

The Colorado  
Business Improvement  
District (BID)

**BOARD  
MEMBER  
MANUAL**



# PREFACE

Welcome to the Second Edition of the Amazing Colorado BID Board Member and Manager’s Manual! This edition is even more fun-filled than the first edition, and we’ve included “and Manager’s” in the title to make sure they don’t miss out on the action.

This manual is intended to be a general survey of statutory responsibilities and miscellaneous recommendations for members of the Boards of Directors and the Managers of Business Improvement Districts in Colorado. This manual is neither designed nor intended to be a thorough legal analysis. The passage of time, new court decisions, and future legislation will cause portions of this manual to become outdated. Further, the answer to any particular legal question depends on the facts that bear on the issue. The reader is strongly encouraged to seek the advice and assistance of the BID’s legal counsel as legal issues arise.

The basic framework for this document was the Special District Association Board Member Manual prepared as a public service by Collins Cockrel & Cole, a professional corporation. It was modified for BIDs by Rick Kron of Spencer Fane LLP in early 2015 and this Second Edition was drafted in late 2017 and early 2018 by Mr. Kron in collaboration with Ron Fano, also of Spencer Fane LLP. Jim Collins graciously consented to allowing the use of the SDA Manual as a basis for the BID Manual. Thanks, Jim.

The general intent of the Manual is to give quick answers to some of the questions that face BID Board Members, Managers, staff, consultants, and friends in the management and operation of an interesting form of local government in Colorado. If you’re reading this Manual, you’ve either volunteered, been hired, or have a fascination with a downtown or other commercial area – and more importantly, hopefully you have a desire to make the area work and thrive as a clean, safe and vibrant force in the community.

BIDs are different than any other form of government or business organization in Colorado. They can have the power to provide economic development activities that could include security, events, marketing and advocacy, plus any physical capital improvements along with operation and maintenance of public improvements. A BID in Colorado can exercise a wide range of financial powers to further its mission.

What is that mission? My view is that “the sky is the limit” – the statute literally says that a BID has the power to furnish “any public improvement” and to provide a wide range of business-related services, therefore the limits are primarily creativity, money and political will. The jobs undertaken by a BID can be as varied as the downtown or commercial area that it serves. BIDs have, can, and could:

- Replace all the utilities and pave Main Street
- Provide lights for safety on a state highway
- Plant flowers and maintain them
- Plant and trim trees, including privately-owned trees
- Do market research and disseminate it to new and existing business
- Install street signs
- Build and operate a parking garage
- Provide public art and a gallery to put it in
- Run area-wide business promotions and marketing
- Support programs for the homeless
- Provide motorcycles for police
- Develop a security action plan and implement it with the local police
- Provide off-duty officers for security
- Sponsor festivals and other events
- Facilitate permitting
- Provide ambassadors
- Clean sidewalks
- Remove snow

- Install street furniture
- Create downtown maps
- Install wayfinding signs
- Install bike lanes and parking
- Install drainage facilities
- Install utility conduits
- Provide weather information
- Create and maintain a website, including links to businesses and offers
- Monitor the activities of state, local, and regional governments (including the state legislature) and report to the business community
- Run TV, radio, billboard, and print ads
- Provide holiday lighting
- Support public games, skating rink, markets, and ideas to get people downtown
- Advocate for area improvements
- Advocate for area services
- Provide business incentives
- Develop design guidelines
- Create “pop up” parks, including dog parks
- Put in a kid’s play area
- Provide a children’s splash area
- Install banners
- Activate alleys or at least clean them
- Provide lighting in alleys
- Stripe parking lots
- Pave parking lots
- Produce a parking plan
- Provide electric vehicle chargers
- Jointly finance projects with the City or another district
- Communicate with, and coordinate, groups working in downtown
- Remove bad public art or worn out facilities
- And a lot more.

This Manual can help provide answers to some of the more common questions, but (here’s the disclaimer), for any particular situation, *the BID should consult knowledgeable legal counsel.*

We expect that there will be future editions of the Manual to keep up with new law, add or expand some topics, and remove others. Have fun.

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## INTRODUCTION

This general manual applies to Business Improvement Districts in Colorado and emphasizes state law and general practices. For a particular BID, at a minimum, every Board member should be familiar with the ordinance that created the BID and the BID's annual operating plan and budget. These documents explain the particular BID's powers and limitations.

As a Board Member, you have become part of the governing body of the BID. The BID is a unit of local government. That local government has the powers and limitations that are set out in state statutes, the ordinance that your municipality passed to create the BID, the annual operating plan and budget of the BID, and the state and federal constitutions.

The BID is a governmental entity, separate from the City government, but its activities can be monitored by the City government, and in most cases, its actions are allowed or approved by the City government.

The BID's annual operating plan and budget are written by the BID Board (usually through staff and consultants). Unless otherwise required by the City, the annual operating plan and budget are filed with the City by September 30 of each year, and then approved by the City Council, either "as submitted" or with changes that are requested or required by the City. Most plans are approved "as submitted." The BID Board member's major tasks are the approval and implementation of that annual operating plan and budget. The operating plan and budget explain what the BID would like to do in the coming year and how it will pay for it.

For simplicity, the words "city" and "city council" are used throughout the manual and refer to the city, town, or city and county in which the BID is located and by which the BID is ultimately created.

In addition to the general procedures in this Manual, a Board member, manager, or the BID staff and consultants should also be aware of any local ordinances or rules relating to BIDs. A particular city may have additional rules, not discussed in this manual, such as for the BID to file reports, to file the operating plan prior to September 30, to provide the city's staff with notice of BID Board meetings, to have budget meetings, or to pay City fees. *Maintaining good relations between the BID and the City is extremely important to the success of both.*

## CHAPTER I - BOARD MEMBERSHIP

### A. Qualifications of Board Members:

Except in the rare situation where the City Council, an urban renewal authority board (URA), or a general improvement district board (GID) acts as the BID Board, to qualify as a director of a BID, a person must be qualified as an appointed or elected "elector" of the BID. An "elector" is a person who is registered to vote in Colorado, and as stated in Section 31-25-1203(4), Colorado Revised Statutes (C.R.S.):

(a) "Elector" means a *natural person* who is a citizen of the United States and a resident of the State of Colorado, who is eighteen years of age or older, and who:

- (I) Makes his primary dwelling place in the district; or
- (II) Owns taxable real or personal property within the boundaries of the district; or
- (III) Is the holder of a leasehold interest in taxable real or personal property within the boundaries of the

- district; or
- (IV) Is the natural person *designated* by an owner or lessee of taxable real or personal property in the district which is not a natural person to vote for such owner or lessee. Such designation must be in writing and filed with the secretary of the district. Only one such person may be designated by an owner or lessee.

(b) *Nothing* in this [law] shall permit an elector to cast more than one vote.

(The italics were added above to emphasize important words). It is important to recognize that **ONLY** natural persons can be electors, which includes natural persons designated by corporate entities under section IV above.

In addition, except in the rare instance where the City Council, URA Board, or GID Board acts as the BID Board, a BID Board Member must be elected by the BID voters or be appointed by the City as required by the statutes and as specified in the BID's governing documents.

Under the provisions of the Local Government Election Code, 1-13.5-101 *et seq.*, C.R.S., an elector must be registered to vote in Colorado in order to vote in any local government election.

B. Mandatory Acts of Office:

1. Oath:

Each Director shall take an oath of faithful performance. Colo. Const. Art. XII, Sec. 8 and C.R.S. 31-25-1209(1)(b).

The Oath must be administered by a qualified official (notary public or judge, usually a notary).

2. Personal Attention Required:

Each Director is required to devote his or her personal attention to the duties of the office. Colo. Const. Art. XII, Sec. 2. This is usually interpreted to prevent a director from sending a person to a meeting to act on his or her behalf or to vote by proxy.

3. Fiduciary Obligations:

***A Director has a general, common-law fiduciary obligation to the BID, §24-18-109, C.R.S. This obligation does not extend to each individual resident, tenant, or property owner of the BID, but rather to the BID itself. As a fiduciary, the Director has the duty to exercise the utmost good faith, business sense and astuteness on behalf of the BID. A Director is prohibited from taking personal advantage of a situation to benefit himself or to prejudice the BID.***

The fiduciary duty to the BID may include the following tasks:

- a. To act as a director on behalf of the BID without personal gain or self-dealing.
- b. To exercise the standard of care that a reasonable person would exercise in the conduct of his or her own business.

- c. To be reasonably informed on all BID decisions upon which the Director is expected to vote, and to participate and vote on all matters unless a conflict of interest exists or could exist.
- d. To attend Board meetings unless excused.

C. Statutory responsibilities:

State statutes require the completion of the following actions by the BID (meaning, the Board is supposed to be sure someone does these for the BID):

<b>ACTION</b>	<b>FILE IN OFFICE</b>	<b>DEADLINE</b>
The Board adopts a Resolution designating where the BID's posting place shall be for Board meeting notices and agendas. §24-6-402(2)(c), C.R.S.	None	First meeting of the Board of Directors of each year
Post Notices of meetings of a quorum or at least three members of the Board (Includes agenda items when possible) §24-6-402(2)(c), C.R.S.	None	At least 24 hours prior to all Board meetings at the designated location.
Submit Annual Operating Plan and Budget to City	City Clerk, recommend sending copy to City Attorney	September 30. Local rules may apply that change the date.
City approval of Operating Plan and Budget.	None	Within 30 days of City's receipt of all required information from the BID but no later than December 5.
Adopt the budget. §29-1-108, C.R.S.	See below.	By December 31 of each year, but if the BID certifies a mill levy, then the date is December 15.
Adopt certification of mill levy (if applicable)	Board of County Commissioners	December 15
Resolution Appropriating Sums of Money §29-1-108(2), C.R.S.	Recommended filing with Division of Local Government	Adopt prior to December 31 or for a BID using a mill levy, December 15. Often combined with the budget resolution.
File certified copy of adopted budget §29-1-113(1), C.R.S.	Division of Local Government	No later than January 30.
File list of all contracts in effect with other political subdivisions §29-1-205, C.R.S.	Division of Local Government	February 1
File report of outstanding non-rated public securities as of the end of the fiscal year §11-58-105, C.R.S., if applicable.	Division of Local Government	March 1
File audit exemption application, if applicable	State Auditor	March 31



File audit report. §29-1-606, C.R.S.	State Auditor	30 days after report is received, but not later than July 30. Time extensions are routinely available upon request. Local rules may apply to require an earlier filing.
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**D. Vacancies:**

A Director’s office shall be deemed vacant upon the occurrence of any one of the following:

1. Failure to satisfy the oath requirement;
2. Written resignation;
3. Removal by the municipal governing body (i.e., city council or town board);
4. Removal from office by recall (if the BID Board is elected rather than appointed);
5. Death;
6. Expiration of term and following the qualification of a successor; or
7. Loss of status as an “elector”. In other words, loss of the qualification to hold office. (For example, if a property owner who is a natural person sells all of his or her property in the BID, then the person will no longer be qualified. As another example, if the entity that designates an elector who is a Board member replaces its designated elector, the Board member will no longer be qualified to be on the Board).

**E. Term:**

The regular length of the term of office for an elected BID Board member is four years. Term limits apply to *elected* BID Board members unless the voters in the BID modify or eliminate term limits in an election.

BID Board members who are appointed by the municipality serve a term as set in the organizing ordinance or as determined by the City Council. The Council can choose not to require term limits.

BID Board members serve at the pleasure of the City Council.

**F. Compensation:**

1. General Practice:

Almost no BID directors receive any compensation for their service on the Board beyond the good feelings that come from a job well done in helping their community.

2. Limitations:

In the extremely rare case where the BID Board is compensated, (if approved by City Council), for

those BID directors that follow special district guidelines, the Directors may receive compensation for service not in excess of \$2,400 per annum, payable not to exceed \$100 per meeting attended. Any “perks” received by a Director may be considered compensation and subject to the limitations.

The maximum annual amount of compensation for special district directors has recently changed (from \$1,600 to \$2,400) and has a phase in period. For BIDs that follow the Special District Act on compensation should review § 32-1-902, C.R.S. for the latest revisions.

The similarity of BID directors to special district directors suggests that this limit could also apply: No director shall receive any compensation as an employee of the BID, §32-1-902(3)(b), C.R.S. Having a BID employee serve on the BID Board creates an obvious conflict of interest that is best avoided.

**3. Reimbursement:**

Reimbursements of actual expenses for Directors during BID service are not considered compensation. Actual expenses may include mileage and approved out-of-pocket expenses incurred in service as a Director.

**4. Gifts:**

The BID is not permitted by the Colorado Constitution to make any donation or grant to or in aid of a private individual or entity *Art. XI, Sec. 2, Colo. Const.* If a gift is contemplated, the Board should consult with the BID attorney before making the donation.

**G. Some Good Ideas.**

**1. Bylaws, Rules and Regulations, and Policies:**

The Board of Directors may adopt Rules and Regulations and “Bylaws” from time to time, but it is not required to do so.

**2. Bond:**

No bond is legally required, but some BIDs routinely obtain a public officials’ bond, at the BID’s cost, for their directors.

## CHAPTER II – BOARD RESPONSIBILITIES

This section deals more with “policy” matters than legal requirements. Many Boards consider that their most important functions fall into the following categories:

- A. In Charge: The Buck Stops Here. (That is, it stops with the Board).
- B. Legislative or Policymaking:
- C. The Board is responsible for the development of policy. The Board may acquire and supervise an employed, consulting or volunteer Manager who will carry out its policy through the development and implementation of programs.

### Planning and Evaluation:

The Board is responsible for acquiring reliable information from responsible sources which will enable it to make the best possible decisions about the scope and nature of the BID’s functions. The Board is responsible for requiring evaluation of the results of its decisions and actions of its employees and consultants.

- D. Staffing and Appraisal:

The Board, possibly through the Manager, is responsible for acquiring the staff, consultants, or volunteers necessary for carrying out the BID’s functions and for establishing salaries and salary schedules and other terms and conditions of employment, consulting contracts, or volunteer work, as well as for general personnel policies, as applicable. The Board is responsible for appraising the effectiveness of its staff by providing for regular evaluation.

- E. Financial Resources:

1. The Board is responsible for presenting an annual operating plan and budget to the City and for adopting a budget that will provide the financial basis that will enable the BID to carry out its functions. The Board may propose and adopt amendments to the operating plan and budget, with City approval, as needed. The Board is responsible for exercising control over the finances of the BID to insure proper use of, and accounting for, all BID funds.

2. Subject to the terms of the BID’s organizational ordinance and operating plan, the Board may call an election to request the authority to levy property taxes, issue bonds or other debt, and to authorize revenue and spending limits. If property taxes are approved by the BID’s voters, the Board sets the rate of taxes (the mill levy) each year during the budget process. Also, if bonds or other debt are approved by the BID’s voters, the Board determines when to issue the debt, the amounts and the terms, all subject to the limits that were approved by the voters.

- F. Facilities:

The Board is responsible for determining office and functional facilities needs and communicating these needs to the community, for purchasing or otherwise acquiring property, if needed, and for approving capital and other plans that will support and enhance the implementation of the operating plan.

G. Communication with the Public:

The Board is responsible for providing adequate and direct means for keeping the local citizenry informed about the BID and for keeping itself informed about the wishes of the BID constituency.

H. Meetings:

The Board may exercise the above powers and duties *only when convened in a legally constituted meeting*. Because all powers of the Board lie in its action as a group, individual Board members exercise authority over BID affairs only as votes are taken at a legal meeting of the Board. In other instances, *an individual Board member has power only when the Board has lawfully delegated authority to him or her*.

I. Management and Staff:

1. The BID statutes do not provide for powers or authority of management or staff, the scope of staff's powers or authority are decided by the Board.
2. The Board is authorized to "hire employees or retain agents, engineers, consultants, attorneys and accountants." §31-25-1212(l)(n) C.R.S. This is the only statutory reference to BID management or staff. The Board is, however, authorized to delegate powers, but not its final authority.
3. The Board, in hiring or retaining management, must set the parameters of power and authority granted to that management.
4. The majority of BIDs do not have their own staff, instead they contract with a private district management firm or the local business association or chamber (usually a 501(c)(6) corporation) for management services, and the firm or association hires the staff to work on BID matters and other clients.

J. Policy versus Implementation:

Most Boards take the position that the Board Develops Policy, Staff Implements the Policy. But what constitutes "Policy," and what constitutes "Implementation?" In general:

1. Policy:
  - a. If the matter has to do with the mission, goals, objectives, direction, or long range planning of the organization, it probably falls into the "policy" category.
  - b. Policy can be described or stated in a mission statement, strategic plan, long term plan, annual or short term goals and objectives, and the operating plan and budget.
2. Implementation:
  - a. If the matter has to do with day to day operation, specific tasks, or how to get it done, it is probably implementation.
  - b. Administration of programs, accounting, and the like would be implementation.

K. Delegation to Manager:

Since the authority of the Manager is only that which the Board gives, it is important that the Board give clearly defined direction. This may include:

1. When hiring or retaining a manager, the Board delegating the needed authority and discretion with which to accomplish the job.
2. Defining the acceptable and unacceptable means of accomplishing the objectives. For instance, the Manager should clearly understand the legal, moral, and ethical framework within which he or she operates.
3. The Board must give the money and tools to do the job.
4. Delegation must include accountability.

#### L. Suggestions for the Manager

This section contains 'tips' or suggestions for the BID Manager and staff based on observation and experience.

1. The Board is in charge. Some managers, especially those who are in the job for a long time, tend to forget that *The Board Is In Charge*. Managers sometimes go on power or ego trips, forget the Board, forget to consult with lawyers, peers, or staff, and plunge into policymaking. It may take a while, but eventually, Managers must remember that *The Board Is In Charge*.

2. Management is difficult. Managers should engage knowledgeable and enthusiastic staff and work with their consultants. Management should give staff and consultants the authority and information needed for them to succeed.

3. Managers need support. The BID should join Downtown Colorado, Inc. (cheap) and the Special District Association (also cheap), get their newsletters, and go to their conferences. If they have time, Board members should go, too. The conferences give the opportunity to learn new things and network with others who are in the same boat. We're all in this together, working to improve Colorado, and hearing about the different ways we are going about it can be very valuable.

#### M. Managers and Attorneys

This section was developed for a session that was given at the 2017 Special District Association Annual Conference entitled "Tales of Mystery and Imagination, District Managers and Attorneys Working Together," and should help Board members and Managers work with their attorneys:

## Things Managers Do (and Don't Do) that Drive the Attorneys Nuts

1. Being unresponsive.
2. Not returning final, signed copies, ever.
3. Berating our staff. Especially our paralegals. . .
4. Not calling when you need to. Failure to ask questions, ("Those of you who think you know everything really bother those of us who do.")
5. Not doing what you say you will do.
6. Doing unauthorized or unnecessary or duplicative stuff.
7. Lack of precision (decimal points and using the right county).
8. Sending a 250-page agenda packet the day before the meeting.
9. Saying "I have a quick question. . ." and then asking a question that is worthy of being on a law school final exam.
10. Putting all of the emails in the agenda package, including the privileged ones (or including the attorney bills in the agenda package, which amounts to the same thing). Doing so makes them "open records" that can create problems for the District in litigation or dispute situations.
11. Not filing something you'd say you'd file (usually the budget) or not confirming that you did file it when you did (usually the mill levy certification).
12. Telling the Board that the attorney said something that had not been said.
13. Leaving key facts out (or adding alternative facts) when asking the attorney a question.
14. Not using the form the law firm provided for the district (such as a CORA resolution or annual administrative resolution).
15. Declaring something is illegal when it's not; and not asking the attorney about it.
16. Delaying informing the attorney about a potential insurance claim against the District. This problem can result in the insurance company denying coverage.
17. Failure to list all of the District's property on the insurance application (esp. liability insurance). In which case, it's usually not covered.
18. Taking forever to get something done.
19. Forgetting that the client is in charge.
20. Inability to see the other side's point of view.

21. Being overly defensive.
22. Expecting the attorney to do something that the attorney was never told or expected to do.
23. Ambush, especially in the minutes.
24. Leaving "not" out of anything that needs it. Failure to proofread.
25. Not acknowledging that "the buck stops here" when it actually does stop here.
26. Expecting definite answers where there aren't any.
27. Assuming that a legal answer does not change depending on the situation – being overly rigid. An answer may change over time. Seemingly similar facts may result in different answers.
28. Asking the attorney for answers for a district that is not the attorney's client – especially when the attorney knows that there is another attorney who should have been asked.
29. Not being prepared.
30. Practicing law.

#### Things attorneys do to make managers nuts

1. Same as the prior list, plus. . . .
2. Being presumptuous enough to create this list.
3. Charging a lot; ignoring the budget.
4. Acting like you know everything.
5. Refusing to say you are sorry or that you made a mistake.
6. Saying "no" instead of finding a way to say "yes."
7. Being pessimistic and gloomy. Being grumpy.
8. Making untoward comments on policy choices. Forgetting The Board Is In Charge.
9. Not remembering the unique circumstances of the client or not waiting to hear all the facts before spouting off with an answer.
10. Delegating work to an associate or paralegal without providing him or her with sufficient background information. Failure to tell the manager you did it.
11. Being too quick to initiate litigation.
12. Disagreeing with the Manager in front of the Board when it is not absolutely necessary.

13. Bad filing – asking the Manager for files the attorney should already have.
14. Being unresponsive to requests for information about CORA.
15. Taking too long to respond, forgetting to respond. Taking two months to send an attorney’s opinion letter to the auditor.
16. Not answering the question or giving way too much esoteric detail or not enough.
17. Using incomprehensible language during a verbal response.
18. Writing books rather than agreements. Writing incomprehensible contracts.
19. Negotiating a contract without running it by the Manager to see if it is possible to actually administer it. Not checking or consulting with other attorneys in the firm to try to be consistent with what they’ve already told the Manager.
20. Giving inconsistent answers to essentially the same question in two different districts (or even the same district). Not checking or consulting with other attorneys in the firm to try to be consistent with what they’ve already told the Manager.
21. Not keeping up with changes in the law.
22. Continuing to argue points you have already won. Being overly aggressive or argumentative.
23. Talking with Board members and not informing the Manager that you did it.
24. Forgetting which district you are working on.
25. Not remembering whether the Manager publishes notices or the attorney’s offices does (particularly notices for public hearings on budgets and budget amendments).
26. Conflicts of interest, trying to represent everybody.
27. Not looking at things from the Manager’s point of view.
28. Ignoring an answer.
29. Doing work that is better done by the manager / accountant / auditor / engineer. Playing at being an engineer.
30. Bad advice.



## CHAPTER III – BOARD MEETINGS

### A. Calling the Meeting:

#### 1. Designation of Time and Place:

The Board must designate and post the time and place for all Board meetings. The Board must pass a resolution at the first regular meeting of each year to identify the posting place for public notice of meetings §24-6-402(2)(c), C.R.S.

#### 2. Notice to Directors:

All Directors must be notified of any regular or special meeting of the Board.

#### 3. Notice to the Public:

##### a. 24-Hour Notice:

Notice of all meetings of a quorum or of three or more members of the Board (whichever is fewer) at which any public business is discussed must be posted in a designated public place within the BID no less than 24 hours prior to said meeting. The 24-hour posted notice must include specific agenda information when possible §24-6-402(2)(c), C.R.S.

##### b. Requested Notice:

The BID must keep a list of all persons who request notice of meetings, and provide reasonable advance notice to such persons. Once a person has requested individualized notice, the person is to be included on the list for two years. What constitutes “reasonable” notice is left to the discretion of the BID. Inadvertent failure to provide notice to a listed person will not invalidate the meeting or actions taken at such meeting.

##### c. Special Notice:

Some activities require special notice, such as a requirement for additional postings or publication of a notice of the public hearing on the budget. There are extensive notice requirements for elections and for a public hearing on special assessments.

### B. Meetings are to be Open to the Public:

All meetings of a quorum, or three or more members (whichever is fewer), of the Board of Directors for the purpose of discussing public business or taking a formal Board action must be open to the public §24-6-402(2)(b), C.R.S. Open meeting requirements do not apply to chance meetings or social gatherings at which discussion of public business is not the central purpose.

Open meetings requirements apply to formal meetings of the Board and to study or work sessions. Such requirements do not apply to staff or consultant meetings where a quorum of the Board is not present.

Once the meeting must be open to the public, it must be open to all members of the public. This includes reporters, attorneys, and any other representatives.

The ability to hold an “executive session” and exclude the public from attendance during a meeting is limited – see subsection H below.

C. Rules of Procedure:

The Board may adopt rules of procedure to govern how Board meetings are conducted. Such rules provide desirable order and efficiency, and may be included within the BID bylaws. We do not recommend adoption of “Roberts Rules of Order” because they are complex, not well suited to a smaller governing body, and often misrepresented.

D. Voting:

1. A quorum (simple majority) of the Board members in office at a lawfully called open meeting is necessary before the BID may take any official action or vote.
2. A majority vote of a quorum is necessary to pass a motion or resolution.
3. A Director is required to devote his/her personal attention to matters of the BID. Such attention requires a Director’s own, individual vote; proxy voting is not permissible. Colo. Const. Art. XII, Sec. 2.

E. Attendance:

A Director is required to attend Board meetings. Any absences should be noted and excused (where appropriate) in the minutes of the meeting. Attendance may be made via physical presence or telephone conference. So long as the Director is able to hear and be heard by the persons who are physically present at the meeting location, telephonic attendance satisfies the attendance requirement. (Not all attorneys agree with this position, so it is important to discuss telephone attendance with the BID’s attorney before the situation arises).

F. Minutes:

Minutes are required of all Board meetings. Copies of such minutes shall be open to public inspection upon request, §24-6-402(1)(d)(II), C.R.S.

There are few statutory requirements for the contents of minutes, but because all Board actions can only be taken by resolution or motion, the minutes would have to show at least:

- a. The date, time, and place of the meeting;
- b. The names of the Board members who were present. If a Board member is absent, the absence is shown, and if the absence was excused, that fact must be in the minutes.
- c. Any motions or resolutions approved by the Board.
- d. If an executive session was held, the information listed in subsection “H” below concerning the executive session.
- e. If a public hearing was held (for approval of the budget or special assessments), the opening and closing of the public hearing should be noted.

Some attorneys may recommend including additional detail in the minutes. Board members or the public may want more detail. There are infinite possibilities, with the amount of detail that may be in the minutes being up

to the Board.

#### G. Public Meetings vs. Public Hearings

1. As noted above, members of the public have the statutory right to be present at all public meetings of the Board, with the limited exceptions for properly called executive sessions noted in subsection H below.
2. There is no requirement that the Board allow the public to speak at a Board meeting, except during a public hearing (discussed below). Often, a Board will allow Public Comment either at the start or the end of the meeting, usually limiting comments to three minutes to keep things moving. One of the jobs of the Chair of the meeting can be to enforce the time limit, but it is pretty common for a public comment to run more than the three minutes. Rather than attempt to immediately respond to a comment made by a member of the public, it is often recommended that the Chair agree to take the matter under advisement and to respond later after having had a chance to gather facts and review the situation.
3. The statutes applicable to BIDs require notice and a public hearing by the BID Board on only these items:
  - a. The annual budget and any amendments
  - b. Special assessments

Some districts consider it to be good practice and politically wise to give public notice and a chance for the public to be heard on rates, fees, and charges, but there is no legal requirement for a hearing for that purpose.

#### H. Executive Sessions:

1. An executive or "closed" session may only be called during a regular or special meeting of the Board by an affirmative vote of two-thirds of the quorum present §24-6-402(4), C.R.S.
2. The possibility that an executive session may be held should be noted on the agenda for all meetings whenever possible.
3. The Board (or the attorney or manager) must announce, and the minutes must reflect the statutory cite to § 24-6-402(4), C.R.S. and the cite to one of the following topics of discussion for a valid executive session.
  - a. Purchase, acquire, lease, transfer or sale of real, personal or other property interest, but not to conceal a conflict of interest;
  - b. Consult or receipt of advice from the attorney on specific legal questions (the attorney must be present at the meeting, and mere 'presence' of the attorney without actual consultation is insufficient);
  - c. Confidential items per federal or state law, rules or regulations but the Board must cite the statute or rule before the session begins;
  - d. Security details - investigations - defenses against terrorism;

- e. Develop negotiating positions, strategy, or instruct negotiators;
- f. Personnel matters, except about directors, an elected official, prospective board appointees, general personnel policies, an individual employee if the employee requests an open meeting or if more than one employee is involved, then all of them request an open meeting, or a hearing covered by the Teacher Empl. Comp. and Dismissal Act of 1990;
- g. Documents to be kept secret by the Open Records Act (medical data; confidential commercial data; names, addresses, and personal financial information of current or former users of BID facilities or services, etc.); or
- h. Discussion of individual students.

- 4. If the topic of the executive session is confidential due to State or Federal law, a specific citation to the applicable law must be announced. §24-6-402(4)(c), C.R.S.
- 5. Except for consultations with the attorney on attorney-client privileged matters, executive sessions are to be electronically recorded. The recording may be destroyed after at least 90 days unless it is required for court.
- 6. No formal action (vote) may be taken while in executive session. §24-6-402(4), C.R.S.

I. Resolutions and Motions:

The Board may act by resolution or motion. Either form of action has the same effectiveness.

J. Cancellation of Meetings

Every now and then, a meeting is cancelled for reasons such as a lack of a quorum or lack of business to dismiss. There is no statutory procedure for cancelling a meeting.

A common method for cancelling a meeting is to inform all the members of the Board of the cancellation, informing anyone who got 'special notice' of the meeting (see Section A.3.b and c above), and posting a notice of the cancellation on the door of the meeting soon.

K. Continuation of Meetings

If the Board cannot complete all the business to be done at a meeting at one time, the meeting may be continued to a definite date, time, and place. Check with the BID's counsel before continuing a meeting, not all attorneys agree that a meeting can be continued.

## CHAPTER IV – CONFLICT OF INTEREST

A. Disclosure Required:

- 1. Any Director shall disqualify himself or herself from voting on any issue in which he/she has a conflict of interest, unless such Director has disclosed the conflict of interest, §24-18-101, et. seq., C.R.S., and then only may vote if it is necessary to act. The person's presence at the meeting may be considered in order to establish the quorum.

2. A Director is guilty of the crime of failing to disclose a conflict of interest if he or she exercises any substantial discretionary function in connection with a government contract with the Director, without having given 72 hours actual advance written notice to the Secretary of State and to the BID Board § 18-8-308(1), C.R.S. Failure to disclose is a class 2 misdemeanor § 18-8-308(3), C.R.S.

## B. How to Disclose

1. There are two disclosure statutes. Disclosure under the criminal statute is described in Section A.2 above. Disclosure in other potential conflict situations may be done using the procedure in § 24-18-111, C.R.S.

2. Voluntary disclosure, using the procedure in § 24-18-111, C.R.S., gives the director an “affirmative defense” that could help the director if the director is sued for a breach of duty to the district arising from a conflict.

3. There are four things the director with a potential conflict is to do:

(a) file a written disclosure statement with the Colorado Secretary of State and the Secretary of the BID at least 72 hours prior to a board meeting at which the matter involving the conflict will be discussed. The Secretary of State’s office accepts the filings on line, and the website explains the procedure;

(b) verbally disclose the conflict at the Board meeting prior to the start of the discussion;

(c) not participate in the discussion to urge the Board to vote for or against the matter; and

(d) not vote on the matter.

The conflicted Board member will want to be sure that the minutes of the meeting show that (b), (c), and (d) occurred at the meeting.

4. A director who has questions about whether to disclose a potential conflict or how to disclose should consult with a knowledgeable attorney – any of the firms that handle special district or BID matters are familiar with the procedures and have forms that can be useful in making the disclosures.

## C. Proscribed Acts Constituting a Conflict of Interest:

1. A potential conflict of interest exists when the Director is an executive officer, or owns or controls directly or indirectly a substantial interest, in any nongovernmental entity participating in the transaction.

2. District Board members, as local government officials (elected or appointed), or BID employees, shall not:

a. Disclose or use confidential information acquired in the course of their official duties in order to further their personal financial interests.

b. Accept gifts of substantial value or of substantial economic benefit tantamount to a gift of substantial value, which would tend to improperly influence a “reasonable person” in their public position to depart from the faithful and impartial discharge of their public duties.

c. Engage in a substantial financial transaction for his or her private business purposes with a person whom they inspect or supervise in the course of their official duties.

- d. Perform an official act directly and substantially affecting, to its economic benefit, a business or other undertaking in which they either have a substantial financial interest or are engaged as counsel, consultant, representative or agent.

§§24-18-104, 24-18-109, 24-18-201 and 24-18-202, C.R.S.

3. The following exceptions exist which are not considered to be conflicts of interest.
  - a. A Director holding a minority interest in a corporation contracting with the BID is not considered "interested" in such contract;
  - b. Contracts in which the Director has properly disclosed a personal interest and has not voted thereon; and
  - c. A Director may vote, notwithstanding any other prohibition, if participation is necessary to obtain a quorum or otherwise enable the Board to act, and if the Director complies with voluntary disclosure procedures.
4. Note: All of these exceptions must be very carefully scrutinized for legal compliance purposes. Perhaps no area offers greater potential exposure to liability than the area of conflicts of interest.
5. Before a Director takes any action which may involve a potential conflict of interest, legal implications, policy implications, and the appearance of impropriety should be considered.
6. If questions arise, the Director should call the BID's attorney for advice.

D. Guides to Conduct Regarding Ethical Principles:

1. The following principles are intended as guides to conduct, they do not constitute violations of the public trust or employment in local government unless circumstances would otherwise so indicate. These principles are listed in §24-18-105, C.R.S.
  - a. A local government official or employee should not acquire or hold an interest in any business or undertaking which he has reason to believe may be directly and substantially affected to its economic benefit by official action to be taken by the local government agency over which he has substantial authority.
  - b. A local government official or employee should not, within six (6) months following the termination of his office or employment, obtain employment in which he will take direct advantage, unavailable to others, of matters with which he was directly involved during his term of employment.
  - c. A local government official or employee should not perform an official act directly and substantially affecting a business or other undertaking to its economic detriment when he has a substantial financial interest in a competing firm or undertaking.
  - d. A local government official or employee is discouraged from assisting or enabling members of their immediate family in obtaining employment, a gift of substantial value; or an economic benefit tantamount to a gift of substantial value from a person the local government official or

employee is in a position to reward with an official action or has rewarded with official action in past.

E. Effect of Existence of Potential Conflict of Interest:

1. Failing to disclose a potential conflict of interest is a criminal misdemeanor and could result in prosecution.
2. Any contract, vote or other official act in which a Director had a potential conflict, not cured by disclosure, may result in the BID's avoidance of the act or the contract being void.
3. The Director may have to give all the money he or she received from the District back to the District.
4. The City may choose to remove the Director from office.

## CHAPTER V – PUBLIC RECORDS

A. Public Right of Access:

Colorado statutes have established as public policy that all public records should be open for inspection by any person at reasonable times §24-72-201, C.R.S.

“Public records” are broadly defined to include most documentation maintained by the BID §24-72-202(6), C.R.S.

The “official custodian” (i.e., the BID officer, employee or consultant responsible for the maintenance, care and keeping of public records) may establish rules and regulations regarding inspection procedures for public records. Having rules and regulations is a good idea to protect the records and allow orderly inspection.

The person requesting inspection is entitled to obtain copies or printouts of the public records. If approved by resolution of the BID Board, a fee not to exceed \$.25 per page, unless actual costs exceed that amount, may be assessed §24-72-205, C.R.S. and the BID may charge for “research and retrieval” time of up to \$30/hour with the first hour free, provided the BID has approved making the charge by a resolution before the request for records is made.

A recent change in the law requires the official custodian to furnish an electronic copy of a public record (rather than a paper copy) if: (a) the requestor asks for an electronic copy, and (b) the custodian has an electronic copy. There is no requirement that the custodian make an electronic copy when one does not exist at the time of the request.

B. Denial of Access:

The state statutes permit the custodian of records to deny public access and disallow inspection of the following documents or under the following limited circumstances §24-72-204(2)(a), C.R.S.

1. If inspection would be contrary to any State statute;
2. If inspection would be contrary to Federal statute or regulation;
3. If inspection is prohibited by rules promulgated by the Supreme Court or by the order of any court;

4. Examinations for employment (except as made available for inspection by the party in interest);
5. Real estate appraisals, until the subject property has been transferred to the BID;
6. Medical, psychological, sociological, and scholastic achievement data on an individual person (except as made available for inspection by the party in interest);
7. Personnel files (except as made available for inspection by the party in interest and the BID official or employee who has direct supervisory capacity);
8. Trade secrets, privileged information, and confidential information or data; or
9. Where disclosure or public access would do substantial injury to public interest.

The determination of whether a document falls within an enumerated exception can be a difficult task. If denial of access is based upon injury to the public interest, the BID must apply to the court for an order permitting the BID to restrict disclosure §24-72-204(6), C.R.S.

Any person denied access may request a written statement of the grounds for denial §24-72-204(4), C.R.S. Such person may also apply to the court for an order compelling inspection §24-72-204(5), C.R.S.

C. Violations:

Willful or knowing violation of the public right of access can be a criminal misdemeanor, carrying a possible \$100 fine or 90 days' imprisonment, or both §24-72-206, C.R.S.

If a person denied access successfully obtains a court order compelling inspection, the BID may be subject to pay court costs and attorney fees if the denial was found to be arbitrary and capricious §24-72-204(5), C.R.S.

D. Executive Session Recordings:

Electronic recordings are to be made of all executive sessions (except if attorney-client privileged) and kept confidential unless a suit is filed, a court reviews the recordings, and then the court concludes (1) that the executive session was called for an improper purpose; (2) that the executive session strayed off of the declared topic (and then only the off-topic discussion would become public); or (3) a final action was taken during the executive session.

## CHAPTER VI – BID ELECTIONS

A. Is an election really necessary?

1. Introductory Comment. An election in a BID is complicated and surprisingly expensive. An election can be successful or can be politically divisive and unsuccessful. Therefore, before embarking on an election journey, the Board must examine whether the election is really necessary and whether the BID has the political support it needs for the election to be successful.

B. BE IN IT TO WIN IT.

Don't bother to start on a TABOR election effort without doing your homework. The Board and Manager have to, at an absolute minimum, order a commercial property owner's list from the County Assessor and a voter



registration list from the County Clerk and Recorder to get a preliminary view of the potential voters, find unexpected voters (usually residents of an apartment building that is erroneously classified as a non-residential building), and gauge the level of support for the election.

You need to know: Who are the voters? Who is qualified to vote? Who can become qualified? If you're asking for a mill levy increase, how much is too much? If you're asking for the authority to issue debt, how much? How do you intend to pay it back? Will your bond attorney render an opinion that the bonds are tax exempt based on the question on the ballot? Is it better to hold the election on the next election date or would you be better off waiting until the one after that? Who will probably vote Yes? No? Not vote at all? Will there be opposition (hint, there will be). Will they organize against you? Do you have the support of the leaders of the community? Are you willing to bang on doors and get supporters to vote? If you can't answer these types of questions without some degree of accuracy, it is probably best to wait until you can. It can take, literally, over a decade to recover from an election defeat. Be in it to win it, and really know beforehand that a win is in the cards.

## 2. Types of BID Elections

a. Board Elections. A BID that has an elected Board is required to call an election to elect members of the Board whose terms are expiring. These elections are held in May of even numbered years. Except for the differences in the qualifications of the electors who can vote in the election, BID Board elections are conducted in substantially the same manner as special district board elections. The election can be cancelled if there are not more candidates running than the number of positions to be filled. Because so few BID Boards are elected in Colorado (the vast majority are appointed), rather than lengthening this manual, our recommendation is to consult with a knowledgeable attorney or district management firm, either of which can help with administration of the election. The best time for the consultation is in January of the year in which the election is to be held.

If the BID has an elected Board, the voters can also approve the elimination or modification of term limits. Without a modification, elected BID Board members cannot be elected to more than two consecutive terms.

A BID with an elected Board may hold a TABOR election at the same time as the Board election (in May of even numbered years).

b. Financial Elections. The TABOR Amendment, found at Colorado Constitution Article X, Section 20, mandates that local governments – which include BIDs – hold elections to approve most major financial decisions. The most important of these decisions are:

- whether to allow taxes to be collected, and how much,
- whether to allow debt to be incurred, how much, and what revenue source to use for repayment,
- whether to allow the collection and spending of other revenues over the limits that would apply without approval in an election.<sup>1</sup>

These are commonly called "TABOR elections". A TABOR election may be held in November of any year (and, if the BID Board is elected, also in May of an even-numbered year).

## 3. Persons who are Eligible to Vote in a BID election.

a. By far, the biggest challenge in administering a BID election is identifying the electors with the

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1 There are other types of TABOR elections, but these three categories cover nearly all of them.

right to vote. The statute that defines the BID's electors is deceptively simple to read but very difficult to grasp in practice.

b. The people who can vote in a BID are called "electors" of the BID, and here is the definition:

C.R.S. 31-25-1203(4)

(a) "Elector" means a *natural person* who is a citizen of the United States and a resident of the State of Colorado, who is eighteen years of age or older, and who:

- (I) Makes his primary dwelling place in the district; or
- (II) Owns taxable real or personal property within the boundaries of the district; or
- (III) Is the holder of a leasehold interest in taxable real or personal property within the boundaries of the district; or
- (IV) Is the natural person *designated* by an owner or lessee of taxable real or personal property in the district which is not a natural person to vote for such owner or lessee. Such designation must be in writing and filed with the secretary of the district. Only one such person may be designated by an owner or lessee.

(b) Nothing in this subsection (4) shall permit an elector to cast more than one vote.

(The italics were added above to emphasize important words). It is important to recognize that **ONLY** natural persons can be electors, which includes natural persons designated by corporate entities under section IV above.

The Election Code also requires voters to be registered to vote in Colorado.

#### 4. Questions about Electors who can vote in a BID election.

Experience has shown that BID Directors and Managers have a lot of questions about their potential voters. Here are a few common questions and answers (the BID should consult with its own attorney about the answers):

- a. Do voters have to be registered to vote? Yes, and they must be registered in Colorado. Canadian citizens can't vote either, sorry.
- b. Do voters have to own property in order to vote? No. Those individuals who "make their primary dwelling place in the district" can be residential tenants in an apartment building that the County Assessor has classified as a commercial property, even though the apartment building should have been classified as a residential property.
- c. How do you identify the commercial property owners? We obtain a property owners' list from the County Assessor. The list shows who are the commercial property owners.
- d. How do you tell if a property owner on the Assessor's list is registered to vote? We check the names and addresses on the Assessor's list against the Secretary of State's statewide voter registration list.
- e. Can commercial tenants vote? Yes, a lessee of commercial property can vote if the person is registered to vote in Colorado.
- f. How do you identify commercial tenants? There is no governmental list of tenants. They

identify themselves by requesting a ballot or filing a “designation of elector” as described below.

g. Can an out of state corporation or LLC that owns commercial property in the BID designate a Colorado registered voter to vote on its behalf? Yes.

h. Can a partnership that owns commercial property in a BID designate one of the partners to vote? Yes.

i. Can an individual who owns commercial property in the BID designate another person to vote for him or her? No.

j. Can a representative of a property-tax exempt property be designated as an elector? (This question comes up a lot). Yes, but not by the owner of the tax-exempt property, instead, the representative has to be designated by the corporate owner of a taxable commercial property to be its designated elector. For example, suppose there is a well-respected priest in the neighborhood that the neighborhood would like to have on the BID Board. The Church, being tax-exempt, cannot designate the priest. But, the coffee shop that is owned by an LLC can designate the priest as its elector, which would qualify the priest to vote and also to be a member of the BID Board. There is no requirement that a person designated by an entity as its elector have any particular relationship to the entity that makes the designation.

k. My company owns seven commercial properties; can the company designate seven electors? No. One entity can designate one elector.

l. I have eight companies that own eight separate commercial properties; can they each designate an elector so there are eight voters? Yes.

m. (See #12). If my eight companies designate one person, does that person get eight votes? No. One person, one vote.

n. So, can the building owner and the tenants in the building vote? Yes, if the persons are properly qualified.

o. Can the spouse of a property owner vote? No, not just by being a spouse. Spouses of property owners can vote in Metro Districts, but that feature does not apply to a BID.

p. What does an elector designation form look like? See the sample at the end of this manual.

## 5. Election Administration.

a. For a BID, TABOR elections are administered using procedures that are in the TABOR Amendment and in the “Local Government Election Code” found at Part 13.5 of Title 1, C.R.S.<sup>2</sup>

b. There are an astonishing number of logistical steps that must be completed to hold a BID election. The BID should obtain professional assistance to handle the election administration. The most likely sources of help are a knowledgeable law firm or district management firm with experience in local government elections, particularly in BID or special district elections with voters who include property owners.

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<sup>2</sup> Although it is possible to hold a BID election as a “coordinated election” using the Uniform Election Code, we don’t know of anyone who has done it due to the small size and with the County Clerk and Recorder logistical difficulties involved in BID elections.

## 6. TABOR Election Timetable, Notices, and Ballot Issues.

a. Timetable. BID Directors and Managers who are considering whether to hold a TABOR election should consult with a knowledgeable attorney about the election timetable or schedule for important election events. The timetable in Appendix 1 of this manual looks intimidating, and it is, unless the BID hires a knowledgeable attorney or management firm to handle the details!

As should be obvious from the timetable in Appendix 1, calling and holding a successful election takes months of planning. It is rare for the administration costs for a BID TABOR election to cost less than \$10,000 or more than \$60,000.

### b. TABOR Notices

The timetable shows two dates that come straight from the Constitution- the 45-day deadline for TABOR Notice comments and the 30-day date for the mailing "TABOR Notices."

The TABOR Notice is called the "Blue Book" for state ballot issues. BID TABOR Notices inform the potential voters of the election date and other details, reprint the question(s) that will be on the ballot, provide some financial information about the BID, and (if comments have been filed) summaries of comments for and against the ballot questions. Because the TABOR Notice is mailed to the potential voters, it is important for an elector to file comments in favor of the ballot questions. This "pro comment" is usually filed by a BID Board member and must be signed and filed on time.

### c. Ballot Issues.

A question on a ballot on TABOR matter is technically known as a "ballot issue," but just about everyone calls them questions.

The Constitution sets requirements on the exact language that must be used to begin a question asking for taxes and asking for debt.

For taxes: "SHALL (DISTRICT) TAXES BE INCREASED \$\_\_\_\_\_ (first, or if phased in, final fiscal year dollar increase) ANNUALLY...?"

All in capital letters.

After the magic TABOR words, questions are more-or-less free form.

Commonly, tax questions may include a maximum number of mills, a maximum number of years (not recommended unless politically necessary because a limitation would probably force a future election), terms allowing collection of whatever money is received by the approved number of mills regardless of constitutional or statutory revenue limits, a purpose for the levy, and other helpful information.

For debt questions, such as questions to authorize bonds, the initial language to authorize the debt is usually followed (in the same question), with authority to levy a tax to pay the debt. The ballot question for approval of debt must begin: "SHALL (DISTRICT) DEBT BE INCREASED \$\_\_\_\_\_ (principal amount) WITH A REPAYMENT COST OF \$\_\_\_\_\_ (maximum total district cost)." Other common provisions of debt questions can include a maximum interest rate, the maximum term of the debt (although the statutes limit the initial term to 40 years), the purpose for the debt, and the ability to spend the proceeds of the debt and the money to repay it without limiting other revenues of the BID. Under an ancient court decision (*Mills v. Denver*), each purpose for the debt is to be voted on separately (so, there would be separate questions for roads, water, sewer, parks, etc.); however, since the BID statutes allow the BID to provide "any public

improvement,” C.R.S. § 31-25-1203(5), the BID can probably ask for broader authority. Please have BID debt questions reviewed by knowledgeable “BOND COUNSEL” before the election. FYI: “legal opinions” by the BID’s general counsel and bond counsel are necessary before the BID can issue tax exempt bonds, part of the opinions state that the bonds were properly authorized, If the debt question is screwed up, the BID won’t be able to get those opinions, and the election will have been for nothing because the bonds won’t be “sellable” without the opinions.

7. After the TABOR election.

If the TABOR election passes, and the proposed financial activities are within the scope of the BID’s operating plan and budget, the BID Board is authorized to use the authority granted by the voters, but is not required to exercise that authority.

8. Campaigning in BID elections.

In Colorado, spending on political campaigns is regulated by the Fair Campaign Practices Act, provisions of the State Constitution, and Rules of the Secretary of State. These laws and regulations are beyond the scope of this manual. You are encouraged to consult with a knowledgeable attorney and the Secretary of State’s website on campaign revenue and spending questions.

The BID is absolutely prohibited from spending any money to promote the campaign of any person for office. C.R.S. Section 1-45-117.

A BID’s activities to campaign on an election issue are very limited. Along with consulting a knowledgeable attorney, before undertaking any campaign or information program, the BID should consult C.R.S. Section 1-45-117, which sets out the very limited campaign activities that the District can do.

In summary, C.R.S. Section 1-45-117 allows the BID Board to:

- a. Pass a resolution of support for its ballot issue and distribute it by the BID’s regular means, but not paid advertising. So, for example, it can be sent in a newsletter or distributed in a press release.
- b. Produce and “dispense” factual summary with arguments for and against the proposal and distribute that. The summary is not to contain a conclusion either for or against the ballot issue. No paid advertising. A court decision says the arguments have to be balanced.
- c. Reimburse or spend up to \$50 per Board member for them to express opinions and respond to constituents. This part of the statute is somewhat complicated, so be sure to review it with the BID’s attorney and remember to make appropriate conflict-of-interest disclosures before discussing or approving reimbursements.
- d. Nothing prevents anyone from expressing their personal opinions.

## CHAPTER VII – FINANCIAL MATTERS

### A. Rates, Tolls and Charges:

1. The Board has the power to fix, and from time to time, increase or decrease rates, tolls, or charges for services or improvements furnished by the BID. C.R.S. § 31-25-1212(1)(k).
2. A limited charge may be assessed against all delinquencies in payment, together with the assessment of interest not to exceed one percent per month. Services may be discontinued against any property whose owner is delinquent in the payment of charges. C.R.S. § 29-1-1101 and 1102.
3. Although not required by state statute, some Boards set, provide public notice, and hold a public hearing on, proposed increases on rates and charges in a manner similar to the procedure for holding a public hearing and adopting the annual budget.
4. A TABOR election may be needed to approve the BID's power to collect and spend the revenue from fees, tolls, and charges. A TABOR election is not required if the fees, tolls and charges can be classified as "enterprise" revenue and spending, please see section VIII.H.2 below.

### B. Special Assessments:

1. Some BIDs have the power (in their organizing ordinance, operating plan, and TABOR vote of their electors) to impose "special assessments" to pay for improvements and/or services. Special assessments are charges imposed against property in the BID that are based on the value of the benefit that the property receives from the BID's improvements or services.
2. The procedures to implement a special assessment are found in § 31-25-1219, C.R.S. The procedures to impose special assessments for "improvements" are different, and more complicated, than for special assessments for "services." Compare C.R.S. § 31-25-1219(1) and (2). The Board should have the assistance of legal counsel and possibly other consultants when working to put a special assessment in place.
3. When setting special assessments, an independent report of an engineer or financial advisor while not required by statute, is highly recommended as the report can help allocate the value of the benefits of a particular improvements to a particular property. Special assessments are usually in different amounts from one property or class of property to another. Implementing a special assessment requires specific public notice and public hearing procedures.

### C. Mill Levy:

- a. Some BIDs have the power (in the organizing ordinance, operating plan, and TABOR vote of their electors) to impose an "ad valorem mill levy" against taxable property in the BID. This a property tax. The rate of the tax, that is, the number of mills, must be uniform throughout the BID. Unlike a special assessment, there is no requirement that the use of the tax revenue correspond with benefits conferred on a particular property.
- b. A TABOR election is required before a mill levy may be imposed. The procedures for approval for mill levy for the first time are fairly complex, and the BID should consult a knowledgeable attorney to help with the process. After the first levy, the procedure to impose the tax rarely requires much, if any, attorney assistance.

D. Combinations of Revenue Sources:

A BID can use any combination of the above revenue sources that are approved in the organizing ordinance, operating plan, voted authority, and annual budget.

The BID may accept gifts. The BID may earn interest income (but see Section VIII G. below). The BID may accept grants from other governments if the BID has the authority under TABOR to do so.

E. Budget:

1. The BID must adopt an annual budget §29-1-103, C.R.S. The BID's fiscal year is the calendar year.
2. The Board must designate a qualified person to prepare the budget. The designated person shall prepare and submit the budget to the Board on or before October 15 of each year §29-1-108, C.R.S.

Unfortunately, although the deadline for preparation of the draft budget is October 15, the statutory deadline for the BID to file its annual operating plan and budget with the City is September 30 (and may be earlier in some cities). The BID will want to consult its attorney; however, the statutes appear to be written for the BID to file a planned budget by September 30, have a more complete budget furnished to the BID Board by October 15, have the City complete the approval process for the operating plan and budget, and have the BID Board hold the required public hearing on the budget (see 3 and 4 below), and thereafter the BID Board formally adopts the budget following the hearing. Because a public hearing implies public listening and possible changes to the budget, there may be some variation between the budget submitted to the City by September 30 and the final budget approved by the BID Board in November or December. Whether any changes are material, or worth of review by the City, is a matter for the City and the BID to decide.

3. Upon receipt of the proposed budget, the BID shall publish notice, in a legal newspaper, one time, of the following: (1) the date, time, and place of a budget hearing; (2) that the budget is open for public inspection and a location where the budget can be reviewed; and (3) that interested parties may file objections to the budget at any time prior to its adoption §29-1-106(3), C.R.S. or, for a budget of less than \$50,000, the notice may be posted in three public places in the BID in lieu of publication.
4. Adoption of the budget must be considered after a public hearing §29-1-108(1), C.R.S. If the budget includes a mill levy, it must be approved by December 15 and the mill levy must also be certified to the County Commissioners by December 15. If no mill levy is involved, the budget can be approved by December 31.
5. The City and County of Denver has its own approval schedule and procedures that change from time to time, but fortunately, only apply to BIDs in Denver.

F. Appropriation:

1. Expenditures of the BID must be made in accordance with an annual appropriation of BID funds §29-1-108(2), C.R.S. Any action or expenditure made beyond the appropriated sum is considered invalid and void §29-1-110, C.R.S.
2. The amount of appropriated funds may be supplemented or adjusted during the year (or after the close of the year), through a budget amendment. A budget amendment requires the adoption of a

Resolution amending the budget at a public hearing, after publication one-time of a notice of such public hearing. The Resolution must then be filed with the Division of Local Government §29-1-109, C.R.S.

3. Usually, BIDs approve the budget and appropriate the money in a single resolution.

G. Public Funds and Investments:

1. Funds of the BID are 'public funds' and are to be used for public purposes within the scope of the BID's powers.
2. Investments:

The BID may invest public funds in investment vehicles allowed by the State §24-75-601, C.R.S. The state encourages safety over yield. Types of available investments include:

- a. United States Treasury obligations;
- b. Certain United States Agency obligations;
- c. Certificates of deposit in Colorado banks or savings and loans;
- d. Repurchase agreements collateralized by appropriate United States Treasury or Agency obligations; and
- e. Colorado investment pools.

Refer to C.R.S. §24-75-601, et seq. for other available legal investments. The investments that are allowed are VERY conservative, as the fiduciary duty to protect the principal is considered primary over return on investment.

3. Public Deposit Protection Act ("PDPA"):

The PDPA, §11-10.5-101, et seq., C.R.S. requires that the BID's deposits of public funds in banks or savings and loan associations may only be made in "eligible public depositories" that have been designated by the State.

The "official custodian" (whoever has authority or control of public funds), usually the BID treasurer or Manager, must do the following:

- a. Inform the depository that BID funds are subject to the PDPA; and
- b. Deposit funds in a PDPA-qualified depository if the amount deposited is above the FDIC insurance limit;
- c. Maintain documents or other verification necessary to identify public funds which are subject to the PDPA; and
- d. Apply to the State for assignment of an account number for all accounts established with an eligible public depository. It is a misdemeanor for an official custodian or bank official to



violate the provisions of the PDPA, with a mandatory fine of not less than \$200 nor more than \$500. Upon conviction, the court may cause the official custodian to be removed from public office.

H. TABOR Enterprises:

1. Article X, Section 20 of the Colorado Constitution, the “Taxpayer’s Bill of Rights” (“TABOR”), is an initiated constitutional amendment that was approved in November, 1992. It limits the revenue, spending, taxes, and debt of the state and all local governments, except “enterprises.” The BID is a local government §31-25-1207(5).
2. TABOR defines an “enterprise” as: (a) a government owned business that (b) can issue its own revenue bonds and (c) that receives less than 10% of its revenues from grants from all state and local governments combined. Some BID operations are run as enterprises (but not many). Examples include parking garages, provision of services to other governments or persons for fees, and other revenue producing facilities and services. For those enterprises, maintaining enterprise status is important because the enterprise revenue can vary from year to year in an amount that would cause financial disruptions for the BID if the enterprise revenues were subject to TABOR’s rigid revenue limits. A TABOR election is not required for a BID to collect and spend enterprise revenue. The BID should maintain the books of the enterprise separate from the books of the rest of the BID to be sure not to accidentally disqualify the enterprise.
4. TABOR is annoyingly complex. Please consult the BID’s attorney as questions arise.

## CHAPTER VIII - DEBT

A. Authorization:

In its organizing ordinance, operating plan, and voted authority, the BID may be authorized to borrow money and incur indebtedness in the form of bonds, notes, and contracts. To simplify the discussion, all forms of borrowing are referred to as “bonds” in the Manual, even though the debt can be in another form, such as a note, bank loan, or multiple-year contract.

B. Types of Obligations:

1. Revenue Bonds:

Specifically identified non-tax revenues of the BID are pledged (or promised) as the source of repayment of revenue bonds. For example, fees from a parking garage can be pledged to pay the revenue bonds that were issued to provide the funds to build the garage. If the revenues do not materialize, then the revenue bonds may not be paid. Because of the higher risk of non-payment, revenue bonds typically have a higher interest rate than general obligation bonds.

2. General Bonds:

General obligation bonds are repaid, at least in part, with pledged property tax revenues. Details are beyond the scope of this manual. Legal counsel and a financial advisor or underwriter should be consulted early, and even before holding the TABOR election that will be required to authorize the bonds.

3. Special Assessment Bonds:

If approved, a BID may have the power to impose and collect special assessments against property in the BID and bonds can be issued that are repaid from the revenue from the assessments. For example, the BID may issue special assessment bonds to pay for improvements to a street, and then charge assessments based on the frontage of properties abutting the street using the complex procedures in C.R.S. § 31-25-1219(1).

4. Refunding Bonds:

Refunding bonds are used to restructure the payment of an existing obligation, usually to decrease the annual payments. Refunding obligations may sometimes be combined with new obligations that are usually called “refunding and improvement bonds.”

5. Lease/Purchase Agreements:

A lease/purchase agreement can be used for a BID to buy improvements or equipment, such as vehicles and office copiers. The lease/purchase agreement usually provides that a portion of the lease payments are applied to the ultimate purchase of the property and a portion is interest. These obligations are dependent upon the BID appropriating money each year, and are often secured by a lien (or mortgage) on the item being purchased. At times when the BID has lease/purchase obligations, it must comply with audit law reporting requirements.

Properly structured lease/purchase agreements have been held by the Courts to be valid under TABOR without an election being needed to approve them, *Boulder v. Dougherty, Dawkins*, 890 P.2d 199 (Colo. App. 1994); *Bruce v. Pikes Peak Library Dist.*, 155 P.3d 630 (Colo. App. 2007).

6. Bond Anticipation Notes:

A bond anticipation note is a short-term obligation issued with the expectation that it will be quickly repaid through the issuance of long-term bonds.

7. Other:

There are other financing options occasionally used, but they generally fit into some variation or combination of the above categories.

C. Bankruptcy Protection:

If the BID experiences severe financial distress, bankruptcy protection may be available under Chapter 9 of the United States Bankruptcy Code.

D. Voter Approval Required:

1. With few exceptions, bonds and debt require voter approval in a TABOR election.
2. Go back and review Section VI, 5!

E. Annual Appropriation Notes:

Occasionally, a BID will have a short term cash flow problem and a “friend” who is willing to help the BID get through the immediate problem. The friend may have an expectation of being repaid at some point in the future “if and when” the BID has the money to pay. Repayment, if any, is contingent on the BID having the money to repay, which could be never. The contract that is used for these advances and potential repayments is sometimes called an “annual appropriation” note, contract, or obligation, and like a lease/purchase, if properly written, it is not ‘debt’ that requires approval in an election. A knowledgeable attorney must be consulted prior to the BID entering into an annual appropriation obligation to be sure that it does not contain terms that might violate TABOR.

## CHAPTER IX – AUDITS

### A. Exemption from Audit:

1. A BID with less than \$750,000 in revenue or spending may be eligible to obtain an exemption from the State’s mandate to prepare an audit. An application for an exemption must be filed with the state. The Board should consult a knowledgeable accountant or attorney concerning the preparation and filing for an exemption. The application for an exemption must be filed by March 31. C.R.S. § 29-1-604.

### B. Mandatory Financial Audit:

1. The Board shall cause to be made an annual audit of the financial statements of the BID if the revenue or spending exceeds \$750,000 or if no exemption is obtained. Such audit shall be made as of the end of each fiscal calendar year, or more frequently if some special reason exists §§29-1-603 and 605, C.R.S.
2. The audit report must be completed by June 30, and filed with the State Auditor not later than 30 days after the report is received by the BID §29-1-606, C.R.S. An extension of time to complete the audit may be available if requested from the State Auditor.
3. Many bond issues and bank loans require that an annual audit be completed and filed with the bond trustee or the bank regardless of whether state law requires an audit.

### C. Coordination with City Audit:

Under governmental accounting standards, the City’s appointment of the BID Board or approval of the annual operating plan and budget are generally considered to make the BID a “component unit” of the City. As a result, the BID’s audit is usually (but not always) incorporated into the City’s audit. Thus, the City may request that the BID complete its audit earlier than would otherwise be required by state law or may want the City’s auditor to also be the auditor for the BID. The BID should contact the City finance director to check on the City’s expectations.

### D. Get a Specialist Auditor.

1. The BID will save a lot of time and consternation if it hires a specialist auditor who is reasonably familiar with governmental accounting and auditing. For reasons known only to auditors, governmental accounting standards and private sector accounting standards are different. The BID Manager, attorney, bookkeeper, Downtown Colorado, Inc. or Special District Association can usually provide recommendations. Ideally, the BID should hire the auditor in November or December for preparation of the audit for the following year.

2. An application for exemption from audit should cost a few hundred dollars (2017) while a full audit will run about \$3,500 and up for a BID of any size and complexity.

## **CHAPTER X- CONTRACTING**

### **A. Construction Contracts:**

#### **1. Bidding:**

There is no legal requirement prior to entering into a contract in either State or Federal law that a BID receive bids. The BID may, however, adopt its own bidding rules that must be followed. Nothing prohibits putting a contract out for bids, but bidding is often not considered to be practical for smaller projects.

#### **2. Bonds and Retainage:**

If the BID decides to request bids for a project, a requirement for a “bid bond”, usually in the amount of five percent of the amount of the bid, is sometimes recommended to avoid withdrawal of low bids. Bid bonds are not, however, required by law.

The law does require every contractor awarded a construction contract for more than \$50,000 to execute an adequate Labor and Materials Payment Bond, as well as a Performance Bond, usually in the amount of 100% of the contract amount §38-26-105 and 106, C.R.S.

Although not required by any statutory provision, a Maintenance Bond guaranteeing the warranty provision of the contract, (usually one year, sometimes two, but check with the City for any improvements to be owned by the City) is also sometimes recommended and can be folded into the one performance, payment, and warranty bond.

The law also requires that construction contracts over \$150,000 contain certain statutory retainage provisions – essentially requiring a five percent retainage to be withheld from each payment that is due to the contractor until the contract is complete. The retainage must be held by the BID until the statutory final payment procedures are followed §24-91-103, C.R.S.

#### **3. Appropriation Clause:**

The BID may not contract for a public works project in an amount in excess of the amount appropriated by the BID for the project. All construction contracts must contain clauses which state that money has been appropriated and that any change order increase will be accompanied by further written assurance that appropriations are sufficient §24-91-103.6, C.R.S.

#### **4. Final Payment and Claims:**

Upon completion of a project over \$150,000 – usually identified by the BID’s receipt of a Certificate of Completion from the BID’s engineer or architect – a notice of final payment must be published twice in a legal newspaper. This notice announces that final payment will be made to the contractor on a designated settlement date, which is to be more than ten days after the second publication, provided no claims are made (by a subcontractor or material supplier) on or before the settlement date §38-26-107(1), C.R.S.

If a claim is properly made by a subcontractor or supplier that has not been paid for work or materials that were supplied for the project, then the BID must withhold sufficient funds to ensure satisfaction of that claim or until the claim is withdrawn, paid, or 90 days have passed. If within 90 days, the claimant has not brought a lawsuit, then the retainage must be remitted to the contractor. If a lawsuit is commenced, the BID may be able to interplead the claims (deposit the money with the court), to avoid becoming embroiled in the litigation §38-26-107(2), C.R.S.

B. Other Contracts:

1. Bidding:

No publication or bid process is required for BID contracts. Contracts for the purchase of vehicles, equipment, materials, real and other personal property, leases, advisory and professional services are not subject to legal bidding requirements, although some comparative review is advisable.

2. Bonds, Retainage, Appropriation Clause, Final Payment and Claims.

None of those items that were discussed above on Construction Contracts apply to other contracts of the BID such as contracts to buy equipment, maintenance, repair, or services. For the most part, general contract law applies, but there are some noteworthy exceptions, as discussed in the next section.

C. Quirks of Governmental Contracting:

1. Although general principles of contract law apply to BID contracts, there are a number of important quirks and oddities that the BID attorney should deal with, especially when dealing with mystified private sector attorneys.

I. State law requires a specialized “illegal aliens clause” to be included in most contracts for services. It is also generally included in construction and other contracts, too. See C.R.S. § 8-17.5-101 and 102.

II. Colorado local governments lack authority to indemnify anyone (the problem is that either the money to pay the indemnification has not been budgeted or appropriated or the requirement to indemnify is an open-ended financial obligation). There are a couple of excellent [Colorado Lawyer](#) articles on this topic.

III. BIDs probably can’t waive the right to trial by jury in advance (it binds future boards to a political or legislative decision that is to be made by the board at the time the issue comes up).

IV. An unconditional promise by a BID to pay money in a future year is probably a multiple fiscal year financial obligation that, unless approved by BID voters in an election, very likely would violate TABOR. Making future year payments “subject to budget and appropriations” or including a termination clause that can be exercised during any fiscal year with or without cause generally solves this problem.

V. A BID can’t guarantee that it will make a payment that is to be paid by someone else. The BID cannot be the guarantor of someone else’s debt.

VI. A BID cannot be a joint owner of property with a private person or company.

2. Contract Drafting or Review:

Someone in the BID (not necessarily always the attorney) should review each contract and should usually recommend changes, because contracts are normally tendered by the vendors and therefore slanted to their favor until they are requested to make changes. Assigning an experienced, capable person to review each contract will pay off over time.

D. Intergovernmental Agreements:

1. General Intergovernmental Cooperation:

Colorado local governments may cooperate or contract with one another to provide any function, service, or facility lawfully authorized to each of the parties §29-1-203, C.R.S. Such contracts must set forth the purposes, powers, rights, obligations, and responsibilities of the contracting parties. Examples are: the joint purchase of equipment; construction of jointly owned buildings; jointly owned water and sewage treatment facilities; the provision of management, bookkeeping, billing, and maintenance services for several districts by a single company or district; joint training facilities and programs; joint ownership of hazardous materials handling equipment; joint funding of bus service; and joint funding and operation of a visitors and convention bureau.

2. Creating a Separate Legal Entity:

A BID may contract with another local government, such as the City, to create a “separate legal entity” to perform services or provide facilities. An intergovernmental “authority” can have a board that is separate from the contracting entities, can be separately insured, and can handle regional facilities. C.R.S. 29-1-203 *et seq.* and *Colo. Const.* Article XVIII, Sec. 2(a) and (b).

## CHAPTER XI – PROPERTY ISSUES

The following is an outline of a few potential property issues which a BID may confront:

A. Acquisition Issues:

The BID may acquire and hold property relating to its public purposes. C.R.S. 31-25-1212(1)(g).

1. Title Insurance and Title Documents:

While not required, the purchase of adequate title insurance is usually recommended for the BID’s protection in its acquisitions of real property. Further, a complete legal review of the effect of Title Documents (easements, leases, covenants, restrictions, etc.) should be made to make sure that the BID can use the property that it acquires for the intended purposes.

2. Payoff of Taxes:

As a governmental entity, the BID is exempt from property taxes. The BID should be sure that all outstanding taxes have been paid upon acquiring the real property, based on the previous year’s rate of levy or else the BID may be surprised by the sale of a delinquent tax lien for the previous owner’s unpaid taxes.

3. Financing:

The BID has various means of financing an acquisition of real property. Lease/purchase agreements and revenue bonds are commonly used means of financing.

4. Environmental Audits:

While not required, an environmental audit is strongly recommended before the purchase or sale of any real property. Potential environmental liability can be quite expensive and potentially burdensome. A regulatory compliance oriented review of historical operations on the property is a valuable tool in limiting present and future environmental liability.

B. Condemnation:

A BID has no power of condemnation (A.K.A. eminent domain) whatsoever.

C. Easements, Leases, and Other Property Interests:

Easements may be acquired by gift, purchase, adverse possession, or agreement.

The BID may enter into leases, but the terms of multiple-year leases may be limited by TABOR.

Licenses are sometimes used to give a temporary, revocable right to use property.

D. Encroachment onto Public Property:

A private entity cannot obtain an interest in government property (including BID property) by adverse possession.

E. Relationship to Municipal Powers:

The BID is subject to the regulatory controls of the municipality within which the BID lies. The following are the primary areas of municipal control:

1. Zoning:

The BID is subject to the applicable zoning plan. However, if a proposed project is denied by the municipality, the BID may be able to overrule the decision of the municipality after first submitting to the location and extent review (sometimes referred to as "site review") process §§30-28-110(1) and 31-23-209, C.R.S. As a practical matter, this ability to overrule a municipal decision is unlikely to be available to a BID due to its close relationship with the municipality.

2. Subdivisions:

The BID is subject to the applicable subdivision regulations. The BID's power to overrule municipal zoning regulations may be extended into the area of subdivision control (again, as noted above, unlikely).

3. Building Codes, Fire Codes, and Permits:

The BID is subject to the requirements imposed by the municipality relating to building codes, fire codes, and permits.

## CHAPTER XII – LIABILITY ISSUES

### A. Potential Sources of Liability:

#### 1. State Tort Actions:

“Torts” are actions (other than in contract) such as negligence, trespass, and conversion, involving damage to person or property. These actions are covered by the Colorado Governmental Immunity Act (see below).

#### 2. Federal Actions:

a. Federal lawsuits are beyond the scope of the Colorado Governmental Immunity Act, although an argument does exist that the Act could offer protection from Federal claims brought in the State courts.

b. The most common Federal actions are in the areas of deprivation of constitutional or statutory rights (Section 1983 cases), antitrust, securities violations, labor and wage actions, and environmental cases.

#### 3. Contract Actions:

a. Claims for a breach of contract are not protected by the Governmental Immunity Act §§24-10-105 and 106, C.R.S.

b. Public officials, however, are generally not personally liable for the contracts of the governmental entity.

#### 4. Criminal Acts:

a. The Governmental Immunity Act offers no protection from criminal actions.

b. Common potential areas of criminal exposure include the following:

i. Entering into a prohibited transaction (involving a conflict of interest);

ii. Failing to disclose a conflict of interest;

iii. Misuse of official information;

iv. Malfeasance in office; or

v. Issuing a false certificate or document.

### B. Colorado Governmental Immunity Act:

1. The Colorado Governmental Immunity Act limits the circumstances under which a public entity or public employee may be liable in state tort actions.

2. The Act creates immunity for all tortious actions committed by a governmental entity or its employees,



except for the following (§24-10-106(3), C.R.S.):

- a. The operation of a public hospital, correctional facility, or jail;
  - b. The operation of a publicly owned motor vehicle, except emergency vehicles;
  - c. A dangerous condition of a public building;
  - d. A dangerous condition of a public highway, road, street, or sidewalk;
  - e. A dangerous condition of any public water, gas, sanitation, electrical power, or swimming facility; and
  - f. The operation and maintenance by a public entity of any public water, gas, sanitation, electrical, power or swimming facility.
  - g. A dangerous condition caused by failure to realign a stop or yield sign or failure to repair a traffic control signal.
  - h. A dangerous condition caused by accumulation of snow and ice when the governmental entity failed to remove it or had notice and a reasonable time to act.
3. Even for those actions where liability may attach, liability is limited by the Act to \$350,000 per person, and \$990,000 per occurrence §24-10-114, C.R.S. These numbers will increase by inflation in the coming years.
  4. The Act also imposes procedural requirements on any claimant against the BID, its Directors or employees. If those procedures are not followed, a claim may be dismissed §24-10-109, C.R.S.

C. Indemnification Resolution:

1. The BID has certain duties to indemnify its directors and employees. That indemnification is codified in the Governmental Immunity Act §24-10-101, et seq. , C.R.S.
2. An "Indemnification Resolution" approved by the BID Board can provide for indemnification of BID Directors and employees beyond the protections of the Act. Federal, contract, and punitive damages may all be indemnified.
3. A well-drafted Indemnification Resolution should be upheld by the courts for civil claims that are covered by the Resolution.
4. Many BID Boards adopt an Indemnification Resolution at an early meeting of the Board. Some attorneys recommend adopting such a resolution as soon as possible, and before a problem arises.

D. Releases and Waivers:

1. Releases and waivers may be used to limit potential liability against the BID, its Directors, employees and also third parties in applicable situations.
2. For a release or waiver to be valid, there must be an express, knowledgeable assent to such release

or waiver. The BID must exercise great caution regarding the validity or adequacy of the release or waiver.

E. Insurance:

1. Insurance is a primary and essential means of protecting the BID, its directors and employees. The primary types of insurance are: liability, property, errors and omissions, and employment practices for BIDs with employees.

2. The following methods for acquiring insurance could be considered:

a. Private Insurance Company:

A qualified insurance person who understands governmental liability should be contacted if the BID considers use of a private carrier.

b. Self-Insurance (not recommended):

The Governmental Immunity Act permits the BID to adopt a policy of self-insurance §24-10-115(2)(a), C.R.S. The Act imposes procedural requirements and compliance is mandatory. The fund established for the purposes of self-insurance shall be kept separate from all other BID funds, and may only be used to pay operating expenses of the fund and claims made against the BID §24-10-115, C.R.S.

c. Insurance Pool:

An insurance pool can be a cost efficient means by which to obtain insurance coverage. The Special District Association of Colorado offers such an insurance pool, and membership in the pool is open to BIDs.

F. Constitutional Liability Issues:

Whenever dealing in the public realm, a sensitivity to Constitutional issues must be maintained. All Constitutional issues should be discussed with a qualified attorney. Potential areas of Constitutional issues most commonly encountered include the First Amendment rights of free speech and assembly, Fourteenth Amendment rights of Equal Protection, and Fifth and Fourteenth Amendment rights of Due Process, and issues involving the "taking" of private property.

## CHAPTER XIII – PERSONNEL MATTERS

A. Legislation:

The areas of labor, employment and personnel issues are heavily regulated by the State and Federal governments. The laws include, but are not limited to:

1. The Federal Fair Labor Standards Act ("FLSA") regulating minimum wage, overtime pay, equal pay, record keeping, and child labor standards.
2. The Federal Occupational Safety and Health Act ("OSHA") which regulates dangerous conditions in the work place.

3. The Federal Americans with Disabilities Act ("ADA") which prohibits discrimination based on a person's disability in employment and the provision of public services and accommodations.
4. Age Discrimination in Employment Act ("ADEA") prohibiting discrimination based on age in employment practices against persons over the age of 40 years.
5. Title VII of the Federal Civil Rights Act, which prohibits discrimination in employment, based on race or color, religion, sex, national origin, or opposition to discriminatory practices.
6. Section 1981 of the Federal Civil Rights Act that prohibits discrimination based on race or lineage.
7. Section 1983 of the Federal Civil Rights Act that prohibits any person, under the color of statute, ordinance or regulation from depriving another person of the privileges and immunities of the United States Constitution and laws.
8. The Federal Equal Pay Act that prohibits wage discrimination on the basis of sex for jobs performed under similar working conditions.
9. The Consolidated Omnibus Budget Reconciliation Act ("COBRA") which generally requires employers to give departing employees the opportunity to continue their health coverage for 18 months at the employee's cost.
10. The Federal Family and Medical Leave Act of 1993, which imposes certain affirmative acts regarding employee leave on all employers, including public entities 50 or more persons.
11. The Colorado Health Care Coverage Act (*Title 10, Article 16, C.R.S.*), which is the State counterpart to COBRA, giving extended health insurance coverage of 180 days to terminated employees.
12. The Colorado Civil Rights Act (*Title 24, Article 34, Parts 3 through 8, C.R.S.*), prohibiting discrimination based on handicap, race, creed, color, sex, sexual orientation, age, marital status, national origin, or ancestry in employment, housing, public accommodations, and advertising.
13. The Colorado Youth Employment Opportunity Act of 1971 (*Title 8, Article 12, C.R.S.*) providing child labor standards.
14. Colorado laws regarding wages and hours (*Title 8, Articles 4 through 6, and 13, C.R.S.*).
15. The Workers' Compensation Act of Colorado (*Title 8, Articles 40 through 47, C.R.S.*) regulating disability and medical benefits of injured workers.
16. The Colorado Employment Security Act (*Title 8, Articles 70 through 82,, C.R.S.*) providing for unemployment benefits.

B. Personnel Policy Manual:

If the BID has employees, it should consider adoption of a personnel policy manual to inform its employees of benefits, rules, and policies.

C. Drug and Alcohol Testing:

The Federal Highway Administration adopted regulations requiring mandatory drug and alcohol testing for employed drivers with commercial drivers' licenses. Qualified legal counsel or consultants should be contacted in formulating such testing policies, if needed.

D. Federal and State Employment Posting Requirements:

Both Federal and State law require the posting of certain informational posters for employees (if any) at a prominent location in the BID's business office. Failure to make the requisite postings could subject the BID to significant financial penalties. The following postings must be made:

1. Federal Equal Employment Opportunity (EEOC);
2. Federal Minimum Wage (Dept. of Labor);
3. Federal Employee Polygraph Protection (Dept. of Labor);
4. State Fair Employment (Dept. of Labor); and
5. State Minimum Wage (Dept. of Labor).

\*The Federal Job Safety and Health Protection (OSHA) does not currently apply to local governments, although Congress is considering this issue. Also, OSHA standards may constitute reasonable guidelines.

E. Independent Contractors.

Many Colorado BIDs (in fact, most of them) do not have enough work to justify a full-time staff. Instead, these smaller BIDs are managed by volunteers (usually Board members) or by "independent contractors."

There are essentially four types of independent contractors who can provide management services for a BID: (1) district management firms; (2) individuals under contract, (3) another unit of government, or (4) a nonprofit corporation.

1. There are perhaps ten prominent district management firms in Colorado. Many of these firms provide both management and accounting services ranging from assistance with organizing and posting notice of board meetings, writing minutes, budgeting, accounting, and check preparation through and including administration of construction and services contracts, maintaining public records, a permanent office, receptionist duties, and undertaking nearly any other tasks that the Board delegates to them. The management firms typically operate under an annual contract, approved by the Board, with a defined 'scope of work.' It is important for the Board to review the 'scope of work' to be sure that the management firm will be providing the services the Board needs.
2. Smaller BIDs without employees will sometimes enter into a contract with an experienced individual, who will then manage the BID. The scope of work for the manager is extremely important. The Board should obtain the advice of the attorney before entering into an "independent contractor" agreement with an individual because Colorado law requires specific terms for the contract, see C.R.S. §8-40-202(2), for the contractor to be truly independent, rather than treated as an employee (which would require tax withholding and many other requirements). A knowledgeable attorney can help avoid mistakes in the independent contractor agreement that could come back to haunt the BID in the future.

3. There is an obscure law that requires that the search for an executive director of a public entity, such as a BID, be somewhat open to the public, C.R.S. § 24-6-402 (3.5). The BID should review the statute. In summary, it requires (apparently only if a “search committee” is established to find a chief executive officer):
  - a. The committee is to establish job search goals, a written job description, application deadlines, requirements for applicants, selection procedures, and time frames for selection or employment.
  - b. The list of finalists is to be made public no later than 14 days prior to filling the position.
  - c. No job offer can be made before the end of the 14th day period.
  - d. Records submitted by finalists are public records.
  - e. The search committee may hold executive sessions, if authorized by law.
4. One local government (such as a city) can provide management services for another (such as a BID) by an intergovernmental agreement between the two. The scope of work and payment provisions can be very flexible.
5. A number of larger BIDs (Downtown Denver and Boulder among them) contract with a nonprofit business association operating in Downtown for management. In Downtown Denver, the BID contracts with the Downtown Denver Partnership, a 501(c)(6) nonprofit business association, for DDP to manage the BID. This has the advantage of avoiding duplication, providing economies of scale, and building on the strengths of both.

Important concerns include the scope of work, and payment provisions, and the need for the contractor to maintain records to separate its ‘public work’ for the BID from its ‘private work’ as a business association or local chamber of commerce.

## CHAPTER XIV - CONCLUSION

The care and operation of a BID take hard work and determination. The Board has to be visionary, open to the public, willing to listen, and willing to authorize action. Management has to accept decisions of the Board, and be open to new ideas, sensitive to the public, mindful of being in the public eye, and respectful to the concerns of the municipality. Making a BID work is a challenge, but the reward is a better community: cleaner, safer, prettier, more fun, and amazing.

Appendix 1, Sample BID  
TABOR Election Timetable

Appendix 2, Sample Designation of Elector Form

**TIME LINE**  
**November 6, 2018 Special Election**

DATE	TASK	STATUTE (C.R.S.)
June-Aug Board Meeting	<b>Election Resolution.</b> Board adopts election resolution appointing a designated election official (DEO) and choosing type of election, i.e., independent mail ballot or coordinated with the County.	
Fri, July 27 (100 days prior)	<b>Notify Clerk and Recorder of the Election.</b> Notice of the election is provided to the County Clerk and Recorder (Note: This requirement is for coordinated elections but notice of an independent mail ballot election is usually provided as a courtesy to the County Clerk).	1-7-116(5)
Tues, Aug 28 (70 days prior)	<b>Intergovernmental Agreement.</b> If the election is coordinated, an intergovernmental agreement between the county clerk and the district is signed no later than seventy days prior to the election.	1-7-116(2)
Fri, August 31 (67 days prior)	<b>Self-Nomination Forms.</b> Self-Nomination and Acceptance forms must be filed with the Designated Election Official no later than the normal close of business on the 67th day before the election.	1-13.5-303(1) 1-13.5-303(4)
Fri, Sept 7 (60 days prior)	<b>Certify Ballot Content.</b> Ballot content certified to DEO or, if coordinated election, with the Clerk and Recorder.	1-13.5-511
Wed, Sept 12 (55 days prior)	<b>Mail Ballot Plan.</b> The DEO for an independent mail ballot election shall have on file a plan for the conduct of the election.	1-13.5-1104(1)
Fri, Sept 21 (45 days prior)	<b>TABOR Comments.</b> Written comments for and against TABOR ballot issue(s) must be filed with the DEO.	1-13.5-503(1); 1-7-901; Article X, Section 20 Colorado Constitution
Fri, Sept 21 (not later than 45 days prior)	<b>UOCAVA Ballots.</b> DEO shall mail ballots to those eligible electors who have applied and are designated as a "covered" voter under the Uniform and Overseas Citizens Absentee Voting Act (UOCAVA)	1-13.5-1103(4); 1-8.3-102(2); 1-8.3-103(1)(d); 1-8.3-110(1)
Sat, Sept 232(no more than 45 days prior)	<b>Classes for Election Judges.</b> Earliest date to hold a class of instruction concerning the tasks of an election judge	1-13.5-408

Denver 2907704.1

Tues, Sept 25 (42 days prior)	<b>TABOR Notice to the County.</b> The DEO, or the DEO's designee for the election, shall provide a copy of the TABOR Notice to the county clerk and recorder's office.	1-7-904
Thurs, Sept 29 (no later than 40 days prior)	<b>Order Voter Registration and Property Owner Lists.</b> Last day for the DEO to order the voter registration and property owner lists from the clerk and recorder and assessor (recommend ordering sooner, i.e., at the time of requesting UOCAVA voters). Includes request for supplemental list.	1-13.5-203; 1-13.5-204; 1-13.5-1105 (2)(a)
Fri, Oct 5 (no later than 30 days prior)	<b>Receive Voter Registration and Property Owner Lists.</b> Last day for clerk and recorder and assessor to certify and make available initial lists of registered voters and property owners. Note: These lists should be requested for receipt prior to this date in order to mail TABOR notices.	1-13.5-203; 1-13.5-204; 1-13.5-1105 (2)(a)
Fri, Oct 5 (no later than 30 days prior)	<b>TABOR Notice Mailed.</b> Mail TABOR Notice to "All Registered Voters" to each household where an active voter of the district resides.	Article X, Section 20(3)(b), Colorado Constitution
Fri, Oct 5 (no later than 30 days prior)	<b>Printed Ballots.</b> The DEO shall have available printed ballots for the election	1-13.5-902(1)(a)
Fri, Oct 12 (no later than 25 days prior)	<b>Withdrawal of Ballot Issue or Ballot Question.</b> No later than 25 days before a coordinated election in November, and at any time prior to any other elections, a governing body may, by resolution, withdraw one or more ballot issues or ballot questions from the ballot. The ballot issues/questions shall be deemed to have not been submitted and votes cast on them shall either not be counted or shall be deemed invalid by action of the governing body.	1-13.5-513(2)
Mon, Oct 15 to Mon, Oct 22 (not sooner than 22 days and no later than 15 days prior)	<b>Mail Ballot Packets Mailed.</b> The DEO mails a mail ballot packet to each active registered elector at the last mailing address appearing in the voter registration records, and to property owners who are active registered voters but who may reside outside the district.	1-13.5-1105 (4)(a); 1-1-104(12); 1-1-104(35)
Mon, Oct 15 (22 days prior through Election Day)	<b>Mail Ballots Available.</b> Mail ballots are available at the office of the DEO for eligible electors who are not listed, or who are listed as "inactive" on the voter registration records, or who are not listed on the property owners list but are otherwise authorized to vote.	1-13.5-1105 (4)(d)(e)



Wed, Oct 17 (at least 20 days prior)	<b>Notice of Election.</b> Publish notice of the election one time in a legal newspaper of general circulation in the district. Post the notice in the office of the DEO. Provide a copy of the notice to the clerk and recorder	1-13.5-502(2); 1-13.5-502(1); 1-13.5-1105 (2)(d)
Wed, Oct 17 (at least 20 days prior)	<b>Notice to Create Financial Obligation.</b> A district submitting a ballot issue concerning the creation of any debt or other financial obligation at an election in the district shall post notice of that information on the district's web site or, if the district does not maintain a web site, at the district's chief administrative office.	1-13.5-503(2); 1-7-908
Wed, Oct 17 (not later than 20 days prior)	<b>Receive supplemental voter registration and property owners lists.</b> The county clerk and recorder and county assessor shall submit to the DEO a supplemental list of names of registered voters and property owners.	1-13.5-1105(2)(b)
Mon, Oct 22 (at least 15 days prior)	<b>Appointment of Election Judges.</b> The DEO shall appoint election judges. The DEO, promptly after the appointments, shall issue to the judges certificates certifying the appointments. Each election judge shall file an acceptance form within 7 days.	1-13.5-401;  1-13.5-403;  1-13.5-404
Mon, Oct 22 (at least 15 days prior)	<b>Appoint Board of Canvassers.</b> The DEO shall appoint at least one member of the special district Board and at least one eligible elector of the special district who is not a member of such Board to serve with the DEO as the Canvass Board for the election.	1-13.5-1301(1)
Mon, Oct 22 (15 days prior)	<b>Counting Mail Ballots.</b> Election judges may receive and prepare mail ballot packets for tabulation; counting of the mail ballots may begin. The count shall not be released prior to 7 p.m. on Election Day.	1-13.5-1107
Tues, Oct 30 (Tues preceding)	<b>Last Day to Request an Absentee Ballot.</b> The application for an absentee ballot shall be filed with the DEO no later than the close of business on the Friday immediately preceding the election.	1-13.5-1002 (1)(b)
Tues, Nov 6	<b>Election Day.</b> 7 a.m. to 7 p.m.	
Wed, Nov 14 (close of business 8 days after election)	<b>Last Day to Receive UOCAVA Ballots.</b> Last day to receive a mail ballot from UOCAVA eligible elector, if such ballot was postmarked by 7:00 p.m. on the day of election, in order for ballot to be counted.	1-8.3-111; 1-8.3-113(2)

Tues, Nov 20 (no later than 14 days after election)	<b>Certificate of Election – Non-Coordinated Elections.</b> The canvass board shall certify the official statement of the election results. The DEO shall notify the governing body of the political subdivision conducting the election of the election result and shall make a certificate of the votes cast for and against each ballot issue/question available for public inspection in the office of the DEO for no less than 10 days following the canvass board’s certification.	1-13.5-1305(1) 1-11-103(2)
	<b>Certify Election Results – County Coordinated Elections.</b> The county canvass board shall complete its duties	
Thurs, Dec 6 (within 30 days after election)	<b>Certify Results to Division.</b> The results of the election shall be certified to the Division of Local Government along with the current contact information for the district.	1-13.5-1305(2) 32-1-104(1)
Fri, Dec 21 (within 45 days after election)	<b>Results sent by Certified Mail and Filed.</b> Results of ballot issue elections to incur general obligation indebtedness shall be sent by certified mail to the board of county commissioners of each county in which the special district is located or to the governing body of a municipality that has adopted a resolution of approval of the special district pursuant to section 32-1-204.5 or 32-1-204.7. A copy of the election results shall also be filed with the Division of Securities.	32-1-1101.5(1)
	Election official shall retain the sealed voted ballots until time has expired for any contest proceedings or 25 months after the election, whichever is later. All other election records and forms shall be preserved for at least six (6) months following the election.	1-13.5-616

**DESIGNATION OF ELECTOR**

**\_\_\_\_\_ BUSINESS IMPROVEMENT DISTRICT ("DISTRICT")  
CITY OF \_\_\_\_\_, STATE OF COLORADO**

To the Secretary of the District:

\_\_\_\_\_ (please print name), the designated elector, who is a natural person who is a citizen of the United States and a resident of the State of Colorado, and who is eighteen years of age or older, and registered to vote in general elections in Colorado, is hereby designated by the entity identified below, as an owner or lessee of taxable real or personal property in the District, which is not a natural person, to vote for such owner or lessee as an "elector" of the District. This designation supersedes and replaces any prior designation (if any) by the entity identified below.

\_\_\_\_\_  
**DESIGNATING ENTITY**

**ADDRESS OF AT LEAST ONE TAXABLE REAL OR PERSONAL PROPERTY IN THE DISTRICT OWNED OR LEASED BY THE ENTITY:**

BY: \_\_\_\_\_  
Authorized Signature

\_\_\_\_\_

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
DENVER, CO, U.S.A.

ITS: \_\_\_\_\_  
Title

Designating Entity is:  Owner   
(check one)  Lessee

EFFECTIVE AS OF: \_\_\_\_\_  
Date

<b>The address to be used for mailing a ballot to the designated elector is:</b>	
<b>The residence address in Colorado where the designated elector is registered to vote is:</b>	
<b>The designated elector's year of birth is:</b>	
<b>The designated elector's daytime telephone number is (optional):</b>	
<b>The designated elector's email address is (optional):</b>	

This designation is filed with the Secretary of the District. Only one such person may be designated by an owner or lessee regardless of the number of properties or lots owned by such owner or lessee. No elector shall be allowed to cast more than one vote even if the person is designated by more than one entity or even if the person is eligible as an individual and also as a designee. See Section 31-25-1203(4)(a)(IV), C.R.S.

# BUSINESS IMPROVEMENT DISTRICTS

## MENU OF SERVICES

### Monthly District Calls

Downtown Colorado, Inc. (DCI) District Members (BIDs + DDAs) have been leading the frontline economic response during the pandemic. DCI provides a happy place for District members to share solutions, vent about challenges, and come together with your peers.

### "Big Talks about the Future"

DCI is Colorado's association for commercial districts, town centers, and downtowns. DCI is proud to partner with our member districts to create a platform for the development and creation of big ideas with a series of speakers who will help shape your thoughts on the future of your downtown. DCI will host two speakers per month on the second and fourth Tuesdays at 4PM.

### The Colorado BID Board Manual + Board Training

Bring new board members up to speed and team build with your long-standing board members with DCI's BID Board Manual. DCI has expanded the resources page to include the BID Board Manual + Board Training, sample agreements and plans, and recorded weekly COVID-19 response webinars.

### 2020 Colorado BID Directory

DCI's Member-Only Resource Page is updated with the 2020 version of the Colorado BID Directory. All Colorado BIDs are listed with information on budgets and expenses.

### Building Inclusive Places Forum

Downtowns offer a place to gather, socialize, rest, and be active. They reflect history, culture and potential. Downtowns can strengthen communities and build social capital. Let's explore how to shape places with the understanding that not all spaces are created equally or equitably. Join us as we engage a multi-disciplinary brain trust to explore the process for building inclusive places.

**DOWNTOWN**  
**COLORADO**  
**inc.**

**Contact us with question about how you can implement these services in your organization!**

