

**BYLAWS  
OF THE  
FOREST HILLS METROPOLITAN DISTRICT**

**SECTION 1. AUTHORITY.**

The Forest Hills Metropolitan District ("District") is a governmental subdivision of the State of Colorado and a body corporate, with those powers of a public or quasi-municipal corporation, which are specifically authorized by, and in compliance with, Section 32-1- 101 et seq., C.R.S. The District was created by court order on January 1st, 1979 and is located in the County of Jefferson.

**SECTION 2. PURPOSE.**

It is hereby declared that the Bylaws hereinafter set forth will serve a public purpose.

**SECTION 3. POLICIES OF THE BOARD.**

It shall be the policy of the Board of Directors ("Board") of the District, consistent with the availability of revenues, personnel and equipment, to use its best efforts to provide the quality services, as authorized under the District Service Plan or by law.

**SECTION 4. BOARD OF DIRECTORS.**

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

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

- a. To confer upon any appointed officer or employee of the District in writing the power to choose, remove or suspend employees or agents, upon such terms and conditions as may seem fair and just and in the best interests of the District.
- b. To determine and designate in writing, except as otherwise provided by law or these Bylaws, who shall be authorized to make purchases, negotiate leases for office space, and sign receipts, endorsements, checks, releases and other documents. The Board may, on a limited basis and by resolution, give a District Manager or other appointed signatory the power to sign contracts and other official documents on behalf of District.
- c. To create standing or special committees, and to delegate such power and authority thereto as the Board deems necessary and proper for the performance of such committee's functions and obligations.
- d. To prepare or cause to be prepared financial reports, other than the statutory audit, covering each year's fiscal activities; and such reports shall be available for inspection by the public, as requested.

**SECTION 5. OFFICE.**

- a. **Business Office.** The principal business office of the District shall be at 14405 West Colfax Avenue #165, Lakewood, Colorado 80401, until otherwise designated by the Board.

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

## **SECTION 6. MEETINGS.**

a. **Regular Meetings.** Regular meetings of the Board shall be conducted on the third Wednesday of each month and held at the Mount Vernon Canyon Club, unless otherwise noticed and posted on the District's website (FHMD.net) twenty-four (24) hours in advance. The public place or places for posting such notice shall be designated annually at the District's first regular meeting of each calendar year. The posting shall include specific agenda information where possible. The notice shall be accessible at no charge to the public. To the extent feasible, the notices searchable by type of meeting, date and time of meeting, agenda contents, and any other category deemed appropriate by the District. The District shall provide the address of the website to the Department of Local Affairs

b. **Public Meeting.** All meetings of the Board, other than executive sessions and social gatherings, shall be open to the public. Public meetings include any and all sessions of the Board, at which a quorum of the Board, or three or more Directors are expected to be in attendance for discussion of District business, either in person, telephonically, or electronically.

c. **Notice of Meetings.** Section 6.a shall constitute formal notice of regular meetings to Board members, and no other notice shall be required to be given to the Board, other than the permanent posting. Written waivers of notice by Board members are not necessary.

d. **Special Meetings.** Special meetings of the Board may be called by any one member of the Board upon twenty-four (24) hours' written notice, which shall be posted on the District's website (FHMD.net), with a copy provided to each Director.

e. **No Informal Action by Directors/Executive Sessions.** All official business of the Board shall be conducted at regular or special meetings. Executive sessions may be called at regular or special meetings, and conducted according to the following guidelines:

1. **Calling the Executive Session.** The topic for discussion in the executive session shall be included and the specific statute that authorizes the executive session shall be cited in the agenda of the regular or special meeting, and announced in a motion during such meeting. The matter to be discussed shall be described in as much detail as possible without compromising the purpose of being in executive session. An affirmative vote of two-thirds (2/3) of the quorum in attendance shall be required to go into executive session.

The Chairperson of the Board must announce, and the minutes must reflect, one of the following topics of discussion for a valid executive session:

a) Purchase, acquisition, lease, transfer, or sale of any property interest. (Note: Not available where a member of the Board has a personal interest in the transaction.) §24-6-402(4)(a), C.R.S.

b). Conferences with the District's attorney regarding legal advice on specific legal questions. (Notes: The mere presence or participation of an attorney is not sufficient to satisfy this requirement. State the topic of the legal questions in as much detail as possible without disclosing confidential information.) §24-6-402(4)(b), C.R.S.

c) Confidential matters pursuant to state or federal law. (Note: Must announce specific citation to the applicable law.) §24-6-402(4)(c), C.R.S.

d) Security arrangements or investigations. §24-6-402(4)(d), C.R.S.

e) Negotiations. §24-6-402(4)(e), C.R.S.

f) Personnel matters, identifying the person or position to be discussed, except if the employee who is the subject of the executive session has requested an open meeting; or if the personnel matter involves more than one employee, all of the employees must request an open meeting. (Note: Not available to discuss general personnel policies.) §24-6-402(4)(f), C.R.S.

g) Items concerning mandatory nondisclosure under the Open Records Act. §24-6-402(4)(g), C.R.S.

h) Discussion of individual students where public disclosure would adversely affect the person. §24-6-402(4)(h), C.R.

2. Conducting the Executive Session. No adoption of any proposed policy, position, resolution, rule, regulation, or formal action shall take place in an executive session. The discussion in executive session shall be limited to the reasons for which the executive session was called. An electronic record (such as an audio tape) of the actual contents of the discussion in the executive session shall be kept. No electronic or other record is required to be kept for any portions of the discussion which the District's attorney reasonably believes constitute attorney-client privileged communication. The attorney shall state on the electronic record when any portion of the executive session is not recorded as an attorney-client privileged communication or sign a statement to the same effect.

3. Records of Executive Sessions. The electronic record of any executive session shall be retained by the District for ninety (90) days from the date of the executive session and then destroyed. §24-6-402(2)(d.5)(II)(E), C.R.S. Electronic recordings of the executive session, or transcripts or other reproduction of the same, shall not be released to the general public for review under any circumstances, except as required by law.

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

g. **Emergency Meetings.** Notwithstanding any other provisions in this Section 6, emergency meetings may be called by the Chairperson or any two (2) Board members in the event of an emergency that requires the immediate action of the Board in order to protect the public health, safety and welfare of the property owners and electors of the District, without notice if notice is not practicable. If possible, notice of such emergency meeting may be given to the Board by telephone or whatever other means are reasonable to meet the circumstances of the emergency. At such emergency meeting, any action within the power of the Board that is necessary for the immediate protection of the public health, safety and welfare may be taken; provided, however, that any action taken at an emergency meeting shall be effective only until the first to occur of (a) the next regular meeting, or (b) the next special meeting of the Board, at which the emergency issue is on the public notice of the meeting. At such subsequent meeting, the Board may ratify any emergency action taken. If any emergency action taken is not ratified, then it shall be deemed rescinded, as of the date of such subsequent meeting.

h. **Email Meetings.** Section 24-6-402, C.R.S., requires that certain e-mail communication between three (3) Directors that discusses pending resolutions or other District business shall be considered a public meeting subject to the requirement of the Colorado Open Meetings Law.

i. **Telephonic Attendance at Meetings.** Section 24-6-402(1)(b), C.R.S. defines a meeting as "Any kind of gathering to discuss public business, in person, by telephone, electronically, or by other means of communication." Directors may attend meetings by telephone (or other electronic means), so long as

they are able to reasonably hear the comments from the audience and any comments and discussion among other Directors and staff, and are able to participate in the discussion.

j. **Voting:** A quorum (more than one-half of the number of Directors serving on the Board) of the Board must be present before the District may take any official act or vote. A majority of the quorum in attendance is required to pass a measure. §§32-1-103(16) and 32-1-903(2), C.R.S.

A Director is required to devote his/her personal attention to matters of the District. Such attention requires a Director's own individual vote; proxy voting is not permissible.

The Chairman/President can make motions and can vote.

k. **Attendance:** A Director is required to attend Board meetings. Attendance may be made via telephone conference. As long as the Director is able to hear and be heard, telephonic attendance satisfies the attendance requirement. §24-6-402(1)(b), C.R.S.

Any absences should be noted and excused (where appropriate) in the minutes of the meeting.

A Director's office shall be deemed to be vacant if the Director, who was duly elected or appointed, fails to attend three consecutive regular meetings of the Board without the Board having entered upon its minutes an approval for an additional absence or absences, except that such additional absence or absences shall be excused for temporary mental or physical disability or illness. §32-1-905(1)(g), C.R.S.

## **SECTION 7. CONDUCT OF BUSINESS.**

a. **Quorum.** All official business of the Board shall be transacted at a regular or special meeting at which a quorum (majority) of the Directors shall be in attendance in person, telephonically, or electronically, except as provided in Section 6.h. above and Section 7.b.

b. **Vote Requirements.** Any action of the Board shall require the affirmative vote of a majority of the Directors in attendance and voting. When special or emergency circumstances affecting the affairs of the District and the health and safety of District residents so dictate, then those Directors available at the time may undertake whatever action is considered necessary and may so instruct the District's employees, agents and contractors. Such actions shall later be ratified by the Board.

c. **Electronic Signatures.** In the event the signature(s) of one or more members of the Board or appointed signatories are required to execute a written document, contract, note, bond, deed, and/or other official papers of the District, and the appropriate individual(s) is unable to be physically present to sign said documentation, such individual or individuals are authorized to execute the documentation electronically via facsimile or e-mail signature, unless said documentation provides otherwise. Any electronic signature so affixed to a document shall carry the full legal force and effect of any original, handwritten signature. Except as approved herein, this provision of these Bylaws shall not be interpreted as establishing the District's consent or authorization to bind the District to any transaction, using electronic records or electronic means. This provision is made pursuant to Article 71.3 of Title 24, C.R.S., also known as the Uniform Electronic Transactions Act.

d. **Order of Business.** The business of all regular meetings of the Board shall be transacted, as far as practicable, in the following order, and the agenda for such meetings shall describe in as much detail as is possible the topics planned for discussion within each category:

1. Changes to, and approval of, the final agenda
2. Approval (or approval, as modified) of the minutes of the previous meeting
3. Monthly reports by officers, committees, and professional consultants
4. Public input, for matters not otherwise on the agenda, with time limits
5. Unfinished business and ratifications

6. New business and special orders
7. Executive Session, if needed
8. Announcement of the date, time, and location of the next meeting
9. Adjournment.

e. **Public Conduct at Meetings.** Comments by members of the public shall be made only during the "Public Input" portion of the meeting and shall be limited to three minutes per individual and five minutes per group spokesperson unless additional opportunity is given at the Board's discretion. Each member of the public wishing to speak may be asked to fill out a form indicating name, address, and agenda item to be addressed. Disorderly conduct, harassment, or obstruction of or interference with meetings by physical action, verbal utterance, nuisance, or any other means are hereby prohibited and constitute a violation of District rules. Such conduct may result in removal of person(s) responsible for such behavior from the meeting and/or criminal charges filed against such person(s). To the extent such occurrences arise and the person(s) responsible refuse to leave the premises, law enforcement authorities will be summoned. Prosecution will be pursued under all applicable laws, including without limitation Sections 18-9-108, C.R.S. (disrupting lawful assembly), 18-9-110, C.R.S. (public buildings - trespass, interference), and/or 18-9-117, C.R.S. (unlawful conduct on public property). Law enforcement may be requested to attend meetings at any time in which the Board believes their presence will be an asset to the keeping of peace and the conducting of public business. 9-1-1 will be called at any time that the Board or staff feels threatened or endangered during a public meeting.

f. **Minutes.** Within a reasonable time after passage, all resolutions, motions and minutes of Board meetings shall be recorded in a visual text format that may be transmitted electronically and kept for that purpose and shall be attested by the Recording Secretary. Minutes of regular sessions shall be available for public review as soon as practicable following acceptance of the minutes by adoption of a motion therefore by the Board and signature by the Chairperson. Executive sessions shall be electronically recorded on audio tape or other electronic media, and such electronic recording or reproduction of the same shall be kept separate from minutes of regular sessions as described in Section 6.e of these Bylaws and shall not be open to the public, except as required by law.

## **SECTION 8. DIRECTORS, OFFICERS AND PERSONNEL.**

a. **Director Qualifications and Terms.** Directors shall be eligible electors of the District. The term of each Director shall be determined by relevant statutory provisions. The District must hold regular elections on the first Tuesday after the first Monday in May in even-numbered years for the purpose of electing Directors to the Board and, as applicable, for the submission of other ballot issues or questions. §1-13.5-111(1), §32-1-103(17), C.R.S.

Note: In the regular election in May 2020, and also in May 2022, those full-term seats that are on the ballot will be for three years, for the one term only, after which those seats will revert back to the normal four year terms. As a result, beginning in 2023, regular special district elections will be on the first Tuesday after the first Monday in May of odd-numbered years. §§1-1-104(42), 1-13.5-111(1), 32-1-103(17), and 32-1-305.5(3).

b. **Oath or Affirmation.** Each Director, within 30 days after election or appointment, shall take an oath or affirmation of faithful performance. §32-1-901(1), C.R.S. The oath or affirmation must be administered by a qualified official (any person designated by the Board, any officer of the Board, Notary Public, Judge, Clerk of the Court, or Clerk and Recorder) and filed

with the Clerk of the District Court that issued the District's organizational decree; the County Clerk and Recorder for the counties in which the District is situated; and the Division of Local Government. Before the person is fully seated as a Board member, the oath or affirmation must be filed with such County Clerk(s). §24-12-101, §24-12-103 and §32-1-901(1), C.R.S.; Article XII, Section 9, Colorado Constitution.

c. **Bonds.** Along with the oath or affirmation, an individual, schedule, or blanket surety bond of not less than \$1,000 must be filed for each Director with the Clerk of the Court and the Division of Local Government, conditioned upon the faithful performance of his/her duties as Director. §32-1-901(2), C.R.S. The Treasurer must file with the Clerk of the Court and the Division of Local Government a corporate fidelity bond of not less than \$5,000. §32-1-902(2), C.R.S. The bond(s) shall be in amounts determined by the Board, and at the expense of the District. It is common for a District to obtain and file a single blanket position schedule bond, setting forth the required amounts for each of the positions of Director and the amount for the position of Treasurer. The surety bond and fidelity bond requirements are satisfied if the District buys crime coverage. §24-14-102(2), C.R.S.

d. **Director's Performance of Duties.** A Director of the District shall perform all duties of a Director, including duties as a member of any committee of the Board, upon which the Director may serve, in good faith, in a manner which the Director reasonably believes to be in the best interests of the District, and with such care as an ordinarily prudent person in a like position would use under similar circumstances. In performing the Director's duties, the Director shall be entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by persons and groups listed in subparagraphs 1, 2 and 3 of this subsection c. The Director shall not be considered to be acting in good faith if (s)he has knowledge concerning the matter in question that would cause such reliance to be unwarranted. A person who so performs the Director's duties shall not have any liability by reason of being or having been a Director of the District. Those programs and groups upon whose information, opinions, reports, and statements a Director is entitled to rely are:

1. One or more officers or employees of the District whom the Director reasonably believes to be reliable and competent in the matters presented;
2. Counsel, public accountants, or other persons as to matters which the Director reasonably believes to be within such persons' professional knowledge or expertise; and
3. A committee of the Board upon which the Director does not serve, duly designated in accordance with the provisions of the Bylaws, as to matters within its designated authority, which committee the Director reasonably believes to merit confidence.

e. **Vacancies.** Any Board vacancy occurring in between elections shall be filled by an affirmative vote of a majority of the remaining Directors, with the appointee to serve until the next biennial election, as prescribed by statute. The appointed individual must meet the statutorily prescribed qualifications for Directors. If the Board fails to fill the vacancy within 60 days, the Board of County Commissioners may make the appointment. The Director appointed to fill a vacancy shall serve until the next regular election, at which time the vacancy shall be filled by election for the remainder, if any, of the originally vacated term. §32-1-905(2)(a), C.R.S.

Discussions regarding the appointment of a person and his or her qualifications to fill a vacancy on the Board must take place in a public meeting, not in executive session. The appointment must occur by official action of the Board at a properly convened meeting and must be recorded in the minutes of the Board meeting. A notice of appointment shall be delivered to the person appointed, and the notice

along with the mailing address of the person, so appointed, must be filed with the Division of Local Government. §32-1-905(3), C.R.S.

f. **Resignation and Removal.** Any Director who has held office for at least six months may be subject to recall by the eligible electors of the District. §32-1-906, C.R.S. Any Director may resign at any time, by giving written notice to the Board; and acceptance of such resignation shall not be necessary to make it effective, unless the notice so provides.

g. **Term Limits:** Directors are limited to two consecutive terms of office, unless the voters of the District lengthen, shorten, or eliminate that limitation. Art. XVIII, Sect. 11, Colo. Const. Term limits apply only to elected four-year terms. Term limits do not apply to interim terms that arise due to a vacancy or to elected two-year terms that are created due to a vacancy. Attorney General Opinion No. 2000-2 (February 9, 2000).

h. **Election of Officers.** After taking oaths/affirmations and filing bonds, the Board shall elect one of its members as Chair of the Board and President of the special district; one of its members as Treasurer of the Board and special district; and a Secretary who may be a member of the Board. The Secretary and the Treasurer may be one person, but, if such is the case, he or she shall be a member of the Board. [§32-1-902\(1\), C.R.S.](#) The officers shall be elected by a majority of the Directors voting at such election. The Board may, from time to time, appoint an acting officer in the absence of any individual officer. The election of the officers shall be conducted biennially at the first regular meeting of the Board following the regular biennial election of the Directors held in May of even numbered years. With the exception of the Chairperson and President, each officer so elected shall serve for a term of two (2) years, or as otherwise directed by the Board. Under any circumstance, the term shall continue until the election of his or her successor.

The Chairperson and President position shall be filled on a rotating, six-month basis in the order indicated by the Board. The rotation order shall be specified in a resolution issued by the Board at its May meeting.

i. **Responsibilities and duties of officers**

1. **Chairperson (and President).** The Chairperson shall preside at all meetings. and shall also be the President of the District. The President is authorized to sign all contracts, deeds, notes, debentures, warrants and other instruments on behalf of the District.

2. **Secretary.** The Secretary shall: Preside at meetings in the absence of the Chairperson; be responsible for the records of the District; and perform all duties incident to that office. If the Board does not appoint another individual as the Recording Secretary, the Secretary may act as such, during meetings of the Board and: Record all votes; be responsible for composing a record of the proceedings of the Board in a visual text format that may be transmitted electronically and kept for that purpose, which shall be an official record of the Board; The Secretary shall be the designated election official of the District, unless otherwise determined by the Board, and the custodian of the seal of the District. The Secretary shall have the authority to affix such seal to and attest all contracts and instruments authorized to be executed by the Board. In lieu of appointing a Director to serve as the Secretary, the Board may assign the role of Secretary to the District Manager; and in that case the Secretary will not be a member of the Board and shall not be required to take an oath of office.

3. **Treasurer.** The Treasurer shall be authorized to invest or cause to be invested all surplus funds or other available funds of the District in permitted investments authorized by law, or as specified by the Board. The Treasurer shall be chairperson of the Budget Committee and of the Audit Committee. The Treasurer shall keep, or cause to be kept, in permanent records strict and accurate accounts of all money received by, and disbursed for, and on behalf of the District.

The Secretary and/or Treasurer may also be authorized to sign all contracts, deeds, notes, debentures, warrants, checks, and other instruments on behalf of the District. In the event dual signatures of District officers are required on any instrument, then two (2) different officers shall sign such instrument.

4. **Recording Secretary.** The Board shall have the authority to appoint a Recording Secretary who need not be a member of the Board of Directors, and who shall be responsible for recording all votes and composing a record of the proceedings of the Board in a visual text format that may be transmitted electronically and kept for that purpose, which shall be the official record of the Board. The Recording Secretary shall not be required to take an oath of office, nor shall the recording secretary be required to post a performance bond.

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

m

k. **District Manager.** The Board may contract with a District Manager, to serve for such term and upon such conditions, including compensation, as the Board may establish. Such District Manager shall have general supervision over the administration of the affairs, employees and business of the District and shall be charged with the hiring and discharging of other contractors and the management of District properties. Such District Manager shall have the care and custody of the funds of the District and shall deposit or cause to be deposited the same, in the name of the District, in such banks or savings associations as the Board may select. Such District Manager will approve all vouchers, orders and checks for payment, and shall keep or cause to be kept regular books of account of all District transactions, and shall obtain, at the District's expense, such bond for the faithful performance of his or her duties as the Board may designate. The Board may delegate such powers and duties to the District Manager as it deems appropriate, including the awarding of contracts with not-to-exceed dollar limits, as specified in a District policy.

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

## **SECTION 9. FINANCIAL ADMINISTRATION.**

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

b. **Budget Committee.** There shall be a permanent Budget Committee, composed of the Treasurer, a member of the Board appointed by the President, and the District Manager and/or Accountant, if any, which shall be responsible for preparation of the annual budget of the District and such other matters as may be assigned to it by the Chairperson or the Board.

c. **Budget.** The District must adopt an annual budget prior to certifying the District's mill levy. §§29-1-103(1) and 29-1-108(2), C.R.S. Adoption of the budget must be considered after the conduct of a public hearing. §29-1-108(1), C.R.S.

On or before October 15th of each year, the Budget Committee shall prepare and submit to the Board a proposed budget for the ensuing fiscal year. Such proposed budget shall be accompanied by a

statement, which shall describe the important features of the budget plan and by a general summary wherein shall be set forth the aggregate features of the budget, in such manner as to show the balanced relations between the total proposed expenditures and the total anticipated income or other means of financing the proposed budget for the ensuing fiscal year, as contrasted with the corresponding figures for the last completed fiscal year and the current fiscal year. It shall be supported by explanatory schedules or statements classifying the expenditures contained therein by services, subjects and funds. The anticipated income of the District shall be classified according to the nature of receipts.

d. **Notice of Budget.** Upon receipt of the proposed budget, the Board shall cause to be published notice of the following, one time in a newspaper of general circulation: (i) the date, time, and place of a budget hearing; (ii) that the budget is open for public inspection and location where budget can be reviewed (District's website); and (iii) that interested parties may file objections any time prior to final adoption. §29-1-106(1), C.R.S.

Analyses of the following components (both short and long term) will be useful in preparation of the District's budget under TABOR: Growth calculation, spending, revenues, emergency reserves, and refunds.

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

f. **Levy and Collection of Taxes.** On or before December 15th of each year, the Board shall certify to the Board of County Commissioners of the County or Counties in which the District is located the mill levy established for the ensuing fiscal year, in order that, at the time and in the manner required by law for the levying of taxes, such Commissioners shall levy such tax upon the assessed valuation of all taxable property within the District.

g. **Filing of Budget.** On or before January 30th of each year, the Board shall cause to be filed with the Division of Local Government in the Colorado Department of Government. a certified copy of the adopted budget, which includes the resolution to adopt the budget, set the mill levy rate(s) and appropriate funds, and the budget message no later than 30 days following the beginning of the fiscal year of the budget (i.e. no later than January 30). §29-1-113, C.R.S.

h. **Appropriating Resolution.**

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

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

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

i. **No Contract to Exceed Appropriation.** The Board shall have no authority to enter into any contract, or otherwise bind or obligate the District to any liability for payment of money for any

purposes, for which provision is not made in an appropriation resolution, including any legally authorized amendment thereto, in excess of the amounts of such appropriation for that fiscal year. Any contract, verbal or written, contrary to the terms of this Section shall be void ab initio, and no District funds shall be expended in payment of such contracts.

j. **Budget Amendments:** The amount of appropriated funds may be revised, supplemented, transferred, or adjusted during the year by adoption at a public hearing of a resolution amending the budget. For supplemental budgets and appropriations, the resolution shall set forth in full the source and amount of the revenue being appropriated; the purpose for which the revenues are being budgeted and appropriated; and the fund or spending agency that will be making the supplemental expenditure. The notice provisions and requirements for adoption of budget amendments are the same as for adopting the budget. §29-1-109, C.R.S. The resolution amending the budget must be filed with the Division of Local Government. §29-1-109(2), C.R.S.

k. **Contingencies.**

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

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

l. **Payment of Contingencies.**

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

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

m. **Annual Audit.** The Board shall cause an annual audit (or exemption from audit) to be made at the end of each fiscal year of all financial affairs of the District through December 31st of such fiscal year. In all events, the audit report must be submitted to the Board within six (6) months of the close of such fiscal year or as otherwise provided by law. Such audit shall be conducted in accordance with generally accepted auditing standards by a registered or certified public accountant, who has not maintained the books, records and accounts of the District during the fiscal year. The auditor shall prepare, and certify as to its accuracy, an audit report, including a financial statement and balance sheet based on such audit, an unqualified opinion or qualified opinion with explanations, and a full disclosure of any violation of Colorado law pursuant to statutory requirements. There shall be a permanent Audit Committee composed of the Treasurer and one other member of the Board appointed by the President. The Audit Committee shall be responsible for the appointment, compensation, selection (to be approved by the Board), retention, and oversight of the work of any independent accountants engaged for the purpose of preparing or issuing an independent audit report or performing other independent audit, review or attest services for the District. The Audit Committee may, as necessary and to the

extent of its ability, provide independent review and oversight of the District's financial reporting processes, internal controls, and independent auditors. All accountants thus engaged shall report directly to the Audit Committee.

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

4. A copy of the audit report shall be forwarded to the State Auditor or other appropriate State official pursuant to statutory requirements. If the District has authorized but unissued general obligation debt as of the end of the fiscal year, send a copy of the audit report or a copy of its application for exemption from audit to the Board of County Commissioners.

5. Notwithstanding the foregoing audit requirement, the Board may file for an application from exemption from audit if the statutory criteria are met.

**SECTION 10. CORPORATE SEAL.** The seal of the District shall be a circle containing the name of the District and shall be used on all documents and in such manner as seals generally are used by public and private corporations. The Secretary shall keep, or cause to be kept, the seal and shall be responsible for its safe keeping and care.

**SECTION 11. DISCLOSURE OF CONFLICT OF INTEREST.** A potential conflict of interest of any Director shall be disclosed in accordance with State law, particularly Article 18 of Title 24, C.R.S., and Sections 32-1-902(3) and 18-8-308, C.R.S.

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

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

**SECTION 14. BIDDING AND CONTRACTING PROCEDURES.** Except in cases in which the District will receive aid from a government agency, a notice shall be published for bids on all construction contracts for work or material, or both, involving an expense of \$60,000 or more of District funds. The Board may reject any and all bids, and if it appears that the District can perform the work or secure material for less than the lowest bid, it may proceed to do so in accordance with law. Notwithstanding the foregoing, the District may award an integrated project delivery contract pursuant to § 32-1-1801, et seq., C.R.S. upon (i) the determination of the Board that integrated project delivery represents a timely or cost-effective alternative for a project; (ii) publication of a request for qualifications and/or request for proposals; and (iii) compliance with Part 18 of Article 1, Title 32, C.R.S. All other statutory requirements relating to performance bonds, retainage, and similar matters shall also be complied with.

a. **Bonds and Retainage:** It is recommended that the District require a Bid Bond (usually in the amount of 5% of the bid amount) to avoid withdrawal of low bids. Bid Bonds are not, however, required by law. The law does require every contractor awarded a contract for more than \$50,000 to execute a Penal (Payment) Bond, as well as a Performance Bond in the amount of at least one-half of the contract amount. §§38-26-105 and 106, C.R.S. Although not required by statute, a Maintenance Bond guaranteeing the warranty provision of the contract (usually one year) is also recommended and is usually able to be included into a single Performance, Payment, and Warranty Bond. If a construction contract exceeding \$150,000 is awarded, the District may withhold payment for up to 5% of the value of the entire project. The retainage may be held until the contract is completed satisfactorily and final payment procedures are followed. §24-91-103(1)(a), C.R.S.

a. **Appropriations Clause:** The District may not contract for a public works project in an amount in excess of the amount appropriated by the District for the project. All construction contracts must contain clauses stating that the amount of money appropriated is equal to or in excess of the contract amount and, prior to issuing a change order, the District must appropriate funds to cover the costs of the additional work and such funds must be available for expenditure. §24-91-103.6, C.R.S.

b. **Final Payment and Claims:** If the amount of the contract awarded exceeds \$150,000, the District shall, not later than ten days before the final settlement is made, publish a notice thereof at least twice in a newspaper of general circulation in any county where the work was contracted for or performed. The date of final settlement should be more than ten days after the second publication. Thereafter, if no claims are made, payment in full to the contractor may be made on the settlement date.

At any time up to and including the time of final settlement for the work contracted to be done, any person that has furnished labor, materials, sustenance, or supplies used or consumed by a contractor or subcontractor, whose claim has not been paid, may file with the District a verified statement of the amount due on account of the claim. Upon the filing of any such claim, the District shall withhold from all payments to said contractor sufficient funds to ensure payment of said claim until the claim is withdrawn, paid, or 90 days have passed. §38-26-107(2), C.R.S.

If, within 90 days from the date of settlement, the claimant has not filed a lawsuit to enforce such claim, the funds withheld which are not the subject of suit shall be paid over to the contractor. §38-26-107(3), C.R.S. If a lawsuit is commenced, the District may be able to interplead the claims (deposit the money with the Court) to avoid becoming embroiled in litigation.

The District must make the final payment in accordance with the above procedures within 60 days after the contract is completed satisfactorily and finally accepted by the District. §24-91-103(1)(b), C.R.S.

**SECTION 15. PUBLIC RECORDS.** The “Open Records Act,” §24-72-201, et seq., C.R.S., applies to almost all levels of Colorado governmental entities and requires records to be available to the public, although it takes into account the burdens that may be placed on local governments to respond to requests for public records and incorporates a reasonableness standard for the time and cost of producing the materials.

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, except as provided by law. §24-72-201, C.R.S. “Public records” is broadly defined to include most documentation maintained by the District **and the correspondence of elected officials, including email**, whether maintained in hard copy or electronically in digital media. §24-72-202(6), C.R.S. The “official custodian” (the District officer or

other assignee, responsible for the maintenance, care, and keeping of public records) may establish rules regarding the inspection procedures for such records. §24-72-203(1)(a), C.R.S. Such rules are advisable to maintain a manageable order regarding records and inspection. In practice, typically the Board adopts by resolution a policy for responding to records requests. The person requesting inspection is entitled to copies or printouts of the District's public records. Special rules apply to records that are kept digitally:

1. If a public record is stored in a digital format that is neither searchable nor sortable, the custodian shall provide a copy of the public record in a digital format.
2. If a public record is stored in a digital format that is searchable but not sortable, the custodian shall provide a copy of the public record in a searchable format.
3. If a public record is stored in a digital format that is sortable, the custodian shall provide a copy of the public record in a sortable format. §24-72-203(3.5), C.R.S.

**b. Fees:**

1. A copying fee not to exceed 25¢ per standard page may be assessed, unless actual costs exceed that amount. §24-72-205(5)(a), C.R.S.
2. If the copying or printout is generated from a computer output other than word-processing, the cost of building and maintaining that information system may be offset by charging a reasonable allocation to the person requesting the record. §24-72-205(4), C.R.S.
3. A reasonable research and retrieval fee may be charged, but the fee may not exceed \$30 per hour and no charge may be imposed for the first hour of research and retrieval of public records. §24-72-205(6)(a), C.R.S.
4. Within three working days of receiving the request, the custodian shall notify the record requester that a copy of the record is available but will only be sent once the custodian either receives payment or makes arrangements for receiving payment for all costs and fees associated with the request for and transmission of the public record, unless the custodian has waived all or some of the fees. §24-72-205(1)(b), C.R.S.

**c. Transmission of Records:** Upon request, the custodian shall transmit a copy of the requested public record by U.S. mail, other delivery service, facsimile, or email. The District cannot charge a transmission fee for transmitting public records via email.

**d. Response Time:**

1. Records must be provided within three working days, or the custodian must provide the requester with written notice that extenuating circumstances exist, and the records cannot be provided within three working days. §24-72-203(3)(b), C.R.S.
2. Extenuating circumstances for which the response period can be extended an additional seven working days include:
  - a. The request is broadly stated, encompasses a large category of records, and is without sufficient specificity (14 SDA Board Member Manual | sdaco.org);
  - b. The request is broadly stated, encompasses a large category of records, and the District is unable to gather the records within three working days because it needs to devote all or substantially all of its resources to meeting an impending deadline or period of peak demand that is unique or not predicted to recur more frequently than once a month; or
  - c. The request involves such a large volume of records that the custodian cannot gather the records without substantially interfering with his other public duties. §24-72-203(3)(b)(I) to (III), C.R.S.

e. **Denial of Access:** The Open Records Act permits (and in some cases requires) the official custodian to deny public access and disallow inspection of the following documents or under the following circumstances: §24-72-204 (1), C.R.S.

1. If inspection would be contrary to any state statute;
2. If inspection would be contrary to any 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. Records submitted for applicants or candidates for employment, other than those submitted by applicants or candidates who are finalists for chief executive officer positions (if there are three or fewer applicants or candidates for a chief executive officer position who possess the minimum qualifications, they are all finalists and access to their submitted records may not be denied);
6. Real estate appraisals, until the subject property has been transferred;
7. Email addresses provided by a person to the District;
8. Specialized details of security arrangements or investigations and records of expenditures on security arrangements or the physical and cyber assets of critical infrastructure;
9. Medical, mental health, sociological, and scholastic achievement data (except as made available for inspection by the party in interest);
10. Personnel files (except as made available for inspection by the party in interest and the District official or employee who has direct supervisory capacity);
11. Trade secrets, privileged information, and confidential information or data;
12. Election records of any person; or
13. Where disclosure or public access would do substantial injury to public interest. §24-72-204(6)(a), C.R.S.

If, after making reasonable inquiries, it is not technologically or practically feasible to permanently remove information that the custodian is required or allowed to withhold within the requested format; it is not technologically or practically feasible to provide a copy of the record in a searchable or sortable format; or if the custodian would be required to purchase software or create additional programming or functionality in its existing software to remove the information, a custodian is not required to produce a public record in a searchable or sortable format. §24-72-203(3.5), C.R.S.

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 District may apply to the Court for an Order permitting the District to restrict disclosure.

A person seeking permission to examine the document has the right to appear in the Court proceeding. The attorney fees provisions of the "Open Records Act" described in Paragraph F of this Chapter do not apply if the Court finds that the custodian in good faith was unable to determine if disclosure was prohibited without a ruling by the Court. §24-72-204(6)(a), C.R.S.

Any person denied access may request a written statement of the grounds for denial, which statement shall be furnished forthwith and cite the law or regulation under which access is denied. §24-72-204(4), C.R.S. Such person may also apply to the Court for an Order compelling inspection but must provide at least 14-days' written notice prior to filing with the Court. During this 14-day period, the official custodian who has denied access must meet with or speak by telephone with the person requesting access to determine if the dispute may be resolved without applying to Court. The meeting may include

recourse to any method of dispute resolution agreeable to both parties, with the parties sharing common expenses equally. No meeting to determine whether the dispute can be resolved without applying to Court needs to be held if the person requesting access requires expedited access and provides written notice to the District of the expedited need, with factual basis, at least three business days prior to applying to Court. §24-72-204(5), C.R.S.

f. **Reasonable Attorney Fees and Costs:** If a person denied access successfully obtains a Court Order compelling inspection, the District shall be ordered to pay Court costs and reasonable attorneys' fees in an amount determined by the Court. [§24-72-204\(5\), C.R.S.](#) In the event the Court finds that the denial of the right of inspection was proper, the Court shall award Court costs and reasonable attorney fees to the custodian if the Court finds that the action was frivolous, vexatious, or groundless.

g. **Email Policy:** Any District that utilizes an electronic mail communications system must adopt a written policy on any monitoring of electronic mail communications and the circumstances under which it will be conducted. The policy must include a statement that employee emails may be a public record and may be subject to public inspection. [§24-72-204.5, C.R.S.](#) \*Arguably, if a District utilizes text messaging for District business, they should adopt a similar policy.

**SECTION 16. SERVICE PLAN:** The District shall conform, so far as practicable, to its adopted Service Plan. §32-1-207(1), C.R.S.

**SECTION 17. LIABILITY ISSUES.** Special districts, along with other governmental entities in Colorado, have limited liability for most injuries or damages that result from acts of the District, its employees, Directors, and volunteers. However, there are still actions that the District should take to protect itself from lawsuits, including obtaining comprehensive liability insurance, agreeing to indemnify Directors and employees of the District, and requiring participants and volunteers to sign waivers when appropriate.

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 ("CGIA"). See Colorado Governmental Immunity Act for more information)

2. Federal Actions: These actions are beyond the scope of the CGIA, although an argument does exist that the CGIA could offer protection from federal claims brought in the state Courts. 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: Contract claims are not protected by the CGIA. §§24-10-105 and 106, C.R.S. Public officials, however, are generally not personally liable for the contracts of the governmental entity.

4. Criminal: The CGIA offers no protection from criminal actions. Common potential areas of criminal exposure include the following:

- a. Entering into a prohibited transaction;
- b. Failing to disclose conflicts of interest;
- c. Misuse of official information;
- d. Malfeasance; and
- e. Issuing a false certificate or document. §18-8-406, C.R.S.

The District may want to consider purchasing crime coverage from the Colorado Special Districts Property and Liability Pool, which covers certain damages and defense costs resulting from a lawsuit for a Director's alleged wrongful acts while acting in his or her official capacity.

#### **SECTION 18. ELECTIONS.**

a. **Regular Elections:** Special districts must hold regular elections on the first Tuesday after the first Monday in May in even-numbered years for the purpose of electing Directors to the Board and, as applicable, for the submission of other ballot issues or questions. §1-13.5-111(1), §32-1-103(17), C.R.S.

Note: In the regular election in May 2020, and also in May 2022, those full-term seats that are on the ballot will be for three years, for the one term only, after which those seats will revert back to the normal four year terms. As a result, beginning in 2023, regular special district elections will be on the first Tuesday after the first Monday in May of odd-numbered years. §§1-1-104(42), 1-13.5-111(1), 32-1-103(17), and 32-1-305.5(3).

b. **Special Elections:** Special elections may be held on the first Tuesday after the first Monday of February, May, October, or December; in November of even-numbered years; or on the first Tuesday in November of odd-numbered years. A court having jurisdiction over the District may order a special election to be conducted on a different election date. §§1-13.5-111(2) and (3), §32-1-103(21), C.R.S.

c. **TABOR Elections:** A TABOR ballot issue election must be conducted as either a coordinated election or as an independent mail ballot election. §1-13.5-111(2), C.R.S. TABOR elections can only be conducted at the regular special district election date, the general election date, or the first Tuesday in November of odd-numbered years. Art. X, Sect. 20(3)(a), Colo. Const.

d. **Election Resolution:** The election process is initiated by Board adoption of an Election Resolution. Depending on whether the election is a regular special district election, a November election, or a special election, the Election Resolution may address the following, as applicable: the election of members to the Board of Directors; polling place or mail ballot format; the location(s) of the polling place(s) or mail ballot drop-off locations; any ballot issues/questions to be presented; whether the election will be conducted as a coordinated election with the county; and the appointment of the Designated Election Official.

e. **Call for Nominations:** Not fewer than 75 days or more than 100 days prior to the regular election, a Call for Nominations must be published one time. The notice must set forth the Director offices to be voted upon at the election, where a self-nomination and acceptance form may be obtained, the deadline for filing such form, and information on obtaining an absentee ballot. §1-13.5-501(1), C.R.S.

f. **Candidates:** A self-nomination and acceptance form signed by the candidate and one other registered voter of the State must be filed with the Designated Election Official no earlier than January 1 and no later than the normal close of business on the 67th day prior to the regular election. §1-13.5-303(1), C.R.S. An affidavit of intent to be a write-in candidate must be filed with the Designated Election Official no later than 64 days prior to the date of election. §1-13.5-305, C.R.S. The Designated Election Official shall provide copies of the self-nomination and acceptance forms and any affidavits of intent to be a write-in candidate to the Colorado Secretary of State no later than 60 days before the special district election. This does not apply if the District cancels its election. Rule 16.1, Secretary of State Rules Concerning Campaign and Political Finance.

g. **Eligible Electors:** An eligible elector for a special district election is a person who is registered to vote in the State of Colorado and is either:

1. A resident within the District boundaries or area to be included within the District boundaries on Election Day; or

2. The owner (or the spouse or civil union partner of the owner) of taxable real or personal property situated within the District boundaries or area to be included within the District boundaries. §32-1-103(5)(a) and (b), C.R.S. A person who is obligated to pay taxes under a contract to purchase taxable property situated within the boundaries of the District or area to be included within the District boundaries is considered an owner for these purposes. The property owner must be a natural person, not a corporation, trust, partnership, etc.

h. **Directors Take Office:** The Designated Election Official shall notify the candidates of their election to office. After the oath or affirmation of office and any required bond are filed with the District Court having jurisdiction over the special district, the Division of Local Government, and the County Clerk and Recorder, the Designated Election Official shall make a formal certificate of election for each person who was elected and shall deliver the certificate to that person. §1-13.5-1305(1) and (2), and 32-1-901, C.R.S., and Art. XII, Sect. 9, Colo. Const.

The term of office of each newly elected person shall commence at the next meeting of the Board after the date of the election, but not later than 30 days after the date that the election results are certified pursuant to §1-13.5-1305; upon the signing of an oath or affirmation; filing such oath or affirmation with the County Clerk and Recorder of each County in which the District is located; and posting of a bond or policy of crime insurance. §§24-12-101 and 24-14-102(2), C.R.S. If the election was cancelled, the term of office of the persons declared elected shall commence at the next meeting of the Board following the date of the election, but no later than 30 days following the date of the election; upon the signing of an oath or affirmation; filing such oath or affirmation with the County Clerk and Recorder of each County in which the District is located; and posting of a bond or policy of crime insurance. §§1-13.5-112, 24-12-101, and 24-14-102(2), C.R.S.

i. **Campaigning:** Under the Fair Campaign Practices Act, Article 45 of Title 1, C.R.S., Districts may not make contributions or contributions in kind to campaigns involving the nomination, retention, or election of any person to any public office, or to urge electors to vote in favor of or against any issue before the electorate. A Board member may expend not more than \$50 of District funds on letters, telephone calls, or other activities incident to making statements or answering questions concerning the issue. Districts may, however, expend public monies or make contributions in kind to dispense fair and balanced information on any issue of official concern before the electorate. This information must be factual, must include arguments both for and against the proposal, and cannot contain a conclusion or opinion in favor of or against any issue addressed. The Board is permitted to adopt a resolution of advocacy on any ballot issue or referred measure and report the adoption of the resolution by customary means other than paid advertising. The statutes do not prohibit a public employee or Board member from working on a campaign or speaking out on an issue on his or her own time, or spending his or her own funds to urge electors to vote in favor of or against any issue before the electorate. The statutes also restrict the activities of campaign committees and require the filing of certain reports.

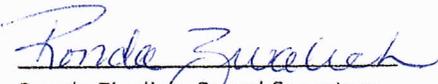
**SECTION 19. MODIFICATION OF BYLAWS.** These Bylaws may be altered, amended or repealed at any regular or special meeting of the Board to become effective immediately or at a subsequent date.

**SECTION 20. SEVERABILITY.** If any part or provision of these Bylaws is adjudged to be unenforceable or invalid, such judgment shall not affect, impair or invalidate the remaining provisions of these Bylaws, it being the Board's intention that the various provisions hereof are severable.

**SECTION 21. TERMINATION OF PRIOR BYLAWS.** These Bylaws amend, supersede and replace in their entirety all prior Bylaws, and any amendments thereto, previously adopted by the Board of Directors.

ADOPTED this 18th day of November 2020, by the Board of Directors of the Forest Hills Metropolitan District.

Attested by

  
Ronda Zivalich, Board Secretary

Approved

  
Gary Carson, Board Chairperson