



COLORADO

Department of Transportation

Clean Transit Enterprise Board

January 31, 2022



AGENDA

Topic	Presenter
Welcome, Board Member & CDOT Staff Introductions (10 min)	
Background (5 min)	Kay Kelly, CDOT
Powers and Duties of the Board (10 min)	Herman Stockinger, CDOT
Bylaws and Articles of Organization (10 min)	Herman Stockinger, CDOT
Board Officers (5 min)	Kay Kelly, CDOT
CTE Revenue Estimates and Start up Loan Agreement (5 min)	Jeff Sudmeier, CDOT
Rulemaking (10 min)	Herman Stockinger, CDOT
Board Ethics Training (30 min)	Kathy Young, COAG
Wrap Up and Next Steps (5 min)	



Board Composition, Terms and Vacancies

Composition: The governing board of the enterprise consists of nine (9) members. The Governor shall appoint six (6) members with the advice and consent of the Senate. The Governor shall make reasonable efforts to consider members that reflect the state's geographic diversity when making appointments.

Term: Those members appointed by the Governor serve for terms of four years

- However, for the first term, three (3) of the appointed Members shall serve an initial term of three (3) years.
- The Transportation Commission Member Appointee shall continue to serve as an Enterprise Board Member for as long as they serve as a Commissioner.
- The Members serving as designees of the Department of Transportation, the Colorado Energy Office, and the Department of Public Health and Environment shall serve for as long as they hold their agency positions or are designated to serve.

Vacancies: Members appointed to fill a vacancy will serve the remainder of the unexpired term of the former member.



Members of the Clean Transit Enterprise Board

For terms expiring 9/28/2024

Matt Frommer (Denver): Member with an expertise in zero-emissions transportation, motor vehicle fleets or utilities

Bonnie Trowbridge (Berthoud): Member representing a public advocacy group that has transit or comprehensive transit expertise

Vacant: Member representing a transportation-focused organization that services an environmental justice community

For terms expiring 9/28/2025

Mark Garcia (Pagosa Springs): Member of the Transportation Commission and have statewide transportation expertise

Cris Jones (Boulder): Member representing an urban area, having transit expertise

David Averill (Telluride): Member representing a rural area having transit expertise

Agency Appointments

Shoshana Lew: CDOT Executive Director

Kelly Blynn: Colorado Energy Office designee

Richard Coffin: Colorado Department of Public Health & Environment designee



Background



SB21-260 Electrification Investments



\$733 million of new fee revenue supports 3 new electrification and charging infrastructure Enterprises:

Charging Infrastructure & Electric Vehicle Equity

- ◆ New ‘**Community Access**’ **Enterprise** in Colorado Energy Office (CEO).
- ◆ Build charging infrastructure in communities across the State, and support electric vehicle and eBike adoption in low and moderate income communities.
- ◆ **\$310 million** investment
- ◆ Paired with existing CO EV Infrastructure Fund - \$115 million and potential federal funding

Fleet Electrification Incentives

- ◆ New ‘**Clean Fleet**’ **Enterprise** in CO Department of Public Health and Environment (CDPHE)
- ◆ Support fleet replacement (delivery trucks, TNCs, school buses, and other light/medium/heavy duty vehicles) with incentives to meet climate and air quality goals
- ◆ Support CDPHE’s Mobile Source Program to complement vehicle investment.
- ◆ **\$289 million** investment

Public Transit Electrification

- ◆ New “**Clean Transit**” **Enterprise** in Colorado Department of Transportation (CDOT).
- ◆ Support electrification of public transit through electrification planning efforts, facility upgrades, fleet vehicle replacements and associated charging infrastructure.
- ◆ **\$134 million** investment



CDOT's ZEV Goals

PD 14 Environmental Impact Objectives & Targets

CDOT will work collaboratively with other state agencies and local partners to reduce statewide GHG pollution from the transportation sector by **26% by 2025, 50% by 2030, 90% by 2050** relative to 2005 statewide GHG pollution levels.

Collaborate with other state agencies to increase electric vehicle registrations to support a future fleet of at least **940,000 light-duty EVs by 2030**.

Work with other state departments, transit agencies, and electric utilities to meet the transit vehicle goals specified in its 2020 Electric Vehicle Plan to **convert the state transit fleet to 100% ZEV by 2050, with an interim target of at least 1,000 ZEVs by 2030**.

Collaborate with other state agencies, local governments, and private companies to increase the percentage of total **state highway miles within a 30-mile travel buffer of DC fast-charging stations** from 40% in FY 2020 to 100% by FY 2030.

Coordinate with other state agencies, the Colorado Scenic & Historic Byways Commission, local governments, and individual site hosts to **increase the number of Colorado Scenic & Historic Byways classified as electrified byways** from 3 in FY 2020 to 26 by the end of FY 2025.





M/HD ZEV Phase-In

ZEVs are likely to be adopted in multiple “waves”, but we need to prepare our policies and investments now in order to maximize the benefits in future years.

Wave 1: Transit



Multiple vehicles available and actively operating in many regions

Wave 2: Delivery



Some vehicles available, pilot deployments and limited fleet usage underway

Wave 3: Medium Freight & Service



Pilots, demonstration projects, and announcements of future models

Wave 4: Heavy Regional Freight



Demos and announcements, but require more infrastructure to scale up

Wave 5: Corridor Long-Haul



Aspirational, requiring major infrastructure investments nationwide

2020

?

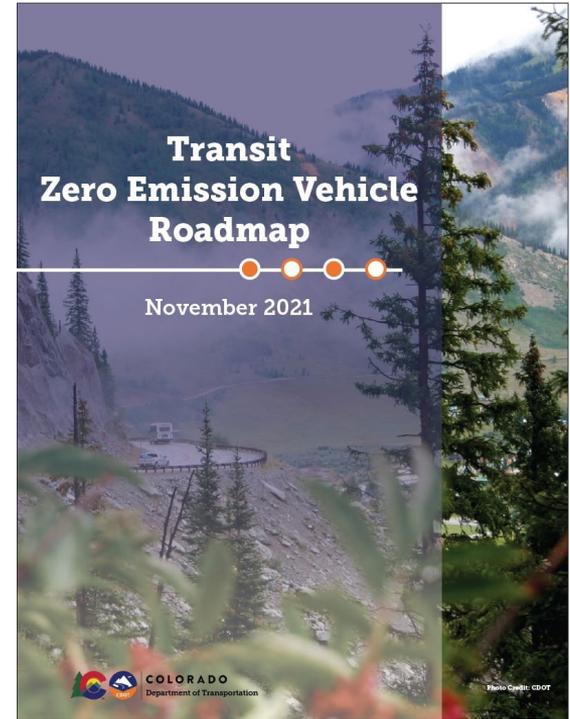
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2050



Transit ZEV Roadmap

- Developed over the course of 2021
- Statewide assessment of barriers and opportunities for transit fleet electrification
- Inventory of current fleet make-up, timeline for achieving state adoption targets, and analysis of the cost to transition
- Detailed Presentation at the next CTE Board Meeting





Purpose, Authority and Powers & Duties of the Clean Transit Enterprise Board



Business Purpose of the Clean Transit Enterprise

The Clean Transit Enterprise is created to serve the primary business purpose of reducing and mitigating the adverse environmental and health impacts of air pollution and greenhouse gas emissions produced by retail deliveries by:

- Supporting the replacement of existing gasoline and diesel public transit vehicles with electric motor vehicles,
- Providing the associated recharging infrastructure for electric transit fleet motor vehicles,
- Supporting facility modifications that allow for the safe operation and maintenance of electric transit motor vehicles,
- Funding planning studies that enable transit agencies to plan for transit vehicle electrification



Powers and Duties/Reporting

- Promulgate rules to impose a “Clean Transit Retail Delivery Fee” and govern the process for awarding and overseeing grants.
- Notify the Department of Revenue by March 15 each year of the amount of the fee that would begin July 1.
- Issue Grants (and Loans and Rebates); Issue Revenue Bonds.
- Accept Loans from CDOT and reimburse the Department of any loans received.
- By June 1, 2022 publish a 10-Year Plan that “details how the enterprise will execute its business purpose and estimate the funding available for ten years.
- Create, maintain and regularly update on its website a “public accountability dashboard” that includes the funding status and progress toward completion of each project.”
- Prepare an annual report that details activities of the enterprise and present the report to the Transportation Commission and House and Senate Transportation Committees.



Choosing Projects and Seeking Public Input

- Issue grants, loans, rebates, revenue bonds to fund:
 - Clean transit planning efforts
 - Facility upgrades necessary for the safe operation and maintenance of electric motor vehicles used by public transit providers
 - The construction of electric motor vehicle charging infrastructure used by public transit providers
 - The replacement of motor vehicles used by public transit providers that are not electric motor vehicles by electric motor vehicles
 - If electric motor vehicles are not practically available, by compressed natural gas motor vehicles, if at least ninety percent (90%) of the fuel for compressed natural gas motor vehicles will be recovered methane
- Award grants on a competitive basis based on written criteria established by the enterprise in advance of grant submission deadlines.
- The Enterprise shall engage regularly regarding its project and activities with the public, specifically reaching out to and seeking input from communities, including but not limited to disproportionately impacted communities, and interest groups that are likely to be interested in the projects and activities



Other Powers and Duties

In addition to any other powers and duties already mentioned, the board has the following general powers and duties:

- To adopt bylaws for the regulation of its affairs and the conduct of its business
- To acquire, hold title to, and dispose of real and personal property
- To employ and supervise individuals, professional consultants, and contractors as are necessary in its judgement to carry out its business purpose
- To contract with any public or private entity
- To seek, accept, and expend gifts, grants, donations
- Contract with the Air Pollution Control Division of the Department of Public Health and Environment to develop proposed rules that will support the Enterprise's business services, including remediation services, in a manner that maintain compliance with the Federal and State statutes, rules and regulation governing air quality.



Board Bylaws



Bylaws and Articles of Organization

Enterprise Bylaws - details how the Board shall function

- Board Composition and Details
- Frequency and Method of Holding Meetings
- Open Meetings and Open Records
- Officers and Staff
- Fiscal Year and Budget
- Miscellaneous Provisions

Articles of Organization - mostly reiterates statute

- Business Purpose
- TABOR Exemption
- Powers and Duties
- Revenues and Expenditures
- Need to Adopt Bylaws



Board Officers and Staff



Elected Positions

Chairperson: The principal duties of the Chairperson shall be to preside at all meetings of the Enterprise Board, to serve as the principal spokesperson for the Enterprise, and to aid the Secretary in coordination of meetings and agendas, and to perform all duties incident to the office

Vice-Chairperson: The principal duty of the Vice-Chairperson shall be, in the absence or disability of the Chairperson, to perform all the duties of the chairperson, and when acting shall have all the powers of the Chairperson. The Vice-Chairperson shall also have such powers and perform such duties as from time to time may be prescribed by the Membership

The Board may appoint other officers as it deems necessary and appropriate



CDOT Staff Support Positions

Secretary: Jennifer Uebelher (backup - Deseri Scott)

- a member of the CDOT staff
- shall keep the records of the Enterprise Board
- shall perform all of the other administrative duties usually pertaining to this office, including taking the minutes of Enterprise Board meetings, and coordinating all communications, announcements, etc.
- shall work with the Chair to coordinate Enterprise Board meeting details, including securing a location, posting the agenda, board packets, and notification of meetings

Program Administrator: Kay Kelly

- a senior member of the CDOT staff
- assigned to provide strategic management and support for the Enterprise Board.
- shall serve as a point of contact for the Enterprise and the Enterprise Board.
- may suggest policies, procedures, and agenda items for the Board's consideration and shall see that all policies, directions and orders of the Board are carried out.



Startup Loan Agreement & Revenue Estimates



Clean Transit Enterprise Expected Revenue

Clean Transit Retail Delivery Order Fee

FY 2022-23 to FY 2031-32

Clean Transit Retail Delivery Order Fee -

Fiscal Year	Rate Per Trip	Total
FY 2021-22	\$0.0000	\$0
FY 2022-23	\$0.0300	\$8,280,329
FY 2023-24	\$0.0308	\$9,132,872
FY 2024-25	\$0.0308	\$9,834,347
FY 2025-26	\$0.0323	\$11,134,125
FY 2026-27	\$0.0331	\$12,308,104
FY 2027-28	\$0.0339	\$13,617,560
FY 2028-29	\$0.0339	\$14,712,367
FY 2029-30	\$0.0357	\$16,716,268
FY 2030-31	\$0.0366	\$18,549,225
FY 2031-32	\$0.0375	\$20,606,029
10-Year Total		\$134,891,225



Clean Transit Enterprise Loan

- The Enterprise currently has no operating budget and no source of funding.
- Staff has prepared a loan (SB21-260 requires funds to be repaid and prohibits a grant). The loan was approved by the Transportation Commission on December 16, 2021, contingent on approval by the Enterprise Board.
- Repayment starts September 1, 2022 and the deadline for the principal amount and the interest (2% annually) on the unpaid principal balance is June 30, 2023. The Enterprise has the option to prepay all or a portion of the loan principal without penalty.



Clean Transit Enterprise Loan

Expense Description	Quantity	FY22 Funding
Director	5.0% of 1.0 FTE	\$6,500
Office of Innovative Mobility (OIM) Chief	2.5% of 1.0 FTE	\$3,500
OIM Staff	50.0% of 1.0 FTE	\$37,500
Program Assistant	5.0% of 1.0 FTE	\$2,750
Division of Accounting and Finance (DAF) Staff	15.0% of 1.0 FTE	\$15,000
Policy Staff	2.5% of 1.0 FTE	\$2,500
Board Travel/Reimbursement	\$1,000 per mtg (6)	\$6,000
Meeting Expenses	\$100 per mtg (6)	\$600
Total		\$73,500



Rulemaking



Rulemaking for Enterprise Fee Setting & Grant Process

Statutory Purpose for Rule: Set the Fees & Govern Grant Process

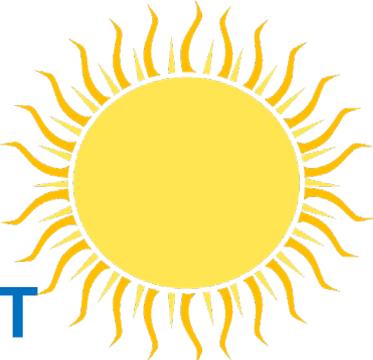
- “Clean Transit Retail Delivery Fee” of 3 cents for retail deliveries of tangible personal property.
- Govern the process for awarding and overseeing grants (staff recommendation uses current State Management Plan process)

Process and Timeline

- Open Rule: Enterprise Opens Rule late February, authorizes CDOT Hearing Officer to conduct Public Hearing
- File Rule: CDOT staff “files the rule” with the Secretary of State
- Public Hearing: CDOT staff conducts public hearing per the Administrative Procedures Act in late March or early April
- Adopt Rule: Enterprise Board adopts Rule in mid April
- Effective Date: As early as May 31.



Board Ethics Training



ANNUAL BEST PRACTICES TRAINING

**Nonattainment Area Air Pollution Mitigation Enterprise
Board Meeting - January 27, 2022**

**Kathy Young
First Assistant Attorney General
Transportation Unit**

Best Practices

- Section 24-3.7-102, C.R.S., requires annual training in several areas including:
 - ◆ Statutory powers and duties;
 - ◆ Identifying and managing conflicts of interest;
 - ◆ Understanding the requirements of the Colorado Open Records Act and open meetings laws.

GOVERNING STATUTE



Section 43-4-1303, C.R.S. – A copy of the statute is attached.

- TABOR-exempt Enterprise
- Government-owned business within CDOT.
- Type 1 Transfer



Conflict of Interest

- Rules of Conduct – A Commissioner who receives no compensation other than a per diem allowance . . . “shall not perform an official act which may have a direct economic benefit on a business or other undertaking in which such member has a direct or substantial financial interest.”

Section 24-18-108.5, C.R.S.

- Voluntary Disclosure – Two step process:

- ◆ You can make a written disclosure to the Secretary of State that adequately describes the financial interest; and
- ◆ Immediately before the vote, you state for the record the fact and summarize the nature of the interest.

Section 24-18-110, C.R.S.

CORA – In a Nutshell



All public records **shall** be open for inspection by any person at reasonable times, except as provided in part 2 or as otherwise provided by law.

- ◆ Section 24-72-203, C.R.S.



Key Concept – “Public Record”

- “...includes all writings...
- ...made, maintained, or kept...
- ...by the state, any agency, institution, a nonprofit corporation incorporated pursuant to section 23-5-121(2), C.R.S., or political subdivision of the state...”
- Section 24-72-202(6)(A)(I), C.R.S.

Is My Record a “Public Record”?

- What is a public record? Definition is very broad and includes:
 - ◆ Internal and external communications, such as might take place among agency staff, between staff and a board, between board members, between staff, between members of one agency and another agency, and between members of the public/3rd parties.
 - ◆ No limitation on means of communication. A “public record” includes both hard-paper documents and electronic records/documents.

Record, but Not a “Public Record”

- CORA exempts numerous documents from the definition of “public records.” Those are found in section 24-72-202(6), C.R.S.
 - ◆ Most exemptions will not apply to this Board.
 - ◆ Work product prepared for elected officials is exempt.

Public Record Denial of Inspection

- Basis for denying inspection of “public records” found in section 24-72-204, C.R.S.
- Reasons are many, and range from “contrary to any state statute” and court order, to reasons in the public interest such as test questions and scoring keys from licensing exams, security arrangements, trade secrets, certain employment records, etc.

Deliberative Process Privilege

- One such exception is the deliberative process or governmental privilege found in section 24-72-204(3)(a)(XIII), C.R.S. and covers records “if the material is so candid or personal that public disclosure is likely to stifle honest and frank discussion within the government, unless the privilege has been waived.”

Other Reasons to Deny

- Discretionary denial – Section 204(2)(a) – “may deny... unless otherwise provided by law...”
- Mandatory denial – Section 204(3)(a) “shall deny the right of inspection, unless otherwise provided by law...”
- Know your organic act and any related statutes for additional reasons to withhold. Don't forget relevant federal statutes.
- Be ready to explain denial – the applicant may request a written statement of the grounds for denial.

But I Want them NOW!

- The requestor must have access to the records within a “reasonable time.”
- “a ‘reasonable time’ shall be presumed to be three working days or less.”
 - ◆ Sec. 24-72-203(3)(b), C.R.S.
- The period may be extended by seven working days upon finding of “extenuating circumstances.”
 - ◆ Sec. 24-72-203(3)(b), C.R.S.

Extenuating Circumstances

- Section 203(3) spells out what constitutes “extenuating circumstances” and “shall be provided to the person making the request within the three-day period.”
- Most common: “A request involves such a large volume of records that the custodian cannot reasonably prepare or gather the records within the three-day period without substantially interfering with the custodian’s obligation to perform his or her other public service responsibilities.” Section 203(3)(b)(III).
- In no event can extenuating circumstances apply to a request that relates to a single, specifically identified document.” Section 24-72-203(3)(c), C.R.S.

Remedies

Options for Denial of Access Include:

- Fourteen day “cooling off” period – Section 24-72-204(5)(a), C.R.S.
- Requestor may apply to the district court for an order, with court costs and reasonable attorney fees to the prevailing party. Sec. 24-72-204(5), C.R.S.
- Custodian may sue to obtain a declaratory order determining status of records for CORA request where it cannot be determined. **NO ATTORNEYS FEES!** Section 24-72-204(6), C.R.S.

Open Meetings Law (OML)

- “It is declared to be a matter of statewide concern and the policy of this state that the formation of public policy is public business and may not be conducted in secret.” Section 24-6-401, C.R.S.
- To give citizens an expanded opportunity to become fully informed on issues of public importance
- To allow citizens to participate in the legislative decision-making process that affects their personal interests



What is a Meeting?

A Meeting is Defined by the Act as:



Any kind of **gathering**, convened to discuss **public business**, in person, by telephone, electronically, or by other means of communication.



Section 24-6-402(1)(b)

When Are Meetings Considered Public?

- All meetings of two or more members of a state public body at which any **public business** is discussed or at which any **formal action** (public policy, rule making, legislation, policy making, interpretation of policies, rules, regulations, guidance documents or the like) may be taken are declared to be public meetings open to the public at all times. Section 24-6-402(2)(a)
- To determine whether “public business” is discussed, Court looks to policy-making responsibilities and powers of the state body

Board of County Comm'rs v. Costilla County Conservancy Dist, 88 P.3d 1188, 1189 (Colo. 2004); *Intermountain Rural Elec. Assn. v. Colo. PUC*, 298 P.3d 1027 (Colo. App. 2012)



What is Proper Notice?

- Notice must be “full and timely.” Section 24-6-402(2)(c)
- “Full notice” is objective, to be interpreted in light of an ordinary member of the community to whom it is directed . . . to provide fair notice to members of that community. *Town of Marble v. Darien*, 181 P.3d 1148 (Colo. 2008).
- Open Meetings Law imposes no requirement that specific advance notice be given of formal actions that might be taken. Notice is sufficient as long as the items actually considered at the meeting are reasonably related to the subject matter indicated by the notice. *Id.*
- Posting must occur no less than 24 hours prior to the meeting



What Does the Notice Include?

- Date and time of the meeting
- Location of the meeting
- Agenda for meeting
- Specific agenda information if possible
- ADA Considerations?



Minutes

- Minutes are prepared for all meetings. Section 24-6-402(2)(d).
- Minutes are open to the public for review. *Id.*
- Minutes of meeting during which an executive session is authorized shall only reflect the topic discussed in executive session. *Id.*



Email discussions between members regarding public business are subject to public inspection.

What is Executive Session?

- Meeting of the board without the public present
- Can only be used for discussions of specific topics
- Cannot be used to take any formal action
- Exception to Open Meetings Law



Privileged Communications

- Attorney-client privileged discussions are confidential by the Open Meetings Law as well as state statute C.R.S §13-90-107(1)(b) and federal law.
- Privileged communications during Executive Session may be required to be electronically recorded



Executive Session is a Limited Discussion?



- Members may only discuss the topic(s) that were announced during the open public meeting and which were specifically referred to executive session
- Must follow exact process

Examples of Topics

- **Conferences with an attorney representing the state public body** concerning disputes involving the public body that are the subject of pending or imminent court action, concerning specific claims or grievances, or for purposes of receiving legal advice on specific legal questions.
- Matters required to be kept **confidential** by federal law or rules, state statutes, or in accordance with the requirements of any joint rule of the senate and the house of representatives pertaining to lobbying practices;
- Specialized details of security arrangements or investigations, including defenses against terrorism, both domestic and foreign, and including where disclosure of the matters discussed might reveal information that could be used for the purpose of committing, or avoiding prosecution for, a violation of the law;
- Determining positions relative to matters that may be subject to negotiations with employees or employee organizations; developing strategy for and receiving reports on the progress of such negotiations; and instructing negotiators;
- All meetings held by members of a state public body subject to this part 4 to consider the appointment or employment of a public official or employee or the dismissal, discipline, promotion, demotion, or compensation of, or the investigation of charges or complaints against, a public official or employee shall be open to the public unless said applicant, official, or employee requests an executive session.

What Cannot Occur in Executive Session?

- Adoption of any proposed policy, position, resolution, rule, regulation, or formal action. Section 24-6-402(3)(a).
- No additional matters may be discussed.



When Don't You Need a Meeting?

- Chance meetings
- Social gatherings at which discussion of public business is not the central purpose
- Other events in which public business is not the central purpose

Section 24-6-402(e), C.R.S.



Failure to Comply With OML

- **Invalidation.** Decisions of the Board may be invalidated should the Board fail to adhere to the requirements of the Open Meetings Law. This may occur in the case of a regularly-scheduled meeting that has not been properly noticed or in a situation where two or more Board members discussed an agenda item in a context outside of a regular meeting. Section 24-6-402(8), C.R.S.
- **Willful Misconduct.** Members who engage in “meetings” outside the regularly scheduled public meetings may be found to have been engaged in “willful misconduct” and, therefore, be subject to removal from the Board.
- **Negative Publicity/Litigation.** Failure to follow the requirements of the Open Meetings Law may result in the Board, and its members, being questioned publicly concerning the content of the alleged outside conversations. Not only does this impact negatively upon the Board but, moreover, should litigation ensue, members may be required to testify against other members either in deposition or at hearing regarding the alleged failure to comply with the law. The remedies available to a party who has been successful in proving a violation of the Open Meetings Law include injunctive relief, costs, and attorney fees. See § 24-6-402(9), C.R.S.
- **Release of Otherwise Confidential Information.** A court may open the portion of the executive session that was held in violation of the Open Meetings Law. Consequently, otherwise confidential information discussed in executive session may be disclosed publicly. Section 24-72-204(5.5), C.R.S; see, e.g., *Gumina v. City of Sterling*, 119 P.2d 527, 532 (Colo. App. 2004) (holding that if a local public body fails strictly to comply with the requirements set forth to convene an executive session, it may not avail itself of the protections afforded by the executive session).

Virtual Open Meetings

- Open meetings may be held virtually.
- Public comments are not required, but there are some tips if a board does want to have a public comments be part of an open meeting.





Wrap Up and Next Steps



- Scheduling Poll for Next Meeting Forthcoming
- Proposed Topics for Next Meeting:
 - Transit Zero Emission Vehicle (ZEV) Roadmap
 - Enterprise 10 Year Plan Development
 - Opening of the Rulemaking to:
 1. “promulgate rules to set the amount of the Clean Transit Retail Delivery Fee and
 2. govern the process by which the Enterprise accepts applications for awards, and oversees grants, loans, and rebates”
- Upcoming Deadlines:
 - June 1, 2022 - publish and post to its website a ten-year plan that details how the Enterprise will execute its business purpose during Fiscal Years 2022-23 through 2031-32, and estimates the amount of funding needed to implement its plan
- The CTE Board will likely need to meet monthly through June 2022 in order to make progress on several required decision points and to meet statutory deadlines.



Clean Transit Enterprise Information

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<https://www.codot.gov/programs/innovativemobility/cte>



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- Mobility Services
- Electrification
- Transit and Rail
- Electric Vehicle Ride & Drive Event
- Clean Transit Enterprise >

Clean Transit Enterprise

To support Colorado's transit electrification through planning efforts, transit site upgrades, procurement of electric transit buses, and deployment of associated charging infrastructure.



Contact Us

cdot_cleantransitenterprise@state.co.us

Resources

- Board Appointments
- Enterprise Funds
- Board Powers & Duties

Upcoming Meetings

January 31, 2022 2:30 - 4:30 pm

[Link to YouTube Live Stream](#)



THANK YOU!

