

LOCAL DEVELOPMENT FINANCE AUTHORITY OF THE CITY OF ANN ARBOR AND CITY OF YPSILANTI

BY-LAWS

Preamble

The By-laws of the ~~Ann Arbor – Ypsilanti SmartZone~~ Local Development Finance Authority of the City of Ann Arbor and City of Ypsilanti are supported by the Agreement between the Cities of Ann Arbor and Ypsilanti, executed June 17 and 18, 2002, as amended, and MCL 125.4405(4), and intended to establish the Local Development Finance Authority jointly between the two communities.¹

Article I - Name

The name of this authority ~~when created~~ is the Local Development Finance Authority of the City of Ann Arbor and City of Ypsilanti (“the Authority” or “L DFA”). For business purposes it shall be referred to as the Ann Arbor – Ypsilanti SmartZone Local Development Finance Authority.

Article II – Principal Office

The principal office of the Ann Arbor – Ypsilanti SmartZone Local Development Finance Authority shall be that of the government offices of the City of Ann Arbor, currently located at Guy C. Larcom, Jr. Municipal Building, ~~100 N. Fifth Avenue~~ 301 E. Huron Street, Ann Arbor, Michigan 48104.²

Article III – Purpose

Public Act 281 of 1986, as amended by Public Act 248 of 2000 provides for the designation of “SmartZones” by the Michigan Economic Development Corporation, for the creation of “certified technology parks” within these SmartZones, and for the funding of these SmartZones through the creation of Local Development Finance Authorities. These Zones and the accompanying certified technology parks are established to promote the economic growth of specific areas within the community.

Article IV – Members and Terms

Section 1. Number of Members: The Board of the L DFA shall consist of nine voting members appointed in the following manner: The City of Ann Arbor shall appoint ~~fivesix (65)~~ members. One of such the City of Ann Arbor appointments shall be a City Council member.; ~~†~~ The City of Ypsilanti shall appoint ~~twothree (32)~~ members. Washtenaw County shall appoint one (1)

¹ Original By-laws approved L DFA (with attorney recommendations) 12/18/2002; City of Ann Arbor 1/21/2003; City of Ypsilanti 1/21/2003

² Amended L DFA Board 4/17/2007; City of Ann Arbor 5/21/2007 (R-193-5-07); City of Ypsilanti 5/15/2007

~~member. Washtenaw County Community College shall appoint one (1) member. The City of Ypsilanti shall appoint two (2) members.~~

Section 2. Terms of Members: Excepting the initial terms, which shall be staggered, all appointments shall be four years. ~~, except that the City of Ann Arbor Council member shall be appointed to a 4-year term subject to annual confirmation consistent with the process for appointment of Council members to authorities, boards and commissions, which appointment shall cease if he/she ceases to be a member of the City of Ann Arbor City Council.~~ Before assuming the duties of office, a member shall qualify by taking and subscribing to the constitutional oath of office.

Section 3. Reappointment of Members: ~~Except for initial appointments to the Board, no member shall serve more than one complete (4 year) term.~~ Members shall serve until the appointment of their successor.³ ~~, except that the City of Ann Arbor Council member shall serve at the pleasure of the City of Ann Arbor Council and shall be appointed or removed consistent with the process for appointment of Council members to authorities, boards and commissions.~~ The Board shall notify the appropriate unit of government at least 60 days prior to the expiration of the member's term.⁴

Section 4. Removal of Members: ~~Except the City of Ann Arbor Council member, who serves at the please of the City of Ann Arbor Council, SS~~ subject to notice and an opportunity to be heard, ~~all other~~ member of the Board may be removed by the governing body ~~appointing the member before the expiration of his or her term for cause.~~ ~~The City of Ann Arbor shall constitute the "governing body" for the five members it appoints and the City of Ypsilanti shall constitute the "governing body" for the two members it appoints. For all other members, the City of Ann Arbor and the City of Ypsilanti shall together constitute the "governing body."~~ A finding of cause shall be made by the Board for unexcused absences, failure to report a conflict of interest, ~~non-compliance with the Agreement between the City of Ann Arbor and the City of Ypsilanti,~~ or other action as deemed detrimental to the efficient and honest operations of the LDFA. Such finding and the documentation, if applicable, shall be reported to the appropriate governing body for its action. The governing body shall provide notice and opportunity to be heard to the member subject to removal. Notice of its decision will be forwarded to the LDFA Board. A finding of cause may be made by the governing body appointing the member for ineligibility for City appointed office as well as the finding stated above. Removal of a member is subject to review by the Circuit Court.

Section 5. Ex-officio Members: The Board may from time-to-time appoint such ex-officio members as may be appropriate. Such ex-officio members ~~will~~ shall include a representative of the Michigan Economic Development Corporation or its successor organization, a representative from the City of Ann Arbor, a representative from the City of Ypsilanti, and a

³ Amended LDFA Board 4/17/2007; City of Ann Arbor 5/21/2007 (R-193-5-07); City of Ypsilanti 5/15/2007

⁴ Amendment confirmed LDFA Board 2/12/2008; City of Ann Arbor 3/17/2008 (R-08-108); City of Ypsilanti 5/08/2008

representative from the Accelerator. Ex-officio members shall be non-voting members of the Board.

Section 6. Vacancies: An appointment to fill a vacancy shall be made in the same manner as the original appointment. An appointment to fill an unexpired term shall be for the unexpired portion of the term only.

Article V – Officers

Section 1. Officers: The officers of the Board shall be a Chair, a Vice Chair, a Treasurer and a Recording Secretary. All officers shall be member of the Board, with the exception of the Recording Secretary who need not be a member of the Board.

Section 2. Removal of Officers: An officer may be removed by the Board whenever in its judgment the best interest of the Board will be served.

Section 3. Chair: The Chair shall preside at all meetings of the Board and shall discharge the duties as a presiding officer.

Section 4. Vice Chair: In the absence of the Chair or in the event of inability to serve as Chair, the Vice Chair shall perform the duties of the Chair and when so acting, shall have all the powers and be subject to all restrictions of the Chair.

Section 5. Treasurer: The Treasurer shall prepare for submittal to each city an annual budget reflective of the tax increment revenues to be captured in that community. An annual audit will be made each year as part of the regular City audit.

Section 6. Recording Secretary: The Recording Secretary or a designee shall attend all meetings of the Board and record all votes and the minutes of all proceedings in a book to be kept for that purpose. The Recording Secretary shall give, or cause to be given, notice of all meetings of the Board of Directors and shall perform such other duties as may be prescribed by the Board. The Recording Secretary shall, when authorized by the Board, attest by signature to actions of the Board.

Section 7. Delegation of Duties of Officers: —In the absence of any officer of the corporation, the Authority may delegate the powers and duties of any officer to any director provided a majority of the Authority then in office concurs therein.

Section 8. Election of Officers: —Nominations shall be made from the floor at the Annual Meeting ~~in July~~. The term of office shall be for one year and begin at the close of the annual meeting at which they are elected. No member shall hold more than one office at a time. No member shall hold the same office for longer than two consecutive terms without a break in service for that position.

Article VI - Meetings

Section 1. Annual Meeting:—An annual meeting shall be held the first regular meeting in July at a time and place to be set by the Board, or such other date as by may be established by the Board. Election of officers shall occur at the annual meeting. If the election of officers does not occur at the annual meeting, the Board shall cause the election to be held at a regular or special meeting of the Board within 90 days of the Annual Meeting.

Section 2. Regular Meetings:—Regular meetings of the Board shall be held at a time and place to be set by the Board. At least six regular meetings per year shall be held. The Board records shall be open to the public.

Section 3. Special Meetings:—Special meetings of the Board may be called by the Chair, the Vice Chair in the absence of the Chair, or by any three Authority members by giving 24 hours notice of the meeting, stating the purpose of the meeting and by posting a notice not less than 18 hours prior to the meeting in the lobby of the City Halls of Ann Arbor and Ypsilanti.

Section 4. Notice of Meetings:—All meetings shall be preceded by public notice posted 18 hours prior to the meeting in accordance with Act 267 of the Public Acts of 1976 as amended.

Section 5. Agenda:—The recording secretary shall prepare the agendas for all meetings and send them to the Board members at least 24 hours prior to the meeting. Any member of the Board may request any item to be placed on the agenda.

Section 6. Minutes:—The recording secretary shall prepare the minutes of each meeting. Upon approval by the Board, the minutes shall be furnished to the governing bodies of Ann Arbor and Ypsilanti in a timely manner. On a quarterly basis, these minutes shall be accompanied by a written progress report of activities undertaken by the LDFA.

Section 7. Quorum and Voting:—A majority of the members of the Board in office shall constitute a quorum for the transaction of business, provided at least one member appointed by each community is present. A vote of five members shall constitute the action of the Board unless the vote of a larger number is required by statute, or elsewhere in these By-laws. ~~In the event that effective membership is reduced because of a conflict of interest, a majority of the remaining members eligible to vote shall constitute the action of the Board.~~ In no event shall less than five affirmative votes constitute action of the Board.

Section 8. Rules of Order:—Robert’s Rules of Order will govern the conduct of all meetings unless otherwise determined by the Board.

Section 9. Open and Closed Meetings:—All regular and special meetings of the Board shall be open to the public. Closed meetings of the Board may be called for purposes listed in the Open Meetings Act 267 of the Public Acts of 1976 as amended if approved by the Authority.

Section 10. Conflict of Interest:—A director who has a conflict of interest in any manner before the Board shall disclose that interest prior to the Board taking any action with respect to the matter. This disclosure shall become part of the record of the Board’s official proceedings. Any member making such disclosure shall then refrain from participating in the Board’s decision-making process relative to such matters. Conflict of interest shall include, but not be limited to,

direct personal or professional benefit to the Board member or an entity in which the Board member serves as an officer, shareholder, or holds another financial interest.

Article VII - Board Committees and Advisory Committees

Section 1. Board Committees: —The Board, by resolution, may designate and appoint one or more committees to advise the Board. Committee members shall be members of the Board. The Chair of the Board shall appoint the members and select the Chair of the Board committees. The committees may be terminated by vote of the Board. At the annual meeting, the committees will be evaluated and reappointed or dissolved. A majority of the committee will constitute a quorum. A majority of the members present at the meeting at which a quorum is present shall be the action of the committee. All Board committees shall be bound by the conflict of interest policy articulated in Article VI, Section 10 (above).

Section 2. Advisory Committees: —The Board may, by resolution, authorize the establishment of advisory committees to the Board. All recommendations of Advisory Committees shall be brought before the full Board for approval before execution, unless the Board authorizes execution by any Committees. Such recommendations are non-binding on the Board.

Section 3. Advisory Committee Conflicts of Interest: An advisory committee member who has a conflict of interest in any manner under discussion shall disclose that interest prior to discussion of this item. This disclosure shall become part of the record of the committee's official proceedings; however it shall not disqualify a committee member from discussion of such issue.

Article VIII – Contracts and Funds.

Section 1. Grants and Contracts: —The Board may authorize an agent or agents of the Authority to enter into any grant or contract or execute and deliver any instrument on behalf of the Authority within the limits authorized by Public Act 281. The authorization may be general or confined to specific instances.

Section 2. Funds: —The Chair of the Authority shall sign all orders for the payment of money issued in the name of the Authority. One other member of the Board may be authorized to execute documents in the absence of the Chair. All funds of the Authority shall be placed in such banks, trust companies, or other depositories as selected by the Cities of Ann Arbor and Ypsilanti.

Article IX – Books and Records

Section 1. Books and Records: —The Authority shall keep correct and complete records of books and accounts and minutes of the meetings. The records shall be kept at the principal office of the Authority, which will have a record of the names and addresses of the members of the Authority. All books and records of the Authority shall be open to the public. An annual audit by an independent certified public accountant will be conducted. Said audit will be conducted by

the City of Ann Arbor until such time as tax increment revenue is contributed by the City of Ypsilanti.

Section 2. Budget: The Treasurer shall annually cause to be prepared a budget, in accordance with the SmartZone plan and LDFA Agreements. No portion of the budget attributable to tax increment financing will become effective until approved by the community in which the revenue is generated. ~~In no event shall revenues generated in one community be used for activities undertaken in another.~~

Section 3. Fiscal Year: The fiscal year of the Authority shall begin on the first day of July and end on the last day of June of each year.

Article X – Raising of Funds

Section 1. Tax Increment Financing: -When the Authority determines that it is necessary for the achievement of the purposes of Act 281 of 1986, as amended, the Authority shall prepare and submit a tax increment financing plan to the City Councils of Ann Arbor and Ypsilanti. The plan shall include a development plan as required by the law, a detailed explanation of the tax increment procedure, the duration of the program and shall be in compliance with the Act. The plan shall contain a statement of the estimated impact of tax increment financing on the assessed values of all taxing jurisdictions in which the development area is located. The plan may provide for the use of part or all of the captured assessed value, but the portion intended to be used by the Authority shall be clearly stated in the tax increment financing plan. Any overlapping Authorities in effect at the time of the development of this plan shall be considered senior to this Authority.

Section 2. Other Grants: The Authority may apply for, request and accept any other grants as may be awarded from time to time, in so far as these grants and gifts are intended to further the purpose of the Authority.

Article XI – District Boundaries

The Authority shall exercise its powers within the area of the Ann Arbor – Ypsilanti SmartZone Tax Increment Financing District ~~(“Authority District”) as described in Attachment 1.~~ The governing body of the municipalities may alter or amend the boundaries of the ~~development Authority~~ District to include or exclude lands from the purview of the Authority pursuant to the same requirements ~~prescribed~~ for adopting the ~~ordinance resolution~~ creating the Authority.

Article XII - Indemnification

Section 1. Personal Liability: A Director of the Authority shall not be personally liable to the Authority or members of the Authority for monetary damages for breach of the director’s fiduciary duty. Directors of the Authority shall not be personally liable to third parties or persons

for monetary damages for breach of the director's fiduciary duty.

This provision does not eliminate or limit the liability of a director for any of the following:

- ~~1-~~ A. A breach of the director's duty of loyalty to the Authority;
- ~~2-~~ B. Acts or omissions not in good faith that involve intentional misconduct or in knowing violation of the law;
- ~~3-C.~~ C. A transaction from which a director received an improper personal benefit.

Section 2. Indemnification: A claim for monetary damages for breach of a director's duty to any person other than the Authority or its members shall not be brought or maintained against a director. Such claim shall be brought or maintained instead against the Authority.

A. The Authority shall indemnify any person 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 and whether formal or informal, including all appeals, other than an action by or in the right of the Authority, by reason of the fact that the person is or was a director, officer, employee, or agent of the Authority, or is or was serving at the request of the Authority as a director, officer, trustee, employee or agent of another corporation, partnership, joint venture, trust, or other enterprise, whether for profit or not, against expenses including attorneys' fees, judgments, fines, and amounts paid and settlement actually and reasonably incurred by him or her in connection with the action, suit or proceeding if the person 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 Authority, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction or on 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 that he or she reasonably believed to be in or not opposed to the best interests of the Authority, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

B. The Authority shall indemnify an person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action or suit, including all appeals, by or in the right of the Authority to procure a judgment in its favor by reason of the fact that the person is or was a director, officer, employee, or agent of the Authority, or is or was serving at the request of the Authority as a director, trustee, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, whether for profit or not, against expenses, including attorneys' fees, actually and reasonably incurred by the person in connection with the defense or settlement of the 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 Authority.

- C. To the extent that a director, trustee, officer, employee, or agent has been successful on the merits or otherwise in defense of any action, suit, or proceeding, or in the defense of any claim, issue, or matter in that action, suit or proceeding covered under this Bylaw, he or she shall be indemnified against expenses, including attorneys' fees, actually and reasonably incurred by him or her in connection with the action, suit, or proceeding and in any action brought to enforce the mandatory indemnification provided in this Bylaw.
- D. Unless ordered by a court, any indemnification made shall be made by the Authority as authorized in the specific case on a determination that indemnification is proper in the circumstances. The determination shall be made by a majority vote of a quorum consisting of directors not a party to the action, suit or proceeding. If a quorum is not obtainable, then the determination shall be made by a majority of a committee of directors not party in the action, suit, or proceeding, or otherwise as allowed by law.
- E. Expenses of each person seeking indemnification under this Bylaw may be paid by the Authority as the expenses are incurred in advance of the final disposition of the action, suit, or proceeding, as authorized by the Board of Directors.
- F. The indemnification provided by the Article shall not be deemed exclusive and shall be in addition to any other rights to which those seeking indemnification may be entitled as a matter of law, or under Articles, these Bylaws or any agreement or vote of shareholders, any insurance purchased by the Authority or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding that office, and shall continue as to a person who has ceased to be a director, trustee, officer, employee, or agent, and shall inure to the benefit of the heirs, executors, and administrators of that person.
- G. The Authority may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, or agent of the Authority, or is or was serving at the request of the Authority as a director, trustee, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, against any liability asserted against him or her and incurred by him or her in that capacity, or arising out of his or her status in that capacity, whether or not the corporation would have the power to indemnify him or her against liability under the provisions of the Article or the laws of the State of Michigan.
- H. It is the intention of the Authority and of these Bylaws to provide at least the maximum amount of protection for directors allowed by the laws of the State of Michigan.

- I. The rights to indemnification and advancement of expenses under this Bylaw shall be a contract right.

Article XIII - Amendment of By-Laws

These By-Laws may be amended at any regular meeting of the Board by a majority vote, provided that the amendment has been submitted in writing at the previous regular meeting. Any amendment approved by the Board shall be consistent with this Article, to the extent required by the terms of the SmartZone Development Agreement and TIF Plan, and all applicable statutes, resolutions and agreements of the member municipalities. Amendments to the By-Laws, after approval by the Board, shall be provided to member municipalities, and unless objected to by at least one of the governing bodies of the member municipalities within thirty (30) days of the receipt by the Clerk of the governing body of the proposed amendment shall become effective.⁵

⁵ Amended LDFA Board 4/17/2007; City of Ann Arbor 5/27/2007 (R-193-5-2007; City of Ypsilanti 5/15/2007