



Sample Policy on the Use of Executive Sessions

Board Policy No.: _____

Effective Date: _____

Purpose: The purpose of this policy is to specify the standards for the use of executive sessions at meetings of [name of organization] (“System”) Board of Directors (“board”), and at board committee meetings.

Scope:

This policy applies to all System officers and directors and to all board meetings.

Standards:

Frequency: An executive session shall occur as part of the regular agenda at [every meeting/every other meeting] of the board. The executive session shall be the [first/last] item on the agenda. Unplanned or *ad hoc* executive sessions should be avoided whenever possible.

Topics: The board will discuss the following topics in executive session:

- The CEO’s annual evaluation or compensation
- CEO or C-suite personnel decisions
- Meeting with the System’s independent accountant or auditor
- Management and board succession planning
- Discussions about authority delegated to the CEO
- Discussions about collective bargaining agreements
- Sensitive compliance issues
- Sensitive quality issues
- Sensitive human resources issues
- Removal or censure of a director or committee member
- Discussions about sensitive transactions or strategic decisions (a potential merger, purchase, closure, etc.)
- Any discussions with counsel about legal matters falling under attorney–client privilege (e.g., discussions about pending lawsuits, etc.)
- Any other sensitive topic that the Chair determines requires discussion in executive session. The Chair is encouraged to consult with the Vice Chair and the CEO when considering such, as appropriate.

Conflicts of interest should not be discussed and approved in executive session; instead, they should be disclosed, discussed, and approved on the record as part of the regular meeting, unless counsel shall advise otherwise.

The topic to be discussed in executive session will be listed in the meeting agenda, using a general description if necessary. For example, “Executive Session: Personnel Discussion, or Executive Session: Discussion with Counsel.”



Personnel Present:

- a) The following individuals shall be permitted to attend executive session, unless the Chair and Vice Chair agree, or legal counsel directs, that attendance by such individual director would not be appropriate considering the topic to be discussed:
 - All elected, voting directors
 - All ex-officio, voting directors
 - The CEO. Except, however, the CEO shall not attend the annual executive session held with the System's external auditors, or any executive session to discuss his/her compensation, evaluation, or personnel decisions affecting him/her.
- b) Staff members: No staff members, or members of management, other than the CEO, will be permitted to attend executive session, unless the board shall vote, prior to entering executive session, to allow such staff member or member of management to attend.
- c) Advisors: Advisors will be invited to attend executive session as needed. In the event of any doubt with respect to whether to invite an advisor into executive session, the board shall vote, prior to entering executive session, to allow such advisor to attend.

Acting During Executive Session:

- a) The purpose of executive session is for deliberation on a topic or proposed course of action only and not to vote on an action. While the board will deliberate in executive session, the board shall not take any vote or action during executive session, unless counsel to the board advises such is necessary.
- b) Otherwise, if the board desires to vote or act on a topic discussed in executive session, before such vote is taken or motion is made, the Chair will call for a motion to end executive session. Once the motion to end executive session passes, the Chair will call the regular meeting back to order, the minute taker will return to the meeting, a motion on the action will be called, and a vote will be taken on the record of the regular meeting.
- c) If the board is compelled to vote and act in executive session, counsel shall take minutes of the executive session deliberation and action. The regular board meeting minutes will reflect that the board acted in executive session and that counsel to the board is maintaining a copy of those minutes of the executive session in his/her files. Prior to the next regularly scheduled board meeting, counsel will provide a draft of the executive session meeting minutes for review by each director. At the next regularly scheduled board meeting, the board shall hold an executive session to review and approve the minutes of the prior executive session. Once approved, counsel will maintain the minutes of that executive session in his/her file and will provide a copy of the minutes to any director upon request.

Minutes: The board meeting minutes will reflect that the board entered executive session to deliberate on a specified topic, the duration of the executive session, that the executive session was ended, and the regular meeting was called to order. If the board desires to vote or act on a topic discussed in executive session, the action will be recorded in the minutes of the regular meeting.

Unplanned or *Ad Hoc* Executive Session: If, during a board meeting, the Chair determines an unplanned executive session should take place, the Chair will poll the board to ask if there are any objections to doing so. If there are none, the Chair will thereafter either move the meeting directly into the executive session or hold the executive session after the last meeting agenda item.



Committees: If any of the decisions on topics to be discussed in an executive session are delegated to a committee, that committee shall follow this policy when holding executive session.

Responsibility:

- All directors and the CEO have the responsibility to ensure this policy is being followed.
- It is the responsibility of the CEO to establish and document any necessary procedures required to effectuate this policy, to ensure such procedures are consistent with the standards set forth in this policy.