



Board Policy Manual

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Board of Directors Governance

PURPOSE:

Visit Estes Park (VEP) strives to be an effective professional organization that serves the Town of Estes Park, residents and local stakeholders, and visiting guests. We aim to serve as a role model to other organizations, both locally and throughout our industry, in our practices, activities, operations and programs. VEP's Board of Directors establishes the vision and leadership to facilitate these goals by employing appropriate policy and direction, addressing issues in a professional, creative and innovative manner, and by providing a culture that attracts well regarded professionals.

Directors and officers serving on VEP's Board have a duty of care to set policy and direction and a standard of care to act in good faith in a manner believed to be in the best interest of the organization, including reasonable inquiry that an ordinary prudent person in a like position would use under similar circumstances. Board members in general are entitled to rely on information supplied by officers, employees, experts, and committees with respect to matters the board members reasonably believe to be within the competence of such persons.

These policies are designed to establish parameters for the accomplishment of Board goals, establish relationships of accountability, and provide clarity regarding the standards by which the Board's work will be conducted and accomplished. Where organizational policies and procedures are specified in Visit Estes Park's bylaws, or other existing policy statements, they are not repeated here.

POLICY:

General Responsibilities

Board members serve the board and VEP first. The Board of Directors assists in the development of policy, procedures, and regulations to govern the operations of VEP and provide oversight for the finances, programs and performance of the organization. Additionally, the Board is exclusively responsible for the engagement and discharge of the CEO.

A board member must meet certain standards of conduct and attention in carrying out their responsibilities to the organization that they serve. These standards are usually described as the duty of care, the duty of loyalty and the duty of obedience.

Duty of Care. The duty of care refers to the level of competence that is expected of a board member and is commonly expressed as the duty of care that an ordinarily prudent person would exercise in a like position and under similar circumstances. This means that a board member owes the duty to exercise reasonable care when they make decisions as a steward of the organization.

Duty of Loyalty. The duty of loyalty is a standard of faithfulness; a board member must give undivided allegiance when making decisions affecting the organization. This means that a board member can never use information obtained as a member for personal gain and must act in the best interests of the organization.

Duty of Obedience. The duty of obedience requires board members to be faithful to the organization's mission. A board member individually, and the board is not permitted to act in a way that is inconsistent with the central goals of the organization. A basis for this rule lies in the public's trust that the organization will manage donated funds to fulfill the organization's mission.

No member of the Board of Directors shall obligate VEP or commit it to any policy, program, purchase, sale, or responsibility in or out of the ordinary course of business without the express authority of the board of directors and the CEO.

Self-Assessment

The Board of Directors may perform a self-evaluation process every two years. A self-evaluation instrument is submitted to the full Board for completion. After the instrument is completed by Board members, the results will be tabulated and submitted to the Board for discussion and consideration.

Whistleblower Policy

VEP maintains a Board approved, detailed whistleblower policy. The whistleblower protection policy establishes procedures to ensure that the organization's board members, officers, employees and other key individuals can "blow the whistle" by reporting good faith suspicions of illegal, unethical or other inappropriate activity without fear of retaliation.

If any employee reasonably believes that some policy, practice, or activity of VEP is in violation of law, a written complaint must be filed by that employee with the CEO or the Chair.

Code of Ethics and Conflicts

VEP maintains a Board approved code of ethics, conflict of interest policy, and disclosure statement. Board members and people in leadership positions with VEP have a responsibility to make others in leadership positions aware when situations arise in which they have personal or professional gain at stake. The Board has adopted a Conflict of Interest disclosure policy and a reporting form that all Board members must complete and sign at the beginning of each fiscal year. Additionally, if a Board member engages in a relationship during the year that might have consequences on VEP's decisions, that conflict must be disclosed as well.

VEP's Code of Ethics statement and Disclosure statement must be completed and signed annually signifying each board member's agreement to abide. The executed documents will be scanned and stored in VEP's network system.

Financial Policies

VEP maintains a Board approved, detailed list of financial policies and procedures. Financial statements are presented to the board of directors at every regular meeting and an audit is conducted annually.

Contracts and Loans

The Board of Directors has approved general authorization for the CEO to enter into contracts or execute or deliver any instrument in the name of and on behalf of VEP. VEP legally can only enter into contracts for one-year periods of time (or less) matching our fiscal year. Contracts can include language that offers options to renew as long as VEP's operating plan and budget that provides funding for the contract are approved by the governing bodies. The CEO will not commit VEP to any loan without approval by the full Board of Directors.

Meetings

Regular meetings shall be held at a time and place determined by the Board of Directors. These are currently held online at 2:00pm on the fourth Thursday of every month.

The CEO prepares meeting agendas for approval by the Chair of the Board of Directors (chief elected officer). Board members may request to place an item of business on the agenda provided they submit background information in advance for distribution to the Board to facilitate discussion. The Chair shall have the discretion to table any agenda items not submitted in accordance with this procedure.

The CEO will prepare and/or distribute all reports and information relevant to Board meetings. Such materials may include, but are not limited to, agenda, minutes of the previous meeting, reports of activity, financial reports, and supporting materials related to items on which the Board may be requested to take action.

In accordance with the bylaws, minutes of Board meetings are prepared by the Secretary/Treasurer or his/her designee and are approved by a vote of the Board. As a general rule, the minutes will be sent to all Board members who missed the meeting within one week following said Board meeting.

Communications

The CEO is the official spokesperson for VEP. This responsibility may be delegated to elected leaders and designated employees, when appropriate.

Public statements should be made when they further the mission, goals and strategic priorities of the organization or benefit the local hospitality industry. VEP's position regarding politically sensitive issues that may affect the organization or community may occasionally be adopted by the Board of Directors.

Official communications on behalf of VEP should be done on Visit Estes Park letterhead and must be approved in advance by the CEO. Communications to industry partners should be consistent, professional, and responsive, using available technologies. The CEO shall have editorial discretion over all publications and communications.

Government Relations

VEP recognizes that local, state and national legislative bodies may propose and enact legislation that affects the lodging tax, destination marketing organizations, or travel and tourism in general. The CEO will monitor any issues which might affect the industry or organization and communicate those issues to the Board.

There is no standing Advocacy or Government Relations Committee. If an issue requires a position, the Board of Directors may elect to take a formal position. Or, the Chairman may form a task force to recommend action which the CEO will communicate to the Board of Directors in the manner most expeditious. The task force should not take policy positions nor lobby without specific Board approval of the position. The CEO is authorized to communicate the organization's formal or informal position to policy makers and the public.

Diversity and Inclusion

VEP is committed to fostering a culture of compassion, open mindedness, and human justice for all who live and work within and visit the Estes Valley. In achieving this commitment, we believe in creating opportunities for people of all backgrounds and cultures to authentically experience our community. We believe in human dignity and equality for all.

We are committed to a welcoming and diverse work environment, free of discrimination. We are committed to inclusivity and opposed to bias based on race, color, ethnicity, age, sexual orientation, gender identity, religious belief, political affiliation, disability or family status in our internal or external business operations.

We are committed to enhancing strong partnerships through tourism related efforts and implementing and collaborating on diverse and inclusive opportunities. We believe that betterment begins with listening to the people in our community. We are the voice of tourism, advocating for all who work within the travel and hospitality industry and those who come to experience our town as visitors.

Administration

The VEP office shall be the official headquarters of the organization. All records, including but not limited to, minutes, financial records, personnel records, history of activities and events, and publications shall be maintained at this location. This shall also be the location for maintaining all property of the organization, including awards, corporate documents, intellectual property, equipment, photographs, and reference material.

Office procedures, hours of operation, purchase and use of organization property, and management of staff shall be the responsibility of the CEO unless otherwise specified by the policies herein. The CEO is the chief employed officer of VEP with full authority for the management of the affairs of the organization subject only to the duties specified by the job description or to the direction of the Board or the Chairman. The CEO is the only employee who reports directly to the board of directors. When the Board is not in session, the CEO reports to the Chairman of the Board. All other employees report directly to the CEO. The CEO has sole and exclusive authority for the engagement and discharge of all employees.

An updated employee handbook is maintained by the Chief Financial Officer and may be periodically approved by the Board.

Employee Compensation and Performance Management

The Board may periodically review the staff performance management plan, compensation, and benefits package. The CEO conducts periodic staff performance reviews and is committed to an annual review at the very least.

A Performance Management Plan and corresponding Compensation Plan may be initiated for the entire staff. The CEO is responsible for administration of the plan which is subject to review by the Board each year.

CEO Performance Review

The Board determines compensation and benefits for the CEO. The Board shall conduct an annual performance review of the CEO at the conclusion of each fiscal year and within two weeks of receiving necessary documents provided by the CEO. The performance review may be conducted by the Board or the Chair. Overall performance is measured in terms of both performance objectives and core competencies which are agreed to by the Board and the CEO at the beginning of the period under review.

Fees, Sponsorships and Advertising

The CEO shall have full authority to set fees for all programs, events, publications and business transactions on behalf of the organization.

VEP may accept advertising, partnerships, or sponsorships as means to financially support its publications and activities. Rates and policies regarding advertising and sponsorships shall be determined by the CEO, or his/her designee. VEP does not endorse the products or services of sponsors or advertisers and does not make any claims or assurances regarding the quality of products or services.

No company or business may distribute literature, place literature on display or otherwise advertise at official VEP programs or events without the consent of the CEO and in accordance with these policies.

Planning

Strategic and Operating Plans are prepared and maintained by the staff and approved by the full Board of Directors. The Board shall regularly engage in planning activities and monitor the progress made on achieving the plan. Programs, events, and marketing strategy shall be determined based on these plans and the annual operating budget shall allocate resources for the achievement of established plans. Performance objectives and measures are also based on these plans.

Coalitions, Partnerships and Alliances

VEP strives to be a partner in the community by engaging in communications and endeavors with related organizations, businesses, and government entities. Alliances which are critically related to VEP's mission are made at the direction of the CEO.



Visit Estes Park

Accountability & Transparency Policy

Visit Estes Park (VEP) values its relationship with its clients, partners, volunteers and stakeholders who engage with it, enabling it to achieve its purpose. It recognizes that transparency and accountability build trust and help those relationships to flourish, and desires to conduct business in an atmosphere that is open and transparent with the goal of promoting trust and understanding.

The purpose of this policy is to recognize the importance of transparency and accountability, and to facilitate the development and implementation of measures by VEP's Board and Staff to provide appropriate transparency and accountability.

Recognizing that transparency has benefit and requires ongoing efforts, VEP will enhance communication with its partners and stakeholders whenever possible.

In order for VEP to facilitate accountability and transparency with partners and stakeholders, there needs to be good internal documentation and reporting. VEP will ensure that there are systems and processes in place to capture, record and analyze the information necessary to perform its reporting functions. This includes reporting regularly to the Board, the Town of Estes Park, Larimer County, and other appropriate persons on the operations of VEP.

VEP will also ensure that privacy and other policies are in place to govern the access and use of documents including client records, staff records, partner records, and minutes of general meetings, in accordance with this policy.

To facilitate transparency, VEP will:

1. Encourage participation of board members in leadership activities and solicit their input to benefit decision-making processes.
2. Balance the intent for openness with sensitivity to privacy, confidentiality, and the need for free and frank discussion at the board table.
3. In addition to its specific legal and contractual obligations, consider each year whether there are any other stakeholder relationships which could benefit from receiving reports on VEP's activities and performance.
4. Share information & reports on a timely basis with partners, stakeholders, and appropriate persons, and when preparing its reports, consider the extent to which it can report on each of the following matters:
 - a. The purpose of organization.
 - i. Reporting on VEP's mission, vision and values, explaining organization's relevance in the current environment.
 - b. Organization stakeholder reporting and engagement.
 - i. Reporting on how stakeholder relationships are managed, how employees and volunteers are recruited, trained, rewarded, retained and recognized, and how VEP is funded.
 - c. Investments & Funding
 - i. Reporting on the source of funds.

1. Including reporting on accountability mechanisms governing the use of the funds.
 2. Including an assessment of VEP's ability to maintain the current levels of funding in the future, and how its funding approach is being evolved or adapted to changes in circumstances.
- ii. Reporting on investments, and the management oversight of VEP to manage investment risks and performance.
- iii. Reporting on movements in the level of funding, particularly where it has fallen in any year.
- d. Business strategy and mission
 - i. Explaining the strategy and structures that enable organization to operate and to grow.
 1. Includes identifying the priorities and associated budgets and allocation of resources.
 - ii. Honest self-assessment and disclosure of performance and plans to address underperformance and/or ongoing challenges, recognizing that this helps to build trust.
- e. Governance structure and processes
 - i. Reporting on governance structures, systems, processes and how risk management frameworks are aligned with those structures, systems and processes.
 1. Including providing clear diagrams of VEP's structure with reporting lines and key roles identified.
 2. Including disclosure of qualifications, experience and length of service of the members of the Board, CEO and senior management.
 - ii. Reporting on how VEP identifies and manages risks, and what risks are specific to VEP in addition to general risks.
- f. Activity and performance
 - i. Reporting on outputs, outcomes and impacts.
 - ii. Reporting on key performance indicators (KPIs).
- g. Financial performance and position
 - i. Reporting on sources of revenue, revenue recognition policies and a discussion and analysis of the factors affecting VEP's financial performance.
 - ii. Reporting on financial position of VEP as reported and/or certified by an independent auditor.
- h. Other
 - i. Public records as set by law.
 - ii. Board approved policies and positions, when appropriate.
 - iii. Other information as may be determined by the board to be of importance to partners and stakeholders.



Visit Estes Park

Board Member Conflict of Interest Policy

This policy seeks to reflect the spirit of Visit Estes Park's (VEP) commitment to promote the highest ethical standards in the destination management profession. The policy also seeks to ensure that decisions about VEP operations and the use or disposition of VEP assets are made solely in terms of the benefits of the VEP and are not influenced by any private profit or other personal benefit to the individuals affiliated with the VEP who take part in the decision. In addition to actual conflicts of interest, board members are also obligated to avoid actions that could be perceived or interpreted in conflict with the VEP's interest.

Conflicts of interest may occur when the VEP enters into transactions with other organizations. The best way to deal with this problem is to make known one's connection with organizations doing business with the VEP. Such relationships do not necessarily restrict transactions so long as the relationship is clearly divulged and non-involved individuals affiliated with the VEP make any necessary decision.

Any member of the Board of Directors who may be involved in a VEP business transaction in which there is a possible conflict of interest shall also promptly notify the CEO. The Director shall refrain from voting on any such transaction or using personal influence in any way in the matter. Furthermore, the Director, or the Chairman in the Director's absence, shall disclose a potential conflict of interest to the CEO and other members of the Board before any vote on a VEP business transaction and such disclosure shall be recorded in the minutes of the meeting at which it is made. Any VEP business transaction which involves a potential conflict of interest with a member of the Board of Directors shall have terms which are at least as fair and reasonable to VEP as those which would otherwise be available to VEP if it were dealing with an unrelated party.

Definitions

1. "Involved in a VEP business transaction" means initiating, making the principal recommendation for, or approving a purchase or contract; recommending or selecting a vendor or contractor; drafting or negotiating the terms of such a transaction; or authorizing or making payments from VEP accounts. That language is intended to include not only transactions for the VEP's procurement of good and services, but also for the disposal of VEP property, and the provision of services or space by the VEP.
2. A "possible conflict of interest" exists when an individual affiliated with the VEP is employed by, or contracted by, an organization which is doing business or is seeking to do business with the VEP, and whenever a transaction will entail a payment of money or anything else of value.

A "possible conflict of interest" exists when an individual affiliated with the VEP has an interest in an organization which is in competition with a firm seeking to do business with VEP if the individual's position gives him or her access to proprietary or other privileged information which could benefit the firm in which he or she has an interest.

A "possible conflict of interest" exists when an individual affiliated with the VEP is a trustee, director, officer or employee of a not-for-profit organization which is seeking to do business with or have a significant connection with the VEP or is engaged in activities which could be said in a business context to be "in competition with" the programs of the VEP.

The *Conflict of Interest Disclosure Form* shall be made available to each Director annually, who will be asked to sign the form either acknowledging potential conflicts of interest or declaring that no conflicts exist. The form shall be kept on file by the organization.

If a potential conflict exists, the Chairperson of the Board shall present the Annual Disclosure Form to the Board of Directors for discussion. If, after exercising due diligence, the Board of Directors determines that a conflict exists, the Interested Person will be notified by the Chairperson of the Board. The Board of Directors shall determine, by a majority vote of the disinterested directors, how the conflict shall be handled.

Failure on the part of a Board Officer or Board Member to disclose a potential conflict may result in his or her dismissal from the Board of Directors, by vote of the disinterested directors.

CONFLICT OF INTEREST DISCLOSURE FORM

To: THE BOARD OF DIRECTORS OF THE ESTES PARK LOCAL
MARKETING DISTRICT; AND THE SECRETARY OF STATE

FROM: Kara Franker, President & CEO

RE: Disclosure of Conflict or Potential Conflict of Interest

I, _____, am a member of the Board of Directors of the
Estes Park Local Marketing District (the "District").

☐ In accordance with Section 18-8-308 C.R.S., I hereby give notice to the District and the Secretary of State that to the best of my knowledge, information and belief as of the date hereof, and as disclosed herein, I have a conflict or potential conflict of interest with respect to the matters set forth on Exhibit A, attached hereto and incorporated herein.

Further, in accordance with applicable law, Exhibit B attached hereto and incorporated herein, contains disclosure of my ownership of any interest in property within the boundaries of the District, and any affiliation I may have with any business(es) or other private entity(ies), and to any other specific transaction under consideration by the Board of Directors of the District, which may give rise to my conflict or potential conflict of interest.

☐ In accordance with Section 18-8-308 C.R.S., I hereby give notice to the District and the Secretary of State that to the best of my knowledge, information and belief as of the date hereof, and as disclosed herein, I do not have a conflict or potential conflict of interest in my role as a board member of the District.

Board Member

Date

**CONFLICT DISCLOSURE
FORM EXHIBIT A
(Description of Matters)**

The interest in property within the District and business ventures described in Exhibit B to this Disclosure Form may create the potential for conflicts of interest in my service as a member of the Board of Directors of the District, in that actions under consideration or actions officially taken by the Board of Directors may benefit, directly or indirectly, my interests as disclosed herein. Such actions may include, but are not limited to, contracts, purchases, payments, or other pecuniary transactions with an entity in which I am president, general manager, or similar executive officer or own or control directly/indirectly a substantial interest in said entity, and other official actions or decisions of the Board of Directors, and negotiations relative to any such matters.

In addition to the foregoing disclosure, which shall be deemed a continuing disclosure, and shall apply to all actions taken at meetings of the Board of Directors of the District in which I am a participant, and shall, by the filing hereof with the Board of Directors of the District and the Secretary of State, be deemed made at least 72 hours in advance of any such meeting, in accordance with law, I may also have a conflict or potential conflict of interest with respect to the following specific transactions which may come before the Board of Directors:

CONFLICT OF INTEREST DISCLOSURE FORM
EXHIBIT B
(Description of Interests)

I own the following real or personal property (i.e. taxable business property) interests within the boundaries of the District:

I am a director, president, general manager, or similar executive officer, or I own or control directly or indirectly a substantial interest in the following entity(ies) which may participate in a transaction(s) with the District:



Visit Estes Park



ORGANIZATIONAL CODE OF ETHICS

Destination Marketing Accreditation Program (DMAP) requires that each organization adhere to the DMAP Code of Ethics as presented by DMAP Board of Directors.

All organizations undertake to:

- Provide exceptional customer service and detailed information on destination products and services.
- Treat all stakeholders, including members of Destinations International, courteously, ethically, and professionally.
- Actively encourage the integration of ethics into all aspects of management of the destination organizations' activities.
- Build collaborative relationships with other destination organization industry professionals and others for the advancement of the profession of destination marketing.
- Handle all inquiries, requests, transactions, correspondence, and complaints promptly, courteously, and fairly.
- Provide clean and well-maintained facilities and equipment for the enjoyment of their customers (members and clients).
- Exercise truth in all promotional materials concerning facilities, services, and amenities provided and advise the public in a reasonable manner if and when unable to provide the level of services or facilities as advertised. Promotional material supplied by the member must be appropriate for all audiences.
- Provide customers with complete details on prices, cancellations policies and services and ensure customers receive fair exchange for their foreign currency where appropriate.
- Promote responsible and sustainable use of environmental resource base when providing services and products to customers.
- Abide by all applicable federal, provincial and municipal laws.

Note: All accredited destination organizations are required to read and abide by this code of ethics as a condition for initial and continuing accreditation.



Visit Estes Park

VISIT ESTES PARK BOARD OF DIRECTOR ORIENTATION

Visit Estes Park utilizes a formal orientation process to welcome new members to the organization's board of directors. The agenda for the orientation is below followed by the official outline of items covered during the orientation.

AGENDA

1. Organizational History
2. Mission & Vision Statements
3. General Discussion and Opportunity for Questions
 - a. What do you want to know about Visit Estes Park?
4. Board History
5. Review documents included in the Board Governance Manual
 - a. Upcoming Meeting Dates
 - b. Roster and terms
 - c. Position description
 - d. Code of ethics policy and disclosure forms
 - e. Bylaws
 - f. Officers: responsibilities, purpose, authority
 - g. Board Orientation Document from our Attorney
6. Strategic Plan
7. Annual Operating Plan
8. Financial Overview
 - a. Financial Policies and Procedures
 - b. Funding Sources
 - c. Annual budget
 - d. Monthly statements
9. Staff introductions and core teams
 - a. Stakeholder Services
 - b. Community Relations
 - c. Marketing
 - d. Administration
10. Current Projects and Issues

BOARD ORIENTATION AND REVIEW

1. **DISTRICT OVERVIEW.** The District is a local marketing district (a quasi-municipal government), organized under the statutes of Colorado (29-25-101, and following), and is considered a political subdivision of the State.

1.1 As a governmental entity, the District must operate within its enabling statutes. If the statute does not confer a specific power, then the District probably lacks that power. Only those powers that are incidental to the express statutory grants of power will be “presumed” to exist.

a. The express statutory authority of a local marketing district related to services include:

- 1) Organization, promotion, marketing, and management of public events;
- 2) Activities in support of business recruitment, management, and development;
- 3) Coordinating tourism promotion activities.

1.2 As a governmental entity, it must operate consistent with the constitutional limitations (e.g., due process, equal protection, First Amendment issues, etc.).

1.3 District has defined boundaries for taxation, voting, and service purposes. Boundaries can be adjusted by inclusions and exclusions, pursuant to formal statutory procedures and the entry of a court order that is then recorded and filed with the assessor and the state.

1.4 District is subject to the Colorado *Open Meetings Law* and *Open Records Act*.

2. DISTRICT BOARD OPERATIONS.

2.1 **Individual powers.** A director has no individual legal powers/authority unless specifically authorized by statute or by the Board through formal motion/resolution (e.g., to sign a document, attend a meeting, form a subcommittee, etc.).

2.2 **Bylaws.** Board is authorized to adopt bylaws and we recommend that you do so. In addition, bylaws should be reviewed periodically to determine whether any changes are necessary or desired.

2.3 **Notice.** A notice/agenda must be posted 24 hours in advance of any meeting of the Board or formally constituted committee of the Board (at the place designated by the Board each January for posting of meetings).

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2.4 Executive Sessions. All official business of the Board must be conducted at a public meeting. All meetings are either “regular” or “special” and there is no statutory provision for a closed session like “study” sessions. All meetings must be open to the public. However, the Board can go into an executive session (closed to the public) upon a motion stating the purpose of the executive session, citing to the exact statutory authorization, and the subject matter with as much detail as possible without jeopardizing the nature of the executive session, duly seconded, and approved by a two-thirds affirmative vote. No formal action can be taken in an executive session. Any formal action taken in an executive session is deemed void by law. After the session, the Board reconvenes the public meeting, and takes whatever action is necessary. Executive sessions can only be called for one the following purposes (cite, Sec. 24-6-402(4), CRS, using one of the specific subparagraphs):

- a. The purchase, acquisition, lease, transfer, or sale of any real or personal property.
- b. Conferences with the Board's attorney to receive *specific* legal advice.
- c. Matters that are required to be kept confidential by federal or state law.
- d. Details of security arrangements or investigations, including defenses against terrorism.
- e. Determining positions relative to matters that are the subject of negotiations and instructing negotiators.
- f. Personnel matters regarding specific employees (as opposed to discussions of personnel policies), unless the session will include an employee who is the subject of the session and who requests an open meeting. NOTE: cannot go into executive session to discuss another board member or to discuss the selection or appointment of a new board member.
- g. Consideration of any documents protected by the mandatory non-disclosure provisions of the Open Records Act (e.g., test questions/answers; real estate appraisals etc.)
- h. Discussion of individual students where public disclosure would adversely affect the person or persons involved.

EXAMPLE: *“I move that we go into an executive session pursuant to Sec. 24-6-402(4)(e) to determine our position relative to the counteroffer made by the XYZ Co. regarding the contract for its services, and to instruct our CEO regarding such contract negotiations.”*

NOTE: Failure to follow the statutory requirements of the Open Meetings Law may result in the invalidity of the action taken: “No resolution, rule, regulation, ordinance or formal action of a state or local public body shall be valid unless taken or made at a meeting that meets the requirements of [the Open Meetings Law.]. (Sec. 24-6-402(8), CRS) IMPROPER ACTION IS STATUTORILY **DEEMED VOID**, NOT

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MERELY VOIDABLE! Furthermore, failure to strictly follow the executive session requirements can result in the executive session being deemed an open record subject to disclosure to the public.

2.5 Minutes. Minutes must be made and kept for all meetings, including executive sessions. Executive sessions must be electronically recorded (except for matters subject to attorney-client privilege) and the only required minutes can be a notation of the Board motion in the regular meeting minutes. Minutes of regular meetings are permanent records! Electronic records of executive sessions are not made public but are kept separately, and can be destroyed after 90 days if no challenge is made that the session was illegal.

2.6 Voting and other procedural matters. Voting may be by voice vote. The Chair/President also must vote. Directors cannot choose to not vote by abstaining whenever they face a difficult issue! Can only abstain when there is a conflict of interest, and then must refrain from discussion on that issue as well as abstaining from vote. Action taken by the board should be my **formal motion**, motion seconded, and a vote taken, and minutes reflect "It was moved and seconded that _____. The motion carried unanimously (or by a vote of ___ to ___)". Formal written **resolutions** are often used for authorizing continuing actions, real estate matters, etc. Informal **consensus** of the board should also be stated in the minutes as a record of Board approval of actions taken or to be taken by administration. (e.g., "The CEO reported that _____. It was the consensus of the Board that the CEO continue to _____.")

2.7 Conflicts of Interest. Holding public office is a "public trust" and duties must be discharged for the benefit of the public, and not for private gain or interest. The statutory ethics code now prohibits certain actions. However, pursuant to the definition section in the statutory ethics code, a local marketing district is not included in the definition of "local government," so the following principles are for illustrative purposes and do not specifically apply to board members or employees of a local marketing district. Under the statutory ethics code, a local government official (elected or appointed) or employee **shall not**:

- a. Disclose or use confidential information acquired during the course of official duties for personal interests. [NOTE: discussions in executive session should always remain confidential.]
- b. Accept a gift of substantial value that tends to improperly influence a reasonable person.
- c. Engage in financial transaction with a person whom you supervise or perform an official act affecting a business in which an interest is held or which you serve as consultant, agent, etc.
- d. Be a party to, or interested in, a contract with the District.
- e. Purchase property from the District unless at public auction/bid.

2.8 Ethical Principles. The statutory ethics code also provides for guidance against certain conduct that do not constitute violations of the public trust, but should be

avoided as potentially causing an appearance of impropriety. Similar to the above provisions, these are included for illustrative purposes. A local government official or employee **should not**:

- a. Acquire or hold an interest in any business or undertaking which you have reason to believe may be directly and substantially affected to its economic benefit by official action to be taken by an agency which you have substantive authority.
- b. Within six (6) months following the termination of your office or employment, obtain employment in which you will take direct advantage, unavailable to others, of matter which you were directly involved during your term or employment.
- c. Perform an official act directly or substantially affecting a business or other undertaking to its economic detriment when you have a substantial financial interest in a competing form or undertaking.
- d. Assist or enable members of your immediate family in obtaining employment, a gift of substantial value, or an economic benefit tantamount to a gift of substantial value from a person whom you are in a position to reward with official action or has rewarded with official action in the past.

2.9 Disclosing Conflicts of Interest. Pursuant to Sec. 29-25-108(3), C.R.S., of the Local Marketing District Act, a board member who has a potential conflict of interest in any transaction proposed or pending before the Board must disclose such interest to the Board pursuant to Sec. 18-8-308, C.R.S. The board member cannot vote or attempt to influence the other members of the Board in voting on the matter, may not attempt to influence any of the contracting parties, and may not act directly or indirectly for the Board in the inspection, operation, administration, or performance of any contract related to the transaction. A disclosure of a potential conflict of interest must be filed in writing to the Colorado Secretary of State and the Board at least seventy-two (72) hours prior to consideration of the transaction to avoid committing "failure to disclose a conflict of interest."

2.10 Service as an Employee. Board members cannot receive any funds from the District, except for incidental expenses, and cannot be employed by the District.

3. BUDGET RESTRICTIONS. The District is restricted by state statute and by the state constitutional provision known as TABOR. TABOR imposed the following on all governments:

3.1 Limitation on Revenues (from all sources): Can only be increased by the sum total of the percentage of CPI increase and the percentage of growth in actual (not assessed) valuation from new construction. Thus, if \$100,000 spent in 2016, and CPI increased by 2% and growth increased by 5%, then government could raise and spend \$107,000 in 2017 (2% +5% = 7% increase). **THIS CAN BE DE-BRUCED.**

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3.2 Limitation on Tax revenues: Can only be increased by the sum total of the percentage of CPI increase and the percentage of growth in actual (not assessed) valuation from new construction; OR by the existing statutory 5.5% limitation, *whichever is more stringent*. **THIS CAN BE DE-BRUCED.**

3.3 Revenues in excess of these two limitations must be refunded: Refund is made in the following year, *unless* voters approve a specific or continual revenue change (“de-Bruicing”). **THIS CAN BE DE-BRUCED.**

3.4 New taxes and mill levy increases over the prior year’s mill levy---both require voter approval. **THIS IS NOT SUBJECT TO DE-BRUCING. VOTERS MUST APPROVE OF TAX INCREASES.**

3.5 Any debt (multi-year financial obligation) requires voter approval unless it is annually subject to board’s discretionary appropriation, or unless board specifically reserves enough funds to cover the obligation in future years. Note: lease-purchase agreements which contain a “subject to annual appropriations clause” are legally deemed to NOT be “multi-year financial obligations.” **THIS CANNOT BE DE-BRUCED.**

DE-BRUCING. Voters can allow government to exceed, keep, and spend revenues from all sources or from specific sources (e.g., just non-tax sources). Simply put: voters are asked to excuse the government from the limitations of paragraphs 3.1, 3.2, and 3.3 above. AG has ruled that voters can approve a waiver of the 5.5% limitation as well as de-Bruce. Even if de-Bruced and voters waived 5.5%, no tax increase (no higher mill levy) or no new debt without separate voter approval!

4. LIABILITY LIMITED. Liability can arise in one of three ways: under common law doctrines of **tort liability** (e.g., negligence, intentional torts, etc.); under state or federal **statutes** (e.g., prohibitions regarding discrimination or for environmental damage); and from **contractual rights** (e.g., when a contract is breached by one of the parties). The following are some limits on liability:

4.1 Board members enjoy qualified immunity under the common law: discretionary actions taken in the course of the performance of public duties are normally protected.

4.2 The Colorado Governmental Immunity Act (“CGIA”) protects the District (as an entity) and its employees (defined to include both paid employees and volunteers) and elected officials from tort claims arising from personal injury or property damage except for those claims that are permitted to be asserted by the statute. The three main exceptions to the CGIA’s protections and which are applicable to special districts are: claims arising from the dangerous condition of public buildings, and claims arising out of the operation of governmental vehicles which are not running “hot” under an emergency, and claims arising from the operation/maintenance of a water system.

4.3 The CGIA requires the District to defend the individual employee/official unless he/she intentionally caused the injury or property damage.

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4.4 Even if the CGIA does not offer immunity, it limits tort claims to \$424,000 per person and \$1,195,000 per occurrence (but each person limited to \$424,000). Other claims, such as civil rights claims, are not limited by the Act.

4.5 The District maintains insurance to protect it and its employees/officials from most claims asserted under various federal and state statutes. In addition, because the Board collectively must act in these areas, there is minimal chance for individual directors to be held individually liable absent malicious, intentional conduct.

4.6 No insurance carrier issues insurance coverage for contractual claims.

5. **INTERGOVERNMENTAL AGREEMENTS.** If two governmental entities both possess the same legal powers, they may enter into contracts with each other. These contracts are called intergovernmental agreements ("IGAs"). IGAs can cover a multitude of issues, such as providing mutual aid/assistance in the event of emergencies. If an IGA forms a new entity (with representation on that new entity's board consisting of reps from each entity) it is known as an "authority." Regionalization to reduce the duplication of services is often accomplished through the creation of authorities and as a first step towards consolidation.

6. **ELECTRONIC COMMUNICATIONS AND OPEN RECORDS.**

6.1 The District's email communications, and email communications between or among Board members, are potentially part of the District's public records that are open for inspection pursuant to the *Colorado Open Records Act* ("Act"), Section 24-72-200.1, C.R.S. Think before you write. Think again before you send.

6.2 Public records under the Act include all writings made, maintained, or kept by the District for use in the exercise of functions required or authorized by law or involving the receipt or expenditure of public funds. Correspondence of Board members, as elected officials, is considered part of the District's public records if it fits within this definition.

6.3 Correspondence covered by the Act includes all District-related communications sent to or received by a Board member via email, fax, U.S. Mail, hand-delivery, etc.

6.4 There are some exceptions that apply that would take mail communications out of the realm of public records and not subject to inspection by the public. These exceptions apply where such correspondence is:

- a. Work product: intra- and inter-District advisory or deliberative materials assembled for the benefit of Board members, which materially express an opinion or are deliberative in nature and are communicated for the purpose of assisting the Board members in reaching a decision within the scope of their authority. The Board member may release the work product communication in whole or in part. This type of information includes, but is not limited to:
 - Notes and memoranda that relate to or serve as background information for such decisions; and,

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- Preliminary drafts and discussion copies of documents that express a decision by a Board member.
- b. Without a demonstrable connection to the exercise of functions required or authorized by law or administrative rule and does not involve the receipt or expenditure of public funds. (e.g. personal emails)
- c. A communication from a constituent to a Board member that clearly implies by its nature or content that the constituent expects that it is confidential or a communication from the Board member in response to such a communication from a constituent.
- d. Subject to nondisclosure because the inspection of such record would be contrary to any state statute, contrary to any federal statute or regulation issued there under having the force and effect of law, or prohibited by rules promulgated by the supreme court or by the order of any court. (e.g., attorney-client privileged communication).
- e. A communication concerning a criminal justice record.

6.5 Note that describing a particular communication as “work product” or as “confidential” will not insulate it from a legal challenge. If challenged, a court would analyze the communication to determine its status under the Act.

6.6 **Board members should not utilize electronic mail in order to conduct meetings, thereby making the communications subject to the Open Meetings Law,** Section 24-6-401 et seq., C.R.S. The Law specifically provides that if elected officials chose to use electronic mail to discuss pending legislation or other public business among themselves, that the electronic mail shall be subject to the requirements of the Law. Resolutions, rules, regulations, or formal actions of the District are not valid when taken at meetings that violate the Law. In addition, a court may issue an injunction to enforce the purpose of the Law and where the court finds a violation, it shall award the citizen prevailing in that matter his costs and reasonable attorney’s fees.