

SMOKY HILL METROPOLITAN DISTRICT
BY-LAWS

Section 1. Authority. The Smoky Hill Metropolitan District (District) is a governmental subdivision of the County of Arapahoe, State of Colorado and a body corporate with those powers of a public or quasi-municipal corporation which are specifically authorized by, and in compliance with all applicable provisions of the Colorado Constitution and the Colorado Revised Statutes, including, without limitation, Article 1, Title 32, C.R.S., Section 32-1-101 *et seq.*, as amended.

Section 2. Purpose. It is hereby declared that the By-Laws hereinafter set forth will serve a public purpose.

Section 3. Policies of the Board. It shall be the policy of the Board of Directors ("Board") of the District, consistent with the availability of revenues, personnel and equipment, to use its best efforts to provide parks, open spaces and related recreational facilities, recreational equipment, safety devices, right-of-way maintenance for the general welfare of the inhabitants and property owners of the District and others, as authorized under the District Service Plan or by law.

Section 4. Board of Directors. All powers, privileges and duties vested in, or imposed upon, the District by law shall be exercised and performed by and through the Board, whether set forth specifically or impliedly in these By-Laws. The Board may delegate to officers, employees and agents of the District any or all administrative and ministerial powers.

Without restricting the general powers conferred by these By-Laws, it is hereby expressly declared that the Board shall have the following powers and duties:

A. To confer upon any appointed officer of the District the power to choose, remove or suspend employees or agents upon such terms and conditions as may seem fair and just and in the best interests of the District.

B. To determine and designate, except as otherwise provided by law or these By-Laws, who shall be authorized to make purchases, negotiate leases, sign receipts, endorsements, checks, releases and other documents.

C. To create standing or special committees and to delegate such power and authority thereto as the Board deems necessary and proper for the performance of such committee's functions and obligations.

D. To prepare financial reports, other than the statutory audit, covering each year's fiscal activities and such reports, if requested, shall be submitted to the Board and made available for inspection by the public.

Section 5. Office.

A. Business Office. The principal business office of the District shall be at 5405 South Telluride Street, Centennial, Colorado, until otherwise designated by the Board.

B. Establishing Other Offices and Relocation. The Board, by resolution, may from time to time designate, locate and relocate its executive and business office and such other offices as, in its judgment, are necessary to conduct the business of the District.

Section 6. Meetings.

A. Regular Meetings. Regular meetings of the Board shall be conducted on the day of each month, as designated in the Resolution setting the meeting dates for the year, as may be changed by Resolution and held at the business office, unless otherwise noticed and posted.

B. Meetings Public. All meetings of the Board, other than executive sessions, duly called pursuant to Open Meetings law, shall be open to the public.

C. Notice of Meetings. The meeting date Resolution shall constitute formal notice of regular meetings to Board members, and no other notice shall be required to be given to the Board, other than the permanent posting. Written waivers of notice by Board members are not necessary.

D. Special Meetings. Special meetings of the Board may be called upon seventy-two (72) hours written notice, which shall be posted in three (3) places within the District and at the Arapahoe's Clerk and Recorder's office.
County

E. No Informal Action by Directors. All official business of the Board shall be conducted at regular or special meetings.

F. Executive Sessions. Executive sessions may be called at regular or special meetings and conducted according to the following guidelines:

1. Calling the Executive Session. The topic for discussion in the executive session shall be announced in a motion and the specific statutory subsection of C.R.S. 24-6-402, that authorizes the executive session, shall be cited: the Board may convene an executive session only during a regular or special meeting and only for the following purposes, as established by law: 1) purchase, lease or sale of any real, personal or other property interest; 2) conferences with an attorney for the District for the purpose of receiving advice on specific legal questions; 3) matters required to be kept confidential by federal or state laws; 4) specified details of investigations; 5) determination of positions subject to negotiation strategy and instructing negotiators; 6) personnel matters, Except the employee who is the subject of the session, must be offered an opportunity for an open

meeting or, if the matter involves more than one employee, all such employees must be offered an opportunity for an open meeting, in either instance, if the employee or employees desire public discussion, their choice must be respected; and 7) consideration of any documents protected by mandatory non-disclosure provisions of the "Open Records Act." The matter to be discussed shall be described in as much detail as possible without compromising the purpose of being in executive session. An affirmative vote of two-thirds (2/3) of the quorum present shall be required to go into executive session. The Minutes of the meeting shall reflect when the Board convenes and executive session, the purpose thereof, and when the regular meeting is reconvened.

2. Conducting the Executive Session. No adoption of any proposed policy, position, resolution, rule, regulation or formal action shall take place in an executive session. The discussion in executive session shall be limited to the reasons for which the executive session was called. A record of the actual contents of the discussion in the executive session shall be created by use of an electronic recording device. No record is to be kept for any portions of the discussion which the District's attorney reasonably believes constitute "Attorney-Client" privileged communication. If minutes of the executive session are electronically recorded, the attorney shall state on the record when any portion of the executive session is not recorded as an "Attorney-Client" privileged communication. The attorney shall sign a statement in the Minutes to the same effect when any portion is not recorded as an "Attorney-Client" privileged communication.

3. After Executive Session. Upon leaving executive session, which shall be accomplished by motion, second and vote, the Chair shall announce the session ended and shall affirm for the record that no decisions were made and no votes taken. The record of any executive session shall be retained by the District as required by law and then destroyed or erased. Recordings of the executive session shall not be released to the general public for review under any circumstances, except as required by law or a Court with appropriate jurisdiction.

G. Adjournment and Continuance of Meetings. When a regular or special meeting is for any reason continued to another time and place, written notice need not be posted of the continued meeting, if the time and place of such meeting are announced at the meeting from which the continuance is made, except as required by law. At the continued meeting, any business may be transacted which could have been transacted at the original meeting.

Section 7. Conduct of Business.

A. Quorum. All official business of the Board shall be transacted at a regular or special meeting at which a quorum of the Directors, then in office, shall be present in person or telephonically, except as provided in Section 7.B.

B. Vote Requirements. Any action of the Board shall require the affirmative vote of a majority of a quorum present and voting. No Director shall be entitled to abstain from voting except when disqualified by potential conflict of interest. In the absence of any Directors, any vote resulting in a tie vote on any proposed Board action, shall defeat such proposed action.

When special or emergency circumstances affecting the affairs of the District and the health and safety of District residents so dictate, then those Directors available at the time may undertake whatever action is considered necessary and may so instruct the District's employees, agents and contractors. Such actions shall later be ratified by the Board.

C. Order of Business. The business agenda of all regular meetings of the Board shall be transacted, as far as practicable, in the following order:

1. Approval of Minutes of the previous meeting;
2. Public comment;
3. Reports of professional consultants/attorneys;
4. Financial Report, including Approval of bills and appropriations;
5. Public hearings, limited to 3–5 minutes per citizen;
6. Operations Report;
7. Board Report;
8. Unfinished business;
9. New business; and
10. Adjournment.

D. Motions and Resolutions. Each and every action of the Board necessary for the governance and management of the affairs of District, for the execution of the powers vested in District and for carrying into effect the provisions of Article 1 of Title 32, C.R.S., shall be taken by the passage of motions or when required by law, resolutions.

E. Meeting Agenda. Absent circumstances requiring emergency consideration, prior to any Board meeting, a Director shall be entitled to submit two (2) items to the Chair for consideration by the Board under "New Business" on the Board's agenda for regular monthly meetings. Any Board Director may request the right to add additional agenda items for consideration by the Board under "New Business" during that portion of the meeting for Approval of the Minutes.

F. Minute Book. Within a reasonable time after passage, all resolutions, motions and Minutes of Board meetings shall be recorded in a book

kept for that purpose and shall be attested by the Secretary. Minutes of regular sessions shall be available for public review as soon as practicable following of acceptance of the Minutes by adoption of a motion therefore by the Board.

G. Policies, Procedures and Rules of Conduct Manual. The Board may adopt a Manual setting forth policies, procedures and rules of conduct of the Board. In the event of any conflict between terms of such Manual and either these By-Laws or State law, these By-Laws or State law shall control.

Section 8. Directors, Officers and Personnel.

A. Director Qualifications and Terms. Directors shall be electors of the District, as defined by State law: residents or property owners or spouses of property owners. The term of each Director shall be four (4) years, with the term of office determined by establishment of the District and applicable statutory provisions, with elections to be held in even numbered years and conducted in the manner prescribed by Articles 1 through 13, Title 1 and Part 8, Article 1, Title 32, C.R.S. Each Director shall sign an oath of office and at the expense of the District; furnish a faithful performance surety bond in a sum of not less than \$1,000.

There exist no statutory two (2) year terms, only the remaining two (2) years of a four (4) year term vacated by a Director.

B. Director's Performance of Duties. A Director of the District shall perform all duties of a Director, including duties as a member of any committee of the Board upon which the Director may serve, in good faith, in a manner, which the Director reasonably believes to be in the best interests of District, with such care as an ordinarily prudent person in a like position would use under similar circumstances and generally in accordance with the Policies, Procedures and Rules of Conduct adopted by the Board.

In performing the Director's duties, the 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 persons and groups listed in subparagraph 1, 2 and 3 of this subsection B. The Director shall not be considered to be acting in good faith if he has knowledge concerning the matter in question that would cause such reliance to be unwarranted. A person who so performs the Director's duties shall not have any liability by reason of being or having been a Director of the District. Those programs and groups upon whose information, opinions, reports and statements a Director is entitled to rely are:

1. One of more officers or employees of the District whom the Director reasonably believes to be reliable and competent in the matters presented;

2. Counsel, public accountants or other persons as to matters which the Director reasonably believes to be with such persons' professional knowledge or expertise; and

3. A committee of the Board upon which the Director does not serve, duly designated in accordance with the provisions of the By-Laws, as to matters within its designated authority which committee the Director reasonably believes to merit confidence.

D. Oath of Office. Each member of the Board, before assuming the responsibilities of his office, shall take and subscribe an oath of office in the form prescribed by law.

E. Election of Officers. The Board of Directors shall elect from its membership a Chair/President, Vice President, Secretary/Treasurer and two Assistant Vice Presidents who shall be the officers of the Board of Directors and of the District. The Vice President shall have all powers of the offices of the Secretary or Treasurer as applicable, in the absence of such officers. The officers shall be elected by a majority of the Directors voting at such election. The Board may, from time to time, appoint an acting officer in the absence of any individual officer. The election of the officers shall be conducted biennially at the first regular meeting of the Board following the regular biennial election of the Directors held in May of even numbered years. Each officer so elected shall serve for a term of two years, which term shall expire upon the election of their successor or upon their reelection to that office.

F. Vacancies. Any vacancy occurring on the Board pursuant to State statute shall be filled by an affirmative vote of a majority of the remaining Directors, as prescribed by law. The appointed individual must meet the statutorily prescribed qualifications for Directors and shall serve until the next regular District election.

G. Absences, Resignation and Removal. All absences of Directors from regular meetings shall be noted in the Minutes of such meetings, and such absences shall be noted as "excused" or "unexcused" in the Minutes. Excused absences for a Director shall be those absences from attendance at a regular Board meeting when a Director shall provide actual or telephone notice of and the reason for such absence to the Board President or other Board member no later than 5:00 p.m., on the day of such meeting.

In the case of an absence for which no notice was provided, a Director may request an "excused absence" for reasons of illness, disability or circumstances beyond the control of the Director by asking the Board for such excused absence, to be approved by vote of the Board.

A Board position will shall be deemed vacant following there (3) consecutive “unexcused” absences from regular Board meetings.

Any Director may resign at any time by giving written notice to the Board and acceptance of such resignation shall not be necessary to make it effective, unless the notice so provides.

Directors may be removed from office only by recall as prescribed by statute.

H. Chair/President. The Chair shall preside at all meetings. The Chair shall also be the President of the District. The President is authorized to sign all contracts, deeds, notes, debentures, warrants and other instruments on behalf of the District.

The Chair shall be responsible for developing the agenda for each regular and special meeting, based upon requests by other Board members, District Manager or legal counsel.

I. Vice President. In the absence of the Chair, the Vice President shall preside at all meetings. The Vice President shall have the authority to make all management or administrative decisions regarding District matters. The Vice President is also authorized to sign all contracts, deeds, notes, debentures, warrants, checks and other instruments on behalf of the District.

J. Secretary/Treasurer. The Secretary shall be responsible for the records of the District; may act as Secretary at meetings of the Board and record all votes; shall be responsible for composing a record of the proceedings of the Board in a minute book kept for that purpose, which shall be an official record of the Board; and shall perform all duties incident to that office. The Secretary shall be the designated election official of the District, unless otherwise determined by the Board and the custodian of the seal of the District. The Secretary shall have the authority to affix such seal to and attest all contracts and instruments authorized to be executed by the Board.

The Treasurer shall be authorized to invest all surplus funds or other available funds of the District in permitted investments authorized by law or as specified by the Board. The Treasurer shall be chairman of the Budget Committee and of the Audit Committee. The Treasurer shall keep or cause to be kept strict and accurate accounts of all money received by and disbursed for and on behalf of District in permanent records. The Treasurer shall file with the Clerk of the Court, at the expense of the District, a corporate fidelity bond in an amount determined by the Board of not less than \$5000, conditioned on the faithful performance of the duties of the Treasurer’s office.

K. Assistant Vice President. The Assistant Vice Presidents shall have all the powers of the office of Vice President in the absences of such officers. The Assistant Vice Presidents are also authorized to sign all contacts,

deeds, notes, debentures, warrants, checks and other instruments on behalf of the District. In the event that dual signatures of District officers are required on any instrument, then two different officers shall sign such instrument.

L. Additional Duties. The officers of the Board shall perform such other duties and functions as may from time to time be required by the Board, by the By-Laws or rules and regulations of District by law or by special exigencies, which shall later be ratified by the Board.

M. Operations Manager. The Board may appoint an Operations Manager to serve for such term and upon such conditions, including compensation, as the Board may establish. Such Operations Manager shall have general supervision over the operation of the parks and recreation facilities affairs and related business of the District.

N. Personnel Selection and Tenure. The selection of agents, employees, engineers, accountants, special consultants and attorneys of the District by the Board will be based upon the relative qualifications and capabilities of the applicants and shall not be based on political services or affiliations. Agents and employees shall hold their employment or positions at the pleasure of the Board. Contracts for professional services of engineers, accountants, special consultants and attorneys may be entered into on such terms and conditions as may seem reasonable and proper to the Board.

“Employment at will” shall remain the official policy of the Board with respect to all employees hired, unless the Board approves an express written employment contract.

Section 9. Financial Administration.

A. Fiscal Year. The fiscal year of the District shall commence on January 1st of each year and end on December 31st.

B. Budget Committee. There shall be a Budget Committee composed of the Treasurer, a member of the Board appointed by the President, and the accountant for the District which shall be responsible for preparation of the annual budget of the District and such other matters as may be assigned to it by the President or the Board.

C. Budget. On or before October 15th of each year, the Budget Committee shall prepare and submit to the Board a proposed budget for the ensuing fiscal year. Such proposed budget shall be accompanied by a statement which shall describe the important features of the budget plan and by a general summary wherein shall be set forth the aggregate features of the budget in such manner as to show the balanced relations between the total proposed expenditures and the total anticipated income or other means of financing the proposed budget for the ensuing fiscal year, as contracted with the corresponding figures for the last completed fiscal year and the current fiscal

year. It shall be supported by explanatory schedules or statements classifying that expenditures contained therein by services, subjects and funds. The anticipated income of the District shall be classified according to the nature of receipts.

D. Notice of Budget. Upon receipt of the proposed budget, the Board shall cause to be published a notice that the proposed budget is open for inspection by the public at the business office; that the Board will consider the adoption of the proposed budget at a public hearing on a certain date; and that any interested elector may inspect that proposed budget and file or register any objections thereto at any time prior to its final adoption. Notice shall be posted or published in substantial compliance with law.

E. Adoption of Budget. On the day set for consideration of such proposed budget, the Board shall review the proposed budget and revise, alter, increase or decrease the items as it deems necessary in view of the needs of the District and probable income of the District. The Board shall then adopt a budget setting forth the expenditures to be made in the ensuing fiscal year. The Board shall provide for sufficient revenues to finance expenditures in the budget with special consideration given to the proposed property tax levy.

F. Levy and Collection of Taxes. On or before December 15th of each year, unless an election for an increased operating tax levy is held, the Board shall certify to the Board of County Commissioners of Arapahoe County, the mill levy established for the ensuing fiscal year, in order that, at the time and in the manner required by law for the levying of taxes, such Commissioners will levy such tax upon the assessed valuation of all taxable property within District.

G. Filing of Budget. On or before January 30th of each year, the Board shall cause a certified copy of such budget to be filed with the Division of Local Government in the State Department of Local Affairs.

H. Appropriating Resolution.

1. At the time of adoption of the budget, the Board shall enact a resolution making appropriations for the ensuing fiscal year. The amounts appropriated there under shall not exceed the amounts fixed therefore in the adopted budget.

2. The income of the District, as estimated in the budget and as provided for in the tax levy resolution and other revenue and borrowing resolutions, shall be allocated in the amounts and according to the funds specified in the budget for the purpose of meeting the expenditures authorized by the appropriation resolutions.

3. The Board may make an appropriation to and for a contingent fund to be used in cases of emergency or other unforeseen contingencies.

4. The Board shall have no authority to enter into any contract, or otherwise bind or obligate the District to any liability for payment of money for any purposes, for which provision is not made in appropriation resolution, including any legally authorized amendment thereto in excess of the amounts of such appropriation for that fiscal year. Any contract, verbal or written, contrary to this Section shall be void *ab initio*, and no District funds shall be expended in payment of such contracts.

5. In cases of emergency caused by a natural disaster, public enemy or other contingency which could not reasonably have been foreseen at the time of the adoption of the budget, the Board may authorize the expenditure of funds in excess of the budget by resolution duly adopted by a two-thirds (2/3) vote of the Board. Such resolution shall set forth in full the facts concerning the emergency and shall be included in the minutes of such meeting.

6. If so enacted, a copy of the resolution authorizing additional expenditures shall be filed with the Division of Local Government in the State Department of Local Affairs and shall be published in compliance with statutory requirements.

I. Payment of Contingencies.

1. If there is unexpended or uncommitted money in funds other than those to which the emergency relates, the Board shall transfer such available money to the fund from which the emergency expenditure is to be paid.

2. To the extent that transferable funds are insufficient to meet the emergency appropriation, the Board may borrow money through: a) the issuance of tax anticipation warrants, to the extent that the mill levy authority of the District is available as provided by law; or b) the issuance of bond anticipation notes payable from future bond proceeds or operating revenue; or c) any other lawful and approved method.

J. Annual Audit.

Provided the District is not exempt from audit under State law, the Board shall cause an annual audit to be made at the end of each fiscal year of all financial affairs of the District through December 31st of such fiscal year. In any event, the audit report should be submitted to the Board within six (6) months of the close of such fiscal year. Any extensions sought shall be approved by the Board. Such audit shall be conducted in accordance with generally accepted auditing standards by a registered or certified public accountant who has not maintained the books, records and accounts of District during the fiscal year. The auditor shall prepare and certify as to its accuracy, an audit report, including a financial statement and balance sheet based on such audit, unqualified opinion or qualified opinion with explanations, and a full disclosure of any violation of State law pursuant to statutory requirements.

A copy of the audit report shall be maintained by the District as a public record for public inspection at all reasonable times.

A copy of the audit report shall be forwarded to the State Auditor or other appropriate State official pursuant to statutory requirements.

If the District is exempt from audit, an application for such exemption shall be prepared by a certified public accountant retained by the District.

Section 10. Corporate Seal. The seal of the District shall be a circle containing the name of the District and shall be used on all documents and in such manner as seals generally are used by public and private corporations. The Secretary shall have custody of the seal and shall be responsible for its safe keeping and care.

Section 11. Disclosure of Conflict of Interest. A potential conflict of interest of any Director shall be disclosed in accordance with State law, particularly Article 18 of Title 24, C.R.S., and Sections 32-1-902(3) and 18-8-308, C.R.S.

Section 12. Compensation. Each Director may receive the maximum compensation authorized by statute, unless otherwise determined by the Board. No Director shall receive compensation as an employee of the District, except as may be provided by statute.

Section 13. Indemnification of Directors and Employees. The District shall defend hold harmless and indemnify any Director, officer, agent or employee, whether elective or appointive against any tort or liability, claim or demand, without limitation, arising out of any alleged act or omission occurring during the performance of official duty as more fully defined by law or by an indemnification resolution. The provisions of this Section shall be supplemental and subject to and, to the extent of any inconsistency therewith, shall be modified by the provisions of the Colorado Governmental Immunity Act, Section 24-10-101, *et seq.*, C.R.S.

Section 14. Bidding and Contracting Procedures. Except in cases in which the District will receive aid from a government agency, a notice shall be published for bids on all construction contracts for work or materials, or both, involving an expense of \$25,000 or more of District funds. In determining the award of a contract, the Board shall select the lowest responsive, and responsible bidder for such contract.

The Board may reject any and all bids, and if it appears that the District can perform the work or secure material for less than the lowest bid, it may proceed to do so in accordance with law.

The District shall also comply with all other statutory requirements relating to payment and performance bonds, retainage and final payment, all other contract matters.

Section 15. Modification of By-Laws. These By-Laws may be altered amended or repealed at any regular or special meeting of the Board to become effective immediately or at a subsequent date.

Amended and adopted this _____ day of _____, 2006.

SMOKY HILL METROPOLITAN DISTRICT

By: _____
President