

# SAN BRUNO

## Community Foundation

### *Board of Directors*

Nancy A. Kraus, *President* • Frank Hedley, *Vice President* • Emily Roberts, *Secretary* • Ben Cohn, *Treasurer*  
Patricia Bohm • John P. McGlothlin • Regina Stanback Stroud  
Leslie Hatamiya, *Executive Director*

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## AGENDA

### SAN BRUNO COMMUNITY FOUNDATION

### Special Meeting of the Board of Directors

**April 13, 2016**  
**5:30 p.m.**

#### **Meeting Location:**

**San Bruno City Hall, Room 101, 567 El Camino Real, San Bruno**

In compliance with the Americans with Disabilities Act, individuals requiring reasonable accommodations or appropriate alternative formats for notices, agendas, and records for this meeting should notify us 48 hours prior to meeting. Please call the City Clerk's Office at 650-616-7058.

#### **1. Call to Order/Welcome**

#### **2. Roll Call**

#### **3. Conduct of Business**

- a. Adopt Resolution Adopting the San Bruno Community Foundation's Amended and Restated Bylaws

- 4. Public Comment:** Individuals are allowed three minutes, groups in attendance, five minutes. If you are unable to remain at the meeting, contact the President to request that the Board consider your comments earlier. It is the Board's policy to refer matters raised in this forum to staff for research and/or action where appropriate. The Brown Act prohibits the Board from discussing or acting upon any matter not agendaized pursuant to State Law.

#### **5. Adjourn**

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### Memorandum

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**DATE:** April 12, 2016

**TO:** Board of Directors, San Bruno Community Foundation

**FROM:** Leslie Hatamiya, Executive Director

**SUBJECT:** Resolution Approving Amended and Restated Bylaws

At the Board's Regular Meeting on April 6, 2016, the Board considered amendments to the Foundation's Bylaws, which were originally approved by the City Council on October 21, 2013. At the time of adoption, the Foundation was just an idea, without Board members yet appointed or employees yet hired. Now that the Foundation has been fully functioning with a Board of seven, an Executive Director, and an office, the Ad Hoc Committee on Bylaws and Corporate Governance Policy Revisions was tasked with reviewing the Bylaws to ensure they fully support the Foundation's current operations.

On April 6, during the Board's discussion of the amendments to the Bylaws, Vice President Frank Hedley raised a question regarding Article V, Section 6, and term limits for Board members who were originally appointed to serve a two-year term. Board Member John McGlothlin raised questions – some substantive, some technical – about several suggested amendments and other provisions throughout the document. Rather than trying to address each of these important questions at the meeting, the Board decided to send the Bylaws back to the Committee and staff for further review, taking into account Vice President Hedley and Board Member McGlothlin's points.

After the meeting, Board Member McGlothlin provided written comments that elaborated on his oral comments at the meeting. City Attorney Marc Zafferano and I reviewed the comments and then discussed them with Board Member McGlothlin. We responded to his questions, in some instances better clarifying for him why certain amendments were being proposed, and in other instances editing sections to address the issues he raised. I also consulted with our nonprofit counsel at the NEO Law Group to ensure that the changes are consistent with nonprofit law. Upon review of the entire document, outside counsel flagged a few other issues, which the current draft addresses.

Two versions of the Amended and Restated Bylaws are attached: (1) a clean version with no editing markings, and (2) redlined version showing changes from the original Bylaws. In the redline version, changes made since the draft considered at the April 6 meeting are highlighted in yellow. These changes are explained as follows and are responsive to the points raised by Vice President Hedley and Board Member McGlothlin:

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Article II, Section 1	As to the question of whether language could be inserted so that if the Foundation changes its office location, the Bylaws do not have to be amended, outside counsel advised that we do not have to include a street address; we can state that the principal office will be “fixed and located in the City of San Bruno, California.”
Article V, Section 3(c)	There was a concern that the proposed amendment – that “a non-resident Director shall not be removed solely to comply” with the requirement that a majority of Directors be residents of San Bruno – was worded in a way that was telling the City Council what it can or cannot do with regard to Board appointments. The change from “shall” to “need” expresses that the City Council has the discretion not to remove – but is not prohibited from removing – a non-resident Director to comply with the residency requirement – for example, when a San Bruno resident Director resigns mid-term from the Board.
Article V, Section 4(a)	Directors cannot receive compensation for their services per Section 9, so this change reflects that provision.
Article V, Section 5	In our discussions regarding Article XVI, we realized that the City Council’s two powers that are independent actions (rather than approval of Foundation Board actions) are the designation and removal of Directors. As a result, the changes in this section make the removal power more explicit.
Article V, Section 6	We were asked for clarification regarding the suggested amendment with regards to Directors who were originally appointed to two-year terms. The new change clarifies that a Director who has served a two-year term followed by a four-year term will be “termed out.”
Article V, Section 7	Changes in this section are the result of discussions with outside counsel that came about as we discussed changes to Article XVI. Subsections (b) and (c) are consolidated in order to make them consistent and in line with California Corporations Code Section 5221.
Article VI, Section 3	It was pointed out that the Foundation’s principal place of business is not the appropriate venue for the annual

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meeting. The change requires the annual meeting to be held in San Bruno but allows flexibility for the exact location within City limits.

Article VIII, Section 1      The insertion clarifies that the Executive Director may not hold any other office.

Article IX, Section 5      The insertion allows the Executive Director to be excused from attending a Board or committee meeting.

Article X, Section 3      After outside counsel suggested including a reference to Corporations Code Section 5233 to this section, the City Attorney and I concluded that we needed to be clearer about the two conflict of interest standards that apply to the Foundation Board – California Government Code Section 1090 (which applies to public entities) and Corporations Code Section 5233 (which applies to nonprofits). The change in this section clarifies the two standards.

Article XII, Section 3      We were asked if this section is consistent with the requirement in Article XIII, Section 4, that the Foundation retain an independent auditor to conduct annual independent audits in accordance with the Supervision of Trustees and Fundraisers for Charitable Purposes Act. We sought advice from outside counsel on this question, who clarified that the annual report requirement in Article XII, Section 3, is the result of the requirement in the California Corporations Code that nonprofit public benefit corporations send an annual report with certain specified information to the Board annually. This is separate and distinct from the requirement in the California Government Code that any California nonprofit that has revenues of \$2 million or more in a year prepare audited financials using an independent CPA. The second set of edits in this section track the language in the Corporations Code to ensure compliance with the annual report requirements. The first change in the section – from 120 days to 150 days for sending the annual report – enables the Foundation to complete its audit by November (the desired timeline to file tax returns by the deadline) and is in compliance with the annual report requirements in the Corporations Code.

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#### Article XVI

A question was raised, given the significant deliberation by the City Council over these Bylaws in 2013, whether the change in terminology from “reserved powers” to “approval of the City Council” would be acceptable to the current City Council. City Attorney Zafferano and City Manager Connie Jackson confirmed they had reviewed the change and were comfortable that “approval” accurately reflects the City Council’s role (“reserved powers” implies a more active role in each item (e.g., the drafting of the any Bylaws amendments, the annual budget, or the grant and investment policies), with a correlating level of liability). To make it clear that the City Council’s power to designate and remove Directors is an independent action that goes beyond approval, we deleted (j) from the list and added the opening clause explicating stating that the City Council has the authority to designate and remove Directors pursuant to Article V. Finally, because the opening sentence says the “following actions shall require approval by the City Council,” we deleted “approval of” at the beginning of each subsection as redundant.

I should note two issues that Board Member McGlothlin raised but ultimately did not lead to any changes to the Bylaws. First, we clarified that under the recommended changes, the Executive Director is an officer (otherwise, the President by default would become the chief executive officer, and the Board’s intention in hiring an Executive Director was to have that person serve as the chief executive of the Foundation) but not a Director. Having the Executive Director serve as a Board Member would create issues related to the Brown Act and, as a practical matter, would make it difficult for the Foundation to function.

Second, we explained the reasoning for deleting the Executive Committee, despite the good reasons that many nonprofits use one. Now that the Board has formed several other committees, retaining an Executive Committee makes it difficult to comply with the Brown Act because members of the Executive Committee may also sit on one or more other committees. Topics discussed at the Executive Committee and then discussed at those other committee meetings would necessarily involve a discussion (and potential collective consensus) among four or more Directors.

I recommend that the Board adopt the attached resolution approving the Amended and Restated Bylaws and directing the Executive Director to submit the Bylaws to the City Council for consideration and approval. Assuming the Board approves the resolution, the City Council will consider the Amended and Restated Bylaws on April 26. The Foundation will be required to disclose the Amended and Restated Articles and Bylaws

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to the IRS when filing Form 990 and to the Franchise Tax Board when filing the Form 199 in November.

I want to sincerely thank Vice President Hedley and especially Board Member McGlothlin for their meticulous attention to the Bylaws and raising a number of issues that have led, I believe, to an even more carefully honed set of Bylaws being presented to the Board for approval.

#### Attachments:

1. Resolution Approving the San Bruno Community Foundation's Amended and Restated Bylaws
2. Exhibit A: Amended and Restated Bylaws
3. Amended and Restated Bylaws – Redlined

**RESOLUTION NO. 2016-\_\_**

**RESOLUTION OF THE SAN BRUNO COMMUNITY FOUNDATION  
ADOPTING THE SAN BRUNO COMMUNITY FOUNDATION'S AMENDED AND  
RESTATED BYLAWS**

**WHEREAS**, the San Bruno City Council approved the San Bruno Community Foundation's original Bylaws on October 21, 2013;

**WHEREAS**, the Foundation Board created the Ad Hoc Committee on Bylaws and Corporate Governance Policies to review the Bylaws;

**WHEREAS**, based on guidance from staff and nonprofit counsel, the Committee recommends a series of administrative and substantive amendments that clean up minor errors, clarify details, bring provisions into compliance with applicable law, reflect the Foundation's current operations, and make the Bylaws consistent with amendments being made concurrently to the Foundation's Articles of Incorporation;

**WHEREAS**, under Article XVI of the Foundation's Bylaws, amendments to the Foundation's Bylaws must be approved by the City Council.

**NOW, THEREFORE, BE IT RESOLVED**, the Board of Directors adopts the Amended and Restated Bylaws attached as Exhibit A.

**RESOLVED FURTHER**, that the Foundation's staff shall present the Amended and Restated Bylaws to, and seek approval of the same from, the City Council.

Dated: April 13, 2016

ATTEST:

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Emily Roberts, Secretary

I, Emily Roberts, Secretary, do hereby certify that the foregoing Resolution No. 2016-\_\_ was duly and regularly passed and adopted by the Board of Directors of the San Bruno Community Foundation on this 13<sup>th</sup> day of April, 2016, by the following vote:

AYES: Board members:

NOES: Board members:

ABSENT: Board members:

**BYLAWS OF  
THE SAN BRUNO COMMUNITY FOUNDATION**  
A California Nonprofit Public Benefit Corporation

Amended and Restated by the SBCF Board of Directors, April \_\_, 2016  
Approved by the San Bruno City Council, April \_\_, 2016

**ARTICLE I.**

**NAME**

**Section 1. Corporate Name**

The name of this corporation is: The San Bruno Community Foundation (the “Corporation”).

**ARTICLE II.**

**OFFICES OF THE CORPORATION**

**Section 1. Principal Office.**

The principal office for the transaction of the activities and affairs of the Corporation (principal office) shall be fixed and located in the City of San Bruno, California. The Board of Directors of this Corporation (the “Board”; each member of the Board, a “Director”) may change the location of the principal office to any place within the City of San Bruno, California.

**Section 2. Other Offices.**

The Board may at any time establish branch or subordinate offices at any place or places where the Corporation is qualified to conduct its activities. Any change shall be noted in these Bylaws, or this Section may be amended to state the new location.

**ARTICLE III.**

**PURPOSE**

The primary purpose of the Corporation is to benefit the San Bruno community through enduring and significant contributions to, and investments in, charitable and community programs, and publicly-owned community facilities, over the long term. In furtherance of that purpose, this Corporation is organized and shall be operated exclusively for charitable purposes (within the meaning of Internal Revenue Code Section 501(c)(3)) by conducting or supporting activities for the benefit, or to carry out the purposes, of organizations, including but not limited to, the City of San Bruno, that: (i) benefit the San Bruno community, and (ii) are described in either (x) Internal Revenue Code Sections 501(c)(4), 501(c)(5), or 501(c)(6) but only if they would be described in Internal Revenue Code Section 509(a)(2) were they organizations described in Internal Revenue Code Section 501(c)(3), or (y) Internal Revenue Code Sections 509(a)(1) or (a)(2).



## **ARTICLE IV.**

### **MEMBERS**

#### **Section 1. Member.**

The Corporation shall have no voting members within the meaning of the Nonprofit Corporation Law.

## **ARTICLE V.**

### **BOARD OF DIRECTORS**

#### **Section 1. General Corporate Powers.**

Subject to the provisions and limitations of the California Nonprofit Public Benefit Corporation Law and any other applicable laws, all powers and activities of the Corporation shall be exercised directly by or under the ultimate direction of the Board.

#### **Section 2. Specific Powers.**

Without prejudice to the general powers set forth in Section 1 of this Article, but subject to the same limitations and to the approval rights of the City Council of the City of San Bruno (the "City" or "City Council") provided in Article XVI, the Board of Directors shall have the power to:

- (a) Appoint and remove, at the pleasure of the Board, all the Corporation's officers and agents, prescribe powers and duties for them that are consistent with law, with the Articles of Incorporation, and with these Bylaws, and require from them security for faithful performance of their duties.
- (b) Adopt and use a corporate seal and alter the forms of the seal and certificates.
- (c) Borrow money and incur indebtedness on behalf of the Corporation and cause to be executed and delivered for the Corporation's purposes, in the corporate name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecations, and other evidences of debt and securities, subject to the reserved powers set forth in Section 3, below.

#### **Section 3. Authorized Number and Qualifications.**

- (a) The authorized number of Directors shall be an odd number not fewer than five (5) and no more than eleven (11), as determined by action of the City Council.
- (b) No Director shall serve concurrently as a member of the San Bruno City Council.

- (c) A majority of the authorized number of Directors shall be residents of the City of San Bruno; provided, however, that a non-resident Director need not be removed solely to comply with such requirement. Among non-residents, preference may be given to representatives of a business or other entity located in or with a substantial interest in the City. Directors should include individuals with particular expertise in areas applicable to the operation of a nonprofit entity, such as financial, investment, legal, philanthropic, or community-based programs.
- (d) Directors shall serve without compensation.

#### **Section 4. Restriction of Interested Persons as Directors.**

No person serving on the Board may be an interested person. An interested person is:

- (a) Any person compensated by the Corporation for services rendered to it within the previous twelve (12) months, whether as a full-time or part-time employee, independent contractor, or otherwise, excluding any expense reimbursement paid to a Director as Director; and
- (b) Any brother, sister, ancestor, descendant, spouse, domestic partner, brother-in-law, sister-in-law, son-in-law, daughter-in-law, mother-in-law, or father-in-law of such person.

However, any violation of the provisions of this Section shall not affect the validity or enforceability of any transaction entered into by the Corporation.

#### **Section 5. Designation and Removal of Directors.**

All Directors shall be designated and may be removed by the City Council.

#### **Section 6. Term.**

Terms shall be for four years, starting on January 1 of each year, staggered so that a roughly equal number of terms ends every two years, with designated Directors having initial two-year terms where necessary. No Director shall hold office for longer than two consecutive terms; a two-year term followed by a four-year term shall constitute two consecutive terms. However, an unexpired term of less than one-half of a full term shall not count as a term for the purpose of the term limits in this Section. A Director may be reappointed two years after serving two consecutive terms.

#### **Section 7. Events Causing Vacancy.**

A vacancy or vacancies on the Board shall exist on the occurrence of the following:

- (a) The death or resignation of any Director;

- (b) The declaration of a vacancy by majority vote of all Directors then in office, excluding the vote of the Director at issue, when a Director has been declared of unsound mind by an order of court, been convicted of a felony, been found by final order or judgment of any court to have breached a duty under Article 3 of Chapter 2 of the California Nonprofit Public Benefit Corporation Law, or failed or ceased to meet any required qualification of a Director that was in effect at the beginning of that Director's current term of office;
- (c) The action of the City Council to remove any Director upon a finding of cause by a two-thirds (2/3) vote of the total number of authorized Directors;
- (d) The increase of the authorized number of Directors;
- (e) Expiration of a Director's term of office; or
- (f) Action by the City Council to remove a Director.

Vacancies shall be filled by the City Council as provided in Section 5.

#### **Section 8. Resignations.**

Except as provided below, any Director may resign by giving written notice to the President or Secretary of the Board. The resignation shall be effective when the notice is given unless it specifies a later time for the resignation to become effective. If a Director's resignation is effective at a later time, the City Council shall appoint a successor to take office as of the date when the resignation becomes effective. Except on notice to the Attorney General of California, no Director may resign if the Corporation would be left without a duly selected Director or Directors. A Director's resignation may not be rescinded, revoked, or withdrawn.

#### **Section 9. Compensation and Reimbursement.**

The Directors shall serve without compensation, though they may be reimbursed for their reasonable expenditures on behalf of the Corporation if approved by the Board.

#### **Section 10. Approval of Executive Compensation.**

The Board (or an authorized committee of the Board) shall review and approve the compensation, including benefits, of the Executive Director to assure that such compensation is just and reasonable and given in return for services actually rendered to this Corporation. This review and approval shall occur upon the hiring of the officer, whenever the officer's term of employment (if any) is renewed or extended, and whenever the officer's compensation is modified (unless the modification extends to substantially all employees).

## **ARTICLE VI.**

### **DIRECTORS' MEETINGS**

#### **Section 1. Place of Meetings.**

Regular meetings of the Board shall be held at any place in the City of San Bruno. At least four (4) meetings of the Board shall be held each year, including the annual meeting required by Section 3, below.

#### **Section 2. Method of Meetings.**

All meetings of the Board of Directors, or any committee thereof, shall be called, noticed, held, and conducted in accordance with the applicable provisions of the Ralph M. Brown Act (the "Brown Act") (commencing with Section 54950 of the California Government Code). The Board of Directors shall take no action other than at a meeting called, noticed, and held pursuant to these Bylaws.

#### **Section 3. Annual Meeting.**

The Board shall hold a regular meeting for purposes of organization, election of officers, and transaction of other business. Notwithstanding any other provision of these Bylaws, the annual meeting shall be held in the City of San Bruno, California.

#### **Section 4. Other Regular Meetings.**

Other regular meetings of the Board may be held at such time and place as the Board may fix from time to time.

#### **Section 5. Authority to Call Special Meetings.**

Special meetings of the Board for any purpose may be called at any time pursuant to the Brown Act.

#### **Section 6. Quorum.**

A majority of the authorized number of Directors shall constitute a quorum for the transaction of business, except to adjourn. Every action taken or decision made by a majority of the Directors present at a duly held meeting at which a quorum is present shall be the act of the Board, including, without limitation, those provisions relating to:

- (a) Approval of certain transactions between corporations having common directorships;
- (b) Creation of and appointments to committees of the Board; and
- (c) Indemnification of Directors.

A meeting at which a quorum is initially present may continue to transact business, despite the withdrawal of Directors, if any action taken or decision made is approved by at least a majority of the required quorum for that meeting.

### **Section 7. Adjournment.**

A majority of the Directors present, whether or not a quorum is present, may adjourn any meeting to another time and place pursuant to the Brown Act.

## **ARTICLE VII.**

### **COMMITTEES**

#### **Section 1. Committees of the Board.**

The Board, by resolution adopted by a majority of the Directors then in office provided a quorum is present, may create one or more committees, each consisting of two or more Directors and no one who is not a Director, to serve at the pleasure of the Board. Members of Committees shall serve without compensation. Committees are authorized to create subcommittees in their discretion to assist in the work of the committee. Appointments to committees of the Board shall be by majority vote of the Directors then in office. No committee, regardless of Board resolution, may:

- (a) Fill vacancies on the Board or on any committee that has the authority of the Board;
- (b) Fix compensation of the Directors for serving on the Board or on any committee;
- (c) Amend or repeal Bylaws or adopt new Bylaws;
- (d) Amend or repeal any resolution of the Board that by its express terms is not so amendable or repealable;
- (e) Create any other committees of the Board or appoint the members of committees of the Board;
- (f) Expend corporate funds to support a nominee for Director after more people have been nominated for Director than can be appointed;
- (g) Approve any contract or transaction to which the Corporation is a party and in which one or more of its Directors has a material financial interest, except as special approval is provided for in Section 5233(d)(3) of the California Corporations Code; or
- (h) Approve the merger, reorganization, voluntary dissolution, or disposition of substantially all of the assets of the Corporation.

## **Section 2. Meetings and Action of Committees of the Board.**

Meetings and actions of committees of the Board shall be governed by, held, and taken in accordance with the provisions of these Bylaws and conducted in accordance with the applicable provisions of the Brown Act concerning meetings and other Board actions, except that the time for regular meetings of such committees and the calling of special meetings of such committees may be determined either by Board resolution or, if there is none, by resolution of the committee of the Board. Minutes of each meeting of any committee of the Board shall be kept and shall be filed with the corporate records. The Board may adopt rules for the governance of any committee, provided they are consistent with these Bylaws, or, in the absence of rules adopted by the Board, the committee may adopt such rules. The below enumerated committees may be created by the Board, but are not limited to:

## **Section 3. Advisory Committees.**

The Board may also create one or more advisory committees which may contain any number of Director and non-Director committee members. None of the powers of the Board can be delegated to any advisory committee, except that management of the Corporation's activities may be delegated to such a committee to the same extent that those powers may be delegated to anyone pursuant to California Corporations Code §5210 and other provisions of these Bylaws.

## **Section 4. Audit Committee.**

The Corporation shall have an Audit Committee consisting of at least two (2) Directors appointed by the Board. Directors who are employees or officers of the Corporation or who receive, directly or indirectly, any consulting, advisory, or other compensatory fees from the Corporation (other than for service as Director) may not serve on the Audit Committee. The Audit Committee shall perform the duties, but are not limited to:

- (a) Assisting the Board in choosing an independent auditor and recommending termination of the auditor, if necessary;
- (b) Negotiating the auditor's compensation;
- (c) Conferring with the auditor regarding the Corporation's financial affairs; and
- (d) Reviewing and accepting or rejecting the audit.

Members of the Audit Committee shall not receive compensation for their service on the Audit Committee. If the Corporation has a Finance Committee, a majority of the members of the Audit Committee may not concurrently serve as members of the Finance Committee, and the chair of the Audit Committee may not serve on the Finance Committee. Members of the Audit Committee shall not include the President and the Treasurer.

## **ARTICLE VIII.**

### **OFFICERS**

#### **Section 1. Officers of the Corporation.**

The officers of the Corporation shall be a President, a Vice President, a Secretary, a Treasurer, and an Executive Director. The Corporation may also have, at the Board's discretion, one or more Assistant Secretaries, one or more Assistant Treasurers, and such other officers as may be appointed in accordance with Section 3 of this Article. Any number of offices may be held by the same person, except that neither the Secretary nor the Treasurer may serve concurrently as the President and the Executive Director may not hold any other office.

#### **Section 2. Election of Officers.**

The officers of the Corporation, except the Executive Director and those appointed under Section 3 of this Article, shall be chosen annually by the Board for one-year terms starting on January 1 and shall serve at the pleasure of the Board, subject to the rights, if any, of any officer under any contract of employment, and subject to the approval of the City Council.

#### **Section 3. Other Officers.**

The Board may appoint and may authorize the President or other officer to appoint any other officers that the Corporation may require. Each officer so appointed shall have the title, hold office, have the authority, and perform the duties specified in the Bylaws or determined by the Board.

#### **Section 4. Removal of Officers.**

Without prejudice to any rights of an officer, any officer may be removed with or without cause by the Board and also by any officer on whom the Board may confer that power of removal.

#### **Section 5. Resignation of Officers.**

Any officer may resign at any time by giving written notice to the Corporation. The resignation shall take effect as of the date the notice is received or at any later time specified in the notice and, unless otherwise specified in the notice, the resignation need not be accepted to be effective. Any resignation shall be without prejudice to the rights, if any, of the Corporation. An officer may not rescind, revoke, or withdraw a resignation.

#### **Section 6. Vacancies in Office.**

A vacancy in any office because of death, resignation, removal, disqualification, or any other cause shall be filled in the manner prescribed in these Bylaws for regular appointments to that office.

## **ARTICLE IX.**

### **RESPONSIBILITIES OF OFFICERS**

#### **Section 1. President.**

The President shall preside at all Board meetings and shall have such other powers and duties as the Board or the Bylaws may prescribe.

#### **Section 2. Vice President.**

If the President is absent or disabled, the Vice President shall perform all duties of the President. When so acting, the Vice President shall have all powers of and be subject to all restrictions on the President. The Vice President shall have such other powers and perform such other duties as the Board or the Bylaws may prescribe.

#### **Section 3. Secretary.**

The Secretary shall keep or cause to be kept, at the Corporation's principal office or such other place as the Board may direct, a book of minutes of all meetings, proceedings, and actions of the Board and of committees of the Board. The minutes of meetings shall include the time and place that the meeting was held, whether the meeting was annual, regular, or special, and, if special, how authorized, the notice given, and the names of those present at Board and committee meetings. The Secretary shall keep or cause to be kept, at the principal office in California, a copy of the Articles of Incorporation and Bylaws, as amended to date.

The Secretary shall give, or cause to be given, notice of all meetings of the Board and of committees of the Board required by these Bylaws to be given. The Secretary shall keep the corporate seal in safe custody and shall have such other powers and perform such other duties as the Board or the Bylaws may prescribe.

#### **Section 4. Treasurer.**

The Treasurer shall be the chief financial officer of the Corporation and shall keep and maintain, or cause to be kept and maintained, adequate and correct books and accounts of the Corporation's properties and transactions. The Treasurer shall send or cause to be given to the Directors such financial statements and reports as are required to be given by law, by these Bylaws, or by the Board.

The books of account shall be open to inspection by any Director at all reasonable times. The Treasurer shall deposit, or cause to be deposited, all money and other valuables in the name and to the credit of the Corporation with such depositories as the Board may designate, shall disburse the Corporation's funds as the Board may order, shall render to the President and the Board, when requested, an account of all transactions as Treasurer and of the financial condition of the Corporation, and shall have such other powers and perform such other duties as the Board or the Bylaws may prescribe.



If required by the Board, the Treasurer shall give the Corporation a bond in the amount and with the surety or sureties specified by the Board for faithful performance of the duties of the office and for restoration to the Corporation of all of its books, papers, vouchers, money, and other property of every kind in the possession or under the control of the Treasurer on his or her death, resignation, retirement, or removal from office.

#### **Section 5. Executive Director.**

The Board shall appoint an Executive Director, who shall serve as the Corporation's chief executive officer at the pleasure of the Board and whose terms and conditions of employment shall be specified by the Board. The Executive Director shall be responsible for the day-to-day administration of the Corporation and shall have other such powers and duties as are prescribed by the Board. The Executive Director shall hire, direct, and discharge all other agents and employees, who shall have such authority and perform such duties as may be required to carry out the operations of the Corporation in accordance with the policies established by the Board.

Unless excused, the Executive Director shall attend all meetings of the Board and committees, except the Audit Committee; provided, however, that the Board or any committee of the Board may enter into a closed session without the presence of the Executive Director at the President's discretion in compliance with the Brown Act.

### **ARTICLE X.**

#### **STANDARD OF CARE**

#### **Section 1. General.**

A Director shall perform the duties of a Director, including duties as a member of any committee of the Board on which the Director may serve, in good faith, in a manner such director believes to be in the best interest of this Corporation and with such care, including reasonable inquiry, as an ordinarily prudent person in a like situation would use under similar circumstances.

In performing the duties of a Director, a Director shall be entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by:

- (a) One (1) or more officers or employees of the Corporation whom the Director believes to be reliable and competent in the matters presented;
- (b) Counsel, independent accountants, or other persons as to matters which the Director believes to be within such person's professional or expert competence; or
- (c) A committee of the Board upon which the Director does not serve that is composed exclusively of any or any combination of Directors and persons described in subsection (a) and (b) of this Section 1, as to matters within its designated authority, which committee the Director believes to merit confidence, so long as in any such case, the Director acts in good faith, after reasonable

inquiry when the need thereof is indicated by the circumstances and without knowledge that could cause such reliance to be unwarranted.

A person who performs the duties of a Director in accordance with the above shall have no liability based upon any failure or alleged failure to discharge that person's obligations as Director, including, without limiting the generality of the foregoing, any actions or omissions which exceed or defect a public or charitable purpose to which the Corporation, or assets held by it, are dedicated.

## **Section 2. Standard of Care - Investments.**

Except with respect to assets held for use or used directly in carrying out this Corporation's charitable activities, in investing, reinvesting, purchasing, acquiring, exchanging, selling, and managing this Corporation's investments, the Board shall avoid speculation, looking instead to the permanent disposition of the funds, considering the probable incomes, as well as the probable safety of this Corporation's capital.

## **Section 3. Standard of Care – Self-Dealing Transactions.**

The Board shall not approve a contract in which one of its Directors has a financial interest, pursuant to California Government Code Section 1090, or a self-dealing transaction, pursuant to Corporations Code Section 5233.

## **Section 4. Inspection.**

Every Director shall have the right at any reasonable time during the business hours of the Corporation to inspect and copy all books, records, and documents pursuant to the California Nonprofit Public Benefit Corporation Law and the California Public Records Act, and to inspect the physical properties of this Corporation.

# **ARTICLE XI.**

## **INDEMNIFICATION; LIABILITY OF THE CORPORATION**

### **Section 1. Right of Indemnity.**

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

## **Section 2. Approval of Indemnity.**

On written request to the Board by any person seeking indemnification under Section 5238(b) or Section 5238(c) of the California Corporations Code, the Board shall promptly determine under Section 5238(e) of the California Corporations Code whether the applicable standard of conduct set forth in Section 5238(b) or Section 5238(c) has been met and, if so, the Board shall authorize indemnification.

## **Section 3. Advancement of Expenses.**

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

## **Section 4. Insurance.**

The Corporation shall have the right to purchase and maintain insurance to the full extent permitted by law on behalf of its officers, Directors, employees, and other agents, against any liability asserted against or incurred by any officer, Director, employee, or agent in such capacity or arising out of the officer's, Director's employee's, or agent's status as such.

## **Section 5. Liability of the Corporation.**

The Corporation itself shall be responsible for the management and fiscal affairs of the Corporation and for the payment of any debts and liabilities incurred by the Corporation.

# **ARTICLE XII.**

## **RECORDS AND REPORTS**

### **Section 1. Maintenance of Corporate Records.**

The Corporation shall keep:

- (a) Adequate and correct books and records of account; and
- (b) Written minutes of the proceedings of its Board and committees of the Board.

The Corporation shall abide by the provisions of the California Public Records Act.

### **Section 2. Maintenance and Inspection of Articles and Bylaws.**

The Corporation shall keep at its principal office, or if its principal office is not in California, at its principal business office in this state, the original or a copy of the Articles of Incorporation

and its Bylaws, as amended to date, which shall be open to inspection by the Directors at all reasonable times during office hours.

### **Section 3. Annual Report.**

The Board shall cause an annual report to be sent to the Directors within one hundred fifty (150) days after the end of the Corporation's fiscal year. That report shall contain the following information, in appropriate detail, for the fiscal year:

- (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;
- (c) The revenue or receipts of the Corporation, both unrestricted and restricted to particular purposes;
- (d) The expenses or disbursements of the Corporation for both general and restricted purposes; and
- (e) Any information required by Section 4 of this Article.

The annual report shall be accompanied by a report on this Corporation prepared by independent accountants, or, if there is no such report, by the certificate of an authorized officer of the Corporation that the financial statements included in the annual report were prepared without audit from the Corporation's books and records.

This requirement of an annual report shall not apply if the Corporation receives less than \$25,000 in gross receipts during the fiscal year, provided, however, that the information specified above for inclusion in an annual report must be furnished annually to all Directors.

### **Section 4. Annual Statement of Certain Transactions and Indemnifications.**

The Corporation shall annually prepare and furnish to each Director a statement of any transaction or indemnification of the following kind within one hundred twenty (120) days after the end of the Corporation's fiscal year:

- (a) Any transaction in which the Corporation, its parent, or its subsidiary was a party;
- (b) Any transaction in which an "interested person" had a direct or indirect material financial interest; and
- (c) Any transaction which involved more than \$50,000, or was one of a number of transactions with the same interested person involving, in the aggregate, more than \$50,000. For the purposes of this subparagraph, and subparagraph (b) above, an "interested person" is either of the following:

- i) Any Director or officer of the Corporation, its parent, or subsidiary (but mere common directorship shall not be considered such an interest); or
  - ii) Any holder of more than ten (10) percent of the voting power of the Corporation, its parent, or its subsidiary. The statement shall include a brief description of the transaction, the names of interested persons involved, their relationship to the Corporation, the nature of their interest in the transaction, and, if practicable, the amount of that interest, provided that if the transaction was with a partnership in which the interested person is a partner, only the interest of the partnership need be stated.
- (d) Any indemnifications or advances aggregating more than \$10,000 paid during the fiscal year to any officer or Director of the Corporation under Article X, Sections 1, 2 and 3 of these Bylaws.

## **ARTICLE XIII.**

### **MISCELLANEOUS**

#### **Section 1. Fiscal Year.**

The fiscal year of this Corporation shall end each year on June 30.

#### **Section 2. Contracts.**

All contracts entered into on behalf of this Corporation must be authorized by the Board, or, where the contract is for less than twenty-five thousand dollars (\$25,000), by the President, Treasurer, or Executive Director.

#### **Section 3. Execution of Checks.**

Except as otherwise provided by law, every check, draft, promissory note, money order, or other evidence of indebtedness of the Corporation shall be signed by such individuals as are authorized by the Board.

#### **Section 4. Independent Audit.**

The Corporation shall retain an independent auditor and conduct annual independent audits in accordance with the applicable provisions of the Supervision of Trustees and Fundraisers for Charitable Purposes Act (commencing with Section 12586 of the California Government Code).

#### **Section 5. Amendment of Bylaws.**

The Bylaws may be amended or repealed and new Bylaws adopted by the vote of a majority of all the Directors then in office and the approval of the City Council. Such amended or newly adopted Bylaws shall take effect immediately upon approval of the City Council.

#### **Section 6. Applicable Law.**

This Corporation shall be subject to any and all applicable state, federal, and local laws, including, but not limited to, such laws as may be applicable as a result of the Corporation's affiliation with the City.

#### **Section 7. Ralph M. Brown Act.**

All meetings of the Board of Directors, or any committee thereof, shall be called, noticed, held and conducted in accordance with the applicable provisions of the Ralph M. Brown Act (commencing with Section 54950 of the California Government Code).

#### **Section 8. Conflict of Interest.**

The Board shall develop, establish, and implement a conflict of interest policy. The policy shall provide that the Board and the Corporation's agents and employees shall not be financially interested in a contract made by them in their official capacity, or by anybody or board of which they are members pursuant to Government Code Section 1090. In addition, the Corporation shall not authorize any contract in which an officer of the City of San Bruno has a financial interest, either directly or through a body or board of which they are members. Nor shall the Board, its agents, or its employees be purchasers at any sale or vendors at any purchase made by them in their official capacity pursuant to Government Code Section 1090.

### **ARTICLE XIV.**

#### **DISSOLUTION OF THE CORPORATION**

Subject to the provisions governing distribution upon dissolution set forth in the Articles of Incorporation of the Corporation, in the event of a dissolution of the Corporation the residual assets shall be distributed as provided in the Articles of Incorporation.

### **ARTICLE XV.**

#### **CONSTRUCTION AND DEFINITIONS**

Unless the context requires otherwise, the general provisions, rules of construction, and definitions in the General Provisions of the California Nonprofit Corporation Law and the California Nonprofit Public Benefit Corporation Law shall govern the construction of the Bylaws. Without limiting the generality of the preceding sentence, the masculine gender includes the feminine and neuter, the singular includes the plural, the plural includes the singular, and the term "person" includes both a legal entity and a natural person.

## **ARTICLE XVI.**

### **APPROVAL OF THE CITY COUNCIL**

In addition to the City Council having the authority to designate and remove Directors pursuant to Article V, the following actions shall require approval by the City Council:

- (a) Any change in the Articles of Incorporation or Bylaws of the Corporation;
- (b) Adoption, amendment, or repeal of the Corporation's investment policy and its spending policy;
- (c) The Corporation's annual budget;
- (d) Adoption, amendment, or repeal of the Corporation's grant policies;
- (e) Election of officers of the Corporation;
- (f) Any agreement for the management of the affairs of the Corporation;
- (g) Acquisition of real estate or of any project that would require the use of City property or resources;
- (h) Incurrence of indebtedness by the Corporation in excess of twenty-five thousand dollars (\$25,000); and/or
- (i) Affiliation of the Corporation with any other entity ("Affiliation" meaning any arrangement whereby the Corporation controls, is controlled by, or is under common control with any other entity or any other similar arrangement).

### **CERTIFICATE OF SECRETARY**

I certify that I am the duly designated and acting Secretary of The San Bruno Community Foundation, a California nonprofit public benefit Foundation; that the above Bylaws consisting of 16 pages are the Bylaws of the Foundation as amended and restated by the Board of Directors at its meeting on April 13, 2016, and that these Bylaws have not been amended or modified since that date. These amended and restated Bylaws were also approved by the San Bruno City Council at a meeting held on \_\_\_\_\_, 2016.

Executed on \_\_\_\_\_, 2016, at San Bruno, California.

\_\_\_\_\_  
Emily Roberts, Secretary

**BYLAWS OF  
THE SAN BRUNO COMMUNITY FOUNDATION**  
A California Nonprofit Public Benefit Corporation

Amended and Restated by the SBCF Board of Directors, April \_\_, 2016  
Approved by the San Bruno City Council, April \_\_, 2016

**ARTICLE I.**

**NAME**

**Section 1. Corporate Name**

The name of this corporation is: The San Bruno Community Foundation (the “Corporation”).

**ARTICLE II.**

**OFFICES OF THE CORPORATION**

**Section 1. Principal Office.**

The principal office for the transaction of the activities and affairs of the Corporation (principal office) shall be fixed and located in the City of San Bruno, California. The Board of Directors of this Corporation (the “Board”; each member of the Board, a “Director”) may change the location of the principal office to any place within the City of San Bruno, California.

is located at:

~~567 El Camino Real  
San Bruno, CA 94066~~

**Section 2. Other Offices.**

The Board may at any time establish branch or subordinate offices at any place or places where the Corporation is qualified to conduct its activities. Any change shall be noted in these Bylaws, or this ~~S~~section may be amended to state the new location.

**ARTICLE III.**

**PURPOSE**

The primary purpose of the Corporation is to benefit the San Bruno community through enduring and significant contributions to, and investments in, charitable and community programs, and publicly-owned community facilities, over the long term. In furtherance of that purpose, this Corporation is organized and shall be operated exclusively for charitable purposes (within the



meaning of Internal Revenue Code Section 501(c)(3)) by conducting or supporting activities for the benefit, or to carry out the purposes, of organizations, including but not limited to, the City of San Bruno, that: (i) benefit the San Bruno community, and (ii) are described in either (x) Internal Revenue Code Sections 501(c)(4), 501(c)(5), or 501(c)(6) but only if they would be described in Internal Revenue Code Section 509(a)(2) were they organizations described in Internal Revenue Code Section 501(c)(3), or (y) Internal Revenue Code Sections 509(a)(1) or (a)(2).

## **ARTICLE IV.**

### **MEMBERS**

#### **Section 1. Member.**

The Corporation shall have no voting members within the meaning of the Nonprofit Corporation Law.

## **ARTICLE V.**

### **BOARD OF DIRECTORS**

#### **Section 1. General Corporate Powers.**

Subject to the provisions and limitations of the California Nonprofit Public Benefit Corporation Law and any other applicable laws, all powers and activities of the Corporation shall be exercised directly by or under the ultimate direction of the Board.

#### **Section 2. Specific Powers.**

Without prejudice to the general powers set forth in Section 1 of this Article, but subject to the same limitations and to the approval rights of the City Council of the City of San Bruno (the “City” or “City Council”) provided in Article XVI, the Board of Directors shall have the power to:

- (a) Appoint and remove, at the pleasure of the Board, all the Corporation’s officers and agents, prescribe powers and duties for them that are consistent with law, with the Articles of Incorporation, and with these Bylaws, and require from them security for faithful performance of their duties.
- (b) Adopt and use a corporate seal and alter the forms of the seal and certificates.
- (c) Borrow money and incur indebtedness on behalf of the Corporation and cause to be executed and delivered for the Corporation's purposes, in the corporate name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecations, and other evidences of debt and securities, subject to the reserved powers set forth in Section 3-, below.

### **Section 3. Authorized Number and Qualifications.**

- (a) The authorized number of Directors shall be an odd number not fewer than five (5) and no more than eleven (11), as determined by action of the City Council ~~of the City of San Bruno (the "City" or "City Council").~~
- (b) No Director shall serve concurrently as a member of the San Bruno City Council.
- (c) A majority of the authorized number of Directors shall be residents of the City of San Bruno; provided, however, that a non-resident Director need not be removed solely to comply with such requirement. Among non-residents, preference may be given to Any Director may be a representatives of a business or other entity located in, or with a substantial interest in the City. Directors should include individuals with particular expertise in areas applicable to the operation of a non-profit entity, such as financial, investment, legal, philanthropic, or community-based programs.
- (d) Directors shall serve without compensation.

### **Section 4. Restriction of Interested Persons as Directors.**

No person serving on the Board may be an interested person. An interested person is:

- (a) Any person compensated by the Corporation for services rendered to it within the previous twelve (12) months, whether as a full-time or part-time employee, independent contractor, or otherwise, excluding any reasonable compensation or expense reimbursement paid to a Director as Director; and,
- (b) Any brother, sister, ancestor, descendant, spouse, domestic partner, brother-in-law, sister-in-law, son-in-law, daughter-in-law, mother-in-law, or father-in-law of such person.

However, any violation of the provisions of this ~~s~~Section shall not affect the validity or enforceability of any transaction entered into by the Corporation.

### **Section 5. Designation and Removal and Qualification of Directors.**

~~(a) — All~~The Directors shall be designated and may be removed by the City Council as ~~designator (the "City Council") of the City in accordance with Article V, Section 3.~~

- ~~(b) — At the time any Director ceases to meet the qualifications set forth herein, that director's membership shall cease. The Director's successor shall meet the qualifications set forth herein.~~

### **Section 6. Term.**

Terms shall be for four years, starting on January 1 of each year, staggered so that a roughly equal number of terms ends every two years, with designated Directors having initial two-year terms where necessary. No Director shall hold office for longer than two consecutive terms; a two-year term followed by a four-year term shall constitute two consecutive terms. However, an unexpired term of less than one-half of a full term shall not count as a term for the purpose of the term limits in this Section. A Director may be reappointed two years after serving two consecutive four year terms.

## **Section 7. Events Causing Vacancy.**

A vacancy or vacancies on the Board shall exist on the occurrence of the following:

- (a) The death or resignation of any Director;
- (b) The declaration of a vacancy by majority vote of all Directors then in office, excluding the vote of the Director at issue, by resolution of the Board of a vacancy in the office of when a Director who has been declared of unsound mind by an order of court, been convicted of a felony, or been found by final order or judgment of any court to have breached a duty under Article 3 of Chapter 2 of the California Nonprofit Public Benefit Corporation Law, or failed or ceased to meet any required qualification of a Director that was in effect at the beginning of that Director's current term of office;
- ~~(c) — The declaration, by majority vote of the Directors who meet all of the required qualifications to be a Director, of a vacancy when a Director fails or ceases to meet any required qualification of a Director that was in effect at the beginning of that Director's current term of office;~~
- ~~(ce)~~ The action of the City Council to remove any Director upon a finding of cause by a two-thirds (2/3) vote of the total number of authorized Directors ~~of the Board~~;
- ~~(dd)~~ The increase of the authorized number of Directors;
- ~~(e) — The membership of Board of Directors may remove, by a two-thirds vote of the membership present, any elected officer for non-performance of duties, or for any violation of these by laws;~~
- ~~(ef)~~ Expiration of a Director's term of office; or
- ~~(fg)~~ Action by the City Council to remove a Director pursuant to Article XVI ~~When a Director ceases to possess any qualification for election to the Board as set forth herein.~~

Vacancies shall be filled by the City Council as provided ~~by~~ in Section 5.

## **Section 8. Resignations.**

Except as provided below, any Director may resign by giving written notice to the President or ~~S~~ecretary of the Board. The resignation shall be effective when the notice is given unless it specifies a later time for the resignation to become effective. If a Director's resignation is effective at a later time, the City Council shall appoint a successor to take office as of the date when the resignation becomes effective. Except on notice to the Attorney General of California, no Director may resign if the Corporation would be left without a duly ~~selected~~ ~~D~~irector or ~~D~~irectors. A Director's resignation may not be rescinded, revoked, or withdrawn.

## **Section 9. Compensation and Reimbursement.**

The Directors shall serve without compensation, though they may be reimbursed for their reasonable expenditures on behalf of the Corporation if approved by the Board.

## **Section 10. Approval of Executive Compensation.**

The Board (or an authorized committee of the Board) shall review and approve the compensation, including benefits, of the Executive Director to assure that such compensation is just and reasonable and given in return for services actually rendered to this Corporation. This review and approval shall occur upon the hiring of the officer, whenever the officer's term of employment (if any) is renewed or extended, and whenever the officer's compensation is modified (unless the modification extends to substantially all employees).

### **Agents and Employees.**

~~The Board shall appoint an Executive Director, who shall serve at the pleasure of the Board and whose terms and conditions of employment shall be specified by the Board. The Executive Director shall be responsible for the day-to-day administration of the Corporation, will be supervised by a member of the Board as appointed by the Board, and shall have other such powers and duties as are prescribed by the Board. The Executive Director shall hire, direct, and discharge all other agents and employees, who shall have such authority and perform such duties as may be required to carry out the operations of the Corporation in accordance with the policies established by the Board. Any employee or agent may be removed at any time with or without cause.~~

~~The Executive Director shall attend all meetings of the Board and committees, serving as an ex-officio member, without a vote.~~

## **ARTICLE VI.**

### **DIRECTORS' MEETINGS**

#### **Section 1. Place of Meetings.**

Regular meetings of the Board shall be held at any place in the City of San Bruno. At least four (4) meetings of the Board shall be held each year, including the annual meeting required by Section 3, below.

## **Section 2. Method of Meetings.**

All meetings of the Board of Directors, or any committee thereof, shall be called, noticed, held, and conducted in accordance with the applicable provisions of the Ralph M. Brown Act (the “Brown Act”) (commencing with Section 54950 of the California Government Code). The Board of Directors shall take no action other than at a meeting called, noticed, and held pursuant to these Bylaws.

## **Section 3. Annual Meeting.**

The Board shall hold a regular meeting for purposes of organization, election of officers, and transaction of other business. Notwithstanding any other provision of these Bylaws, the annual meeting shall be held in the City of San Bruno, California ~~at the principal place of business of the Corporation.~~

## **Section 4. Other Regular Meetings.**

Other regular meetings of the Board may be held at such time and place as the ~~B~~board may fix from time to time.

## **Section 5. Authority to Call Special Meetings.**

Special meetings of the Board for any purpose may be called at any time pursuant to the Brown Act.

## **Section 6. Quorum.**

A majority of the authorized number of Directors shall constitute a quorum for the transaction of business, except to adjourn. Every action taken or decision made by a majority of the Directors present at a duly held meeting at which a quorum is present shall be the act of the Board, including, without limitation, those provisions relating to:

- (a) Approval of certain transactions between corporations having common directorships;
- (b) Creation of and appointments to committees of the Board; and;
- (c) Indemnification of Directors.

A meeting at which a quorum is initially present may continue to transact business, despite the withdrawal of Directors, if any action taken or decision made is approved by at least a majority of the required quorum for that meeting.

## **Section 7. Adjournment.**

A majority of the Directors present, whether or not a quorum is present, may adjourn any meeting to another time and place pursuant to the Brown Act.

## ARTICLE VII.

### COMMITTEES

#### Section 1. Committees of the Board.

The Board, by resolution adopted by a majority of the Directors then in office provided a quorum is present, may create one or more committees, each consisting of two or more Directors; and no one who is not a Director, to serve at the pleasure of the ~~B~~board. Members of Committees shall serve without compensation. Committees are authorized to create subcommittees in their discretion to assist in the work of the committee. Appointments to committees of the Board shall be by majority vote of the ~~D~~irectors then in office. No committee, regardless of Board resolution, may:

- (a) Fill vacancies on the Board or on any committee that has the authority of the ~~B~~board;
- (b) Fix compensation of the Directors for serving on the Board or on any committee;
- (c) Amend or repeal Bylaws or adopt new Bylaws;
- (d) Amend or repeal any resolution of the Board that by its express terms is not so amendable or repealable;
- (e) Create any other committees of the ~~B~~board or appoint the members of committees of the Board;
- (f) Expend corporate funds to support a nominee for ~~D~~irector after more people have been nominated for Director than can be appointed; ~~or~~
- (g) Approve any contract or transaction to which the Corporation is a party and in which one or more of its ~~D~~irectors has a material financial interest, except as special approval is provided for in ~~S~~ection 5233(d)(3) of the California Corporations Code; or
- (h) Approve the merger, reorganization, voluntary dissolution, or disposition of substantially all of the assets of the Corporation.

#### Section 2. Meetings and Action of Committees of the Board.

Meetings and actions of committees of the Board shall be governed by, held, and taken in accordance with the provisions of these Bylaws and conducted in accordance with the applicable provisions of the ~~Ralph M. Brown Act (commencing with Section 54950 of the California Government Code)~~ concerning meetings and other Board actions, except that the time for regular meetings of such committees and the calling of special meetings of such committees may be

determined either by Board resolution or, if there is none, by resolution of the committee of the Board. Minutes of each meeting of any committee of the Board shall be kept and shall be filed with the corporate records. The Board may adopt rules for the governance~~ment~~ of any committee, provided they are consistent with these Bylaws, or, in the absence of rules adopted by the Board, the committee may adopt such rules. The below enumerated ~~c~~Committees may be created by the ~~B~~board, but are not limited to:

### **Section 3. Advisory Committees.**

The Board may also create one or more advisory committees which may contain any number of ~~Director and non-D~~director committee members. None of the powers of the Board can be delegated to any advisory committee, except that management of the Corporation's activities may be delegated to such a committee to the same extent that those powers may be delegated to anyone pursuant to California Corporations Code §5210 and other provisions of these Bylaws.

### **Section 4. ~~Executive Committee.~~**

~~The Board shall have an Executive Committee, consisting of the president, the vice president, the secretary and the treasurer. The Executive Committee shall be responsible for taking action to carry out policies as delegated by the Board of Directors.~~

### **Section 45. Audit Committee.**

The ~~C~~orporation shall have an ~~A~~audit ~~C~~ommittee consisting of at least ~~two~~ (2) Directors ~~appointed by the Board~~. Directors who are employees or officers of the ~~C~~orporation or who receive, directly or indirectly, any consulting, advisory, or other compensatory fees from the ~~C~~orporation (other than for service as ~~D~~irector) may not serve on the ~~A~~audit ~~C~~ommittee. The ~~A~~audit ~~C~~ommittee shall perform the duties, but are not limited to:

- (a) Assisting the Board in choosing an independent auditor and recommending termination of the auditor, if necessary;
- (b) Negotiating the auditor's compensation;
- (c) Conferring with the auditor regarding the ~~C~~orporation's financial affairs; and
- (d) Reviewing and accepting or rejecting the audit.

Members of the ~~A~~audit ~~C~~ommittee shall not receive compensation for their service on the ~~A~~audit ~~C~~ommittee. If the ~~C~~orporation has a ~~F~~finance ~~C~~ommittee, a majority of the members of the ~~A~~audit ~~C~~ommittee may not concurrently serve as members of the ~~F~~finance ~~C~~ommittee, and the chair of the ~~A~~audit ~~C~~ommittee may not serve on the ~~F~~finance ~~C~~ommittee. Members of the ~~A~~audit ~~C~~ommittee shall not include the ~~P~~resident and the ~~T~~reasurer.

## **ARTICLE VIII.**

### **OFFICERS**

### **Section 1. Officers of the Corporation.**

The officers of the Corporation shall be a ~~P~~resident, a ~~V~~ice ~~P~~resident, a ~~S~~ecretary, ~~and~~ a Treasurer, ~~and an Executive Director~~. The Corporation may also have, at the Board's discretion, one or more ~~A~~ssistant ~~S~~ecretaries, one or more ~~A~~ssistant ~~T~~reasurers, and such other officers as may be appointed in accordance with Section 3 of this Article. Any number of offices may be held by the same person, except that neither the ~~S~~ecretary nor the Treasurer may serve concurrently as the ~~P~~resident ~~and the Executive Director may not hold any other office~~.

## **Section 2. Election of Officers.**

The officers of the Corporation, except ~~the Executive Director and~~ those appointed under Section 3 of this Article, shall be chosen annually by the Board ~~for one-year terms starting on January 1~~ and shall serve at the pleasure of the Board, subject to the rights, if any, of any officer under any contract of employment, ~~and subject to the approval of the City Council~~.

## **Section 3. Other Officers.**

The Board may appoint and may authorize the ~~P~~resident or other officer to appoint any other officers that the Corporation may require. Each officer so appointed shall have the title, hold office, have the authority, and perform the duties specified in the Bylaws or determined by the Board.

## **Section 4. Removal of Officers.**

Without prejudice to any rights of an officer, any officer may be removed with or without cause by the Board and also by any officer on whom the Board may confer that power of removal.

## **Section 5. Resignation of Officers.**

Any officer may resign at any time by giving written notice to the Corporation. The resignation shall take effect as of the date the notice is received or at any later time specified in the notice and, unless otherwise specified in the notice, the resignation need not be accepted to be effective. Any resignation shall be without prejudice to the rights, if any, of the Corporation. An officer may not rescind, revoke, or withdraw a resignation.

## **Section 6. Vacancies in Office.**

A vacancy in any office because of death, resignation, removal, disqualification, or any other cause shall be filled in the manner prescribed in these Bylaws for regular appointments to that office.

# **ARTICLE IX.**

## **RESPONSIBILITIES OF OFFICERS**

### **Section 1. President.**



The ~~P~~resident shall preside at all Board meetings, and shall have such other powers and duties as the Board or the Bylaws may prescribe.

## **Section 2. Vice President.**

If the ~~P~~resident is absent or disabled, the ~~V~~ice ~~P~~resident shall perform all duties of the ~~P~~resident. When so acting, the ~~V~~ice ~~P~~resident shall have all powers of and be subject to all restrictions on the ~~P~~resident. The ~~V~~ice ~~P~~resident shall have such other powers and perform such other duties as the Board or the Bylaws may prescribe.

## **Section 3. Secretary.**

The ~~S~~ecretary shall keep or cause to be kept, at the Corporation's principal office or such other place as the Board may direct, a book of minutes of all meetings, proceedings, and actions of the ~~B~~oard, and of committees of the Board. The minutes of meetings shall include the time and place that the meeting was held, whether the meeting was annual, regular, or special, and, if special, how authorized, the notice given, and the names of those present at ~~B~~oard and committee meetings. The ~~S~~ecretary shall keep or cause to be kept, at the principal office in California, a copy of the Articles of Incorporation and Bylaws, as amended to date.

The ~~S~~ecretary shall give, or cause to be given, notice of all meetings of the Board and of committees of the ~~B~~oard required by these Bylaws to be given. The ~~S~~ecretary shall keep the corporate seal in safe custody and shall have such other powers and perform such other duties as the ~~B~~oard or the Bylaws may prescribe.

## **Section 4. Treasurer.**

The Treasurer shall be the chief financial officer of the Corporation and shall keep and maintain, or cause to be kept and maintained, adequate and correct books and accounts of the Corporation's properties and transactions. The Treasurer shall send or cause to be given to the ~~D~~irectors such financial statements and reports as are required to be given by law, by these Bylaws, or by the ~~B~~oard.

The books of account shall be open to inspection by any ~~D~~irector at all reasonable times. The Treasurer shall deposit, or cause to be deposited, all money and other valuables in the name and to the credit of the Corporation with such depositories as the ~~B~~oard may designate, shall disburse the Corporation's funds as the Board may order, shall render to the ~~P~~resident and the Board, when requested, an account of all transactions as Treasurer and of the financial condition of the Corporation, and shall have such other powers and perform such other duties as the Board or the Bylaws may prescribe.

If required by the Board, the Treasurer shall give the Corporation a bond in the amount and with the surety or sureties specified by the ~~B~~oard for faithful performance of the duties of the office and for restoration to the Corporation of all of its books, papers, vouchers, money, and other property of every kind in the possession or under the control of the Treasurer on his or her death, resignation, retirement, or removal from office.

## **Section 5. Executive Director~~Agents and Employees.~~**

The Board shall appoint an Executive Director, who shall serve as the Corporation's chief executive officer at the pleasure of the Board and whose terms and conditions of employment shall be specified by the Board. The Executive Director shall be responsible for the day-to-day administration of the Corporation, ~~will be supervised by a member of the Board as appointed by the Board,~~ and shall have other such powers and duties as are prescribed by the Board. The Executive Director shall hire, direct, and discharge all other agents and employees, who shall have such authority and perform such duties as may be required to carry out the operations of the Corporation in accordance with the policies established by the Board. ~~Any employee or agent may be removed at any time with or without cause.~~

Unless excused, ~~t~~The Executive Director shall attend all meetings of the Board and committees, ~~serving as an ex-officio member, without a vote except the Audit Committee; provided, however, that the Board or any committee of the Board may enter into a closed session without the presence of the Executive Director at the President's discretion in compliance with the Brown Act.~~

## **ARTICLE X.**

### **STANDARD OF CARE**

#### **Section 1. General.**

A ~~D~~irector shall perform the duties of a ~~D~~irector, including duties as a member of any committee of the Board on which the ~~D~~irector may serve, in good faith, in a manner such director believes to be in the best interest of this Corporation and with such care, including reasonable inquiry, as an ordinarily prudent person in a like situation would use under similar circumstances.

In performing the duties of a ~~D~~irector, a ~~D~~irector shall be entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by:

- (a) One (1) or more officers or employees of the Corporation whom the ~~D~~irector believes to be reliable and competent in the matters presented;
- (b) Counsel, independent accountants, or other persons as to matters which the ~~D~~irector believes to be within such person's professional or expert competence;  
or
- (c) A committee of the Board upon which the Director does not serve that is composed exclusively of any or any combination of Directors and persons described in subsection (a) and (b) of this Section 1, as to matters within its designated authority, which committee the ~~D~~irector believes to merit confidence,

so long as in any such case, the ~~D~~irector acts in good faith, after reasonable inquiry when the need thereof is indicated by the circumstances and without knowledge that could cause such reliance to be unwarranted.

A person who performs the duties of a ~~D~~irector in accordance with the above shall have no liability based upon any failure or alleged failure to discharge that person's obligations as ~~D~~irector, including, without limiting the generality of the foregoing, any actions or omissions which exceed or defect a public or charitable purpose to which the Corporation, or assets held by it, are dedicated.

## **Section 2. Standard of Care - Investments.**

Except with respect to assets held for use or used directly in carrying out this Corporation's<sup>2</sup> charitable activities, in investing, reinvesting, purchasing, acquiring, exchanging, selling, and managing this Corporation's investments, the Board shall avoid speculation, looking instead to the permanent disposition of the funds, considering the probable incomes, as well as the probable safety of this Corporation's capital.

## **Section 3. Standard of Care – Self-Dealing Transactions.**

~~Pursuant to California Government Code Section 1090, t~~The Board shall not approve a contract in which one of its Directors has a financial interest, pursuant to California Government Code Section 1090, or a self-dealing transaction, pursuant to Corporations Code Section 5233. A self-dealing transaction is one in which the Corporation is a party and in which one (1) or more of the directors has a material financial interest or a transaction between this Corporation and any entity in which one (1) or more of its directors has a material financial interest.

## **Section 4. Inspection.**

Every ~~D~~irector shall have the right at any reasonable time during the business hours of the Corporation to inspect and copy all books, records, and documents pursuant to the California Nonprofit Public Benefit Corporation Law and the California Public Records Act, and to inspect the physical properties of this Corporation.

# **ARTICLE XI.**

## **INDEMNIFICATION; LIABILITY OF THE CORPORATION**

### **Section 1. Right of Indemnity.**

To the fullest extent permitted by law, this Corporation shall indemnify its ~~D~~irectors, officers, employees, and other persons described as "agents" in ~~S~~ection 5238(a) of the California Corporations Code, including persons formerly occupying such position, against all expenses, judgments, fines, settlements and other amounts actually and reasonably incurred by them in connection with any "proceeding," as that term is used in that ~~S~~ection, and including an action by or in the right of the Corporation, by reason of the fact that the person is or was a person

described in that ~~S~~section. ~~"Expenses,"~~ as used in ~~these~~ ~~B~~bylaws, shall have the same meaning as in ~~S~~section 5238(a) of the California Corporations Code.

## **Section 2. Approval of Indemnity.**

On written request to the ~~B~~board by any person seeking indemnification under ~~S~~section 5238(b) or ~~S~~section 5238(c) of the California Corporations Code, the ~~B~~board shall promptly determine under ~~S~~section 5238(e) of the California Corporations Code whether the applicable standard of conduct set forth in ~~S~~section 5238(b) or ~~S~~section 5238(c) has been met and, if so, the ~~B~~board shall authorize indemnification.

## **Section 3. Advancement of Expenses.**

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

## **Section 4. Insurance.**

The Corporation shall have the right to purchase and maintain insurance to the full extent permitted by law on behalf of its officers, ~~D~~irectors, employees, and other agents, against any liability asserted against or incurred by any officer, ~~D~~irector, employee, or agent in such capacity or arising out of the officer's, ~~D~~irector's employee's, or agent's status as such.

## **Section 5. Liability of the Corporation.**

The Corporation itself shall be ~~solely~~ responsible for the management and fiscal affairs of the Corporation and for the payment of any debts and liabilities incurred by the Corporation.

# **ARTICLE XII.**

## **RECORDS AND REPORTS**

### **Section 1. Maintenance of Corporate Records.**

The Corporation shall keep:

- (a) Adequate and correct books and records of account; and,
- (b) Written minutes of the proceedings of its ~~B~~board, and committees of the ~~B~~board.

The Corporation shall abide by the provisions of the California Public Records Act.

## **Section 2. Maintenance and Inspection of Articles and Bylaws.**

The Corporation shall keep at its principal office, or if its principal office is not in California, at its principal business office in this state, the original or a copy of the Articles of Incorporation and its Bylaws, as amended to date, which shall be open to inspection by the Directors at all reasonable times during office hours.

## **Section 3. Annual Report.**

The Board shall cause an annual report to be sent to the Directors within one hundred fiftytwo (1520) days after the end of the Corporation's fiscal year. That report shall contain the following information, in appropriate detail, for the fiscal year:

- (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;
- (c) The revenue or receipts of the Corporation, both unrestricted and restricted to particular purposes;
- (d) The expenses or disbursements of the Corporation for both general and restricted purposes; and,
- (e) Any information required by Section 4 of this Article.

The annual audited financial report shall be accompanied by a report on this Corporation prepared by independent accountants, or, if there is no such report, by the certificate of an authorized officer of the Corporation that the financial such statements included in the annual report were prepared without audit from the Corporation's books and records.

This requirement of an annual report shall not apply if the Corporation receives less than \$25,000 in gross receipts during the fiscal year, provided, however, that the information specified above for inclusion in an annual report must be furnished annually to all Directors.

## **Section 4. Annual Statement of Certain Transactions and Indemnifications.**

The Corporation shall annually prepare and furnish to each Director a statement of any transaction or indemnification of the following kind within one hundred twenty (120) days after the end of the Corporation's fiscal year:

- (a) Any transaction in which the Corporation, its parent, or its subsidiary was a party;
- (b) Any transaction in which an "interested person" had a direct or indirect material financial interest; and,

- (c) Any transaction which involved more than \$50,000, or was one of a number of transactions with the same interested person involving, in the aggregate, more than \$50,000. For the purposes of this subparagraph, and subparagraph (b) above, an "interested person" is either of the following:
- i) Any Deirector or officer of the Corporation, its parent, or subsidiary (but mere common directorship shall not be considered such an interest); or
  - ii) Any holder of more than ten (10) percent of the voting power of the Corporation, its parent, or its subsidiary. The statement shall include a brief description of the transaction, the names of interested persons involved, their relationship to the Corporation, the nature of their interest in the transaction, and, if practicable, the amount of that interest, provided that if the transaction was with a partnership in which the interested person is a partner, only the interest of the partnership need be stated.
- (d) Any indemnifications or advances aggregating more than \$10,000 paid during the fiscal year to any officer or Deirector of the Corporation under Article X, Sections 1, 2 and 3 of these Bylaws.

## **ARTICLE XIII.**

### **MISCELLANEOUS**

#### **Section 1. Fiscal Year.**

The fiscal year of this Corporation shall end each year on June 30.

#### **Section 2. Contracts.**

All contracts entered into on behalf of this Corporation must be authorized by the Board, or, where the contract is for less than tTwenty--fFive tThousand dDollars (\$25,000), by the President, Treasurer, or Executive Director.

#### **Section 3. Execution of Checks.**

Except as otherwise provided by law, every check, draft, promissory note, money order, or other evidence of indebtedness of the Corporation shall be signed by such individuals as are authorized by the Board.

#### **Section 4. Independent Audit.**

The Corporation shall retain and independent auditor and conduct annual independent audits in accordance with the applicable provisions of the Supervision of Trustees and Fundraisers for Charitable Purposes Act (commencing with Section 12586~~(d)~~) of the California Government Code).

## **Section 5. Amendment of Bylaws.**

The Bylaws may be amended or repealed and new Bylaws adopted by the vote of a majority of all the ~~Directors~~members of the Board then in office and the approval of the City Council, ~~provided that any amendment must receive the prior written consent of the City Council.~~ Such amended or newly adopted Bylaws shall take effect immediately upon approval of the City Council.

## **Section 6. Applicable Law.**

This Corporation shall be subject to any and all applicable state, federal, and local laws, including, but not limited to, such laws as may be applicable as a result of the Corporation's affiliation with the City.

## **Section 7. Ralph M. Brown Act.**

All meetings of the Board of Directors, or any committee thereof, shall be called, noticed, held and conducted in accordance with the applicable provisions of the Ralph M. Brown Act (commencing with Section 54950 of the California Government Code).

## **Section 8. Conflict of Interest.**

The Board shall develop, establish, and implement a conflict of interest policy. ~~In the policy,~~ The policy shall provide that the Board and the Corporation's, ~~its~~ agents and employees, ~~city officers, or city employees~~ shall not be financially interested in a contract made by them in their official capacity, or by anybody or board of which they are members pursuant to Government Code ~~S~~section 1090. In addition, the Corporation shall not authorize any contract in which an officer of the City of San Bruno has a financial interest, either directly or through a body or board of which they are members. Nor shall the Board, its agents, ~~or its and~~ employees, ~~city officers, or city employees~~ be purchasers at any sale or vendors at any purchase made by them in their official capacity pursuant to Government Code ~~S~~section 1090.

## **ARTICLE XIV.**

### **DISSOLUTION OF THE CORPORATION**

Subject to the provisions governing distribution upon dissolution set forth in the Articles of Incorporation of the Corporation, in the event of a dissolution of the Corporation the residual assets shall be distributed as provided in the Articles of Incorporation.

## **ARTICLE XV.**

### **CONSTRUCTION AND DEFINITIONS**

Unless the context requires otherwise, the general provisions, rules of construction, and definitions in the General Provisions of the California Nonprofit Corporation Law and the California Nonprofit Public Benefit Corporation Law shall govern the construction of the Bylaws. Without limiting the generality of the preceding sentence, the masculine gender includes the feminine and neuter, the singular includes the plural, the plural includes the singular, and the term “person” includes both a legal entity and a natural person.

## ARTICLE XVI.

### APPROVAL OF THE CITY COUNCIL RESERVED POWERS

In addition to the City Council having the authority to designate and remove Directors pursuant to Article V, the following actions shall require approval ~~are reserved~~ by the City Council:

- (a) Approval of any change in the Articles of Incorporation or Bylaws of the Corporation;
- (b) Approval of adoption, amendment, or repeal of the Corporation's investment policy and its spending policy;
- (c) Approval of ~~the~~ Corporation's annual budget;
- (d) Approval or amendment of Adoption, amendment, or repeal of the Corporation's grant policies;
- (e) Approval of ~~E~~lection of officers of the Corporation;
- (f) Approval of any agreement for the management of the affairs of the Corporation;
- (g) Approval of the acquisition of real estate or of any project that would require the use of City property or resources;
- (h) Approval of ~~I~~ncurrence of indebtedness by the Corporation in excess of twenty-five thousand dollars (\$25,000); and/or
- (i) Affiliation of the Corporation with any other entity ("Affiliation" meaning any arrangement whereby the Corporation controls, is controlled by, or is under common control with any other entity or any other similar arrangement); ~~and/or~~
- (j) ~~Appointment and removal of members of the Board of Directors.~~