for the Board to:

i. enter into contracts;

ii. sell, lease, exchange, or mortgage of any of the property and assets of the Corporation; or

iii. commit corporate funds of the Corporation;

b. The consent of the City Council shall be required to:

i. amend, alter or repeal the Corporation's Certificate of Formation or Bylaws;

ii. adopt a plan of merger or a plan of consolidation with another corporation;

iii. adopt a plan for the distribution of the assets of the Corporation;

iv. issue bonds, notes and other forms of debt instruments.

3.08 Other Limitations. Any administrative expenditure in excess of $50,000 by the Corporation for a project must first be submitted to and approved by the City Council.

3.09 Prohibited Acts. As long as the Corporation is in existence, no director, officer, of committee member of the Corporation shall:

a. Do any act in violation of the Bylaws or a binding obligation of the Corporation;

b. Do any act with the intention of harming the Corporation nor any of its operations;

c. Do any act that would make it impossible or unnecessarily difficult to carry on the intended or ordinary business of the Corporation;

d. Receive an improper personal or business benefit from the operation of the Corporation;

e. Use the assets of the Corporation, directly or indirectly, for any purpose other than carrying on the business of the Corporation;

f. Wrongfully transfer or dispose of Corporation property, including tangible property such as good will;

g. Use the name of the Corporation (or any substantially similar name) or any trademark or trade name adopted by the Corporation, except on behalf of the Corporation, in the ordinary course of the Corporation's business.

h. Disclose any of the Corporation business practices, trade secrets, or any other information not generally known to the business community to any person not authorized to receive it.

i. Commit Corporation funds without the prior approval of the Board.

j. Breach any provisions of the City's Ethics Code. .

3.10 **City Code and Conflicts of Interest**. Directors shall be subject to the City's Ethics Code and shall be "City Officials" as that term is defined in the City's Ethics Code as well as the provisions of Chapters 171 and 176 of the Texas Local Government Code. The Directors shall also be subject to the City's Codified Board and Commissions Rules.

Article Four. Officers

4.01 Officers. The officers of the Corporation shall be the Mayor serving as President of the Board, a Vice President and a Secretary of the Board. Additional officers, including one or more Vice Presidents may be elected. Any two or more offices may be held by the same person except the offices of President and Secretary may not be held by the same person. The officers shall have all powers specified in the Bylaws, as amended from time to time, and all powers authorized under the Act and the Texas Business Organizations Code or its successor statute.

4.02 Election and Terms of Office. The initial officers, except the President, shall be elected by the Board as soon as practicable. The Mayor will serve as President of the Board and therefore shall not be elected by the Board. Thereafter, officers of the Corporation (other than President) shall be elected annually at the first board meeting of each calendar year and assume their duties immediately. If the election of officers is not held at the first meeting of the calendar year, it shall be held as soon thereafter as conveniently possible. Each officer shall hold office until a successor is duly elected and qualified. Vacancies in officer positions may be filled by the Board for their unexpired position of the officer's term.

4.03 President. The President shall be the chief executive officer of the Corporation. The President, in accordance with these Bylaws, shall generally supervise and control all of the business and affairs of the Corporation and shall preside at all meetings of the Board. The President shall perform all duties incident to the office and other duties prescribed from time to time by the Board. The President may execute deeds, mortgages, bonds, contracts, or other instruments that the Board has authorized to be executed. The President shall appoint the members of all standing and other committees unless composition is otherwise provided for in the Bylaws, and shall appoint all committee chairs.

4.04 Secretary. The Secretary shall be the custodian of the corporate records. The Secretary shall record and keep or cause to be recorded and kept all votes and minutes of the meetings of the Board. The Secretary shall further give or cause to be given notice of all meetings of the Board and its committees, and shall perform such other duties as may be prescribed by the Board or President.

4.05 Vice President. If elected, any Vice President shall perform such duties as assigned by the Board or the President. In the absence of the President, or if the President is unable or refuses to act, the Vice President with the most seniority on the Board shall perform the duties of President and have all the powers and be subject to all the restrictions of that office.

Article Five. Staff

5.01 Independent Contractors. The Board may enter into contracts with or engage independent contractors to provide bookkeeping, accounting, legal, or other professional services to the Corporation without obtaining approval of the City Council.

5.02 Employment. The Board may not employ any person as an employee unless the position for which the person is employed has been approved by the City Council prior to the employment of the person.

5.03 Executive Director. The Deputy City Manager or Assistant City Manager responsible for the City's Economic Development Department or such other person as may be recommended by the City Manager and approved by the Board shall serve as the Executive Director and shall be the chief administrative officer of the Corporation. The Executive Director shall be responsible for policy and program implementation and for all operations of the Corporation, including personnel and their work assignments and shall compile and submit to the Board regular reports and recommendations regarding the programs, policies, and business affairs of the Corporation. The Executive Director shall be a non-voting, ex-officio member of the Board and of any committees created by the Board.

5.04 **Chief Financial Officer.** The City's Chief Financial Officer shall be the Corporation's Chief Financial Officer. The Chief Financial Officer shall see that proper and accurate accounts are kept of the financial condition of the Corporation, that proper books are maintained for their orderly entry, ensure that the financial policies adopted by the Board are duly followed, and that an independent audit is made of the accounts of the Corporation at the end of each fiscal year. Disbursements of the funds of the Corporation shall be made in a manner consistent with the guidelines approved by the Board.

Article Six. Committees

6.01 Committees Authorized. The Board may establish and delegate specified authority to additional standing and ad hoc committees from time to time. A committee may include persons who are not Directors of the Corporation. The establishment of a committee shall not relieve the Board, or any individual director, of any responsibility imposed by the Bylaws or otherwise imposed by law.

The Board may establish qualifications for membership on a committee, but the chair and all members of each committee shall be appointed by the President. No committee may undertake any action not specifically delegated to it by the Board.

In addition, the Board may authorize subcommittees from time to time and charge them with clear and specific duties. Subcommittees will operate under the general rules governing the Board committees and the general oversight of the committee chair and of the President.

6.02 Committee Terms. The members of each standing committee shall serve until successors are appointed by an incoming President, unless the committee is terminated or a member is removed, resigns, or ceases to qualify as a member. Vacancies on committees may be filled in the same manner as the original appointment.

6.03 Rules. Each committee or subcommittee may adopt rules for its own operation not inconsistent with the Bylaws or with rules adopted by the Board.

Article Seven. Meetings

7.01 Regular Meetings. The Board shall provide for at least one annual meeting which shall be held during January or February of each calendar year. The meeting shall be held at a time and place convenient to Board members and designated by the Board President. All meetings of the Board shall be held at a location within the boundaries of the City. Other meetings shall be held at times and dates determined by the Board.

7.02 Special Meetings. Special meetings of the Board may be called by the President of the Corporation, by the Mayor of the City, or upon written request of at least three Directors. Any notice of a special meeting shall contain a summary of the business or proposals to be brought before the special meeting. Should a director's request for a special meeting be submitted to the President by three Directors, the President shall determine and notify all Directors in writing of the date, time, and place of the special meeting.

7.03 Notice. Written or printed notice of each meeting of the Board shall be delivered to each director by mail, fax, electronic mail, in person, or other means not less than three days before the date of the meeting. If mailed, a notice shall be deemed to be delivered when deposited in the United States mail addressed to the person at his or her address as it appears in the records of the Corporation, with postage paid. The notice shall state the place, day, time, and subjects of the meeting. Attendance of a director at a meeting shall constitute a waiver of notice of that meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

7.04 Quorum. Four Directors currently serving shall constitute a quorum for the transaction of business at any meeting of the Board.

7.05 Action of Board. The vote of a majority of the Directors present and voting at a meeting at which a quorum is present shall be sufficient to constitute the act of the Board.

7.06 Proxies. A director may not vote by proxy.

7.07 Open Meetings. All meetings and deliberations of the Board shall be called, convened, held, and conducted in accordance with the Texas Open Meetings Act, Section 551.001, et seq., Texas Government Code, as amended.

Article Eight. Corporate Activities

8.01. Annual Report to City Council. The Board shall prepare and submit to the City Council annually a performance report detailing the Board's achievements and any projects approved during the course of the previous fiscal year.

8.02 Annual Corporate Budget. In accordance with the City of San Antonio's annual budget process, the Corporation shall submit to the City a proposed budget of expected revenues and proposed expenditures for the next ensuing fiscal year. The budget shall contain such classifications and shall be in such form as may be prescribed from time to time by the City Council. The Board shall discuss and may request modifications to the budget, if necessary, prior to submitting to the City Council. The budget is not effective until adopted by the City Council.

8.03 Deposit and Investment of Corporate Funds. All funds of the Corporation shall be deposited, secured, and/or invested in the manner provided for the deposit, security, and

for investment of the public funds of the City of San Antonio or as otherwise required by applicable law or under the terms of any bonds, notes, or other debt instruments issued by the Corporation. No authority to invest funds shall be implied without the written approval of an investment criterion by the City Council. The Board shall designate the accounts and depositories to be created and designated for such purposes, and the methods of withdrawal of funds therefrom for use by and for the purposes of the Corporation upon the signature of its treasurer and such other members as the Board shall designate. The Board shall also provide for the reconciliation and investment of such funds and accounts. If agreed to by separate contract between the City and the Corporation, the accounts, reconciliation, and investment of such funds and accounts may be performed by the City. The Corporation shall pay reasonable compensation for such services to the City.

8.04 Contracts. The Board may, by official action as specified herein, authorize any officer or agent of the Corporation to enter into a contract or execute and deliver any instrument in the name of and on behalf of the Corporation. This authority may be limited to a specific contract or instrument or it may extend to any number and type of possible contracts and instruments. In the absence of authority to the contrary, the Executive Director is authorized to execute Board-approved contracts on behalf of the Corporation.

8.05 Gifts. The Board may accept on behalf of the Corporation any gift or bequest provided for the general purposes of or for any special purpose of the Corporation. Special funds shall include all funds from government contracts and gifts designated by a donor for special purposes. All other funds shall be general funds of the Corporation.

Article Nine. Books. Records. Audits

9.01 Maintenance of Records. The Corporation shall keep and properly maintain, in accordance with generally accepted accounting principles, complete books, records, accounts, and financial statements pertaining to its corporate funds, activities, and affairs. In addition to proper financial records, the Corporation shall keep correct and complete minutes of all Board and committee meetings and all records required by the City, by contracting agents, or by funding sources.

9.02 Compliance with State Law. All records shall be kept and administered in accordance with the Public Information Act, Section 552.001, et seq., Texas Government Code, as amended.

9.03 Inspection. Any member of the City Council of the City and any director or officer of the Corporation may inspect and receive copies of all books and records of the Corporation required to be kept by the Bylaws. Any person entitled to inspect and copy the Corporation's books and records may do so through his or her attorney or other fully authorized representative. The Board may establish reasonable fees for copies of the Corporation's books and records.

9.04 Audits. The Corporation shall cause its books, records, accounts, and financial statements, and all other activities for the previous fiscal year, to be audited at least once each fiscal year by an outside independent certified public accounting firm selected by the Corporation. Each audit shall be prepared and submitted annually to the Board and to the San Antonio City Council. Any such audit shall be performed at the expense of the Corporation.

Article Ten. Fiscal Year

10.1. The fiscal year of the Corporation shall run concurrently with the fiscal year of the City, beginning on the first day of October and ending on the last day of September in each year.

Article Eleven. Effective Date, Amendments to Bylaws

11.01 Effective Date. These Amended and Restated Bylaws shall become effective upon the occurrence of the following events:

a. the approval of these Amended and Restated Bylaws by City Council; and

b. the adoption of these Amended and Restated Bylaws by the Board.

11.02 Amendments. The Board, by the affirmative vote of a majority of the Board, may alter, amend, or repeal the Bylaws or adopt new Bylaws at any regular meeting, or any special meeting provided that notice be given not less than three days prior to such meeting and that such notice contain a copy of the proposed amendment or amendments. Said amendments shall be effective only upon approval by the San Antonio City Council.

11.03 Legal Construction. If any Bylaw provision is held to be invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability shall not affect any other provision and the Bylaws shall be construed as if the invalid, illegal, or unenforceable provision had not been included in the Bylaws.

Article Twelve. Indemnification and Insurance

12.01 Status of Corporation. As provided in the Act, the Corporation is, for the purposes of the Texas Tort Claims Act (Subchapter A, Chapter 101, Texas Civil Practice and Remedies Code), a governmental unit and its actions are governmental functions.

12.02 Corporation to Indemnify. The Corporation shall indemnify any director or officer or former director or officer of the Corporation against judgment, penalties (including excise and similar taxes), fines, settlements, and reasonable expenses, including court costs and attorneys' fees actually incurred by such person in connection with any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, arbitrative, or investigative, any appeal in such action, suit, or proceeding, and any inquiry or investigation that could lead to such an action, suit, or proceeding, in which such person was, or is threatened, to be named defendant or respondent because of being or having been such director or officer or because of serving or having served in such capacity at the request of the Corporation, in which case indemnification shall be limited to reasonable expenses actually incurred by the person in connection with such action, suit, or proceeding, if the person (1) conducted himself in good faith, (2) believed, in the case of conduct in his official capacity as director or officer of the Corporation, that his conduct was in the Corporation's best interest, and, in all other cases, that his conduct was at least not opposed to the Corporation's best interest, and (3) in the case of any criminal proceeding, had no reasonable cause to believe his conduct was unlawful.

Such person may not be indemnified for obligations resulting from such action, suit, or proceeding in which the person is found liable on the basis that personal benefit was improperly

received by him, whether or not the benefit resulted from an action taken in the official capacity of the person; provided, however, that nothing in this Article shall be construed to limit the protection or the rights afforded any director or officer or former director or officer entitled to indemnity under the Corporation's articles of incorporation or by laws (as either may be amended from time to time) or under any agreement, insurance policy, or vote of the Board, or otherwise. In this Article, "official capacity" shall, when used with respect to a director, mean the office of director in the Corporation, and shall, when used with respect to a person other than a director, mean the elective or appointive office in the Corporation held by the officer. Indemnification in all cases not provided for in this Article shall be governed by the laws of the State of Texas, as they may be amended and in effect from time to time.

12.03 Corporation May Provide Insurance. The Corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, or agent of the Corporation to insure such person against any liability asserted against said person by reason of such person being or having been a director, officer, employee, or agent of the Corporation. The premiums for such insurance shall be paid by the Corporation.

Article Thirteen. Parliamentary Authority

13.01 Robert's Rules of Order. Robert's Rules of Order Newly Revised, shall be the parliamentary authority for all matters of procedure not specifically covered by the Bylaws or any specific rules of procedure adopted by the Board.

Article Fourteen. Dissolution of the Corporation

14.01 Non-Profit Corporation. The Corporation is a nonprofit corporation. Upon dissolution at the direction of the City Council, all of the Corporation's assets shall be distributed to the City.