

HEATHER GARDENS METROPOLITAN DISTRICT BYLAWS

1. **Authority.** Heather Gardens 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.
2. **Purpose.** It is hereby declared that the Bylaws hereinafter set forth will serve a public purpose.
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 services as authorized under the District Service Plan or by law.
4. **Board of Directors.** All powers, privileges and duties vested in, or imposed upon, the District by law shall be exercised and performed by and through the Board, whether set forth specifically or impliedly in these Bylaws
 - a. The Board may delegate to officers, employees, and agents of the District any or all administrative and ministerial duties.
 - 1.) The Administrator shall be the Heather Gardens Association (HGA).
 - 2.) The Board may delegate its agent through execution of a Management Agreement, any or all administrative and ministerial duties.
 - b. Without restricting the general powers conferred by these Bylaws, it is hereby expressly declared that the Board shall have the following powers and duties:
 - 1.) To confer upon any appointed officer of the District the power to choose, remove or suspend employees or agents upon such terms and conditions as may seem fair and just and in the best interests of the District.
 - 2.) To determine and designate, 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.

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- 3.) To create standing or special committees and to delegate such authority thereto as the Board deems necessary and proper for the performance of such committee's functions and obligations.
- 4.) To prepare or have prepared financial reports, other than the statutory audit, covering each year's fiscal activities, and such reports, if requested, shall be submitted to the Board and made available for inspection by the public.
- 5.) To request the agent to prepare and submit to the District monthly and annual financial reports and to complete statutory reports.

5. Office.

- a. **Business Office.** The principal business office of District shall be at 2888 South Heather Gardens Way, Aurora, Colorado 80014, 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.

6. Meetings.

- a. **Regular Meetings.** Regular meetings of the Board shall be conducted on the Thursday after the second Monday of each month at 1:00 p.m. and held at the business office, unless otherwise noticed and posted.
- b. **Public Meeting.** All meetings of the Board, other than executive sessions, shall be open to the public.
- 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. Notice of Meetings and Agendas will be made available for posting at other locations within the District by the Area Representatives and also will be forwarded to the Office of the Clerk and Recorder of the county in which the District is located.
- d. **Special Meetings.** Special meetings of the Board may be called upon seventy-two (72) hours written notice, which shall be posted in three

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places within the District and at the Office of the Clerk and Recorder of the county in which the District is located.

- 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.

- a.) The topic for discussion in the executive session shall be announced in a motion, and the specific statute that authorizes the executive session shall be cited.
- b.) The matter to be discussed shall be described in as much detail as possible without compromising the purpose of being in executive session.
- c.) An affirmative vote of two-thirds (2/3) of the quorum present shall be required to go into executive session.

2.) Conducting the Executive Session.

- a.) No adoption of any proposed policy, position, resolution, rule, regulation, or formal action shall take place in an executive session.
- b.) The discussion in executive session shall be limited to the reasons for which the executive session was called.
- c.) A record of the actual contents of the discussion in the executive session, using the same manner and media as are used to record minutes of regular sessions, shall be used.
- d.) If handwritten notes of the executive session are kept, minutes of the executive session shall be created and shall contain a signed statement by the President that the minutes substantially reflect the substance of the discussion during the executive session.
- e.) No record is necessary to be kept for any portions of the discussion, which the District's attorney reasonably believes, constitute attorney-client privileged communication.
- f.) If minutes of the executive session are otherwise electronically recorded, the attorney shall state on the record

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- d.) 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.

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 (i.e., three) of the Directors shall be present in person or telephonically, except as provided in Section 7.b.
- b. **Vote Requirements.** Any action of the Board shall require the affirmative vote of a majority of the Directors present 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. The Board shall later ratify such actions.
- c. **Order of Business.** The business of all regular meetings of the Board shall be transacted, as far as practicable, in the following order:
 - 1.) Determine quorum is present.
 - 2.) Call meeting to order.
 - 3.) Reading and approval of the minutes of the previous meeting/meetings.
 - 4.) Addition or changes to the agenda.
 - 5.) President's comments.
 - 6.) Election matters and resolutions, election of Board officers, approval and determination of bonds as needed.
 - 7.) Treasurer Report.
 - 8.) Discussion of Business and General Manager's reports.
 - 9.) Reports of Directors, committees and professional consultants.
 - 10.) Recognize and hear HGA representative and AR representative.
 - a.) President recognizes persons wishing to address the Board.
 - 11.) Unfinished business.
 - 12.) Approval of bills and appropriations.
 - 13.) New business and special orders.
 - 14.) Residents wishing to address the Board.
 - 15.) Adjournment.
- d. **Motions and Resolutions.** Each and every action of the Board necessary for the governance and management of the affairs of District, for the execution of the powers vested in District, and for carrying into effect the

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provisions of Article 1 of Title 32, C.R.S., shall be taken by the passage of motions or resolutions.

- e. **Minute Book.** Within a reasonable time after passage, all resolutions, motions and minutes of Board meetings shall be recorded in a book kept for that purpose and shall be attested by the Secretary.
 - 1.) Minutes of regular sessions shall be available for public review as soon as practicable.
 - 2.) Minutes of executive sessions 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.
- f. **Acquiring Professional Assistance.** Any director or resident, who contacts the District's attorneys, engineers, accountants, vendors and tradesmen, or other professional persons without first obtaining approval of the Board, may do so at their own expense. The President may contact the approved attorney when necessary and advise the Board in total.

8. Directors, Officers and Personnel.

- a. **Director Qualifications and Terms.** Directors shall be electors of the District. The term of each Director shall be determined by relevant statutory provisions with elections held in even numbered years and conducted in the manner prescribed by Articles 1 through 13, Title 1, and Part 8, Article 1, Title 32, C.R.S. Each Director shall sign an oath of office and, at the expense of the District, furnish a faithful performance surety bond in a sum of not less than \$1,000.
- b. **Director's Performance of Duties.** A Director of the District shall perform all duties of a Director, including duties as a member of any committee of the Board upon which the Director may serve, in good faith, in a manner which the Director reasonably believes to be in the best interests of District, 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 Section 8.e.
- c. The Director shall not be considered to be acting in good faith if he has knowledge concerning the matter in question that would cause such reliance to be unwarranted.

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- d. 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.
- e. 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.
- f. **Oath of Office.** Each member of the Board, before assuming the responsibilities of his office, shall take and subscribe an oath of office in the form prescribed by law.
- g. **Election of Officers.** The Board of Directors shall elect from its membership a President, Secretary and Treasurer, who shall be the officers of the Board of Directors and of the District.
 - 1.) The officers shall be elected by a majority of the Directors voting at such election.
 - 2.) The Board may, from time to time, appoint an acting officer in the absence of any individual officer.
 - 3.) The election of the officers shall be conducted every year at the first regular or special meeting of the held in May of even numbered years and in May in the odd numbered years.
 - 4.) Each officer so elected shall serve for a term of one year, which term shall expire upon the election of his or her successor or upon his or her reelection to that office.
- h. **Vacancies.** Any vacancy occurring on the Board shall be filled by an affirmative vote of a majority of the remaining Directors, as prescribed by law. The appointed individual must meet the statutorily prescribed qualifications for Directors and shall serve until the next regular election.

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- i. **Resignation and Removal.** Directors may be removed from office only by recall as prescribed by statute. 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.
- j. **President.** The President shall preside at all meetings. The President is authorized to sign all contracts, deeds, notes, debentures, warrants and other instruments on behalf of the District.
- k. **Secretary.**
 - 1.) In the absence of the President, the Secretary shall preside at all meetings.
 - 2.) The Secretary shall be responsible for the records of the District; may act as Secretary at meetings of the Board and record all votes; shall be responsible for composing a record of the proceedings of the Board in a minute book kept for that purpose, which shall be an official record of the Board; and shall perform all duties incident to that office.
 - 3.) The Secretary shall be the designated election official of the District, unless otherwise determined by the Board, and the custodian of the seal of District.
 - 4.) The Secretary shall have the authority to affix such seal to and attest all contracts and instruments authorized to be executed by the Board.
- l. **Treasurer.**
 - 1.) The Treasurer shall be authorized to invest all surplus funds or other available funds of the District in permitted investments authorized by law or as specified by the Board.
 - 2.) The Treasurer shall keep or cause to be kept strict and accurate accounts of all money received by and disbursed for and on behalf of District in permanent records.
 - 3.) The Treasurer shall file with the Clerk of the Court, at the expense of the District, a corporate fidelity bond in an amount determined by the Board of not less than \$5,000, conditioned on the faithful performance of the duties of the Treasurer's office.

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- 4.) The Treasurer shall be a member of the HGA Budget and Finance Committee.
 - 5.) The Treasurer shall be responsible for the preparation and presentation of the Budget to the District.
- m. **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 will be responsible for recording all votes and composing a record of the proceedings of the Board in the minute book. 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.
- n. **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 District, by law, or by special exigencies, which shall later be ratified by the Board.
- o. **Administrator.** The Administrator shall be as described in Section 4.a.1.) and shall perform all duties in conformance with Section 4.b.
- 1.) The Administrator shall have general supervision over the administration of the affairs, and business of the District and shall be charged with the hiring and discharging of employees and the management of District properties.
 - 2.) The Administrator shall have the care and custody of the general funds of the District and shall deposit the same in the name of District in such banks or savings associations as the Board may select.
 - 3.) The Administrator will approve all vouchers, orders and checks for payment.
 - 4.) The Administrator shall keep regular books of account of all District transactions and shall obtain, at the District's expense, such bond for the faithful performance of its duties as the Board may designate.
- p. **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

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consultants and attorneys may be entered into on such terms and conditions as may seem reasonable and proper to the Board.

9. Financial Administration.

- a. **Fiscal Year.** The fiscal year of the District shall commence on January 1 of each year and end on December 31.
- b. **Budget Committee.** There shall be a committee, composed of the District Treasurer, members of the HGA Budget & Finance Committee, and the designated Management Agent, which shall be responsible for preparation of the annual budget for the District.
- c. **Budget.**
 - 1.) On or before the regular November meeting of the District Board, the Management Agent shall prepare and submit to the District Board a proposed budget for the ensuing fiscal year.
 - 2.) The 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.
 - 3.) The propose budget shall be supported by explanatory schedules or statements classifying the expenditures contained therein by services, subjects and funds.
 - 4.) The anticipated income of the District shall be classified according to the nature of receipts.
- d. **Notice of Budget.** Upon receipt of the proposed budget, the Board shall cause to be published a notice that the proposed budget is open for inspection by the public at the business office; that the Board will consider the adoption of the proposed budget at a public hearing on a certain date; and that any interested elector may inspect the proposed budget and file or register any objections thereto at any time prior to its final adoption. Notice shall be posted or published in substantial compliance with law.
- e. **Adoption of Budget.** On the day set for consideration of such proposed budget, the Board shall review the proposed budget and revise, alter, increase or decrease the items, as it deems necessary in view of the

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needs of the District and the probable income of the District. The Board shall then adopt a budget setting forth the expenditures to be made in the ensuing fiscal year. The Board shall provide for sufficient revenues to finance expenditures in the budget with special consideration given to the proposed property tax levy.

- f. **Levy and Collection of Taxes.** On or before December 1st of each year, unless an election for an increased operating tax levy is held, the Board shall certify to the Board of County Commissioners of the County 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 will levy such tax upon the assessed valuation of all taxable property within District.
- g. **Filing of Budget.** On or before January 30th of each year, the Board shall cause a certified copy of such budget to be filed with the Division of Local Government in the State Department of Local Affairs.
- h. **Appropriating Resolution.**
 - 1.) At the time of adoption of the budget, the Board shall enact a resolution making appropriations for the ensuing fiscal year. The amounts appropriated there under shall not exceed the amounts fixed therefore in the adopted budget.
 - 2.) The income of the District, as estimated in the budget and as provided for in the tax levy resolution and other revenue and borrowing resolutions, shall be allocated in the amounts and according to the funds specified in the budget for the purpose of meeting the expenditures authorized by the appropriation 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 appropriation resolution, including any legally authorized amendment thereto, in excess of the amounts of such appropriation for that fiscal year. Any contract, verbal or written, contrary to this Section shall be void ab initio, and no District funds shall be expended in payment of such contracts, except stated in Section 9.j. and 9.k.

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j. 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-thirds 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 State Department of Local Affairs and shall be published in compliance with statutory requirements.

k. 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.

l. Annual Audit.

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

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- 2.) A copy of the audit report shall be maintained by the District as a public record for public inspection at all reasonable times.
- 3.) A copy of the audit report shall be forwarded to the State Auditor or other appropriate State official pursuant to statutory requirements.
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 public and private corporations generally use seals. The Secretary shall have custody of the seal and shall be responsible for its safekeeping and care.
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.
12. **Compensation.** Members of the Board shall not receive any compensation for their service. No member of the Board shall receive any compensation as an employee of the District or otherwise. No member of the Board shall be interested in any contract or transaction with the District except in his official representative capacity.
13. **Indemnification of Directors and Employees.** The District shall defend, hold harmless and indemnify any Director, officer, agent, or employee, whether elective or appointive, against any tort or liability, claim or demand, without limitation, arising out of any alleged act or omission occurring during the performance of official duty, as more fully defined by law or by an indemnification resolution. The provisions of this Section shall be supplemental and subject to and, to the extent of any inconsistency therewith, shall be modified by the provisions of the Colorado Governmental Immunity Act, 24-10-101, et seq., C.R.S.
14. **HGMD Foundation.** There shall be a Standing Committee known as the HGMD Foundation. A Director of the District shall be the Chair of the Committee with at least four non-board members of the District. The Committee Chair shall provide a report of the Committee proceedings to the District. The Committee shall solicit, review, and approve all donations to the District. The Treasurer or his designee shall receive all donations to the District.
15. **Bidding and Contracting Procedures.** Except in cases in which a.) The District will receive aid from a government agency or purchase through the state purchasing program or, b.) Makes improvements to District property under provisions of the Integrated Delivery Method for Special District Public Improvements Act, 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

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of District funds. The District 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. All other statutory requirements relating to performance bonds, retainage, and similar matters shall also be complied with.

16. **Modification of Bylaws.** These Bylaws may be altered, amended or repealed at any regular or special meeting of the full Board by an affirmative vote of four (4) Directors to become effective immediately or at a subsequent date.

ADOPTED this 17th day of June 2010, by the Board of Directors of Heather Gardens Metropolitan District.



Allen Lindeman, President



Ronald E. Dissette, Secretary



William Archambault, Treasurer



Mavis Richardson, Director



Sandra Knight, Director

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