



COLORADO

Department of Transportation

Nonattainment Area Air Pollution
Mitigation Enterprise

BOARD OF DIRECTORS MEETING | JUNE 29 2023 | 3:00 PM - 4:30 PM

SCHEDULE AND AGENDA

- | | | |
|-------|---|--------------------------|
| I. | Convene Meeting & Roll Call
<i>Kristin Stephens, NAAPME Chair</i> | 3:00 PM - 3:05 PM |
| II. | <i>Decision Item:</i>
Approval of Minutes from the
May 25, 2023, Board of Directors Meeting
<i>Kristin Stephens, NAAPME Chair</i> | 3:05 PM - 3:10 PM |
| III. | <i>Decision Item:</i>
Appointment of Suzanna Alvarado
as new NAAPME Board Secretary
<i>Kristin Stephens, NAAPME Chair</i> | 3:10 PM - 3:15 PM |
| IV. | Open Meetings Training
<i>Colorado Attorney General's Office</i> | 3:15 PM - 3:45 PM |
| V. | Board Meeting Cadence and Schedule for FY 2024
<i>Darius Pakbaz, NAAPME Program Administrator</i> | 3:45 PM - 4:00 PM |
| VI. | Revenue and Budget Update
<i>Division of Accounting and Finance (CDOT)</i> | 4:00 PM - 4:15 PM |
| VII. | Enterprise Program and Financial Update
<i>Darius Pakbaz, NAAPME Program Administrator</i> | 4:15 PM - 4:30 PM |
| VIII. | Adjournment
<i>Kristin Stephens, NAAPME Chair</i> | 4:30 PM |

Next Governing Board Meeting: TBD



COLORADO

Department of Transportation

Nonattainment Area Air Pollution
Mitigation Enterprise

Nonattainment Area Air Pollution Mitigation Enterprise - Meeting Minutes

Board of Directors Meeting

May 25, 2023

Location: CDOT HQ/Virtual

Recording: [YouTube](#)

Attendance

Present

Chair Kristin Stephens
Jessica Ferko
Yessica Holguin
Stacy Suniga
Herman Stockinger

Excused

Vice Chair Lynn Baca
Leanne Wheeler

NAAPME Staff

Jenni Fogel
Darius Pakbaz
Phil von Hake

Guests: Mike Silverstein, Executive Director, RAQC
CDOT Division of Accounting and Finance Staff

- I. Convene Meeting & Roll Call ([Video 0:00](#))
Chair Stephens convened the meeting and Roll Call was conducted.
- II. **Decision Item:** Approval of February 23, 2023, Board of Directors Meeting Minutes ([Video 2:49](#))
motion made by Director Holguin, seconded by Director Ferko. Motion passed, no opposition.
- III. Regional Air Quality Council, *Mike Silverstein, Executive Director, RAQC* ([Video 3:31](#))
Please note: there were technical difficulties and weather alerts throughout the meeting.
 - **Presentation:** COLORADO'S OZONE STATUS
 - Colorado is not meeting federal ozone standards.
 - 2008: 75 parts per billion, Severe Classification
 - 2015: 70 parts per billion, Moderate Classification
 - will be “bumped-up” to Serious.
 - new SIP with additional controls
 - Colorado’s human-caused emissions are decreasing.

- *Almost 1/3 of ozone formation comes from Colorado's human-caused emissions.*
- **THERE'S MORE TO DO**

What is the RAQC's Role?

- The DM/NFR region is a large, complex nonattainment area, so a close partnership between the RAQC and the Air Division is necessary
- By working with and/or seeking input from state agencies, local governments, transportation planning organizations, and all stakeholders, the RAQC:
- Coordinates air quality planning efforts to piece together the elements of the nonattainment plans
- Evaluates effective and cost-efficient strategies and measures
- Recommends for consideration, or directly implements, air quality improving Programs

Voluntary and Incentive-based Initiatives

- Ozone modeling and technical assessments
- Education, Marketing and Outreach
- Localized Community-Based Social Marketing
- Employer Micro-grants & Clean Air Champion Recognition
- Anti-Idling Outreach
- Auto Maintenance Program - Incentives & Outreach
- Emission Source Data Tracking
- Diesel Best Practices - Incentives & Outreach
- Hardship Waiver Repair Program
- Additional Lawn and Garden Equipment Electrification Incentives

Fund raising and further program development a continuous process!

The NAAPM Enterprise is well positioned to fund new projects and complement existing programs that reduce emissions from motor vehicles in the ozone nonattainment area. Emissions reductions must be achieved rapidly to assist the region in attaining federal ozone standards and improving public health.

For example, RAQC programs will continue, and new programs will be ready to go in 2024.

- However, most of RAQC's monies can only be spent for programs that serve the southern half of the nonattainment area.
- The more money we can raise for all current and planned efforts across the entire nonattainment area, the more effective they can be.
- Additional resources are necessary for full impact.

RAQC hopes the Enterprise will soon initiate calls for project proposals with the goal of achieving the necessary emissions reductions as quickly as possible.

RAQC Programs:

- Simple Steps. Better Air.
- Heightened education/outreach efforts
- Reduced travel encouraged - teleworking and e-commerce!
- Mow Down Pollution
- Retail-based residential program

- Grant-based public sector program
- Grant-based private sector commercial program under development
- Air Quality Planning
- Numerous emission control strategies under development through a Board committee process
- Planning underway for the next ozone plan and additional measures

Discussion: Chair Stephens requested clarification on some of the maps.

Mr. Silverstein: some were slightly outdated, so her observations were correct.

Director Suniga: asked about methane gas.

Mr. Silverstein: said it was not included because EPA does not classify methane as a contributor to ozone only GHG.

Director Holguin: What outreach is being done to inform the communities about the RAQC programs (lawnmowers, for example).

Mr. Silverstein: Telemundo, social media, RAQC website

Director Ferko: I was not able to claim the electric mower incentive because I ordered my mower online, just a heads up. Also, has there been thought to providing incentives to people who opt to xeriscape their property?

Mr. Silverstein: Yes, that has been brought up; no action on that right now.

Director Stockinger: I just bought a new electric mower and recycled the old, \$150!

Mr. Silverstein: The program is so successful we are running out of money (\$250k) and may need to pause until next year when new funding is available.

Chair Stephens: I like the idea of assisting people with emission repairs to their vehicles.

Mr. Silverstein: We would like to participate in something of that nature also.

Director Holguin: that would also have a positive impact on local businesses.

Mr. Silverstein: as well as training in community colleges and trade schools.

Break: [\(Video 46:31\)](#)

IV. **NAAPME Program Funding Workshop, Darius Pakbaz, NAAPME Program Administrator**
[\(Video 48:00\)](#)

As part of its 10 Year Plan development (2022), the NAAPME Board identified three funding focus areas: Sustainably reduce traffic congestion; reduce the environmental and health impacts of transportation; improve neighborhood connectivity for communities adjacent to highways.

Ideas from CDOT Staff: Sidewalk and bike path projects is a category that is a joint grouping in two focus areas and Bus Rapid Transit is a major initiative for both the State and MPOs.

Available funding: FY 22-23: \$6.62m; FY 23-24: \$8.26m; FY 24-25: \$9.87m

Next Steps: Staff returns with a formal proposal for review and approval by the Board at a future board meeting.

Discussion:

Director Holguin: Having the most impact in an equitable way is very important, where is the most contamination? Highest return on investment?

Administrator Pakbaz: In the future we will be obligated to address those concerns on an accountability dashboard.

Director Stockinger: Old idea—air quality monitoring: The AG’s office offered the opinion that air quality monitoring does not reduce pollutants in the air, so we’ve tabled that idea. The BRT projects are interesting to me--they are a couple years out but as the money increases so does the possible impact.

Chair Stephens: In my region we are forming a TMO for SH 34 (Greeley to Loveland) that may include BRT that would benefit the underserved communities in Larimer and Weld counties. I also really like the bike path and sidewalk idea because it addresses equity, environmental justice, and safety.

Director Ferko: what exactly does “Staff returns with a formal proposal for review and approval by the Board” mean? Staff comes with a specific project or staff presents a project reviewing process.

Administrator Pakbaz: The latter.

Director Ferko: I agree with Chair Stephens, addressing equity, environmental justice, and safety is a high priority.

Director Suniga: Re my community (Greeley): bike/ped activities are not really part of the culture, however focusing on the idea of sustainably reducing traffic congestion seems promising.

Chair Stephens: Fort Collins has a pretty good BRT system and I think transit/BRT is a good way to acclimate communities to the concepts. Sometimes there are barriers to getting to buses, we could address some of those (sidewalks, for example). I’d like to start looking at projects, not just sitting on the money. Are we expecting communities to come with matching funds?

Administrator Pakbaz: That is the most common method, this is a decision that is completely up to the Board.

Director Holguin: is there a short-term - long-term strategy mix we could look at? Can we have a method to identify the barriers, physical and cultural? I’ve seen BRT work very successfully, so I support that idea also.

Chair Stephens: agree on looking at barriers including when it comes to matches. Not all communities can afford a match.

V. **Enterprise Translation Support**, *Darius Pakbaz*, *NAAPME Program Administrator* ([Video 1:13](#))

We have \$50k in our budget this year for translation. Staff has a list of proposed deliverables and proposed delivery dates; they will bring forward a proposal at the June 2023 meeting. The priorities being the 10-year plan, the annual reports (’22 & ’23).

Discussion:

Director Holguin: I like the idea of interpretation of these meetings especially as we start to work more on project selection. Can we prioritize the introduction video?

Chair Stephens: I agree with Dir. Holguin

Administrator Pakbaz: Absolutely

Director Suniga: Agree

Chair Stephens: is there a way that we can partner with other entities to spread the word to for example Spanish-speaking communities? And are there restrictions to the type of entities we provide grants to?

Administrator Pakbaz: Yes, we can look into that. And we will need to research that.

VI. Revenue and Budget Update, Division of Accounting and Finance (CDOT) [\(Video 1:21\)](#)

We have spent approximately \$28k which is primarily staff salaries & AG fees.

Revenue: The forecast and the actuals are very close, actuals slightly higher. Current total revenue is \$7,922,297.

Discussion:

Chair Stephens: there is new legislation re smaller business being exempt from the retail delivery fees, do we have to give money back?

Administrator Pakbaz: we do not yet know how that will impact us. We are looking into it. We will bring our findings back to the board.

VII. Enterprise Program and Financial Update, Darius Pakbaz, NAAPME Program Administrator [\(Video 1:27\)](#)

SB23-143: Retail Delivery Fees:

Creates an exemption from the Retail Delivery Fee (RDF) for a retail delivery by a qualified business (<\$500,000 of retail sales in the prior year), that applies retroactively to when RDFs were first imposed.

For NAAPME, retailers can EITHER collect and REMIT OR ELECT TO PAY THE AIR POLLUTION MITIGATION RETAIL DELIVERY FEE, per 43-4-218 (6).

Governor signed on May 4, and takes effect July 1, 2023.

Future Board of Directors Meeting Business

- Enterprise Public Accountability Dashboard
- Updates to the Enterprise 10-Year Plan
- Discussion on Enterprise fiscal rules
- Presentation on CDOT's role in proposed BRT corridors in Denver Metro / North Front Range Areas
- Presentation on how local communities manage grant funds
- Update on Safe Routes to School Program and allocation for High School students
- Updates on other business pertinent to the Enterprise
- Board meeting schedule for fiscal year 2024.
- The AG's office would like to conduct Open Meeting training soon.

VIII. Adjournment, Kristin Stephens, NAAPME Chair [\(Video 1:31\)](#)

Upcoming Dates:

June 29, 2023, 3:00 PM - 4:30 PM - NAAPME Board of Directors Meeting, Virtual



COLORADO NONATTAINMENT AREA AIR POLLUTION MITIGATION ENTERPRISE

REGISTRY OF ACTIONS

May 25, 2023

Action Number	Action	Decision
2023-5	Approval of February 23, 2023 minutes <ul style="list-style-type: none">• Motion made by Director Holguin• Seconded by Director Ferko• Passed without further discussion	Approved

Jennifer Fogel, Secretary
Nonattainment Area Air Pollution Mitigation Enterprise

Date

Nonattainment Area Air Pollution Mitigation Enterprise



COLORADO

Department of Transportation

Board of Directors Meeting
June 29, 2023



Meeting Agenda

**DECISION
ITEM**

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- | | |
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DECISION ITEM

Approval of Minutes from the February 23, 2023, Board of Directors Meeting

Kristin Stephens, NAAPME Chair



DECISION ITEM

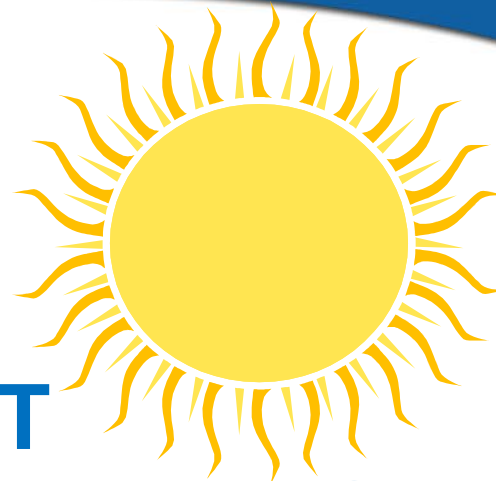
Appointment of Suzanna Alvarado as New NAAPME Board Secretary

Kristin Stephens, NAAPME Chair



Open Meetings Training

Colorado Attorney General's Office



ANNUAL BEST PRACTICES TRAINING

**Nonattainment Area Air Pollution Mitigation Enterprise Board
June 29, 2023**

**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 Colorado Open Meetings Law.

NAAPME ENTERPRISE AND BOARD



Section 43-4-1303, C.R.S. – NAAPME Enterprise and Board - Created

Section 43-4-1303(3) – Business purpose of NAAPME



Section 43-4-1303(6), C.R.S. – Duties and powers of the Board

Special Note – SB 23-143 – Exemption from the retail delivery fees

NAAPME ENTERPRISE



Section 43-4-1303(3), C.R.S. – Business Purpose

(3) 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.



- Also note 43-4-1303(6)(d) and (9)

NAAPME BOARD



Section 43-4-1303(6), C.R.S. – Board Powers and Duties

Includes, but is not limited to, the following:



- To adopt bylaws;
- To acquire, hold title to and dispose of real property;
- To employ and supervise individuals, consultants, and contractors;
- To provide grants;
- To publish the processes by which the enterprise accepts grant applications.

Conflict of Interest

- Rules of Conduct – A board member 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.

Colorado Open Records Act (CORA)



It is declared to be the public policy of this state that all public records shall be open for inspection by any person at reasonable times, except as provided in this part 2 or as otherwise specifically provided by law.

- ◆ Section 24-72-201, C.R.S.



The purpose of the open records statutes is to assure that the workings of government are not unduly shielded from the public eye.

- ◆ *Int'l Brotherhood of Electrical Workers v. Denver Metropolitan Major League Baseball Stadium District*, 880 P.2d 160, 165 (Colo. App. 1994)



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...
- ...for use in the exercise of functions required or authorized by law or administrative rule or involving the receipt or expenditure of public funds”
- Section 24-72-202(6)(a)(I), C.R.S.

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.
 - ◆ “Work product” prepared for elected officials – defined in Section 202(6.5) in part as deliberative materials prepared for elected officials communicated for the purpose of assisting the elected official in reaching a decision.
 - ◆ Certain information security plans and incident reports.

Is My Record a “Public Record”?

- What is a public record? Definition is broad and includes:
 - ◆ Internal and external communications, such as might take place between staff and 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.
- “CORA was not intended to cover information held by a government official in his private capacity.” *Wick v. Montrose Board of County Commissioners*.
 - ◆ *Wick v. Montrose Bd. Cnty. Comm’ers* – Personal diary not public record since it was not kept by Def. in his capacity as County Manager.
 - ◆ *Denver Publ’g v. Bd. of Cnty. Com’rs* – Explicit emails between gov. officials not public records since messages not intended for use in the performance of public functions.
 - ◆ *Denver Post Corp. v. Ritter* – Governor’s cell phone records not public records since they were not made by governor in his official capacity.

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 law enforcement investigations, 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.
- Its purpose is to “protect the frank exchange of ideas and opinions critical to the government's decisionmaking process where disclosure would discourage such discussion in the future”
- It covers material that is “predecisional (i.e., generated before the adoption of an agency policy or decision) and deliberative (i.e., reflective of the give-and-take of the consultative process)”

Attorney-Client Privilege

- The Attorney-Client Privilege protects confidential communications between clients and their attorneys that were made in the course of obtaining legal advice.
- Can assert the attorney-client privilege in response to a CORA request to deny inspection.

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

Section 204(4)



If the custodian denies access to any public record, the applicant may request a written statement of the grounds for the denial, which statement shall cite the law or regulation under which access is denied and shall be furnished forthwith to the applicant.



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).
- But - 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:

- 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. Not clear yet if improper denial of a single document in a large challenge will trigger fees.
- 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.

Take-aways

- Keep in mind that the materials you produce may be subject to disclosure under CORA. Check and become familiar with CDOT document retention policies.
- If you receive a CORA request, please keep AG's office in the loop.
- Search your records. If no responsive records exist, then that is the end of the matter. We will respond that no responsive documents exist.
- If responsive records exist, collect them and send them to CORA officer and/or AG's office.
- Flag any issues that you see or are concerned about (e.g., breadth of request, media attention, privacy, deliberative process, attorney-client privilege) for the AG's office.
- CORA officer and/or AG's office will request extension if necessary and produce CORA-eligible documents after review.

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)



When Are Meetings Considered Public?

- “[F]or a meeting to be subject to the requirements of the OML, there must be a demonstrated link between the meeting and the policy-making powers of the government entity holding or attending the meeting.” *Board of County Comm’rs v. Costilla County Conservancy Dist*, 88 P.3d 1188, 1194 (Colo. 2004):
 - ◆ Meeting convened to discuss a rule, regulation, ordinance, or formal action. (YES)
 - ◆ Meeting held for the purpose of discussing a pending measure or action. (YES)
 - ◆ Series of 1-on-1 meetings to discuss firing of superintendent (YES)
 - ◆ Meeting convened by state agencies and company to discuss local pollution, and 2 county commissioners attended. (NO)
 - ◆ Email discussion between PUC members, governor’s staff, and legislative staff regarding pending bill. (NO)

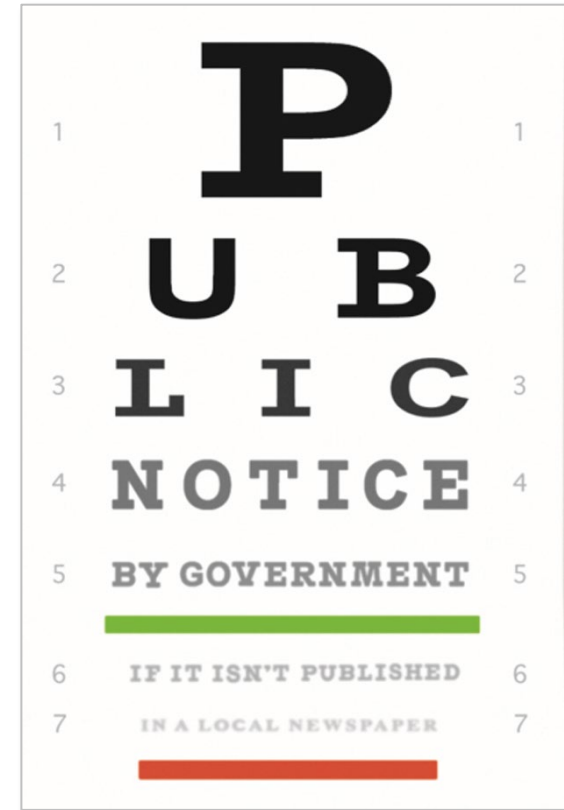
What is Proper Notice?

- 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



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



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

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;
- Personnel matters except if the employee who is the subject of the session has requested an open meeting

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



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(2)(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).



Appellate Treatment of CORA and OML

EXTRA SAUCE...

Appellate Treatment of CORA and OML

CORA and OML have similar goals, but courts appear to interpret the statutes differently to achieve balance between openness and efficient government.

CORA

- Often interpreted more strictly

OML

- Often interpreted more flexibly

Appellate Treatment of CORA and OML

Examples of CORA's Strict Treatment

- Definition of “public documents” read strictly to limit scope
 - ◆ *Denver Post Corp. v. Ritter*, 255 P.3d 1083 (Colo. 2011) (governor’s personal cell phone records, even though phone used for state business, were not public documents)
- Payment of fees in connection with unjustified withholding of documents
 - ◆ *Reno v. Marks*, -- P.3d ---, 2014 COA 7 (Colo. App. 2014)
- Privileges strictly construed
 - ◆ Read not to eliminate common law privileges. *Denver Post Corp. v. Univ. of Colo.*, 739 P.2d 874, 880 (Colo. App. 1987)
- Exemptions strictly construed
 - ◆ Law enforcement exemption read not to include civil law enforcement. *Land Owners United, LLC v. Waters*, 293 P.3d 86, 94-95 (Colo. App. 2011)

Appellate Treatment of CORA and OML

Examples of OML's More Flexible Treatment

- Explicit statements regarding liberal interpretation of OML
 - ♦ *Bd. Of County Comm'rs v. Costilla County Conservation Dist.*, 88 P.3d 1188, 1189 (Colo. 2004)
- Definition of “meeting” and “Public Business” is key to scope of OML
 - ♦ *Id.* at 1191
- “Public Business” must be tied to power of board
 - ♦ Meetings about pending legislation are only covered by OML if they involve the legislature or governor. *Intermountain Rural Elec. Ass'n v. Colo. Pub. Utilites Comm'n*, 298 P.3d 1027, 1031 (Colo. App. 2012)



Board Meeting Cadence and Schedule for FY 2024

Darius Pakbaz, NAAPME Program Administrator



Board Meetings for FY 2024

If every fourth Thursday:

July 27, 2023

August 24

September 28

October 26

November 16 or 30

December 21, or off

January 25, 2024

February 22

March 28, or off

April 25, or off

May 23

June 27



Revenue and Budget Update

Division of Accounting and Finance (CDOT)



Enterprise Budget to Actuals

FY 2023 - July 2023 to April 2023

Fiscal Year 2022-23 Budget to Actual for Fund 542-Ongoing Nonattainment Area Air Pollution Mitigation Enterprise								
Line Item		Approved Budget	Total Quarter 1	Total Quarter 2	Total Quarter 3	April 2023	Total	Remaining Funds
1	Fiscal Year Revenues							
2	NAAPME Retail Delivery Fee	\$ 6,669,090	\$ 328,812	\$ 530,177	\$ 545,638	\$ 188,682	\$ 1,593,310	
3	NAAPME Rideshare Fee	-	-	1,556,049	1,569,570	10,829	6,262,068	
4	Interest Income	-	74	5,898	21,827	11,395	66,919	
5	Total FY 2022-23- Revenue	\$ 6,669,090	\$ 328,886	\$ 2,092,125	\$ 2,137,035	\$ 210,906	\$ 7,922,297	\$ (1,253,207)
6	Fiscal Year Allocations							
7	Administration & Agency Operations							
8	Staff Salaries	\$ 64,800	\$ -	\$ 5,453	\$ 4,824	\$ 3,669	\$ 13,947	\$ 50,853
9	State Agency Support	\$ 64,800						
10	Attorney General Fees	\$ 5,000	\$ -	\$ 548	\$ 1,524	\$ -	\$ 2,072	\$ 2,928
11	Office of the State Audit-Annual Financial Audit	2,000	-	-	-	-	-	2,000
12	Total State Agency Support	\$ 7,000	\$ -	\$ 548	\$ 1,524		\$ 2,072	\$ 4,928
13	Enterprise Support Initiatives							
14	Language Translation Services	\$ 50,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 50,000
15	Consultant Services	100,000	-	-	-	-	-	100,000
16	Total Enterprise Support Initiatives	\$ 150,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 150,000
17	Board Meeting Expenses							
18	Board Travel	\$ 5,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 5,000
19	Board Meeting Expenses	500	-	-	-	-	-	500
20	Presentation Support	350	-	-	-	-	-	350
21	Total Board Meeting Expenses	\$ 5,850	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 5,850
22	Total Administration and Agency Operations	\$ 227,650	\$ -	\$ 6,002	\$ 6,348	\$ 3,669	\$ 28,368	\$ 199,282
23	Debt Service							
24	Debt Service on CDOT Loan	\$ 76,486	\$ -	\$ 75,557	\$ -	\$ -	\$ 75,557	\$ 929
25	Total Debt Service	\$ 76,486			\$ -	\$ -	\$ 75,557	\$ 929
26	Contingency Reserve							
27	Enterprise Reserve Fund (>\$200,000.01)	\$ 200,000	\$ -	\$ -	\$ -		\$ -	\$ 200,000
28	Total Contingency Reserve	\$ 200,000	\$ -	\$ -	\$ -		\$ -	\$ 200,000
29	Total FY 2022-23 Allocations	\$ 504,136						



NAAPME - Retail Delivery Fee

Fund	FY 2022-23	FY 2023-24	FY 2024-25
Highway Users Tax Fund*	(\$67,727)	(\$299,461)	(\$324,781)
Multimodal Transportation and Mitigation Options Fund*	(\$28,482)	(\$125,933)	(\$136,582)
Bridge and Tunnel Enterprise	(\$30,618)	(\$135,380)	(\$146,827)
Community Access Enterprise	(\$78,246)	(\$345,971)	(\$375,225)
Clean Fleet Enterprise	(\$60,102)	(\$265,746)	(\$288,216)
Clean Transit Enterprise	(\$34,020)	(\$150,422)	(\$163,141)
Nonattainment Area Air Pollution Mitigation Enterprise	(\$7,938)	(\$35,099)	(\$38,066)
Total	(\$307,133)	(\$1,358,012)	(\$1,472,838)
Total Subject to TABOR	(\$96,209)	(\$425,394)	(\$461,363)
Total Exempt from TABOR	(\$210,924)	(\$932,618)	(\$1,011,475)

* This revenue is subject to the TABOR limit



NAAPME - Retail Delivery Fee

This bill exempts small businesses with retail sales less than or equal to \$500,000 in the prior year from paying the Retail Delivery Fee created by SB 21-260.

This revenue decrease has been built into the the 2050 Long Range Model that is currently in development.

Retail Delivery Fee Recipient	FY 2022-23	FY 2023-24	FY 2024-25
HUTF	(\$27,090)	(\$119,784)	(\$129,912)
MMOF	(\$28,482)	(\$125,933)	(\$136,582)
Bridge and Tunnel Enterprise	(\$30,618)	(\$135,380)	(\$146,827)
Clean Transit Enterprise	(\$34,020)	(\$150,422)	(\$163,141)
NAAPME	(\$7,938)	(\$35,099)	(\$38,066)
Grand Total	(\$134,765)	(\$746,295)	(\$809,397)



Enterprise Program Update

Darius Pakbaz, NAAPME Program Administrator



Future Board of Directors Meeting Business

- Enterprise Public Accountability Dashboard
- Updates to the Enterprise 10-Year Plan
- Discussion on Enterprise fiscal rules
- Presentation on CDOT's role in proposed BRT corridors in Denver Metro / North Front Range Areas
- Presentation on how local communities manage grant funds
- Update on Safe Routes to School Program and allocation for High School students
- Updates on other business pertinent to the Enterprise



Next Steps and Adjoinment

Kristin Stephens, NAAPME Chair



Next Steps

Upcoming Board of Directors Meeting Dates:

- TBD