

CITY OF FRESNO CULTURAL ARTS PROPERTIES (COFCAP)

AGENDA

Members

Mayor Ashley Swearengin
Council President Brand
Councilmember Westerlund

APRIL 7, 2011

IF YOU WOULD LIKE TO SPEAK, FILL OUT A SPEAKER REQUEST FORM AVAILABLE FROM THE CITY CLERK'S OFFICE

All items on the agenda and public appearances are subject to approval, denial, referral by the City of Fresno Cultural Arts Properties.

For each matter considered by the "COFCAP", there will first be a staff presentation, followed by a presentation from the project applicant. Testimony from those in attendance will then be taken.

COFCAP action of unscheduled item, if any, shall be limited to referring the item to staff for a report and possibly scheduling on a future agency agenda. All testimony given will be limited to three minutes per person. The three lights on the podium next to the microphone will indicate the amount of time remaining for the speaker. The green light will be turned on when the speaker begins. The yellow light will come on with one minute remaining and one tone will sound. The speaker should be completing the testimony by the time the red light comes on and two tones sound, indicating that time has expired.

REGULAR MEETING OF THE CITY OF FRESNO CULTURAL ARTS PROPERTIES

- A. **RESOLUTION** – Authorizing the amending and restating of the articles of incorporation, the adoption of a Conflict of Interest policy, and the filing of federal and state income tax exemption applications, providing for the City of Fresno Cultural Arts Properties Corporation to operate as a 501(c)(3); authorizing the amending and restating of the bylaws, changing the City of Fresno Cultural Arts Properties Corporation's fiscal year end from June to December
Action Taken:

UNSCHEDULED ORAL COMMUNICATIONS - Members of the public may address the COFCAP regarding items that are not listed on the agenda and within the subject matter jurisdiction of the COFCAP. Each person is limited to a three (3) minute presentation. Anyone wishing to be placed on an agenda for a specified topic should contact the City Clerk Department at least 10 days prior to the desired date.

ADJOURNMENT



**REPORT TO THE CITY OF FRESNO
CULTURAL ARTS PROPERTIES BOARD**

AGENDA ITEM NO. "A"
COUNCIL MEETING 4/07/2011
APPROVED BY _____
DEPARTMENT DIRECTOR _____
CITY MANAGER 

April 7, 2011

FROM: MARK SCOTT, City Manager

BY: NICOLE R. ZIEBA, Deputy City Manager

SUBJECT: APPROVE RESOLUTION AUTHORIZING THE AMENDING AND RESTATING OF THE ARTICLES OF INCORPORATION, THE ADOPTION OF A CONFLICT OF INTEREST POLICY, AND THE FILING OF FEDERAL AND STATE INCOME TAX EXEMPTION APPLICATIONS, PROVIDING FOR THE CITY OF FRESNO CULTURAL ARTS PROPERTIES CORPORATION TO OPERATE AS A 501(C)(3); AUTHORIZING THE AMENDING AND RESTATING OF THE BYLAWS, CHANGING THE CITY OF FRESNO CULTURAL ARTS PROPERTIES CORPORATION'S FISCAL YEAR END FROM JUNE TO DECEMBER.

RECOMMENDATION

Staff recommends the attached Amended and Restated Articles of Incorporation and Bylaws be approved, a Conflict of Interest policy be adopted, and staff be authorized to file the necessary federal and State Income Tax Exemption applications under Internal Revenue Code Section 501(c)(3) for the City of Fresno Cultural Arts Properties (COFCAP).

EXECUTIVE SUMMARY

COFCAP was created as the non-profit arm of the City to hold and disburse the properties once held by the now-defunct Metropolitan Museum, as well as to hold the Master Lease with the City of Fresno for the building once known as the Metropolitan Museum. The non-profit was initially set up as a 501(c)(4) with a fiscal year that ends June 30th. To be more consistent with Internal Revenue Service regulations, this action will amend the status of COFCAP to a 501(c)(3), which will enable to organization to receive property tax exemptions if space is leased to other non-profit or governmental entities, and will revise the fiscal year end to December 31st. In addition, tax counsel strongly recommended that a Conflict of Interest policy be adopted and filed with the Secretary of State. None of these actions change COFCAP's organizational structure or existing leases. Clearinghouse CDFI, the entity through which COFCAP has New Market Tax Credits, has approved these changes.

BACKGROUND

The City set up a 501(c)(4) non-profit entity, COFCAP, to obtain New Market Tax Credits for reducing the total cost incurred when taking title to 1555 Van Ness Avenue, formerly known as the Metropolitan Museum, and the associated properties on that same block. The organization was formed with a fiscal year that ends June 30th. Staff now finds it beneficial to provide "clean up" changes to the non-profit entity for ease of administration and to be fully compliant with Internal Revenue Tax Code. The attached Resolution calls for

revising the Articles of Incorporation and Bylaws to reflect a December 31st fiscal year end and revising the organization's structure to a 501(c)(3), both of which ease reporting requirements for the non-profit entity. In addition, tax counsel strongly suggested that COFCAP adopt a Conflict of Interest policy and reference that policy in the Bylaws. These actions will have no impact to the New Market Tax Credit requirements, and Clearinghouse CDFI has approved these changes.

FISCAL IMPACT

There is no fiscal impact associated with the Resolution.

Attachment: Resolution – Authorizing the amending and restating of the Articles of Incorporation, the amending and restating of the Bylaws, adopting a Conflict of Interest policy, and the filing of the federal and State Income Tax Exemption applications.

RESOLUTION NO. _____

CITY OF FRESNO CULTURAL ARTS PROPERTIES CORPORATION
CORPORATE AUTHORIZING RESOLUTION

RE: AUTHORIZING THE AMENDING AND RESTATING OF THE ARTICLES OF INCORPORATION, THE AMENDING AND RESTATING OF THE BYLAWS, ADOPTING A CONFLICT OF INTEREST POLICY, AND THE FILING OF THE FEDERAL AND STATE INCOME TAX EXEMPTION APPLICATIONS

At a duly constituted meeting of the Board of Directors of City of Fresno Cultural Arts Properties Corporation, a California nonprofit public benefit corporation (the "Corporation"), held on April 7, 2011, the following resolution was adopted:

WHEREAS, the Board of Directors of the Corporation deems it to be in the best interest of the Corporation that the Corporation be exempt from federal income tax pursuant to Internal Revenue Code (the "Code") Section 501(c)(3) and not Code Section 501(c)(4);

WHEREAS, the Board of Directors of the Corporation deems it to be in the best interest of the Corporation to amend and restate the Articles of Incorporation of the Corporation in the form of the Certificate of Amended and Restated Articles of Incorporation of City of Fresno Cultural Arts Properties Corporation, attached hereto as Exhibit A, to provide for the Corporation to be exempt from federal income tax pursuant to Code Section 501(c)(3) (the "Certificate");

WHEREAS, the Board of Directors of the Corporation deems it to be in the best interest of the Corporation that the Corporation revise its fiscal year to end on December 31st instead of June 30th;

WHEREAS, the Board of Directors of the Corporation deems it to be in the best interest of the Corporation to amend and restate the Bylaws of the Corporation in the form of the First Amended and Restated Bylaws of City of Fresno Cultural Arts Properties Corporation, attached hereto as Exhibit B, to provide for the Corporation to revise its fiscal year to end on December 31st (the "Amended and Restated Bylaws");

WHEREAS, the Board of Directors of the Corporation deems it to be in the best interest of the Corporation that the Corporation adopt a conflict of interest policy;

WHEREAS, the Board of Directors of the Corporation deems it to be in the best interest of the Corporation to adopt the conflict of interest policy, attached hereto as Exhibit C, (the "Policy"); and

WHEREAS, the Board of Directors of the Corporation deems it to be in the best interest of the Corporation to have the Corporation file for state and federal income tax exemption.

NOW, THEREFORE, BE IT RESOLVED: That the Corporation shall amend its Articles of Incorporation in the form of the Certificate, attached hereto as Exhibit A.

FURTHER RESOLVED: That the Corporation shall amend its Bylaws in the form of the Amended and Restated Bylaws, attached hereto as Exhibit B.

FURTHER RESOLVED: That the Corporation shall adopt a conflict of interest policy in the form of the Policy, attached hereto as Exhibit C.

FURTHER RESOLVED: That the officers of the Corporation shall execute and file all necessary documents, forms and applications required to apply for and obtain federal and state income tax exemption for the Corporation.

FURTHER RESOLVED: That Bruce Rudd, President of the Corporation, Rebecca E. Klisch, Secretary of the Corporation, or any officer of the Corporation, shall be authorized and directed to execute any and all necessary documents, including, but not limited to, the Certificate, the Amended and Restated Bylaws, the Policy, and state and federal tax exemption applications, and shall take any further actions necessary to amend and restate the Articles of Incorporation, amend and restate the Bylaws, adopt the Policy, file for federal and state income tax exemption on behalf of the Corporation, and to take all other actions contemplated in this resolution.

FURTHER RESOLVED: That to the extent that any actions authorized herein have already been performed by Bruce Rudd, President of the Corporation, Rebecca E. Klisch, Secretary of the Corporation, or any officer of the Corporation, such actions are hereby ratified, confirmed and approved in all respects.

DATED: _____

By: _____
ASHLEY SWEARENGIN
MAYOR

DATED: _____

By: _____
LEE BRAND
COUNCIL PRESIDENT

DATED: _____

By: _____
LARRY WESTERLUND
REDEVELOPMENT CHAIR

REBECCA E. KLISCH
Ex-Officio Clerk

By: _____
Deputy

APPROVED AS TO FORM
JAMES SANCHEZ
Ex-Officio Attorney

By: 
Mark Gleason, Deputy

CERTIFICATE OF SECRETARY

I, the undersigned, hereby certify that the foregoing is a true copy of the Resolution adopted by the Board of Directors (the "Board") of the above mentioned Corporation, at a meeting of said Board held on the aforementioned date, and that said Resolution is in full force and effect.

Dated: _____, 2011

Rebecca E. Klisch, Secretary

EXHIBIT A

First Amended and Restated Articles

CERTIFICATE OF AMENDED AND RESTATED ARTICLES OF INCORPORATION
OF
CITY OF FRESNO CULTURAL ARTS PROPERTIES CORPORATION

The undersigned certify that:

1. They are the president and secretary, respectively, of City of Fresno Cultural Arts Properties Corporation, a California nonprofit public benefit corporation (the "Corporation").
2. That the Articles of Incorporation of the Corporation are amended and restated to read in their entirety as follows:

**AMENDED AND RESTATED
ARTICLES OF INCORPORATION
OF
CITY OF FRESNO CULTURAL ARTS PROPERTIES CORPORATION**
A California Nonprofit Public Benefit Corporation

ARTICLE I. NAME

The name of this corporation is City of Fresno Cultural Arts Properties Corporation (the "Corporation").

ARTICLE II. PURPOSE

(a) This Corporation is a nonprofit public benefit corporation and is not organized for the private gain of any person. It is organized under the California Nonprofit Public Benefit Corporation Law for charitable purposes. The general purpose of this Corporation is to have and exercise all rights and powers conferred on nonprofit corporations under the laws of California, provided that this Corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the primary purposes of this Corporation.

(b) The specific charitable and public purposes for which the Corporation is organized are to benefit and support the City of Fresno (the "City") and the Redevelopment Agency of the City of Fresno (the "Agency") and to lessen the burdens of government of the City and the Agency by: (1) purchasing, developing, financing, rehabilitating, and/or demolishing vacant and blighted properties; (2) assisting the City and the Agency in combating community blight and deterioration in the City and its redevelopment areas and contributing to the physical improvement of the City and its redevelopment areas by redeveloping vacant or blighted properties; and (3) acquiring, owning, operating, and leasing property within a Low-Income Community (as defined in Section 45D(e)(1) of the Internal Revenue Code) to community businesses, which will promote and support the social welfare of the City. In no event shall the Corporation engage in any business described in 26 C.F.R. 1.45D-1(d)(5)(iii).

ARTICLE III. AGENT OF SERVICE

Agent for Service intentionally left blank pursuant to Corporations Code §5819.

ARTICLE IV. DEDICATION AND DISPOSITION

(a) The property of this Corporation is irrevocably dedicated to charitable purposes, and no part of the net income or assets of this Corporation shall ever inure to the benefit of any director, officer, or member of this Corporation or to the benefit of any private individual.

(b) Upon the winding up and dissolution of this Corporation, and after paying or adequately providing for the debts and obligations of the Corporation, the remaining assets shall be distributed to the City, the Agency, or a nonprofit fund, foundation or corporation that is organized and operated exclusively for charitable purposes, and which has established and maintained its tax-exempt status under Section 501(c)(3) of the Internal Revenue Code or the corresponding provision of any future Internal Revenue Law.

ARTICLE V. LIMITATION OF CORPORATE ACTIVITIES

(a) This Corporation is organized and operated exclusively for charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code. Notwithstanding any other provision of these Articles, the Corporation shall not carry on any activities not permitted to be carried on by a corporation exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code.

(b) This Corporation shall not participate in or interfere in (including publishing or distributing statements) any political campaign on behalf of any candidate for public office.

ARTICLE VI. DIRECTORS

The number of directors and the manner in which directors shall be chosen and removed from office, their qualifications, powers, duties, term of office, the manner of filling vacancies on the board of directors and the manner of calling and holding meetings of directors shall be as stated in the bylaws.

3. That the amendment and restatement has been approved by the Board of Directors. The Corporation has no members.

4. The Board of Directors was entitled to adopt the foregoing amendment. The Corporation has no members.

5. We further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of our own knowledge.

Date: _____

Bruce Rudd, President

Date: _____

Rebecca E. Klisch, Secretary

EXHIBIT B

First Amended and Restated Bylaws

FIRST AMENDED AND RESTATED BYLAWS
OF
CITY OF FRESNO CULTURAL ARTS PROPERTIES CORPORATION
A California Nonprofit Public Benefit Corporation

ARTICLE 1.
NAME

Section 1.1 Name. The name of this corporation is City of Fresno Cultural Arts Properties Corporation (the "Corporation").

ARTICLE 2.
OFFICE

Section 2.1 Principal Office. The principal office for the transaction of affairs and activities of the Corporation is located at 2600 Fresno Street, Fresno, California 93721. The Board of Directors (the "Board") may change the principal office from one location to another. Any change shall be noted on these Bylaws, or this section may be amended to state the new location.

Section 2.2 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.

ARTICLE 3.
MEMBERS

Section 3.1 Members. This Corporation shall have no members.

ARTICLE 4.
DIRECTORS

Section 4.1 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 4.2 Number of Directors. The number of directors shall be three (3) unless a greater or lesser number is authorized by the Board.

Section 4.3 Compensation and Reimbursement of Directors. The directors shall serve without compensation though they may be reimbursed for their expenditure of monies on behalf of the Corporation.

Section 4.4 Restriction on Interested Persons as Directors. No more than forty-nine percent (49%) of the persons serving on the Board may be interested persons. 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, and (b) any brother, sister, ancestor, descendant, spouse, brother-in-law, sister-in-law, son-in-law, daughter-in-law, mother-in-law, or father-in-law of such person. However, any violation of the provisions of this paragraph shall not affect the validity or enforceability of any transaction entered into by the Corporation.

Section 4.5 Appointment and Qualification of Directors.

(a) The initial directors shall be appointed and approved by the City Council of the City of Fresno (the "City Council"), such persons being qualified to serve as a director hereunder if he or she holds, in an "acting" or permanent capacity, one of the positions specified below:

Mayor of the City

City Council President

Chair of the Redevelopment Agency of the City of Fresno

(b) Each of the directors, described in 4.5(a) above shall be deemed a "Specified Position," for purposes of these Bylaws. At the time any director ceases to hold a Specified Position or is removed pursuant to Section 4.8, that director's membership on the Board shall automatically cease and the successor to such Specified Position shall become a director. If a Specified Position should become vacant, the City Council may select a replacement director.

Section 4.6 Term. Each director shall serve a term of one (1) year, which shall be renewed automatically at the end of the term, unless he or she is replaced by a new director appointed in accordance with these Bylaws.

Section 4.7 Vacancies on the Board. A vacancy shall be deemed to exist in the event that the actual number of directors is less than the authorized number for any reason. Vacancies shall be filled as provided for in Section 4.5.

Section 4.8 Removal of Directors. In the event that approval described in Section 4.5(a) is withdrawn such action shall constitute automatic resignation as a director of this Corporation, provided that if the City Council directs the removal of those directors holding Specified Positions, the Board shall amend these Bylaws as necessary to effect such actions. In addition, the Board may remove any director with cause. Absence of a director from three (3) or more consecutive board meetings shall constitute cause for removal.

Section 4.9 Resignations of Directors. 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 Board 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 elected director or directors.

Section 4.10 Meetings of the Directors. Regular meetings shall be held at least twice a year at such time and place as shall from time to time be fixed by the directors for the purpose of organization, election of officers and the transaction of other business.

Section 4.11 Special Meetings. Special meetings of the Board for any purpose may be called at any time by the president, the secretary, or any two (2) directors.

Section 4.12 Notice. Subject to Section 54950 of the California Government Code (if applicable), notice of regular and special meetings shall be given to the directors not less than four (4) days prior to the meeting if delivered by first class mail or not less than seventy-two (72) hours prior to the meeting if the notice is delivered personally, by telephone or by email. The notice must state the date and time of the meeting and the place of the meeting if it is other than the principal office of the Corporation. In addition, public notice of each meeting shall be posted at the principal office of the Corporation not less than seventy-two (72) hours prior to such meeting.

Section 4.13 Waiver of Notice. Notice of a meeting need not be given to any director who, either before or after the meeting, signs a waiver of notice, a written consent to the holding of the meeting, or an approval of the minutes of the meeting. The waiver of notice or consent need not specify the purpose of the meeting. All such waivers, consents, and approvals shall be filed with the corporate records or made a part of the minutes of the meetings. Notice of a meeting need not be given to any director who attends the meeting and does not protest, before or at the commencement of the meeting, the lack of notice to him or her.

Section 4.14 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 of which a quorum is present shall be the act of the Board.

Section 4.15 Adjournment. A majority of the directors present, whether or not a quorum is present, may adjourn any meeting to another time and place. Notice of any adjournment to another time and place shall be given to the directors who were not present at the time of the adjournment.

Section 4.16 Action Without a Meeting. Subject to Section 54950 of the California Government Code (if applicable), any action that the Board is required or permitted to take may be taken without a meeting if all members of the Board consent in writing to the action. Such action by written consent shall have the same force and effect as any other validly approved action of the Board. All such consents shall be filed with the minutes of the proceedings of the Board.

Section 4.17 Meetings by Conference Telephone. Subject to Section 54950 of the California Government Code (if applicable), members of the Board may participate in a meeting through use of conference telephone or similar communications equipment, so long as all persons participating in the meeting can hear one another. Participation by directors in a meeting in the manner provided in this section constitutes presence in person at the meeting.

Section 4.18 Committees of Directors. The Board may, by resolution adopted by a majority of the directors then in office, designate one (1) or more committees, each consisting of two (2) or more directors, to serve at the pleasure of the Board. Appointments to such committees shall be by majority vote of the directors then in office. Any committee, to the extent provided in the resolution, shall have all the authority of the Board, except that no committee, regardless of Board resolution, may:

- (a) Fill vacancies on the Board or on any committee;
- (b) Fix compensation of directors for serving on the Board or any committee;
- (c) Amend or repeal bylaws or adopt new bylaws;
- (d) Amend or repeal any resolution of the Board which by its express terms is not so amendable or repealable;
- (e) Appoint any other committees of the Board or the members of these committees; or
- (f) Spend corporate funds to support a nominee for director after there are more people nominated for director than can be elected.

Section 4.19 Committee Meetings. Meetings and actions of committees shall be governed by and held and taken in accordance with the provisions of this Article 4 concerning meetings of directors, with such changes in the context of these Bylaws as are necessary to substitute the committee and its members for the Board and its members. Minutes shall be kept of each meeting of any committee and shall be filed with the corporate records. The Board may adopt rules for the governance of any committee not inconsistent with the provisions of these Bylaws concerning meetings of directors.

Section 4.20 Standard of Care – 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, 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 would cause such reliance to be unwarranted.

Except in the case of a self-dealing director, as described in Section 4.22 of these Bylaws, 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 a director, including, without limiting the generality of the foregoing, any actions or omissions which exceed or defeat a public or charitable purpose to which the Corporation, or assets held by it, are dedicated.

Section 4.21 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 income, as well as the probable safety of this Corporation's capital. The provisions of Section 4.20 of these Bylaws shall apply to this Section.

Section 4.22 Self-Dealing Transactions. Except as provided below, the Board shall not approve a self-dealing transaction. 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. The Board may approve a self-dealing transaction if a majority of the Board, not including the self-interested director, determines that the transaction is fair and reasonable to this Corporation and, after reasonable investigation under the circumstances, determines that it could not have secured a more advantageous arrangement with reasonable effort under the circumstances.

Section 4.23 Inspection. Every director shall, at his or her own expense, have the absolute right at any reasonable time during the business hours of the Corporation to inspect and copy all books, records, and documents, and to inspect the physical properties of this Corporation.

ARTICLE 5. OFFICERS

Section 5.1 Officers of the Corporation. The officers of the Corporation shall be a

president, a secretary, and a treasurer. The Corporation may also have, at the Board's discretion, one (1) or more vice presidents, one (1) or more assistant secretaries, one (1) or more assistant treasurers and such other officers as may be appointed in accordance with Section 5.3 of these Bylaws. 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.

Section 5.2 Election of Officers. The officers of the Corporation, except those appointed under Section 5.3, shall be chosen annually by the Board. Such officers shall serve at the pleasure of the Board, and shall serve until a successor is chosen or such officer resigns or is removed from office.

Section 5.3 Other Officers. The Board may appoint or 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 for the period, have the authority, and perform the duties specified in the Bylaws or determined by the Board.

Section 5.4 Removal of Officers. Any officer may be removed with cause by the Board.

Section 5.5 Resignation of Officers. Any officer may resign at any time by giving written notice to the president or secretary of 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 not affect the rights, if any, of the Corporation under any contract to which the officer is a party.

Section 5.6 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, provided, however, that vacancies may be filled as they occur.

Section 5.7 Reimbursement of Expenses. The Corporation shall provide reimbursement for monies expended on behalf of the Corporation by its officers.

Section 5.8 President. The president shall preside at meetings of the Board and shall exercise and perform such other powers and duties as may from time to time be assigned to the president by the Board. Subject to the control of the Board, the president shall be the general manager of the Corporation and shall supervise, direct, and control the Corporation's activities, affairs, and officers.

Section 5.9 Secretary. The secretary shall have the following duties:

(a) 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 the meetings shall include the time and place that meeting was held, whether the meeting was annual, regular, or special, and, if special, how authorized and the notice given.

(b) The secretary shall keep or cause to be kept at the Corporation's principal office, a copy of the Articles of Incorporation and Bylaws of the Corporation, as amended to date.

(c) 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 have such other powers and perform such other duties as the Board or the Bylaws may prescribe.

Section 5.10 Treasurer. The treasurer shall have the following duties:

(a) The treasurer 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 during the business hours of the Corporation.

(b) 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 other powers and perform such other duties as the Board or the Bylaws may prescribe.

ARTICLE 6. MISCELLANEOUS

Section 6.1 Fiscal Year. The fiscal year of this Corporation shall end each year on December 31st.

Section 6.2 Contracts. All contracts entered into on behalf of this Corporation must be authorized by the Board, or, where the contract is for less than Ten Thousand Dollars (\$10,000), by the President.

Section 6.3 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 6.4 Indemnification. This Corporation shall indemnify its directors, officers, employees, and agents, including persons formerly occupying any such position, to the fullest extent permitted by law, against all expenses, judgments, fines and other amounts actually and reasonably incurred by them in connection with any threatened, pending or completed action or proceeding, whether it is civil, criminal, administrative or investigative.

In all cases where indemnification is sought, the Corporation shall be subject to the

following restrictions and requirements:

(a) Where the action or proceeding is brought on behalf of the Corporation or involves self-dealing transactions, as defined in Section 4.22 of these Bylaws, the Corporation shall not indemnify against amounts paid in settlement or judgment amounts, but shall, upon the express authorization of the Board, indemnify the director, officer, employee or agent against expenses incurred in defense of an action arising from his or her relation to the Corporation. To indemnify in such cases the Board must find the person met the statutorily prescribed standard of care by acting (1) in good faith, (2) in the best interests of the Corporation, and (3) with the care of an ordinarily prudent person.

(b) Where the person seeking indemnification under this section has been held liable to the Corporation, or has settled his or her liability to the Corporation, the Corporation shall not indemnify against expenses without the approval of the court or the Attorney General.

(c) The Board shall determine whether the person seeking indemnification has acted in accordance with the standard of care set forth in subsection (a) of this section by a majority vote of a quorum consisting of disinterested directors. The termination of any proceeding in a manner adverse to the defendant seeking indemnification shall not create a presumption that such person failed to meet the standard of care.

(d) Where the person seeking indemnification has been successful on the merits in defense of any action or proceeding brought on behalf of the Corporation or in defense of any claim or issue involved in such action or proceeding, the Corporation shall indemnify against all expenses actually or reasonably incurred.

(e) The Corporation shall not advance any money to the person seeking indemnification for the purpose of defending against any action or proceeding without the receipt of an undertaking by such person to repay all advances unless it is ultimately determined that he or she is entitled to indemnification.

Section 6.5 Insurance. The Board may adopt a resolution authorizing the purchase of insurance on behalf of any director, officer, employee or agent of this Corporation against any liability asserted against or incurred by the director, officer, employee or agent in such capacity or arising out of the director's, officer's, employee's or agent's status as such, whether or not this Corporation would have the power to indemnify the director, officer, employee, or agent against that liability under law; except, the Corporation may not purchase insurance to protect self-dealing directors (as defined in Section 4.22 of these Bylaws) from liability.

Section 6.6 Reports to Directors. If the Corporation has more than Twenty-Five Thousand Dollars (\$25,000) in gross receipts in any fiscal year, the president shall furnish a written report at the first regular meeting of the next fiscal year to all directors of this Corporation containing the following information:

(a) The assets and liabilities, including the trust funds, of this Corporation as of the end of the fiscal year;

(b) The principal changes in assets and liabilities, including trust funds, during the fiscal year;

(c) The revenue or receipts of this Corporation both unrestricted and restricted for particular purposes, for the fiscal year;

(d) The expenses or disbursements of this Corporation, for both general and restricted purposes during the fiscal year.

Regardless of the gross receipts of the Corporation, the president must furnish a written report to all directors that lists any transaction during the prior fiscal year involving One Thousand Dollars (\$1,000) or more between this Corporation or a subsidiary and any director or officer of this Corporation or a subsidiary. The report must disclose the name of the director or officer and the person's relationship to the Corporation, the nature of such person's interest in the transaction and, where practicable, the amount of such interest. The president must also furnish an annual written report to all directors disclosing the amount and circumstances of any indemnifications or advances aggregating more than One Thousand Dollars (\$1,000) paid during the prior fiscal year to any officer or director of the Corporation.

Section 6.7 Amendment of Bylaws. The Bylaws may be amended or repealed and new Bylaws adopted by the vote of a majority of all the members of the Board, provided that any amendment to Section 4.5 or 4.8 hereof must receive the prior written consent of the City Council. Such amended or newly adopted Bylaws shall take effect immediately.

Section 6.8 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 of Fresno.

Section 6.9 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)

CERTIFICATE OF SECRETARY

I, the undersigned, do hereby certify:

(1) That I am the duly elected and acting Secretary of City of Fresno Cultural Arts Properties Corporation, a California nonprofit public benefit corporation; and

(2) That the foregoing Bylaws, including Certification by Incorporator, comprising nine (9) pages, constitute the First Amended and Restated Bylaws of such corporation as adopted by the directors of the corporation at a duly constituted meeting held on February __, 2011.

IN WITNESS THEREOF, I have hereunto subscribed my name, this _____ day of February, 2011.

_____, Secretary

EXHIBIT C

Conflict of Interest Policy

CONFLICT OF INTEREST POLICY

ARTICLE I

PURPOSE

The purpose of this conflict of interest policy (the "Policy") is to protect the interest of City of Fresno Cultural Arts Properties Corporation, a California nonprofit corporation (the "Organization") when the Organization is contemplating entering into a transaction or arrangement that might benefit the private interest of an officer or director of the Organization or might result in a possible excess benefit transaction. This Policy is intended to supplement, but not replace, any applicable state and federal laws governing conflict of interest applicable to nonprofit and charitable organizations such as California Corporations Code Section 5227.

ARTICLE II

DEFINITIONS

1. Interested Person.

Any director, principal officer, or member of a committee with governing board delegated powers, who has a direct or indirect financial interest, as defined below, is an Interested Person.

2. Financial Interest.

For the purpose of this Policy, a person has a Financial Interest if the person has, directly or indirectly, through business, investment, or family:

- a.** An ownership or investment interest in any entity with which the Organization has a transaction or arrangement;
- b.** A compensation arrangement with the Organization or with any entity or individual with which the Organization has a transaction or arrangement; or
- c.** A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the Organization is negotiating a transaction or arrangement.
- d.** Compensation includes direct and indirect remuneration as well as gifts or favors that are not insubstantial.
- e.** A financial interest is not necessarily a conflict of interest. Under Article III, Section 2 of this Policy, a person who has a Financial Interest may have a conflict of interest only if the appropriate governing board or committee decides that a conflict of interest exists.

ARTICLE III

PROCEDURES

1. **Duty to Disclose.**

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

2. **Determining Whether a Conflict of Interest Exists.**

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

3. **Procedures for Addressing the Conflict of Interest.**

The Organization shall follow the procedures set forth below:

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

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

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

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

4. **Violations of the Conflict of Interest Policy.**

A violation of this Policy shall require the Organization to adhere to the following:

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

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

ARTICLE IV

RECORDS OF PROCEEDINGS

1. Organization's Minutes.

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

a. The names of the persons who disclosed or otherwise were found to have a Financial Interest in connection with an actual or possible conflict of interest, the nature of the Financial Interest, any action taken to determine whether a conflict of interest was present, and the governing board's or committee's decision as to whether a conflict of interest in fact existed.

b. The names of the persons who were present for discussions and votes relating to the transaction or arrangement, the content of the discussion, including any alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection with the proceedings.

ARTICLE V

COMPENSATION

1. Compensation of Directors and Independent Contractors.

a. A voting member of the governing board who receives compensation, directly or indirectly, from the Organization for services is precluded from voting on matters pertaining to that member's compensation.

b. A voting member of any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Organization for services is precluded from voting on matters pertaining to that member's compensation.

c. A voting member of the governing board or any committee whose jurisdiction includes compensation matters and who receives compensation, directly or

indirectly, from the Organization, either individually or collectively, is prohibited from providing information to any committee regarding compensation.

ARTICLE VI

ANNUAL STATEMENTS

1. **Keeping the Organization's Annual Statements.**

Each director, principal officer and member of a committee with governing board delegated powers shall annually sign a statement which affirms such person:

- a. Has received a copy of the Organization's Conflicts of Interest Policy,
- b. Has read and understands the Policy,
- c. Has agreed to comply with the Policy, and
- d. Understands the Organization is charitable, and in order to maintain its federal tax exemption, it must engage primarily in activities which accomplish one or more of its tax-exempt purposes.

ARTICLE VII

PERIODIC REVIEWS

1. **Periodic Reviews of the Organization.**

To ensure the Organization operates in a manner consistent with charitable purposes and does not engage in activities that could jeopardize its tax-exempt status, periodic reviews shall be conducted. The periodic reviews shall, at a minimum, include the following subjects:

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

ARTICLE VIII

USE OF OUTSIDE EXPERTS

1. **The Organization's Policy on Use of Outside Experts.**

When conducting the periodic reviews as provided for in Article VII, the Organization may, but need not, use outside advisors. If outside experts are used, their use shall not relieve the governing board of its responsibility for ensuring periodic reviews are conducted.