

**VILLAGE OF DOWNERS GROVE**  
**REPORT FOR THE VILLAGE COUNCIL WORKSHOP**  
**AUGUST 3, 2010 AGENDA**

SUBJECT:	TYPE:	SUBMITTED BY:
Approval of Third Amendment to the EDC Bylaws	✓ Resolution Ordinance Motion Discussion Only	Enza Petrarca Village Attorney

**SYNOPSIS**

A resolution has been prepared to approve a third amendment to the Economic Development Corporation Bylaws. The Village Council is required to approve any changes to the Bylaws pursuant to the Agreement between the Village and the Downers Grove Economic Development Corporation.

**STRATEGIC PLAN ALIGNMENT**

Five Year Plan and Goals for 2006-2011 identified *A Strong, Diverse Local Economy*. A supporting objective of this goal is *Effective EDC-Public-Private Partnership*.

**FISCAL IMPACT**

N/A.

**RECOMMENDATION**

Approval on the August 3, 2010 consent agenda.

**BACKGROUND**

On December 20, 2005, the Village Council approved an agreement between the Village of Downers Grove and the “to be created” private, not-for-profit Downers Grove Economic Development Corporation (EDC). In a related action, the Village Council also approved the Bylaws for the Corporation. On December 19, 2006 and on September 11, 2007, the Village Council approved a first and second amendment, respectively, to the Bylaws via resolution.

A third amendment to the Corporation’s Bylaws shall appoint the Executive Director of the Chamber of Commerce and the Executive Director of the Downtown Downers Grove Management Corporation to serve as permanent Elected Directors and shall remove the seven person maximum restriction to the executive committee.

The adopted changes were initiated by the EDC and approved by its board. Staff recommends approval.

**ATTACHMENTS**

Resolution

Third Amendment to EDC Bylaws

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION AUTHORIZING ADOPTION OF A  
THIRD AMENDMENT TO THE  
ECONOMIC DEVELOPMENT CORPORATION BYLAWS**

BE IT RESOLVED by the Village Council of the Village of Downers Grove, DuPage County, Illinois, as follows:

1. That the form and substance of a certain Third Amendment (the "Amendment") to the Downers Grove Economic Development Corporation (the "EDC") Bylaws, as set forth in the form of the Amendment submitted to this meeting with the recommendation of the Village Manager, is hereby approved.

2. That the Village Manager and Village Clerk are hereby respectively authorized and directed for and on behalf of the Village to accept the Amendment, substantially in the form approved in the foregoing paragraph of this Resolution, together with such changes as the Manager shall deem necessary.

3. That the proper officials, agents and employees of the Village are hereby authorized and directed to take such further action as they may deem necessary or appropriate to perform all obligations and commitments of the Village in accordance with the provisions of the Amendment.

4. That all resolutions or parts of resolutions in conflict with the provisions of this Resolution are hereby repealed.

5. That this Resolution shall be in full force and effect from and after its passage as provided by law.

\_\_\_\_\_  
Mayor

Passed:

Attest: \_\_\_\_\_  
Village Clerk

**THIRD AMENDED & RESTATED BY-LAWS OF THE**  
**DOWNERS GROVE ECONOMIC DEVELOPMENT CORPORATION**

**ARTICLE I – DECLARATION**

**Section 1 – Name:** The name of this corporation is the Downers Grove Economic Development Corporation (hereinafter “the EDC”). The EDC is an Illinois not-for-profit corporation that is tax exempt pursuant to Section 501(c) (6) of the Internal Revenue Code.

**Section 2 – Mission:** The purpose of the EDC is to maintain and improve the economic vitality of Downers Grove, Illinois, through the retention, expansion and attraction of all types of commercial enterprise that are conducive to the maintenance and improvement of the quality of life in Downers Grove, as more fully described in the Articles of Incorporation.

**Section 3 – Objectives:** The objectives of the EDC are to:

- (a) promote and cultivate new business growth in Downers Grove;
- (b) further strengthen the local economy through retention and expansion of existing businesses;
- (c) facilitate and promote new development programs;
- (d) to promote business and leisure travel to Downers Grove;
- (e) cultivate and maintain a labor pool; and
- (f) maintain a diverse local economy.

**Section 4 – Area:** The EDC shall serve Downers Grove, Illinois and other areas within the Village planning limits where economic activities will benefit Downers Grove.

**Section 5 – Office:** The principal office of the EDC shall be located in Downers Grove, Illinois.

**Section 6- Fiscal Year:** The fiscal year of the EDC shall run from the 1<sup>st</sup> day of January through the 31<sup>st</sup> day of December of each year.

**ARTICLE II – BOARD OF DIRECTORS**

**Section 1 – Powers:** The business and affairs of the EDC shall be managed by its Board of Directors. The Board of Directors shall have all of the powers, authorities, responsibilities and obligations given the Board of Directors of a not-for-profit corporation under the laws of the State of Illinois, its Articles of Incorporation and these by-laws.

**Section 2 – Composition:** Recognizing the independence and interdependence of various governmental bodies in Downers Grove and the Downers Grove community as a whole, the Board

of Directors of the EDC shall consist of at least twenty-seven (27) Directors composed of up to nine (9) ex-officio non-voting Governmental Directors, and at least sixteen (16) voting Elected Directors, as well as such number of additional ex-officio non-voting directors as may be appointed from time to time.

**Section 3 – Governmental Directors:** The non-voting non-elected ex-officio Governmental Directors shall consist of the following:

- (a) The Mayor of Downers Grove;
- (b) One (1) Village Council member of Downers Grove as designated by the Village Council;
- (c) The Village Manager of Downers Grove and one additional person designated by such Village Manager;
- (d) The Superintendent of School District 58;
- (e) The Superintendent of School District 99;
- (f) The Administrator of the Downers Grove Park District; and
- (g) A representative from the DuPage County Board, provided the representative’s district includes a portion(s) in the Village of Downers Grove, or a person that serves on the County Economic Development Board, as designated by the County Board.
- (h) A representative from the Illinois House of Representatives and/or Illinois Senate

**Section 4 – Terms:**

Terms of all ex-officio non-voting Governmental Directors shall be one (1) year commencing on or after January 1 of each year, but always ending December 31 of each year.

Terms for Elected Directors shall be three (3) years. It is intended that approximately one third (1/3) of elected Board terms shall be up each year. To do so, the initial Elected Directors shall be appointed to serve a one (1), two (2), or three (3) year term to implement this intention. All Elected Directors terms shall commence on January 1 of the year of election. Terms of the initial Elected Directors shall be either:

- (A) 1/1/07 to 12/31/07
- (B) 1/1/07 to 12/31/08; or
- (C) 1/1/07 to 12/31/09.

**Section 5 – Elected Directors:** The Elected Directors shall consist of at least sixteen (16) who are elected. Elected Directors may opt to serve a second term at the conclusion of the first term by notifying the President before August 1 of the last year of his or her first term. An election must occur to reappoint an Elected Director. In no event shall any Elected Director serve

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more than two (2) consecutive terms. In addition, the Executive Director of the Downers Grove Area Chamber of Commerce & Industry and the Executive Director of the Downtown Downers Grove Management Corporation shall serve as permanent Elected Directors. Upon creation of the EDC, the initial Elected Directors shall be appointed by the Nominating Committee.

Deleted: there may be up to three (3) additional Directors elected at any time for a term of up to one (1) year commencing upon their election and ending on December 31 of election year

**Section 6-Qualifications:** An Elected Director shall be an individual who either resides in Downers Grove or is employed by a person, entity or organization with an office in Downers Grove, supports the purpose and mission of the EDC and commits to contribute such time, experiences, expertise and/or resources as will benefit the EDC.

**Section 7 – Restrictions:** There shall be no more than one (1) individual from any one (1) or affiliated group of employers serving as an Elected Director at any time.

**Section 8 – Election:** The Elected Directors shall be elected at the Annual Meeting of the Directors, which shall take place during the last quarter of the fiscal year. The additional Elected Directors may be elected at any meeting of the Directors.

**Section 9 – Removal:** A Director may be removed for conduct or circumstances determined to be prejudicial to the best interests of the EDC by the vote of at least two-thirds (2/3) of all of the Elected Directors.

**Section 10 – Absences:** Absence from three (3) consecutive regular Elected Board of Director meeting without an excuse deemed valid and so recorded by the Elected Board of Directors may be construed as a resignation by said Director.

**Section 11 – Vacancies:** The Board of Directors shall fill any vacancy of an Elected Director as a result of his or her resignation, removal or failure to maintain the required qualifications.

**Section 12 – Meetings:** The Board of Directors shall meet as often as is necessary, but in any event, at least once during each fiscal year quarter.

**Section 13 – Reports:** The Board of Directors shall submit a report of the work and finances of the EDC at least once a year at the Annual Meeting of the Directors.

**Section 14 – Quorum:** A Majority of the total number of Elected Directors on the Board of Directors shall constitute a quorum.

**Section 15 – Compensation:** Directors shall not receive any compensation for their services. However, any Director may be reimbursed for actual expenses incurred in carrying out his or her duties of the EDC if approved by the Board of Directors. All such expenses shall be itemized and documented in writing.

**Section 16 – Manner of Acting:** the act of a majority of the Elected Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors, except where otherwise provided by law, the Articles of Incorporation, or these by-laws.

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**Section 17 – Informal Action by Directors:** Any action required to be taken, or which may be taken, at a meeting of Elected Directors, may be taken without a meeting if a written consent setting for the action taken, is signed and/or confirmed by reply email by all of the Elected Directors.

**Section 18 – Telephonic Meetings Permitted:** Directors may participate in any Board of Director meeting by means of conference telephone or similar communications equipment whereby all Directors participating in the meeting can hear each other, and participation as provided herein shall constitute presence in person at such meeting.

### ARTICLE III – OFFICERS

**Section 1 – Elections:** At the first meeting of the newly constituted Board of Directors, The Elected Directors shall elect from among the Elected Directors a Chairman, a Vice Chairman, a Secretary, a Treasurer, and such additional Vice-Chairmen as the Directors may from time to time deem necessary:

**Section 2 – Term:** All officers shall serve for a two (2) year term, and until their successors shall have been elected and qualified, and shall be Elected Directors.

**Section 3 – Chairman:** The Chairman shall preside at all Board of Director and executive committee meetings, and shall perform all duties incident to this office. The Chairman of the Board shall, with approval of the Elected Board of Directors, appoint all committees and task forces and shall be an ex officio member of all committees and task forces.

**Section 4 – Vice-Chairman:** The Vice-Chairman shall be responsible for any division of EDC activity designated by the Elected Board of Directors, and shall perform such duties as may be pertinent to such office, or as may be designated from time to time by the Elected Board of Directors. The Vice-Chairman shall assume office of Chairman in the event the Chairman is unable to service for any reason. In addition, upon conclusion of term of Chairman, Vice-Chairman shall assume the Chairmanship for a two (2) year term. If for any reason, the Vice-Chairman cannot fulfill this requirement, a replacement shall be elected by the Elected Directors from among the Elected Board of Directors.

**Section 5 – Treasurer:** The Treasurer shall be the custodian of all funds of the EDC. The treasurer shall make or cause to be made quarterly and annual financial reports to the Board of Directors. The Treasurer shall be chairman of any finance committee. The Treasurer may, at the discretion of the Elected Board of Directors, be bonded. The cost of such bond shall be paid by the EDC.

**Section 6 – Secretary:** The Secretary shall oversee maintenance of the minutes of the meetings of the Board of Directors; assure that all notices are duly given in accordance with the provisions of these By-Laws or as required by the Articles of Incorporation or law; be custodian of the corporate records of the EDC; maintain a register of the post offices address of each member of the Board of Directors; and in general shall direct all duties incident to the office of Secretary and such other duties as may be designated from time to time by the Elected Board of Directors.

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**Section 7 – President:** the President shall be the chief administrative officer of the EDC. The President shall conduct official correspondence, preserve all documents, books and communications, keep books of accounts and maintain accurate records of the proceedings of the Board of Directors, and all committees and task forces. The President shall engage, discharge, and supervise all employees, including fixing their duties and compensation within budgetary limits with the approval of the Elected Board of Directors. The President shall act as one of the co-signers on authorized checks. Compensation of the President shall be determined by the Elected Board of Directors and reviewed from time to time. The Board of Directors may engage or dismiss the President by a vote of two-thirds (2/3) of all of the Elected Directors. The President shall be subject to such policies and procedures as may be set forth by the Board of Directors from time to time. Upon termination of his or her duties, the President shall deliver to the Board of Directors all books, papers and property of the EDC.

**ARTICLE IV – NOMINATIONS**

**Section 1 – Nominating Committee:** A Nominating Committee of seven (7) individuals shall be appointed by the Chairman of the Board with the approval of the Elected Board of Directors on or before the 1<sup>st</sup> day of July of each year. There shall be no more than one (1) individual from any one (1) affiliated group of employers serving on the Nominating committee at any time.

**Section 2- Duties:** The Nominating committee shall nominate that number of qualifying individuals as there are Directorships to be filled. On or before 1<sup>st</sup> day of October of the succeeding year, the Nominating Committee shall submit its list of nominees who have indicated their willingness to serve to the Board of Directors or its designated person.

**Section 3 – Other Nominations:** Nominations for Elected Directors may also be made by the filing of a petition, signed by at least five (5) Directors, with the Secretary, President or Chairman of the EDC at least thirty (30) days prior to the Annual Meeting of the Directors. No nominations may be made from the floor during the Annual Meeting or in any other manner not specifically authorized by these by-laws.

**ARTICLE V – EXECUTIVE COMMITTEE**

**Section 1 – Composition:** The Executive Committee shall consist of the Chairman, Vice-Chairman, Treasurer, Secretary and the Immediate Past Chairman, and such additional Elected Directors as the Elected Directors may from time to time deem necessary. The Executive Committee shall be selected by the Elected Directors from among the Elected Directors. The President and the Village Manager or his/her designee shall be ex-officio non-voting members of the Executive Committee.

Deleted: up to a total of seven (7) Elected Directors

**Section 2 – Powers:** The Executive Committee shall, in the interim period between Board meetings, have all powers of the Board of Directors as provided by law, the Articles of Incorporation of the EDC or these By-Laws and be fully empowered to make all decisions relating to EDC matters, except the Executive Committee shall not have the power (i) to elect Directors, (ii) to elect Officers, or (iii) to amend the By-Laws pursuant to Article XI, all of which shall require the action of the Board of Directors.

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**Section 3 – Quorum:** A majority of the Executive Committee shall constitute a quorum.

**Section 4 – Duties:** The Executive Committee shall provide guidance to the President, annually make an appraisal of his or her performance in keeping with the job description and official duties and cause a detailed review of all books and accounts to be made and presented to the Board of Directors.

**Section 5 - Manner of Acting:** The act of a majority of the Members of the Executive Committee present at a meeting at which a quorum is present shall be the act of the Executive Committee, except where otherwise provided by law, the Articles of Incorporation of the EDC or these By-Laws.

**Section 6 - Informal Action by Members of Executive Committee:** Any action required to be taken or that may be taken at a meeting of the Executive Committee may be taken without a meeting if a written consent setting forth the action taken is signed and/or confirmed by reply email by all of the Members of the Executive Committee.

**Section 7 – Telephonic Meetings Permitted:** Members of the Executive Committee may participate in any Executive Committee meeting by means of conference telephone or similar communications equipment whereby all such Member participating in the meeting can hear each other, and participation as provided herein shall constitute presence in person at such meeting.

## ARTICLE VI – COMMITTEES

**Section 1 – Designation:** The Chairman shall designate all committees and task forces and appoint all chairmen subjects to confirmation by the Elected Board of Directors. The Board shall authorize and define the powers and duties of all standing and special committees, except for those committees as are set forth in these by-laws.

**Section 2 – Duties:** The committee shall make investigations, conduct studies, make recommendations and generally carry out such activities as may be delegated to it from time to time by the Elected Board of Directors.

**Section 3 – Term:** The term of all committees shall expire on the 31<sup>st</sup> day of December of each year, but may be renewed by the newly Elected Chairman with the approval of the Elected Board of Directors.

**Section 4 – Policies:** Committees and task forces shall adhere to any policies set down by the Elected Board of Directors. Progress reports and minutes of meetings shall be made available to the Directors.

**Section 5 – Limitations:** No Elected Director, office or committee chairman shall represent the EDC in advocacy of or opposition to any project, program, or position without prior approval of a policy statement by the Elected Board of Directors.

## ARTICLE VII – FINANCE

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**Section 1 – Revenues:** The revenues of the EDC shall be derived from donations, grants and activities designed to advance the “mission and objectives” of the EDC, provided, however, that the Elected Board of Directors, in its sole discretion, shall have the right to reject any funds or property.

**Section 2 – Commitments:** No obligation or expense shall be incurred and no money shall be appropriated without prior approval of the Elected Board of Directors. Upon approval of the budget, the President is authorized to make disbursements on accounts and expenses provided for in the budget without additional approval of the Elected Board of Directors. Disbursements shall be by check. Check and contracts shall be signed by the President and at least one (1) Executive Committee Member.

**Section 3 – Special Funds:** If deemed necessary or advisable by the Elected Board of Directors, special funds may be raised or accepted.

## ARTICLE VIII – MISCELLANEOUS

**Section 1 – Conflict of Interest:** The EDC shall develop, adopt and maintain a Conflict of Interest Policy. All matters concerning conflicts of interest shall be considered in accordance with (I) 805 ILCS 105/108.60 as in effect at the time of adoption of these Amended and Restated By-Laws, a copy of which is set forth in Exhibit A, attached hereto, or as hereafter amended, and (II) the Conflict of Interest Policy of the EDC, or as hereafter amended. The minutes of all actions taken on matters involving a conflict of interest shall reflect that these requirements have been met.

**Section 2 – Parliamentary Procedure:** The proceedings of the EDC shall be governed by and conducted according to the most current edition of Robert’s Rule of Order as it may exist from time to time.

**Section 3 – Books and Records:** The EDC shall keep books and records of account and shall also keep minutes of the proceedings of its Board of Directors and committees having any of the authority of the Board of Directors. All books and records of the EDC may be inspected by any Director or his agent or attorney for any proper purpose at any reasonable time.

**Section 4 – Waiver of Notice:** Whenever any notice whatsoever is required to be given by statute or by the by-laws of this EDC, waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

## ARTICLE IX – INDEMNIFICATION

The EDC may indemnify any current or past Director or Officer who was or is a party, or is threatened to be made a party, to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, other than an action by or in the right of the EDC. Such indemnification shall be against expenses, including reasonable attorneys’ fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding if he or she acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the EDC. Such indemnification shall also apply to any criminal action or proceeding, so long as no reasonable

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cause exists to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment or settlement, conviction or upon a plea of *nolo contendere* or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in or not oppose to the best interest of the EDC, and with respect to any criminal action or proceeding that he or she had reasonable cause to believe that his or her conduct was unlawful.

The EDC may indemnify and person who was or is a party, or is threatened to be made a party, to any threatened, pending or completed action or suit by or in the right of the EDC to procure a judgment in its favor by reason of the fact that he or she is or was a Director or Officer of the EDC against expenses, including reasonable attorneys' fees, actually and reasonably incurred by him or her in connection with the defense or settlement of such action or suit if he or she acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the EDC. No indemnification shall be made in respect of any claim, issue or matter at to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his or her duty to the EDC unless, and only to the extent that, the court in which such action or suit was brought shall determine upon application, that despite the adjudication of liability, but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the court shall deem proper.

To the extent that a Director or Officer of the EDC has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in the foregoing paragraphs, or in defense of any claim, issue or matter therein, he or she may be indemnified against expense, including reasonable attorneys' fees, actually and reasonably incurred by him or her in connection therewith.

Any indemnification under the foregoing paragraphs, unless ordered by a court, shall be made by the EDC only as authorized in the specific case upon a determination that indemnification of the Director or Officer is proper in the circumstances because he or she has met the applicable standard of conduct set forth in said paragraphs. Such determination shall be made (a) by the Board of Directors by a majority vote of a quorum consisting of Directors who were not parties to such action, suit or proceeding, or (b) if such a quorum is not obtainable, or, even if obtainable, a quorum of disinterested Directors so directs, by independent legal counsel in a written opinion.

The EDC shall have power to purchase and maintain insurance on behalf of any person who is or was a Director, Officer, employee or agent of the EDC, or is or was serving at the request of the EDC as a Director, Officer, employee or agent of another corporation, EDC, joint venture, trust or other enterprise against any liability asserted against him or her and incurred by him or her in any such Village, or arising out of his or her status as such, whether or not the EDC would have the power to indemnify him or her against such liability under the provisions of this article.

## ARTICLE X – DISSOLUTION

The EDC shall use its funds only to accomplish the purpose and mission specified in these by-laws and no part of said funds shall be used for, or is distributed to, the Directors of the EDC. On dissolution of the EDC, any remaining funds that were provided by the Village pursuant to the Operating Agreement shall be returned to the Village. Any remaining funds raised by other means

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shall be distributed to one (1) or more organizations organized and operated for charitable, education, scientific or philanthropic purposes as shall at the time qualify as an exempt organization under Section 501(c) (3) of the Internal Revenue Code of 1986, or the corresponding provision of any future United States Internal Revenue Law, as the Board of Directors shall determine, subject to approval of the Village Manager.

#### ARTICLE XI – AMENDMENTS

**Section 1 – Procedures:** These bylaws may be amended by a vote of two-thirds (2/3) of all of the Directors at any Regular Meeting, or at any Special Meeting called for that purpose, provided a ten (10) day notice has been given to all Directors, and approval by the Downers Grove Village Council.

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## EXHIBIT A

(805 ILCS 105/108.60) (from Ch. 32, par. 108.60)

Sec. 108.60. Director conflict of interest. (a) If a transaction is fair to a corporation at the time it is authorized, approved, or ratified, the fact that a director of the corporation is directly or indirectly a party to the transaction is not grounds for invalidating the transaction.

(b) In a proceeding contesting the validity of a transaction described in subsection (a), the person asserting validity has the burden of proving fairness unless:

(1) The material facts of the transaction and the director's interest or relationship were disclosed or known to the board of directors or a committee consisting entirely of directors and the board or committee authorized, approved or ratified the transaction by the affirmative votes of a majority of disinterested directors, even though the disinterested directors be less than a quorum; or

(2) The material facts of the transaction and the director's interest or relationship were disclosed or known to the members entitled to vote, if any, and they authorized, approved or ratified the transaction without counting the vote of any member who is an interested director.

(c) The presence of the director, who is directly or indirectly a party to the transaction described in subsection (a), or a director who is otherwise not disinterested, may be counted in determining whether a quorum is present but may not be counted when the board of directors or a committee of the board takes action on the transaction.

(d) For purposes of this Section, a director is "indirectly" a party to a transaction if the other party to the transaction is an entity in which the director has a material financial interest or of which the director is an officer, director or general partner.

(Source: P.A. 84-1423.)

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