

## A. Definitions

1. Board of Directors: The term board of directors as used herein means the governing board of an auxiliary organization.
2. Board of Trustees: The term board of trustees as used herein means the Board of Trustees of the MiraCosta Community College District.
3. Board of Governors: The term board of governors as used herein means the Board of Governors of the California Community Colleges.
4. Superintendent/President: The term superintendent/president as used herein means the superintendent/president of the district.
5. District: The term district as used herein means the MiraCosta Community College District.
6. Associated Student Government: The term Associated Student Government as used herein means an organization formed by any group of students from a college of the district in accordance with the provisions

5. The proposed bylaws and articles of incorporation for the auxiliary organization, including the size and composition of the board of directors.

The process of recognition shall be as follows:

1. When the superintendent/president receives a request to establish an auxiliary organization, the superintendent/president shall submit a recommendation concerning the establishment of said organization to the Board of Trustees within three months.
2. The Board of Trustees shall hold a public hearing on each recommendation concerning the establishment of an auxiliary organization.
3. At a subsequent scheduled meeting after the public hearing, the board shall announce its decision concerning the establishment of the organization, and if approved, authorize the functions it may perform, identify the number and category or categories of the board of directors, and approve contractual arrangements.

At such time that the district recognizes an auxiliary organization, it shall submit to the California Community Colleges Chancellor's Office any written agreements with the auxiliary organization, as well as the articles of incorporation, bylaws, or other governing instruments.

C. Recognized Services, Programs, and Functions

Auxiliary organizations may be recognized

10. Gifts, bequests, devises, endowments, and trusts

11. Public-relations programs

No auxiliary organization shall be authorized by the Board of Trustees to engage in any other function unless the Board of Governors amends §59259 of Title 5 by adding said function to the list of approved functions of auxiliary organizations.

This section shall not be construed to prohibit an auxiliary organization from taking actions essential to satisfy the nonprofit corporation or tax laws of the state of California or the federal tax laws.

Operations of commercial services on a campus shall be self-supporting when operated by an auxiliary organization.

D. Authority and Responsibility of Auxiliary Organizations

2. Other Auxiliary Organizations: Any other district-approved auxiliary organization that is established pursuant to Education Code §§72670 et seq. shall have a board of directors appointed in accordance with the organization's articles of incorporation or bylaws and consisting of voting membership from one or more of the following categories—administration, staff, members of the community, and students.

The size of the board of directors of an auxiliary organization shall be at least large enough to accommodate the one or more categories from which board members are selected.

The board of directors shall have the advice and counsel of at least one attorney admitted to practice in California and at least one certified public accountant. Upon being notified of the certified public accountant selected by an auxiliary organization, the district shall forward the applicable auditing and reporting procedures to the selected certified public accountant.

#### F. Conduct of Boards of Directors

No member of the board of directors of an auxiliary organization shall be financially interested in any contract or other transaction entered into by the board of which they are a member. Any contract or transaction entered into in violation of this section is void.

No contract or other transaction entered into by the board of directors of an auxiliary organization is void under the provisions of Education Code §72677, nor shall any member of such board be disqualified or deemed guilty of misconduct in office under such provisions, if pursuant to Education Code §72678 both of the following conditions are met:

1. The fact of such financial interest is disclosed or known to the board of directors and noted in the minutes, and the board thereafter authorizes, approves, or ratifies the contract or transaction in good faith by a vote sufficient for the purpose without counting the vote or votes of such financially interested member or members.
2. The contract or transaction is just and reasonable as to the auxiliary organization at the time it is authorized or approved.

The provisions of Education Code §72678 above shall not be applicable if any of the following conditions are met:

1. The contract or transaction is between an auxiliary organization and a member of the board of directors of that auxiliary organization.
2. The contract or transaction is between an auxiliary organization and a partnership or unincorporated association of which any member of the governing board of that auxiliary organization is a partner or in which they are the owner or holder, directly or indirectly, of a proprietorship interest.
3. The contract or transaction is between an auxiliary organization and a corporation in which any member of the board of directors of that auxiliary

organization is the owner or holder, directly or indirectly, of five percent or more of the outstanding common stock.

4. A member of the board of directors of an auxiliary organization is interested in a contract or transaction within the meaning of Education Code §72677 and without first disclosing such interest to the governing board at a public meeting of the board, influences or attempts to influence another member or members of the board to enter into the contract or transaction.

It is unlawful for any person to utilize any information not a matter of public record that

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7. Simple and equitable methods of proration where services are performed by district employees for the organization shall be mutually determined.
8. A mutually agreed upon method of determining in advance to what extent the organization shall be liable for indirect costs relating to specially funded programs (including federally sponsored programs).
9. The responsibility for maintenance and payment of operating expenses.
10. Proposed expenditures for public relations or other purposes that would serve to augment district appropriations for operation of the district. With respect to these expenditures, the auxiliary organization may expend funds in such amount and for such purposes as are approved by the board of directors of the auxiliary organization. The board of directors shall file with the superintendent/president a statement of such policy on accumulation and use of public-relations funds. The statement shall include the policy and procedure on solicitation of funds, source of funds, amounts, and purpose for which the funds will be used, allowable expenditures, and procedures of control.
11. The disposition to be made of net earnings derived from the operation of the auxiliary organization, including earnings derived from facilities owned or leased by the auxiliary organization and provisions for reserves.
12. The disposition to be made of net assets and liabilities on dissolution of the auxiliary organization or cessation of the operations under the agreement.
13. The covenant of the auxiliary organization to maintain its organization and to operate in accordance with Education Code §§72670 through 72682 and with the regulations contained in Title 5, §§59250 et seq., as well as district board policy and these procedures.
14. The understanding that the auxiliary organization shall obtain the services and counsel of an attorney admitted to practice in the state of California whenever the need arises.
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Except as otherwise provided in any board rules, the board of directors of each auxiliary organization shall, pursuant to Education Code §72672, provide salaries, working conditions, and benefits for its full-time employees that are comparable to those provided district employees performing substantially similar services. For those full-time employees who perform services that are not substantially similar to the services performed by district employees, the salaries established shall be at least equal to the salaries prevailing in other educational institutions in the area or commercial operations of like nature.

Regular district employees may be employed by the auxiliary organization. District employees must resign or request a personal leave of absence from the district in order to accept employment with the auxiliary organization. District officers and employees who are required by the district's Conflict of Interest Code (Administrative Procedure 2712) to file disclosure of financial information are responsible to determine whether they are eligible to accept employment with the auxiliary organization immediately upon resignation from the district.

1. Educational administrators or other management employees may be granted a personal leave of absence for two semesters, which may be extended to a maximum of ten consecutive semesters.
2. Classified management employees may be granted a personal leave of absence for up to one year. This leave may not be extended beyond one year without the employee first having returned to active duty.
3. Academic (faculty) employees may be granted personal leave of absence for two semesters. The leave may be extended for not more than six consecutive semesters.
4. Classified employees may be granted a personal leave of absence for up to one year. This leave may not be extended beyond one year without the employee first having returned to active duty.

The board of directors of each auxiliary organization may provide retirement benefits different from those provided comparable district employees and may withhold retirement benefits or permanent-status benefits or both from temporary employees and executive employees. For the purposes of this administrative procedure, a temporary employee is:

1. An employee employed for a specific research project, workshop, institute, or other special project funded by any grant, contract, or gift.
2. An employee whose contract of employment is for a fixed term not exceeding three years.

For the purposes of this procedure, an executive employee is any management employee with responsibility for the development and execution of the auxiliary organization's policies and includes, but is not limited to, general managers, managers, directors, and the like, as determined by the board of directors of each auxiliary organization.



Should retirement benefits be provided, they may but need not be provided by the Public Employees' Retirement System. Any newly created auxiliary organization is exempted from the requirement of providing retirement benefits for a period not to exceed three years from the date on which the Board of Trustees recognizes the establishment of such auxiliary organization.

An auxiliary organization may contract with the district for the services of a district employee and reimburse the district for that portion of the employee's full-time assignment (and corresponding benefits) that is spent in providing said services.

#### J. Accounting and Reporting for Auxiliary Organizations

The fiscal year of the auxiliary organization shall coincide with that of the district.

Each auxiliary organization shall develop an accounting system that is in accordance with generally accepted accounting principles.

The auxiliary organization shall implement financial practices that will assure its fiscal viability. Such standards shall include professional management, adequate working capital, adequate reserve funds for current operations, capital replacements, contingencies, and adequate provisions for new business requirements.

Each auxiliary organization serving the district shall submit its programs and budgets for review at a time and in a manner specified by the superintendent/president.

Funds derived from indirect cost payments shall only be appropriated with the specific approval of the superintendent/president. All uses of such funds shall be regularly reported to the district Board of Trustees.

Should the superintendent/president determine that any program or appropriation planned by an auxiliary organization is not consistent with district policy, the program or appropriation shall not be implemented. Further, should a program or appropriation that has received approval, upon review, be determined by the superintendent/president to be operating outside the acceptable policy of the Board of Governors or the district, that program or appropriation shall be discontinued by direction of the superintendent/president until further review is accomplished and an appropriate adjustment is made.

The board of directors of an auxiliary organization shall approve all expenditure authorizations.

If the auxiliary organization receives or accrues in any fiscal year gross revenue of two million dollars (\$2,000,000) or more, it shall also include in its bylaws an audit committee appointed by the board of directors. The audit committee may include persons who are not members of the board of directors, but the member or members of the audit committee shall not include any members of the staff, including the president or chief executive officer and the treasurer or chief financial officer. If the auxiliary committee has a finance committee, it must be separate from the audit committee.

Members of the audit committee shall not receive any compensation from the auxiliary in excess of the compensation, if any, received by members of the board of directors for service on the board and shall not have a material financial interest in any entity doing business with the auxiliary. Subject to the supervision of the board of directors, the audit committee shall be responsible for recommending to the board of directors the retention and termination of the independent auditor and may negotiate the independent auditor's compensation on behalf of the board of directors.

The auxiliary organization must also make its annual audited financial statements available to members of the public in the same manner prescribed by IRS for Form 990 and no later than nine months after the close of the fiscal year to which the statements related.

The board of directors or an authorized committee of the board shall review and approve the compensation, including benefits, of the president or chief executive officer and the treasurer or chief financial officer to assure that it is just and reasonable. This review and approval shall occur initially upon the hiring of the officer, whenever the term of employment, if any, of the officer is renewed or extended, and whenever the officer's compensation is modified. Separate review and approval shall not be required if a modification of compensation extends to substantially all employees.

K. Records and Annual Report of Auxiliary Organizations

Personnel and payroll records shall be maintained as permanent records by each auxiliary organization.

Adequate records of all other transactions of an auxiliary organization shall be maintained for a minimum of five years, or as otherwise prescribed by any document retention policy adopted by the organization, which may set different retention periods. Transactions of the organization include, but are not limited to, purchases, disbursements, and investments.

An annual report shall be submitted to the board of directors of the auxiliary organization and to the superintendent/president by September 15. The report shall include, but is not limited to

## L. Annual Audit

Each auxiliary organization shall have an annual fiscal audit of any and all funds. The audit shall be performed by a certified public accountant in accordance with procedures prescribed by the California Community Colleges Chancellor. Copies of the annual audit report shall be submitted to the Board of Trustees and to the California Community Colleges Chancellor's Office within thirty days after it is received by the auxiliary organization. Thereafter, it shall be a public record, except as otherwise provided by law. Such audits may be conducted as part of a fiscal audit of the district itself.

Auxiliary organizations shall annually publish an audited statement of their financial condition, which shall be disseminated as widely as feasible and be available to any person on request. A reasonable fee may be charged to cover the costs of providing a copy. An auxiliary organization shall comply with this requirement by:

1. Publishing the audited financial statement in a campus newspaper; or
2. Publishing a notice in a campus newspaper indicating the on-campus location where copies of the financial statement may be obtained or reviewed; or
3. Publishing or noticing the audited statement in a campus bulletin or other appropriate medium if a campus newspaper is unavailable.
4. The audited financial statements shall also be available for inspection by the Attorney General and shall be made available to members of the public in the same manner as prescribed by IRS for Form 990 and no later than nine months after the close of the fiscal year to which the statements relate.

## M. Insurance

An auxiliary organization shall secure and maintain insurance adequate to protect its operations from catastrophic losses and as required by law, including but not limited to, the following:

1. Comprehensive general liability.
2. Property and extended coverage, when applicable.
3. All risks, money, and securities.
4. Fidelity and performance bonds covering its chief fiscal officer.
5. Automotive liability, when applicable.
6. Workers' Compensation.

In any insurance policy secured by the auxiliary organization, the district shall be named as additional insured.

A copy of each policy or endorsement or insurance certificates setting forth the coverage and limits shall be provided to the district within thirty days from the receipt of the document.

In obtaining the insurance coverage, the auxiliary organization may secure the insurance directly through its own broker or through the district.

N. Auxiliary Organizations – Use of Facilities

Facilities may be made available by the district to an auxiliary organization to perform the functions specified in these regulations or in an agreement under the following circumstances:

1. The auxiliary organization may occupy, operate, and use such district facilities as are mutually identified as appropriate for the functions and/or activities that have been undertaken by the auxiliary organization.

conference, along with other appropriate district representatives, as determined by the superintendent/president. The district shall give the auxiliary organization board of directors reasonable notice that such conference will be held, and representatives of the board shall be entitled to be present at the conference, and to be heard. The board of directors of such organization shall be entitled to participate in this conference and shall have a minimum of one month's notice to prepare a response to the issues that have been raised.

Based upon such conference, the superintendent/president shall recommend to the Board of Trustees whether the particular organization shall be removed from the list of auxiliary organizations in good standing. The Board of Trustees may, at its sole discretion, remove such an auxiliary organization from the list, and may make such other decisions consistent with law as may be appropriate with respect to an auxiliary organization not included on the list.

An organization so removed shall not be permitted to do any of the following:

1. Use the name of the district.
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When the superintendent/president's designee determines, after inspection and review, that certain auxiliary organization procedures and practices are not in compliance with policies, rules, and regulations of the California Community Colleges Board of Governors and the district, a recommendation concerning the items of noncompliance shall be communicated in writing to the superintendent/president and to the board of directors of the auxiliary organization. The board of directors shall reply in writing within one month, either describing the actions that will be taken, including a timetable, to bring said procedures and practices into compliance or describing the reasons why the board considers the procedures already to be in compliance.

If the superintendent/president's designee considers the proposed corrective actions to be acceptable, the auxiliary organization shall be so informed. A second compliance review shall be held at the end of the time agreed to and the results communicated in writing to the superintendent/president and to the board of directors.

When the auxiliary organization fails to provide an acceptable proposal for corrective actions or fails to implement successful corrective actions within the agreed upon time, the superintendent/president shall inform the board of directors of such further action as they consider appropriate, which may include a recommendation to the Board of Trustees for termination of the contract.

R. Revision of Rules and Procedures and Reports to the California Community Colleges System Office

Rules and procedures for the administration of auxiliary organizations may be revised as necessary by the superintendent/president or designee. The board of directors of each auxiliary organization in good standing shall be promptly notified in writing of such revisions and be informed of the date by which any changes in the organization's procedures must be accomplished.

S. Any such revisions shall be submitted to the California Community Colleges System Office for approval.

The District shall report, as may be required from time to time, on the operation of its auxiliary organizations.