



DATE: June 26, 2013
TO: Board of Commissioners
FROM: Patrick Quinton, Executive Director
SUBJECT: Report Number 13-27
Appointing Portland Development Commission Board Members to the Portland Economic Investment Corporation's Board of Directors

BOARD ACTION REQUESTED

Adopt Resolution No. 7013

ACTION DESCRIPTION

This action will appoint the Portland Development Commission (PDC) Board of Commissioners (Board) Chair, Scott Andrews, to the Board of Directors for the newly incorporated Portland Economic Investment Corporation (PEIC). This resolution will also designate PDC Commissioner Charles Wilhoite as a second PDC designee for the PEIC Board of Directors in the event that PEIC chooses to expand the size of its initial board.

BACKGROUND AND CONTEXT

In the past several months, PDC has initiated discussions with economic development partners Greater Portland, Inc. (GPI) and the Portland Business Alliance (PBA) to explore new methods of stimulating economic development and prosperity through a 501(c)(4) organization. Based on these discussions, a new organization has been created for the stated purpose of promoting social welfare, including the advancement of economic development in Portland by encouraging and assisting industrial and commercial enterprises in locating and expanding in the Portland metropolitan area and attracting investment in catalytic redevelopment projects. (Articles of Incorporation are attached as Attachment A.)

The immediately preceding Board action (Board Resolution 7012) requested Board approval for a grant to provide operational funds to establish PEIC as a new operating entity and to support capitalization of the Portland Seed Fund's second fund (PSF II) for investment in local startups through PEIC. PDC has no plans to provide additional funds for the organization or to request that it perform any other functions currently performed by PDC.

PEIC will begin operations with a three-member Board of Directors composed of one PDC Board member and one each from GPI and PBA. The PEIC Board of Directors may potentially expand to five members with one additional PDC Board member and one additional director representing either (or both) Portland neighborhood or economic development interests. Members of the PEIC Board of Directors will serve three-year terms with a limit of two consecutive terms. Vacancies from the independent seats will be filled by the appointing organization. Vacancies from the PDC Board-appointed seat(s) will be filled by a vote of the PDC Board.

Approval by a supermajority of members of the PEIC Board of Directors will be required to amend the purpose or change the composition of the PEIC Board. PDC will not have a controlling interest in PEIC and all actions of PEIC will be separate from, and independent of, PDC.

Given the stated purpose of PEIC, the proposed bylaws require that each agency appoint a member to the PEIC Board of Directors who is knowledgeable and sophisticated in finance and economic development. This action before the Board i) appoints Scott Andrews to PEIC's Board of Directors (and permits the future appointment of Charles Wilhoite in the event the PEIC Board of Directors expands), and ii) constitutes a finding by this Board that Mr. Andrews and Mr. Wilhoite meet the knowledge requirements of the bylaws.

COMMUNITY AND PUBLIC BENEFIT

Through financial knowledge and economic development expertise derived from their PDC Board service, PDC's appointees to the PEIC Board of Directors will ensure that any PEIC returns generated through the PSF II investment will be reinvested in PSF or in economic development activities that benefit Portland.

PUBLIC PARTICIPATION AND FEEDBACK

No specific public participation has taken place related to this action.

BUDGET AND FINANCIAL INFORMATION

There are no budget or financial impacts related to this proposed action.

RISK ASSESSMENT

Appointing PDC Board members to the board of an independent non-profit does not materially add risk to PDC. The appointed members from the PDC Board will act in their personal capacity and not as an agent for PDC. As an independent entity, PEIC will provide its own Directors and Officers insurance to all members of its Board of Directors. Pursuant to State of Oregon law, service of PDC Board members on the PEIC Board of Directors or any other non-profit board does not create a conflict for the members of the PDC Board. The Oregon Ethics Statute exempts service on a 501(c)(4) board as non-remunerated board members for purposes of conflicts of interests.

ALTERNATIVE ACTIONS

The PEIC bylaws require that one member of its initial Board of Directors be appointed by the PDC Board. The PDC Board may choose to appoint a different member of the PDC Board to the PEIC Board of Directors. Alternately, the PDC Board may choose not to appoint any member to the PEIC Board of Directors. Since the PDC Board's action under Resolution 7012, granting funds to PEIC, is contingent upon PEIC being formed with a member of the PDC Board on its Board of Directors, if the PDC Board elects to not make an appointment to the PEIC Board of Directors, grant funds to invest in PSF II through PEIC would not be available.

ATTACHMENTS

- A. PEIC Articles of Incorporation

PORTLAND DEVELOPMENT COMMISSION

Portland, Oregon

REPORT NO. 13-27

ATTACHMENT A

**APPOINTING PORTLAND DEVELOPMENT COMMISSION BOARD
MEMBERS TO THE PORTLAND ECONOMIC INVESTMENT
CORPORATION'S BOARD OF DIRECTORS**

Attachment A includes this cover page and contains four pages:

- Articles of Incorporation of Portland Economic Investment Corporation

ARTICLES OF INCORPORATION
OF
PORTLAND ECONOMIC INVESTMENT CORPORATION
An Oregon Nonprofit Corporation

The undersigned individual of the age of 18 years or older, acting as incorporator under the Oregon Nonprofit Corporation Act, adopts the following articles of incorporation:

ARTICLE I
NAME AND DURATION

The name of the corporation is Portland Economic Investment Corporation (the "Corporation"), and its duration shall be indefinite.

ARTICLE II
TYPE OF NONPROFIT CORPORATION

The Corporation is a public benefit corporation under the Oregon Nonprofit Corporation Act.

ARTICLE III
PURPOSES AND POWERS

The Corporation is organized and shall be operated exclusively for the promotion of social welfare within the meaning of section 501(c)(4) of the United States Internal Revenue Code of 1986, as amended, including without limitation, but only to the extent consistent with such purposes, the advancement of the economic development of the city of Portland by encouraging and assisting industrial and commercial enterprises in locating and expanding in the Portland metropolitan area. Subject to the foregoing purposes, the requirements of Internal Revenue Code section 501(c)(4), and the restrictions provided in these articles of incorporation, the Corporation shall have and may exercise all the rights and powers of a nonprofit corporation under the Oregon Nonprofit Corporation Act.

ARTICLE IV
CONSTRUCTION

It is intended that the Corporation qualify as an organization that is exempt from federal income taxation under Internal Revenue Code section 501(c)(4). These articles of incorporation shall be construed and interpreted accordingly.

**ARTICLE V
RESTRICTIONS**

The assets of the Corporation are irrevocably dedicated to the purposes described above, and no part of the net earnings of the Corporation shall inure to the benefit of or be distributed to its directors, officers, or other private persons, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Article III. Notwithstanding any provision of these articles of incorporation to the contrary, the Corporation shall not engage in any activities that are not permitted for a corporation which is exempt from federal income tax under Internal Revenue Code section 501(c)(4).

**ARTICLE VI
REGISTERED OFFICE AND AGENT**

The address of the Corporation's initial registered office is 111 S.W. Fifth Avenue, Suite 3675, Portland, Oregon 97204 and the name of its initial registered agent at such address is TCMMS Service Corporation.

**ARTICLE VII
MAILING ADDRESS**

The Corporation's mailing address to which notices may be mailed, until designation of the Corporation's principal office in its annual report, is 111 S.W. Fifth Avenue, Suite 3675, Portland, Oregon 97204.

ARTICLE VIII

The number, terms, and manner of appointment and removal of directors shall be as provided in the bylaws of the Corporation.

**ARTICLE IX
MEMBERS**

The Corporation shall not have members within the meaning of the Oregon Nonprofit Corporation Act.

**ARTICLE X
DISSOLUTION**

The board of directors may approve the dissolution of the Corporation, by the affirmative vote of at least three-fourths of all the directors then in office, at any meeting of the board of directors. Upon dissolution or final liquidation of the Corporation, the assets of the Corporation remaining after payment of or provision for the liabilities and obligations of the Corporation shall be distributed to one or more other qualified organizations determined by the board of directors, by the affirmative vote of at least three-fourths of all the directors then in

office. Any assets not so distributed shall be disposed of by the Multnomah County Circuit Court to such qualified organizations as the court determines. For purposes of this provision, a "qualified organization" means an organization described in Internal Revenue Code section 501(c)(3) or 501(c)(4) or a governmental unit described in section 170(c)(1), in each case with a principal focus on economic development in Portland.

**ARTICLE XI
LIABILITY OF DIRECTORS
AND UNCOMPENSATED OFFICERS**

To the fullest extent permitted under the Oregon Nonprofit Corporation Act, as amended, a director or uncompensated officer of the Corporation shall not be liable to the Corporation for monetary damages for conduct as a director or officer. No repeal or amendment of this provision shall adversely affect any right or protection of a director or officer of the Corporation existing at the time of such repeal or amendment.

**ARTICLE XII
INDEMNIFICATION**

To the fullest extent permitted under the Oregon Nonprofit Corporation Act, as amended, the Corporation shall indemnify any Director or Officer who is made a Party to a Proceeding because the individual is or was a Director or Officer against Liability incurred in the Proceeding, including without limitation advancement of Expenses, as these terms are defined in the Oregon Nonprofit Corporation Act.

**ARTICLE XIII
AMENDMENT**

The board of directors may amend these articles of incorporation, by the affirmative vote of at least three-fourths of all the directors then in office, at any meeting of the board of directors. The meeting notice shall state that a purpose of the meeting is to consider an amendment to the articles of incorporation and shall include a copy or summary of the proposed amendment.

**ARTICLE XIV
INCORPORATOR**

The name and address of the Incorporator of the Corporation is Jeffrey C. Thede, 111 S.W. Fifth Avenue, Suite 3675, Portland, Oregon 97204.

DATED June ____, 2013.

Jeffrey C. Thede, Incorporator

Contact Name: Jeffrey C. Thede
(503) 416-6150