

**NONATTAINMENT AREA AIR POLLUTION MITIGATION  
ENTERPRISE**

**ARTICLES OF ORGANIZATION**

**PREAMBLE**

The General Assembly of the State of Colorado (the “State”) found and declared in C.R.S. 43-4-1301 that:

(a) Rapid and continuing growth in retail deliveries made by motor vehicles and in prearranged rides arranged through transportation network companies has increased and will continue to increase traffic congestion and air pollution from motor vehicle emissions, along with the adverse environmental and health impacts that result from such pollution, in nonattainment areas, including but not limited to disproportionately impacted communities and communities adjacent to highways;

(b) It is necessary and appropriate to offset and mitigate these impacts by creating a nonattainment area air pollution mitigation enterprise that has the business purpose of providing funding for eligible projects that reduce traffic congestion, including demand management projects that encourage alternatives to driving alone, and thereby reduce travel delays, engine idle time, and unproductive fuel consumption or that directly reduce emissions by means such as retrofitting of construction equipment;

(c) Instead of reducing the impacts of retail deliveries and prearranged rides arranged through transportation network companies, by limiting retail delivery and prearranged ride activity through regulation, it is more appropriate to continue to allow persons who receive retail deliveries and benefit from the convenience afforded by unfettered retail deliveries and to allow transportation network companies that arrange prearranged rides to continue to provide that service without undue restrictions and to instead impose a small fee on each retail delivery and prearranged ride and use fee revenue to fund necessary mitigation activities.

(d) The creation of a nonattainment area air pollution mitigation enterprise is in the public interest and will promote the health, safety, and welfare of all Coloradans and visitors to the state by mitigating the impacts of prearranged rides arranged through transportation network companies and residential and commercial deliveries on the state's transportation infrastructure, air quality, and emissions.

The General Assembly thereupon created in C.R.S. § 43-4-1303(1)(a) a nonattainment area air pollution mitigation enterprise as a government-owned business in the Colorado Department of Transportation (the “Department”).

## **Article I. Name**

The nonattainment area air pollution mitigation enterprise created in C.R.S. § 43-4-1303(1)(a) shall be known as the NONATTAINMENT AREA AIR POLLUTION MITIGATION ENTERPRISE (“Enterprise”).

## **Article II. Authority**

The Colorado Legislature approved the creation of the Nonattainment Area Air Pollution Mitigation Enterprise during its regularly scheduled session in 2021, and the Governor of the State of Colorado signed SB 21-260 into law on June 17, 2021. The Enterprise shall function pursuant to these Articles of Organization until such time as it may be abolished by a specific action under applicable Colorado state law.

## **Article III. Purpose**

The business purpose of the Enterprise is to mitigate the environmental and health impacts of increased air pollution from motor vehicle emissions in nonattainment areas that results from the rapid and continuing growth in retail deliveries made by motor vehicles and in prearranged rides provided by transportation network companies by providing funding for eligible projects that reduce traffic, including demand management projects that encourage alternatives to driving alone or that directly reduce air pollution, such as retrofitting of construction equipment, construction of roadside vegetation barriers, and planting trees along medians. To accomplish this purpose, the Enterprise may impose an air pollution mitigation per ride fee and an air pollution mitigation retail delivery fee; issue grants, loans, and rebates; and issue revenue bonds payable from the revenue and other money available to the Enterprise.

## **Article IV. TABOR Exemption**

As provided in C.R.S. § 43-4-1303(4), the Enterprise constitutes an “enterprise” for purposes of section 20 article X of the state constitution so long as it retains the authority to issue revenue bonds and receives less than ten percent of its total annual revenue in grants from all Colorado state and local governments combined. By providing impact remediation services as authorized by C.R.S. § 43-4-1301 *et seq.*, the nonattainment area air pollution mitigation enterprise provides a benefit to fee payers when it remediates the impacts they cause and therefore operates as a business in accordance with the determination of the Colorado supreme court in *Colorado Union of Taxpayers Foundation v. City of Aspen*, 2018 CO 36. Consistent with the determination of the Colorado supreme court in *Nicholl v. E-470 Public Highway Authority*, 896 P.2d 859 (Colo. 1995), that the power to impose taxes is inconsistent with enterprise status under section 20 of article X of the state constitution, the general assembly declared that the revenue collected by the Enterprise is generated by fees, not taxes, because the air pollution mitigation per ride fee and the air pollution mitigation retail delivery fee imposed by the Enterprise as authorized by C.R.S. § 43-4-1303(7) and (8) are imposed for the specific purpose of allowing the enterprise to defray the costs of providing the remediation services specified by

law, including mitigating impacts to air quality and greenhouse gas emissions caused by the activities on which the fees are assessed, and contribute to the implementation of the comprehensive regulatory scheme required for the planning, funding, development, construction, maintenance, and supervision of a sustainable transportation system. The fees are collected at rates that are reasonably calculated based on the impacts caused by fee payers and the cost of remediating those impacts.

**Article V. Enterprise Board**

The Board of the Enterprise shall consist of up to seven (7) Members as described and defined in C.R.S. § 43-4-1303(2)(a).

The Enterprise Board shall exercise their powers and perform their duties as if the same were transferred to the Colorado Department of Transportation by a type 1 transfer, as defined in C.R.S. § 24-1-105.

**Article VI. Officers**

The officers of the Enterprise shall be elected according to the Bylaws of the Board and shall have the duties set forth in the Bylaws.

**Article VII. Powers**

The Enterprise may:

- (a) Impose an air pollution mitigation per ride fee as authorized in C.R.S. § 43-4-1303(7);
- (b) Impose an air pollution mitigation retail delivery fee as authorized in C.R.S. § 43-4-1303(8);
- (c) Issue grants, loans, and rebates as authorized in C.R.S. § 43-4-1303(9); and
- (d) Issue revenue bonds payable from the revenue and other available money of the Enterprise.

In addition to any other powers and duties specified in C.R.S. § 43-4-1303, the Board also has the following powers and duties:

- (a) To adopt bylaws for the regulation of its affairs and the conduct of its business;
- (b) To acquire, hold title to, and dispose of real and personal property;
- (c) To employ and supervise individuals, professional consultants, and contractors as are necessary in its judgment to carry out its business purpose;
- (d) To contract with any public or private entity, including state agencies, consultants, and the attorney general's office, for professional and technical assistance, office space and

administrative services, advice, and other services related to the conduct of the affairs of the Enterprise;

(e) To seek, accept, and expend gifts, grants, donations, or other payments from private or public sources, so long as the total amount of all grants from the state of Colorado and local governments received in any state fiscal year is less than ten (10) percent of the Enterprise's total annual revenue for the state fiscal year;

(f) To publish the processes by which the Enterprise accepts applications, the criteria for evaluating applications, and a list of grantees or program participants. The Enterprise shall actively seek input from communities, including but not limited to disproportionately impacted communities, and local governments to mitigate the environmental and health impacts of highway projects, reduce traffic congestion, and improve neighborhood connectivity for communities adjacent to highways. The Enterprise shall include mitigation strategies that take into account the input as well as issues and impacts of particular importance to the state such as reduction of greenhouse gas emissions and fine particulate matter;

(g) To promulgate rules for the sole purpose of setting the amount of the air pollution mitigation per ride fee and the air pollution mitigation retail delivery fee at or below the maximum amounts authorized by law; and

(h) To have and exercise all rights and powers necessary or incidental to or implied from the specific powers necessary and duties granted by law.

### **Article VIII. Revenues and Expenditures**

The nonattainment area air pollution mitigation enterprise fund has been created in the state treasury. The fund consists of air pollution mitigation per ride fee revenue and air pollution mitigation retail delivery fee revenue credited to the fund pursuant to C.R.S. §§ 43-4-1303(7) and (8), any monetary gifts, grants, donations, or other payments received by the Enterprise, any federal money that may be credited to the fund, and any other money that the general assembly may appropriate or transfer to the fund. The state treasurer shall credit to the fund all interest and income derived from the deposit and investment of money in the fund. Money in the fund is continuously appropriated to the Enterprise for the purposes set forth in C.R.S. § 43-4-1301 *et seq.* and to pay the Enterprise's reasonable and necessary operating expenses, including the repayment of any loan received pursuant to C.R.S. § 43-4-1303(5)(b).

CDOT may transfer money from any legally available source to the Enterprise for the purpose of defraying expenses incurred by the Enterprise before it receives fee revenue or revenue bond proceeds. The Enterprise may accept and expend any money so transferred, and notwithstanding any state fiscal rule or generally accepted accounting principle that could otherwise be interpreted to require a contrary conclusion, such a transfer is a loan from CDOT to the Enterprise that is required to be repaid and is not a grant for purposes of section 20(2)(d) of article X of the state constitution or as defined in C.R.S. § 24-77-102(7). All money transferred

as a loan to the Enterprise shall be credited to the nonattainment area air pollution mitigation enterprise initial expenses fund in the state treasury, and loan liabilities that are recorded in the nonattainment area air pollution mitigation enterprise initial expenses fund but that are not required to be paid in the current fiscal year shall not be considered when calculating sufficient statutory fund balance for purposes of C.R.S. § 24-75-109. The state treasurer shall credit to the fund all interest and income derived from the deposit and investment of money in the nonattainment area pollution mitigation enterprise initial expenses fund. The nonattainment area air pollution mitigation enterprise initial expenses fund is continuously appropriated to the Enterprise for the purpose of defraying expenses incurred by the Enterprise before it receives fee revenue or revenue bond proceeds. As the Enterprise receives sufficient revenue in excess of expenses, the Enterprise shall reimburse CDOT for the principal amount of any loan made by CDOT plus interest at a rate set by CDOT.

**Article IX. Articles of Organization – Amendment**

The Board may amend, supplement, or repeal these Articles of Organization or adopt new Articles of Organization. All such changes shall affect and be binding upon the Enterprise, the Board and Members heretofore, as well as hereafter, authorized. Any amendment, supplement, or repeal of these Articles of Organization, or adoption of new Articles of Organization shall require a majority vote of the Members at any regular meeting of the Board.

**Article X. Bylaws**

The Board shall adopt a set of Bylaws to govern its internal operations and procedures.