

Legal Authority and Jurisdiction

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Park, recreation, and leisure services are offered by many different types of providers, ranging from “mom and pop” paintball ventures, to for-profit golf courses, commercial fitness centers, nonprofit YMCA associations or scout councils, and public park and recreation departments. All fall into one of three sectors: private for-profit, nonprofit, or public. Each of these sectors has distinctive legal entities. This chapter describes the legal forms these entities take, their source of authority, and their jurisdiction. It also discusses types and structure of the governing/policy bodies and their operation, as well as citizen advisory boards.

It is essential that a manager not only understand fully the nature of the legal entity which is being managed, but also be knowledgeable about other legal entities with which the manager must relate, including their legal capabilities and restrictions. State law determines legal authority and jurisdiction. It is essential that management retain legal counsel who is knowledgeable about the respective form of organization (private for-profit, nonprofit, or public). This chapter gives only an overview of some general concepts and principles of authority and jurisdiction. Your state may vary. Contact a local attorney for specifics of a particular state.

Legal Entities

The legal entities or the forms of ownership of each of the three sectors are all structured, with and derive their authority from, the legal framework of the state in which they operate (see Exhibit 3.1). A manager must understand the source of authority and legal basis of operation and the extent of the powers of the entity being managed.

Private For-Profit Sector

Individuals establish business enterprises, such as a miniature golf course, a movie theater, indoor playgrounds, family campground, or health and fitness center to make a profit. Whatever the nature of the business, each must be organized under the state statutes

relating to the specific form desired. Private business enterprises may take one of four forms of ownership: sole proprietorship, partnership, corporation, or limited liability corporation. Within each of the forms there are variations.

Sole Proprietorships

A sole proprietorship is a business owned by a single individual. The owner maintains the title to the assets and is personally, financially responsible, generally without limitation, for the liabilities incurred. The owner, or “proprietor,” is entitled to the profits from the business, but also absorbs any losses and pays all the tax on the generated income. The owner also retains all decision-making authority.

Depending on the type of operation and the state, this form is usually relatively simple to create, as there are minimal legal restrictions on initiating a sole proprietorship. A rural paintball venture may require no formal procedures to start, while an urban sports bar, on the other hand, would have to adhere to state and local ordinances and would most likely need to be licensed. State statutes control the structure and legal establishment of the business, while both state statutes and local ordinances, especially zoning ordinances, may place requirements and restrictions on the location of a type of business, licenses, building codes, and so on.

One of the issues with sole proprietorship is liability. If a sole proprietor was sued for negligence for an injury that occurred in the business, even by one of the employees, the owner is responsible. The injured party, if successful in the suit, can get personal assets of the proprietor if the business assets cannot cover it. The same is true for financial liability. If the business cannot cover a debt, the creditor can get the owner’s personal accounts and assets to settle the debt.

To protect personal assets and create a separation between the business and the sole proprietor, a Legal Liability Corporation or an LLC can be created for a \$50 filing fee and a little paperwork. The LLC is relatively new in the United States. The first state to offer it was Wyoming in 1977. Some feel that it is the business

Exhibit 3.1
Forms of Legal Entities Authorized by Sector

Sector	Legal Entity	Source of Authority
Private	Sole proprietor Partnership general limited joint venture Corporation regular S corporation Limited liability corporation	Statutes and regulations of for-profit states in which doing business
Nonprofit	Corporation	Statutes and regulations of state in which incorporated, some chartered by federal government Federal and state government approval required for certain tax treatment
Public	Federal departments State departments independent agencies "Arm of the State" countries townships school districts Municipalities Special districts	U.S. Constitution—property, general welfare, and commerce clauses, independent agencies. Congressional authorization, implemented by Executive branch U.S. Constitution residual powers granted to state under 10th amendment referred to as "police power" regulating health, safety, general welfare, morals; Legislative authorization, implemented by Executive branch State authorization with enabling regulations State enabling legislation or home rule State enabling legislation

structure of the future, and may replace the general and limited partnerships and the S corporation, discussed below. It enjoys the benefits of limited liability and also the pass-through tax treatment. In 1988, the Internal Revenue Service (IRS) recognized the LLC as a partnership for federal income tax purposes, and now all 50 states have LLC statutes. The interest in the LLC has been stimulated by the legislatures' interest in attracting businesses and their belief that the loss in tax dollars is outweighed by the economic vitality produced for the area. The approach of the states varies.

Partnerships

A partnership is an association of two or more people or entities coming together as co-owners for the purpose of operating a business or enterprise for profit; that is, to put their money, labor, and skill into commerce or business and to divide the profits in agreed-upon proportions. To start a partnership just requires that two or

more people start a business and act together. Because it is for business, a partnership cannot be developed for a nonprofit.

Partnerships are of two types: general partnership; and limited partnership. In a general partnership, each partner is fully responsible for the liabilities incurred by the partnership. The partners, whether two individuals or more, share in the costs and the benefits of the partnership. For example, a private golf course venture may be too large an investment for one person; therefore, several people may invest and work together. However, even if only one partner is a managing partner running the operation, all partners are held jointly liable. All partners stand to lose personal assets if the partnership goes into debt or is sued. Of course, partners should draft a written agreement that explicitly sets forth the basic relationships in the partnership. (Note: This partnership, a legal form of business organization, is different than the partnerships described in Chapter 6.)

To limit the liability of a partner, a limited partnership may be established by filing with the state to tell the world that one of the partners is a limited partner. A limited partner has limited liability, restricted to the amount of capital invested in the partnership. Several conditions usually must be met to qualify as a limited partner. First, at least one general partner must remain in the partnership for which the privilege of limited liability does not apply (the general or managing partner). Second, the names of the limited partners (investors) may not appear in the name of the firm. Third, the limited partners cannot participate in the management of the business. If one of these restrictions is violated, all partners forfeit their right to limited liability. In essence, the intent of the statutes creating a limited partnership is to provide limited liability for a person whose interest in the partnership is purely as an investment. For example, this might occur if someone does not want to be involved directly with the golf course operations, but is willing to invest in it. When a partner dies or moves, the partnership is dissolved. Some of the advantages listed for a corporation also apply to a limited partner.

The general partner in a limited partnership is the managing partner or the one or ones who make the decisions and run the business. They also take the risk of liability. While the limited partner can only lose the investment given to the partnership, the general partner, like the sole proprietor, may lose personal assets as well, although the assets of the partnership must be used first.

Just as the government has provided for sole proprietors, giving them a mechanism for protecting their personal assets, the same has been done for partnerships. If the partnership is a general partnership, by filing papers and paying the filing fee, the partnership can become a limited liability partnership (LLP). The partners are then protected by making the partnership separate from the individuals, and creditors can only get to the assets of the partnership. By the same token, a Limited Liability Limited Partnership (LLLP) can be created for a limited partnership, thus protecting the general partner from liability.

Corporation

The organizational form known as a corporation has been a significant factor in the economic development of the United States. The Supreme Court defines a corporation as “an artificial being, invisible, intangible, and existing only in the contemplation of the law.” It acts like a person and may engage in business, make contracts, hold title to property, sue and be sued, and pay taxes; however, the corporate entity functions separate and apart from its owners/investors (known as stockholders). The investors’ liability is limited to the amount of the investment in the company, thereby

preventing creditors from confiscating the investors’ personal assets to settle unresolved claims. The life of the corporation does not depend on the status of the investors.

A corporation is established under the laws of the state in which it is incorporated and of any other state in which it chooses to do business. The jurisdiction of a corporation is basically the state(s) in which it is incorporated to do business. States differ in the requirements they place on the corporation, such as tax rate imposed, restrictions on activities, capital required to incorporate, the fee or organization tax charged to incorporate, and how “foreign” corporations (corporations chartered in another state) are treated. The total cost of doing business must be evaluated before deciding in which state to incorporate.

Every state requires that a legal document, a Certificate of Incorporation (also known as Articles of Incorporation, Corporate Charter, or Articles of Association), be filed with the state’s Secretary of State or, in a few special cases, with the federal government. The following information generally is required:

- name of the corporation;
- statement of purpose (i.e., the general nature of the business, which should be broad enough to allow for some expansion of activities);
- names and addresses of the incorporators (all of whom must be identified in the Articles of Incorporation and must attest that all items in the Articles are correct; in some states, one or more incorporators must reside in the state in which the business is being incorporated);
- jurisdiction and place of business (The area of business operation is specified, and, if a geographic area, then a map should be posted. The post office address of the principal office of the corporation is specified, as is the identification and address of statutory agent to which all official correspondence will be sent. It must be in the state in which incorporation is taking place.);
- rules under which the corporation will operate (The bylaws or the rules and regulations for the internal management and operation of the corporation are required.);
- capital stock authorization (This includes the amount and class or type of capital stock the corporation wishes to issue, not the amount it must issue; and the definition of the different classifications of stock and any special rights, preferences, or limits each class might have.);
- capital required at the time of incorporation (which determines whether the state in which the business is incorporating requires a specific

percentage of the par value of the capital stock be paid in cash and deposited in a bank before incorporation); and

- provisions for preemptive rights, if any, granted to stockholders (see Compendium 3-1).

When the Secretary of State of the state in which the business is to be incorporated has approved a request for incorporation, and the corporation has paid its fees, the approved Articles of Incorporation become its legal basis of operation. Then, the corporation holds an organizational meeting for the stockholders to formally elect directors who, in turn, select the corporate officers.

Generally, the corporation must report certain financial information annually to the state. These financial reports become public record. If the stock of the corporation is sold, the corporation must comply with federal and state regulations governing the sale of corporate securities.

The advantages of incorporating include:

- the ability to sue and be sued, but with the liability of the stockholders limited to the amount of their investment;
- the limitation of liability of the directors and officers when acting in behalf of the corporation, protecting personal assets;
- the right to hold property;
- the right to legally contract (including leases, services), purchase products, hire employees;
- the ability to attract capital, grants, legacies, gifts, and donations;
- the ability to continue indefinitely;
- the ability to transfer ownership; and
- access to a larger pool of skills, expertise, and knowledge.

The disadvantages include:

- the cost and time involved in the incorporation process;
- double taxation (corporate income taxed by federal government, most state governments, and some local governments; then, the stockholders must pay taxes on the dividend they may receive);
- legal restrictions and regulatory red tape (many reports must be filed with government agencies); and
- the potential loss of control by the founding stockholders.

There are two major types of corporations; public and private corporation. The basic difference is that a public corporation sells their stock to the public, and a private corporation holds the stock close; that is, the establish-

ing members of the corporation decide who can have shares of the business and how many shares are distributed to each shareholder.

A nonprofit can use any of the above business operation systems, except partnerships. Therefore, there are nonprofit LLCs, and corporations. They are basically run the same way, except the tax structure is different. Both for-profit and nonprofit corporations are run by a board of directors.

Franchises

Franchising is a method of doing business, not a form of ownership. A company (the franchisor) grants another business (the franchisee) the right and license (the franchise) to sell a product or service, and possibly to use the business system developed by the franchisor. The terms of the relationship are always set forth in an agreement between the franchisor and the franchisee. It is a continuing relationship in which the franchisor provides a licensed privilege to do business, plus assistance in organizing, training, merchandising, and managing, in return for payment from the franchisee. It involves a system of distribution in which a series of individually-owned businesses operate as if part of a large chain. Often, the franchisee is granted an exclusive right or license to distribute the franchisor's goods or services in a specific geographic region, but the franchisor normally directs the distribution methods and establishes standards of performance and quality that the franchisee must meet. Thus, the franchisor maintains substantial control over the operations of the business.

There are three types of franchising:

- trade name;
- product distribution; and
- pure.

Trade name franchising involves a brand name, such as True Value Hardware or Western Auto. The franchisee purchases the right to become identified with the franchisor's trade name without distributing particular products exclusively under the manufacturer's name.

Product distribution franchising involves licensing the franchisee to sell specific products under the manufacturer's brand name and trademark through a selective, limited distribution network. This system is commonly used to market automobiles (Chevrolet, Oldsmobile, Chrysler), gasoline products (Exxon, Sunoco, Texaco), soft drinks (Pepsi Cola, Coca-Cola), bicycles (Schwinn), shoes (Reebok, Nike), appliances, cosmetics, and other products.

These two distribution systems allow franchisees to acquire some of the parent company's identity. They concentrate on the franchisor's product line, although not necessarily exclusively.

The third type, pure (or comprehensive, or business format) franchising, involves providing the franchisee with a complete business format, including a license for a trade name, the products or services to be sold, the physical plant, the methods of operation, a marketing strategy plan, a quality control process, a two-way communications system, and the necessary business services. The franchisee purchases the right to use all the elements of a fully integrated business operation. This is common among fast food restaurants, lodging establishments, business service firms, and car rental agencies. Gymboree Play & Music, Gold's Gym, and Discovery Zone are examples of franchises related to recreation services.

The benefits for the franchisor include:

- a relatively quick way to expand a distribution system with minimum capital;
- the ability to grow without the cost and inconvenience of locating and developing key managers, although the unqualified potential entrepreneurs must be screened out;
- income from franchise fees and ongoing royalties; and
- quick takeover of a share of a regional or national market without having to invest huge amounts.

As for the franchisee, the benefits include:

- the opportunity to own a small business relatively quickly (Because of the identity with an established product and brand name, these enterprises often reach break-even point faster than traditional forms of business operation.);
- support of the franchisor's staff and other franchisees to help the investor survive mistakes; and
- management (such as management training and counseling), brand name appeal, standardized quality goods/services, national advertising programs, financial assistance, proven products and business formats, centralized buying power, territorial protection, and greater chance for success.

The drawbacks of franchising relate to freedom of action and decision-making inherent in an independent business. These include franchise fees and profit-sharing, strict adherence to standardized operations, restrictions on purchasing, and limited product line. Some franchisors have unsatisfactory training programs and require a very restrictive contract.

Nonprofit Sector

Nonprofit associations are established to achieve a specific mission. Most associations evolve from an

individual or group of volunteers who desire to solve a problem, meet a need, promote a special concern, provide a specific service, or create new opportunities to help others. Some of the purposes for which one may incorporate, as set forth by the Missouri statute, include:

- Charitable
- Benevolent
- Eleemosynary (relating to charity)
- Educational
- Civic
- Patriotic
- Political
- Religious
- Cultural
- Social welfare
- Health
- Social
- Literary
- Athletic
- Scientific
- Research
- Professional, commercial, industrial, or trade association
- Recreational club or association.

Associations in the nonprofit sector generally exist legally through incorporation. They become a legal entity or corporation through a process similar to that for private, for-profit enterprises, except they do not have capital stock (see Compendium 3-2 for Nonprofit Articles of Incorporation). Also, the same advantages of incorporation accrue to a nonprofit corporation as to a private, for-profit corporation. However, the nonprofit association does not have the disadvantages of a private corporation. Not-for-profit means no part of income or property is distributed to its members, directors, or officers.

There are many types of associations in the nonprofit sector. These have also been referred to as "quasi-public" and "semi-public," meaning they serve a public purpose and, thus, have been given some privileges of public entities. These privileges include freedom from most federal income tax burden, as well as exemption from real property and other state taxes. A nonprofit association can make a profit through an auxiliary enterprise that is related to the mission of the association. If the enterprise is not related to the mission, the association has to pay an Unrelated Business Income Tax (UBIT). Further, the use of profits is restricted; they must go back into the association to meet the overarching goal for which the association was incorporated; they must be invested in a manner consistent with the mission, whether providing recreation services for mentally-retarded adults, saving the whales, or helping low-income children.

Nonprofit associations also are allowed special low postage rates and exemption from labor union collective bargaining rules. In addition, a privilege to solicit donations, gifts, bequests, and contributions, which become tax deductible to the donor, is a major feature of nonprofit associations. To gain this status, there are certain legal requirements set forth by state law. Most states have some sort of nonprofit corporation act defining what is required to gain this status, although it is normally a relatively simple process and even small associations can file for such status. At the federal level, such an association is known as having 501(c)(3) tax status (see Chapter 19).

A nonprofit association does not have stockholders. When incorporation papers are filed, the constituent body is designated. For membership associations, such as the Boy Scouts, YMCA, Girl Scouts, YWCA, Camp Fire, American Camping Association, National Recreation and Park Association, or a religious organization, the dues-paying members are the “owners,” sometimes also referred to as “members.” For special-interest organizations, such as for health (e.g., Easter Seal), incorporation establishes a board that is self-perpetuating and is considered the legal entity; however, there is the concept of ownership by the community as a whole and particularly by those who make financial contributions.

Some special-interest associations, such as for the environment (e.g., National Wildlife Federation, Defenders of Wildlife) do have memberships, as well as contributions, and often the membership categories are designated by amount of contribution. Or, there may be a special-interest association focusing on a specific program or service; examples include the Community Center Association, the Nature Way Association that runs a local nature center, Impression 5 (a children’s science center), or Critter Alley, an animal rehabilitation center. These usually have member-donors. For special services, the “owners” may be the “customers” who hold membership in the corporate entity, such as a local country club with golf course. For further discussion, see the section below on governing bodies.

It is becoming more common for public park and recreation organizations to help their supporters create a nonprofit, usually called “Friends of the ...”. The park and recreation department helps them with the organization of the new nonprofit. The benefits in creating such an organization include greater opportunities for grants, as well as the development of a group of interested individuals who will help with park fundraisers and projects, and provide an additional outreach for donations from the public (a public which, although they may not want increased taxes, are very willing to give money to recreation programs and obtain a tax write-off). Donors can give directly to the parks, but

the benefit of the “friends” organization is that there is a group willing to ask for money and collect it. It also helps the public organization by giving them a core of volunteers for special programs and projects.

Nonprofit associations may be local, statewide, or national-affiliated. If a membership association is affiliated with a national organization, that organization will specify the jurisdiction or service areas. For example, the national organization determines the Boy Scout and Girl Scout council service areas. On the other hand, special-interest national organizations normally use local or state chapters to carry out the national projects and interests, although this usually includes local service.

Public Sector

The public sector is composed of tax-supported agencies at the federal, state, and local levels. They may legally be authorized to perform park and recreation services as a function of government according to the power of the various levels of government. There are many federal, state, and local regulatory enactments affecting parks and recreation. Recreation also may be provided by administrative placement within a larger system, for example, a hospital, school, or prison.

Federal Agencies

The federal authority to engage in parks and recreation is not specifically authorized in the U.S. Constitution, but is provided under broad authority of the general welfare (Art. I, sec. 8, cl. 1), commerce (Art. IV), and property (Art. I, sec. 8, cl. 13) clauses. Specific authorization comes through congressional action providing broad functions, which then are implemented by administrative regulations. The involvement of the federal government in parks and recreation falls essentially into two types: natural resources management and welfare of people.

It has been deemed in the public good to set aside large tracts of land (specifically parks and forests) for future generations. Parks are administered under the National Park Service (NPS), which is authorized by an “Organic Act” that sets forth the mission and responsibilities of the NPS. The use of forests for recreation was directed by the Multiple-Use Sustained-Yield Act of 1960, which states that the U.S. Forest Service should manage the forests for multiple uses, including recreation. There also is congressional authorization to the Army Corp of Engineers for the use of its impounded waters for recreation, and historical/cultural sites are set aside for the benefit of the people.

By administrative regulations, the federal government has authorized the conduct of recreation services for the health and welfare of certain groups of people for which it has taken responsibility; examples include

military personnel and their families, the patients at Veterans Administration hospitals, and persons in federal prisons.

Authorization through implementing financial resources comes from congressional budgetary allocations.

State Agencies

States are involved in parks and recreation in a way similar to the federal government: with natural resources management and welfare of the people. Their basis of authority is from the U.S. Constitution, Art. X, which grants all powers to the states that are not reserved to the federal government. This includes what is known as “police power,” regulations for the general welfare, health, safety, and morale of the people. The states also have broad authority in their constitutions. The state establishes and authorizes management of state parks and forests through legislation, and then the appropriate state departments implement such authorization. The departments may enact regulations to manage the lands (e.g., state parks, forests) and waters. Similarly, the state authorizes the institution and the appropriate department administers the recreation services (e.g., state prisons and hospitals). As with the federal government, authorization also comes through budgetary allocations.

Local Agencies

Local entities derive their power from the state. They are given no powers by the U.S. Constitution, which gives the power to the states. The states in turn allocate to the local entity. There are three types of local agencies, each authorized differently by the state:

1. those agencies considered an “arm of the state” (schools, counties, townships);
2. municipalities; and
3. special districts.

Each entity has specific boundaries of jurisdiction that geographical descriptions set forth. The agency must clearly describe the geographical boundaries of its jurisdiction both within and outside the corporate limits using a detailed official map so that it can avoid situations involving ambiguous territorial jurisdiction (see Compendium 3-3 for an example of jurisdictional boundary descriptions).

Arm of the state. Schools, counties, and townships are considered “arms of the state,” because the state establishes the geographical boundaries that encompass the whole state. Counties and townships are political subdivisions of the state that are included in municipality legislation. Then, the state divides itself into school districts. Legislation authorizing schools may include

provisions for athletics and community recreation, especially summer programs, or in some states, it may include specific “community education” legislation that includes recreation services. Wisconsin is a leading state for school-sponsored community (public) recreation, in contrast to having the municipality conduct public recreation; Michigan is a leading community education authorization state.

Municipalities. Municipalities are created for the benefit of people living inside the designated boundaries. Either home rule charter or authorizing legislation establishes municipalities and defines their powers and responsibilities. The authorization for parks and recreation, then, comes through the municipality under home rule enacting an ordinance establishing a park and recreation department or through the municipality not under home rule taking advantage of a state-enabling statute. An ordinance institutes details of the managing authority and its responsibilities, jurisdiction, and functions. State legislation may also authorize municipalities to undertake special projects.

Home rule charters are somewhat similar to articles of incorporation, in that they are documents specifying municipal structure, powers, and duties of the governing unit. A home rule charter allows the local government to control local matters without intervention from the state legislature. There are two basic types of home rule: constitutional home rule established by a state’s constitution; and legislative home rule established by the state’s legislative body. As cities expand and local governments face greater challenges (such as financial burdens, urban sprawl, and deteriorating infrastructure), home rule is becoming a more-viable tool to solve these problems. To obtain home rule charter status, the residents of a geographical area must vote for it (see Compendium 3-4 for an example of a home rule charter).

Enabling statutes grant local entities the right to acquire, develop, and maintain property for park and recreation purposes and to conduct recreation programs and services. All 50 states have enabling statutes that authorize one or more units of local government to provide park and recreation services. Enabling statutes are permissive in nature, rather than mandatory. Thus, enabling statutes permit local governments to establish a park and recreation system and to expend public funds for park and recreation purposes, but they do not require it. Enabling statutes typically contain the following provisions:

- authorization for local governments to exercise certain powers;
- authorization for local governments to establish a board or agency to administer the powers granted;

- authorization of powers given under specific limits or under certain conditions;
- provision for joint exercise of power by two or more local, political jurisdictions to establish and deliver park and recreation services; and
- provision for financing the powers granted, usually including authorization to levy a special tax or appropriate money from the general fund to operate a park and recreation organization, to accept monetary gifts or other donations, and to establish a user fee system.

North Carolina's Enabling Act, which was passed in 1946, contains all of the provisions mentioned and

has proven to be effective over the past fifty years (see Exhibit 3.2).

Under the joint exercise of power that most state-enabling statutes authorize, the governing bodies of cooperating jurisdictions may establish a regional park and recreation commission or a community recreation association. Such an organization has a board of representatives of the political jurisdictions. The cooperating jurisdictions finance the organization and taxes may be authorized to support the park and recreation program and services. Although the board is semi-independent, it has many of the powers of an independent board (see discussion below on boards).

Special project statutes have been passed by some state legislatures to authorize municipalities to sponsor

Exhibit 3.2

Recreation Enabling Law (North Carolina General Statutes, Ch. 160A, Art. 18)

160A-350 Short title—This Article shall be known and may be cited as the “Recreation Enabling Law”

160A-351 Declaration of State Policy—The lack of adequate recreational programs and facilities is a menace to the morals, happiness, and welfare of the people of this State. Making available recreational opportunities for citizens of all ages is a subject of general interest and concern, and a function requiring appropriate action by both State and local government. The General Assembly therefore declares that the public good and the general welfare of the citizens of this State require adequate recreation programs, that the creation, establishment, and operation of parks and recreation programs is a proper governmental function, and that it is the policy of North Carolina to forever encourage, foster, and provide these facilities and programs for all its citizens.

160A-353 Powers—In addition to any other powers it may possess to provide for the general welfare of its citizens, each county and city in this State shall have authority to:

- 1) establish and conduct a system of supervised recreation;
- 2) set apart lands and buildings for parks, playgrounds, recreational centers, and other recreational programs and facilities;
- 3) acquire real property, either within or without the corporate limits of the city or the boundaries of the county, including water and air rights, for parks and recreation programs and facilities by gift, grant, purchase, lease, exercise of the power of eminent domain, or any other lawful method;
- 4) provide, acquire, construct, equip, operate, and maintain parks, playgrounds, recreation centers, and recreation facilities, including all buildings, structures, and equipment necessary or useful in connection therewith;
- 5) appropriate funds to carry out the provision of this Article;
- 6) accept any gift, grant, lease, loan, bequest, or devise of real or personal property for parks and recreation programs. Devises, bequests, and gifts may be accepted and held subject to such terms and conditions as may be imposed by the grantor or trustor, except that no county or city may accept or administer any terms that require it to discriminate among its citizens on the basis of race, sex, or religion.

160A-354 Administration of parks and recreation programs—A city or county may operate a parks and recreation system as a fine department, or it may create a parks and recreation commission and vest in it authority to operate the parks and recreation system.

160A-355 Joint parks and recreation systems—Any two or more units of local government may cooperate in establishing parks and recreation systems as authorized in Article 20, Part 1, of this chapter.

160A-356 Financing parks and recreation—Each county and city is authorized to expend for its parks and recreation system any of its revenues not otherwise limited as to use by law.

certain types of programs and services and to construct and maintain specific types of areas and facilities. They may create these special purpose statutes for facilities such as auditoriums, community buildings, stadiums, swimming pools, or golf courses. They also authorize the financing of such facilities through taxes, bonds, or other funding ventures. Rather than a general authorization, such laws may be specific to a designated municipality.

Special districts. Numerous states have passed enabling legislation that authorizes the establishment of special districts at the local level to provide designated park and recreation services. Such districts are independent and autonomous, with their own governing bodies either elected within the specific district or judicially appointed and with taxing power. These districts usually cross traditional jurisdictional lines. The state statute describes how to establish such districts; the residents within the geographic area involved must initiate it. The advantage of such districts is that they focus on one community issue. Further, because they cross jurisdictional lines, they allow a combining of resources and minimization of duplication of services. Some examples:

- Oregon authorizes such districts as a park and recreation managing authority;
- California has recreation districts;
- Illinois has two types of special districts — park districts and therapeutic recreation districts; and
- Ohio and Michigan authorize metropolitan park districts; e.g., Cleveland Metroparks and Huron-Clinton Metropolitan Park District.

The authorization of certain recreation functions usually does not preclude another entity from performing that function. For example, in Illinois the operation of recreation facilities (including harbors, beaches, pools, and playgrounds) is authorized for municipalities, but the park district code has a special provision to assume these functions.

Multi-jurisdictional park authorities. As funding becomes tighter, communities are looking for more efficient ways to provide services. One way to do this is to combine with another jurisdiction. Counties and cities each provide similar services. To save money, they can become one department that serves both entities. This saves money through minimizing duplication. In central New York, where there are many small townships, it is common for these townships to pay into one fund to provide services for all of them. Instead of five, small day camps, it allows for one large one that can offer more-varied programs and better-trained staff.

Governing Authority

One common component of all corporations and public agencies is a governing authority responsible for making policy. The policy-making entity is legally, ultimately responsible for the operation of the park and recreation programs and services. It has the “power to accomplish without recourse.” It may be a board of directors or trustees elected by the stockholders or members of a private for-profit corporation or a non-profit corporation. For public entities, it may be the city council or commission for a municipality, an elected board of commissioners for a special authority, the school board, the county supervisors, or other legally-established and elected body. The public entity usually has taxing power and must approve the budget. It also may hold title to property.

Types of Boards/Commissions, Their Authority and Election

The governing authority is usually referred to as a board; however, in the public “arm of the state” political entities, the word “commission” may be used. For nonprofits and private for-profits, the board may be referred to as a Board of Trustees or a Board of Directors. There are two types of boards:

- independent; and
- semi-independent (public entities only).

There is a third type of board used by both the public and nonprofit sectors: the citizen advisory board, which, although it has no legal authority, does affect policy decision-making. It is discussed in the third part of this chapter.

Independent

The independent board is the strongest type of governing board. Some examples include the corporate board for Gold’s Gym, the city council for Fayetteville AR, or the board for the National Red Cross. In each case, the board has the authority to establish policy, adopt a budget and raise funds, and hold property title. It is the ultimate authority with regard to fiscal matters. At the government level, it also can assess taxes. The citizens elect local government boards. Membership elects nonprofit board members to answer to the needs of the membership. Board members can assess dues and develop funding strategies for projects that fall within the mission of the organization. They also determine how the association’s money is spent. The stockholders of a corporation elect private for-profit board members. Individuals are nominated who have a proven business sense or special expertise. State law and the incorpo-

ration documents set forth the specific powers of the respective boards.

Semi-Independent

When the policy-making entity is not an elected independent board, the public governing entity may appoint a park and recreation board to which it delegates authority for operating policies and general administrative practices. This is considered a semi-independent board, since it depends upon the city council or county commission for ultimate policy, in addition to approval and allocation of its funds. The board is an integral part of city or county government and other local entities. The park and recreation executive may be directly responsible to the city or county manager, or to the park and recreation board itself, but should not be responsible to both (see Exhibit 3.3.). The operating policy-making body should hold regular meetings, duly publicized, with the actions of the board and reports of the administrator officially recorded and available. Board members should represent the total community and serve staggered terms.

A semi-independent board usually can make operating policy and budget decisions, but must submit the budget to the ultimate governing authority for approval. Therefore, a semi-independent board is vulnerable to the "power of the purse." Its members are appointed by the ultimate governing authority. For example, a city council can delegate decision-making for parks and recreation to an operating policy-making board, a semi-independent board. This means that although the city council may have final say on some issues, especially those pertaining to money, they delegate their authority for the operational policy decisions. If a new park and recreation director is needed for a city, a semi-independent board could do the hiring without the city council's approval. However, if more money were needed for the new hire, the board would have to get permission from the city council. Although the semi-independent board has operating policy power, not having full fiscal power is limiting. The board members are usually appointed by the city council, with membership derived from some established formula. For example, the formula may require that every geographical section of the community be represented.

As indicated previously, inter-jurisdictional boards formed to provide park and recreation services are usually semi-independent boards.

Board Responsibilities

Boards have three primary responsibilities:

- to establish sound policies to guide management in the performance of duties, particularly

as related to strategic planning, facilities development, and fiscal matters;

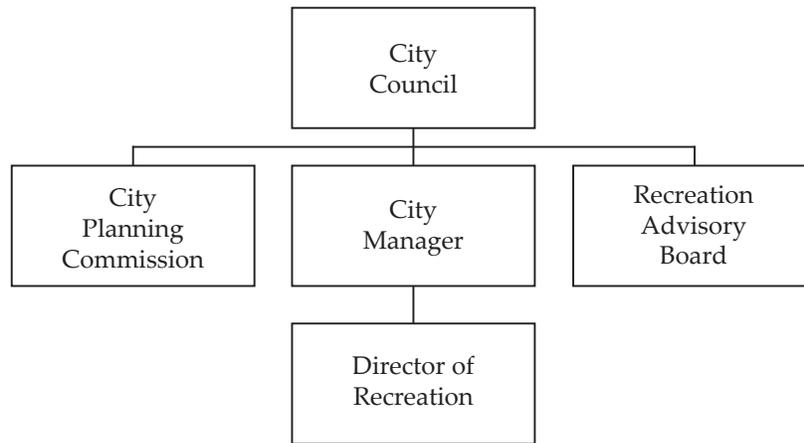
- to select capable and effective management; and
- to advise and counsel management.

It is management, not the board, which conducts the affairs of the organization so that it becomes an effective, fiscally responsible operation. Written guidelines define the relationships between the policy-making functions of the board and the administrative functions of the chief administrator and staff. These guidelines for internal relationships often are incorporated into position descriptions, especially in smaller organizations.

In doing its job, the board should accept certain responsibilities. According to Ingram (2009) they include:

- determining the mission and purpose of the organization (While these should not be changed without stakeholder input, they should be reviewed at least annually and all decisions by the board should support the mission and purpose.);
- selecting the CEO that fits with the organization and believes in the mission;
- supporting and evaluating the CEO (This includes providing quality feedback, helping him meet the right people, providing opportunity to be in the "right" places, extending professional development possibilities, encouraging the use of professional and personal leave time, and giving a pat on the back for quality work.);
- ensuring effective planning (When the plan is completed, it becomes the board's responsibility to support and move the plan forward.);
- monitoring and strengthening programs and services (This does not mean taking over, but it does mean asking the right questions during proposals, studying the cost/benefits of programs, and occasionally allowing the CEO to hire third-party consultants to provide external evaluations.);
- ensuring adequate financial resources (This includes making sure the organization has adequate staffing and resources to do the job and fundraising. For non-profits, many believe this includes being a role model by personally giving to the cause.);
- protecting assets and providing financial oversight (To do this, a board must review and approve the budget, establish policies for financial practices including having appropriate insurance and policies for investment, and providing for regular audits.);

Exhibit 3.3
Options for Organizational Leadership



Recreation director answers to City Manager but also has an advisory board.



Recreation director answers to the park board who are elected and have power of the purse.

- ensuring that the board is continuous by replacing members with qualified citizens and assessing board members competencies and releasing them when they are not performing;
- ensuring legal and ethical integrity (This means avoiding conflict of interest, making sure that all laws are followed, and being transparent in dealing with, and being accountable to, the stakeholders. Many boards adopt a code of conduct for board members. See Compendium 3-5 for a sample code of conduct.); and
- enhancing the organization’s public standing. (It is important that the agency have advocates who will articulate achievements and be a voice for the organization to the community, the media, and the stakeholders. See also Exhibit 3.4.).

Policy Formulation and Review

It is the board’s job to set policy with guidance from the CEO. Policies, rules and regulations, and operational

procedures are each different in specific ways. Policies are broad statements that reflect the mission and goals of the organization, set forth by the policy-making board. An established policy is a settled course of action that the chief administrator and staff must follow. Rules and regulations are administrative statements developed by the chief administrator, which control the activity of participants and staff functions. They are based upon policies. Operational procedures are guidelines, set forth by the administrator and staff, to facilitate the implementation of programs, how something is to be done, when, and by whom. It should be indicated how each is established and administered.

The policy and procedure manual lists the organization policies and needs to be:

- up to date;
- reviewed systematically (at least every five years) by the administration and by appropriate committees or members of the board; and

Exhibit 3.4

Park Board Policy and Guides

Consistent and systematic procedures park boards use to accomplish their tasks are a good barometer of their enthusiasm and effectiveness. Good organizations and administrative procedures are reflected in the care and maintenance of park areas.

Organization

- Goals and objectives for the department developed in writing.
- Bylaws governing the organization of the board and the calling and conducting of the meetings adopted.
- Personnel practices for department and employees, full- and part-time, written and available.
- Regular meetings held at least monthly, open to the public and press; complete record and minutes of all board meetings kept, and copy sent to city council members, mayor, absent board members, members of board of education, school superintendent, and other interested parties.
- A manual provided for each board member which will include the following:
 - A copy of the enabling legislation under which the board operates.
 - Copy of ordinance authorizing the park board.
 - Bylaws of the board.
 - List of fees and charges used in the community by the department.
 - A copy of previous year's budget.
 - A copy of current annual budget.
 - Site plans of each park area owned and operated by the city and a list of their facilities and equipment.
 - Salary schedules for employees.
 - A copy of last annual report.
 - Any other information helpful in acquainting new board members with the procedures and operation of the park board.
- Annual report.
- Agreements in writing or use of any area or facility not owned by the city.
- A full- or part-time director appointed to plan recreation programs and maintain the park facilities, depending upon the city size.

Planning

- Questionnaire survey conducted to determine needs and interest of the community regarding recreation areas, facilities, and programs.
- Inventory completed of other private, voluntary, and commercial agencies or organizations in the community with recreation facilities and/or recreation programs.
- A master plan developed and approved for areas and facilities, short term (five years) and long term (ten years).
- A master plan developed for improving recreation programs within the community.
- Coordinate and cooperate with other agencies, particularly the local school authorities in use and maintenance of facilities to insure the most effective use and minimum cost for providing community services.

Finance

- Specific procedures adopted for handling, spending, and accounting of department funds.
 - Monthly written financial statement of appropriations, expenditures, receipts, and balances required and reviewed.
 - Annual budget prepared based on the needs of the department and submitted to the governing body.
-

- made available to pertinent unit administrative and supervisory personnel (see Compendium 3-6 for policy and procedure manual).

The chief administrator prepares a review of policies for the board. Policies may be reviewed in general or with specificity, but in either case, the chief administrator recommends to the board the need to continue, change, or terminate existing policies. Of course, policy changes can be recommended at any time and do not have to wait for the systematic review.

The board should preserve and protect the distinction between policy and operations, and it should allow its managers to manage. Further, a board or individual board member who gets into operations loses individual immunity for operational functions.

Fiduciary Duty

A board member is charged with the duty to do what is best for the organization. This duty is characterized by loyalty, due care, and obedience. Those charged with such duties are called fiduciaries.

The duty of loyalty requires a board member to have undivided loyalty to the organization, to forego seizure of the organization's business opportunities for less or for one's own benefit, to avoid conflict of interest, and to act in good faith and with honesty. This means not usurping or misappropriating business opportunities belonging to the organization for one's own business.

An example of conflict of interest would be if a board member invested the corporate assets in his own business. A board member has the power to invest funds, but must stay away from any investments of those funds that would be of personal benefit. Similarly, there would be a conflict of interest if a board member proposed that a company purchase materials or components from a corporation headed by that board member; if a board member served on the board of more than one organization, where one is the customer of the other; or if a board member used confidential, privileged information for personal gain or the gain of family member or friend.

An example of why conflict of interest can have negative effects was seen in a small community in Arkansas. This community had a five-member board. Two of the members were heads of community sports associations. One was head of the soccer association and the other of the baseball association. They admitted to trading votes when it was needed for their respective sports. A third member had not attended the meetings for a long period of time and had not been replaced, giving the first two members even more power. Over a five-year period, a number of sport fields were added, but they were all soccer and baseball fields, leaving other groups under-served.

Acting on a conflict of interest is not illegal. Having a board policy is not required by law either. However, the IRS is advocating that nonprofits have a conflict-of-interest policy as a condition of tax-exempt status for public charities. Therefore, nonprofit agencies should seriously consider instituting such a policy (Hopkins, 2009).

The simplest rule to follow is that when there is a suggestion that a conflict of interest is involved, one should withdraw from the situation or not take the action that may be in violation of this rule without full review of legal counsel. The audit committee of the board should include in its work the review of content of the membership and the potential for conflicts of interest. It is not enough to merely state that conflict of interest is against organization policy or even to list the areas of conflict that might naturally follow. There should be a committee that regularly reviews potential conflicts of interest. This may require board members and management to complete forms that review such activities and sign a statement of noninvolvement. A board member's loyalty must be first to the organization in any dealing that pertains to the organization (see Exhibit 3.5). (See Compendium 3-7 for a sample board member application form and statement of commitment.)

A second duty of loyalty is confidentiality. There are many issues that will arise in board meetings that may be confidential. For a public board, all meetings are open to the public, except those dealing with personnel issues and some concerning land purchases and contracts. The reason for closed session meeting must be in the best interest of personnel or public. For example, if the board is negotiating a deal for park land, there are some good reasons to keep the sessions closed. If land deals become public, the land could be bought out from under the park board, causing increased costs for the community.

The fiduciary duty of *due care* is especially important in conducting the organization's financial affairs. Due care is that degree of skill, diligence, and care that ordinary, prudent men and women would exercise in similar circumstances in like positions. This means that a board member must use good judgment. For example, a board member must invest the organization's assets in the same manner a prudent person would invest his or her own assets. Board members can exercise due care by paying reasonable attention to the organization's financial affairs, making proper inquiries about investments, and hiring quality employees to handle the day-to-day business.

A second issue in due care is to attend and to be prepared for meetings. If there is an important topic on the agenda, the board member should come prepared by reading the background information and being prepared to ask appropriate questions so that important issues can be identified before votes are taken.

Exhibit 3.5

Board Member Code of Ethics

Directions: As a board member, you need to be aware that more is expected of those in leadership roles. Review the following statements. Signing this code of ethics solidifies your commitment to honest board service.

As a member of this board, I will:

- Represent the interest of all people served by this organization, and not favor special interests inside or outside of this organization.
- Not use my service on this board for my own personal advantage or for the advantage of my friends or associates.
- Keep confidential information confidential.
- Respect and support the majority decision of the board.
- Approach all board issues with an open mind, prepared to make the best decision for everyone involved.
- Do nothing to violate the trust of those who elected or appointed me to the board, or of those we serve.
- Focus my efforts on the mission of the organization and not on my personal goals.
- Never exercise authority as a board member except when acting in a meeting with the full board or as I am delegated by the board.
- Consider myself a “trustee” of this organization and do my best to ensure that it is well-maintained, financially secure, growing, and always operating in the best interests of those we serve.

Board member signature

Date

Breach of duty of care might include failure to make required reports, the payment of claims the board members had no authority to pay, misuse of corporate assets, improper loans to board members, or the creation of corporate debt in excess of limits allowed by law or bylaws.

The board must make sure that there are adequate resources to protect the assets. Some examples would include that:

- the board has and has signed a code of ethics (see Compendium 3-8);
- proper insurance is purchased for the agency including liability, fire, bonding, etc.;
- complete and accurate financial records are kept and reviewed;
- quality investment of funds are made;
- only appropriate budgeted expenditures that focus on the mission are approved; and
- fundraising is responsible.

An example of due care was experienced when a CEO of a nonprofit day care did not pay payroll taxes. Although the board received a report of expenditures every month, they did not ask the appropriate questions. The IRS requested the payments and, when the organization did not have the funds, it became board members’ responsibility to find them. They became personally liable, since they each had fiduciary duty for checking organizational finances.

The *duty of obedience* means that the board members will perform their duties in accordance with applicable statutes, bylaws, and charters. This means that the board is responsible for ensuring compliance with all regulations and reporting requirements, knowing all the documents that govern the organization, and making decisions that fall within the scope of the mission and those governing documents. Breach of obedience includes engaging in activities not authorized by the bylaws, making payments to silence complaints, diverting funds for speculation in commodities or any other unlawful act, and lack of enforcement of human rights. A board member is expected to act within the law, and is liable for actions taken outside of that.

The most common reasons nonprofits to get sued are:

- employment claims;
- contract claims;
- discrimination claims;
- torts/negligence;
- release of records; and
- defamation (Hopkins, 2009).

In general, there are a number of actions a board member takes to act in good faith and perform his or her fiduciary duties (see Exhibit 3.6).

Keeping the duties just discussed in mind and educating board members so that they understand the requirements for their positions will help

Exhibit 3.6

Fiduciary Duties

- Attend the board and committee meetings to maintain awareness of board activities.
 - Be prepared for meetings by reading all the premeeting information and reviewing any background material before the meeting.
 - Represent the interest of all the people served by the organization and do not favor special interests inside or outside of the organization.
 - Do not use the service to the board for personal advantage.
 - Keep confidential information confidential.
 - Do not exercise authority of a board member except in a board meeting or as otherwise authorized.
 - Read the relevant statutory provisions, certificate of incorporation, bylaws, mission statement, financial statements, and minutes.
 - Recruit quality members for the board.
 - Be involved in board activities and speak up if in disagreement with an action and have it included in the record.
 - Pay attention to the organization's finances and insist on an outside audit that will be reported to the board.
-

develop a quality board that works for the good of the organization.

Freedom of Information Act

Freedom of Information Act has become extremely important today as transparency has become an issue. Especially in public organizations where taxpayers' dollars are being used, the public has the right to know what their public employees and government actors are doing. Board members for public agencies fit into this category. The U.S. Department of Justice (2004, paragraph 1) states:

The Freedom of Information Act (FOIA) generally provides that any person has a right, enforceable in court, to obtain access to federal agency records, except to the extent that such records (or portions of them) are protected from public disclosure by one of nine exemptions or by one of three special law enforcement record exclusions.

Although this states "federal agency," the states and municipalities have passed their own open records acts.

Paragraph 2 of the same Justice Department document states: "The basic purpose of FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed" This includes:

- efficient government;
- input by citizens on issues that affect them;
- accountability for use of taxpayer monies; and
- a balance for sensitive personal and governmental information.

In essence, it requires that all government documents in any format, as well as government meetings, be open to the public. Some states have taken open-government meetings to mean that if two or more board members that are elected by the citizens or that are appointed by elected officials meet, they must notify the press of the meeting. This notification must include when and where the meeting will occur and minutes must be taken.

Some public records are exempt and in some states a public agency can request a document to become exempt. In most states, the exemptions include:

- medical records;
- police records of an open investigation;
- student educational records; and
- security system plans.

If a person wants information, how quickly they can receive it depends on the type of information. Each state has policies as to whom and how to retrieve information and what it will cost. Generally a research and duplication fee will be charged. A form needs to be filed with the fee before it is considered a legitimate request. After the request the government has 24 hours (shortest period for a state) or 30 days, the longest period. Federal government has 40 days. Some of the length of time is dependent on the difficulty to retrieve the record.

As boards go about their business, they should remember that they (especially public boards) work for their citizens and the information produced belongs to them.

Board Structure

The overall structure of the board is usually provided in the bylaws, and includes its composition and election,

committee structure, number of members, and length of term. To ensure the continuity and strategic success of the organization, it is important to have a strong board of directors. See Compendium 3-9 for sample bylaws both for nonprofit and public agencies.

Composition

Few organizations can survive long, especially in the current economic and competitive environment, without an active, informed, and competent board or commission with skills and experiences correlating to the organization's mission. The familiar attributes of highly-successful and outstanding people are integrity, experience, intelligence, and judgment. However, a board should have people who are qualified to deal with issues that the organization faces. It helps to have some board members with previous board experience and extensive knowledge of the organization and the community. Board members should reflect the diversity of its constituents by occupation, experience, age, gender, race, and geographical area. In general, the board will benefit by including people from several different industries and professions; people with such expertise in law, accounting, finance, architecture, engineering, fund-raising, public relations, and advertising that can use their skills to the service of the organization. Individuals with diversified backgrounds can bring important insights to board meetings. Someone on the board experienced with the public sector can contribute a perspective frequently missed by the businessperson. A person in academics can add still another perspective. A board with diverse membership will have an extensive network of contacts throughout industry and the professions, which may be useful to the organization. A diverse board membership can engage in detailed, insightful discussions that inevitably lead to better decision-making.

Recruiting Board Members

Berit Lakey (2007) identifies nine steps to finding, recruiting, and engaging board members (see Exhibit 3.7).

Step 1: Identify. As discussed above, it is important to have a diverse board. As each board member leaves, there is a hole left that must be filled. It is important to identify the need of the board. What talent, perspective, connections, etc. are needed from the new member? From that list, the board can begin to search for the ideal candidates. Organizations want to avoid a self-perpetuating board; that is, a board that continually re-elects itself or only includes friends of board members. This stifles development of new ideas and organizational improvement. Asking well-connected people for suggestions, checking in professional civic clubs, and ask-

ing local industry managers for suggestions should help develop a list of possible candidates.

Developing an applicant pool to fill nonprofit and public sectors vacant board positions may be achieved by:

- accepting recommendations from existing board members;
- circulating printed announcements to local business and civic organizations;
- advertising in local news media;
- posting vacancies in and around city facilities; and
- making announcements at special events, service clubs, local organizations (senior citizen groups, PTA), and other similar meetings.

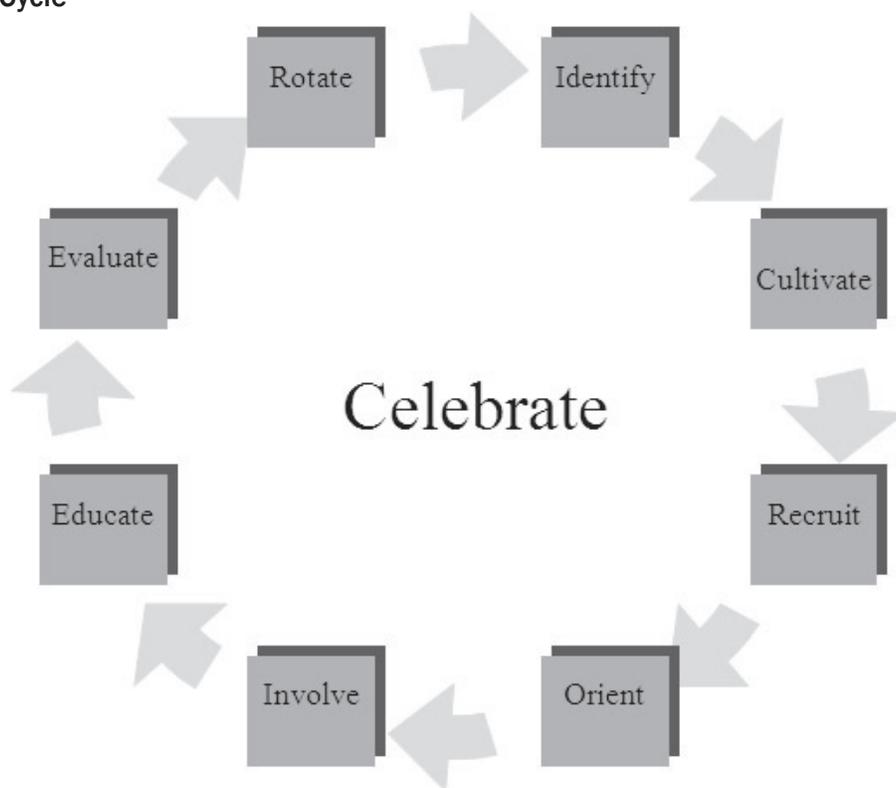
Step 2: Cultivate. Once identified, a connection with potential board members must be made. They need to hear about the organization, learn about what it does, and how it serves the community. One must make the potential board member aware of the possibility of joining the board and then cultivate their genuine interest in becoming a member.

Step 3: Recruit. People rarely do anything without being asked. To be fair, make sure that the potential board members are clear about expectations, time commitments, and requirements of what they are being asked to do. If meetings are once a month, but there are additional committee responsibilities and fundraising expectations, do not avoid telling them that information. A new board member must come into their new responsibilities with their eyes open, if they are to do a good job. Many boards have new members sign a Board Service Commitment Pledge (see Compendium 3-10).

Step 4: Orient. Do not expect that anyone can become a board member without some training. They need to learn about the agency, its background, financial condition, issues, and bylaws or how the board operates. The new board members need to understand their roles and responsibilities and be introduced to the other members of the board. Orientation of new board members helps bring them quickly up to speed and reduces their learning curve.

Board Manual. Managers can work with board chairs to compile or maintain a board background book. This book is a comprehensive, professionally-presented summary of important information about the organization. While compiling the book may take time, the board members usually greatly appreciate the investment of care and effort. The board background book should be bound (i.e., in a three-ring binder) and organized as clearly as pos-

Exhibit 3.7 Board Building Cycle



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sible. New members are given the book well before the first board meeting to give them time to assimilate its contents. Information recommended for a board background book includes:

- mission statement, vision, strategic plan (see Chapter 6);
- history of the organization;
- articles of incorporation, bylaws;
- organizational chart of board and of staff, including job descriptions (see Chapter 4);
- manuals—policies and operational procedures, personnel or employment (see Chapter 4), including conflict of interest, insurance coverage, accreditation documents, and whistleblower policy;
- minutes of the board for the past year, plus three years annual reports or three years of minutes if the board meets infrequently;
- federal and state statutes, and local ordinances (as applicable);

- financial information, as appropriate (see Chapter 19), including audit and estate evaluation, budget (see Chapter 20), competitors, vendors, and customers;
- parliamentary procedures;
- affiliate (national, international) information;
- program information, including calendars, brochures and websites, participation numbers and five-year program trends;
- descriptions of special project with which the board will be dealing in the upcoming year;
- information from other related boards, the like City Council or advisory boards;
- maps and locations of parks and facilities which include pertinent information about each; and
- biographies of board members.

This manual is organization-specific, and, therefore, not all items will be appropriate for all organizations. The goal is to orient board members as effectively as possible to the workings of the organization. The board

background book can provide board members with as much essential information as practical and provide a ready resource for guiding documents when needed. This helps ensure that little valuable meeting time will be spent presenting basic information and bringing a member up-to-date. Board members depend on the organization's staff to efficiently provide needed information so they may effectively perform their board responsibilities.

Separate packets are used for current materials, including the agenda and supporting materials, minutes, and any committee work.

Step 5: Involve. New board members need help to get involved, but it is no good if they are put in positions for which they have no interest or ability. Identifying best fit for committees and positions that need filling will assure involvement and a board member who will be productive

Step 6: Educate. Board members are usually from outside the field of recreation. To provide the best service, they need to be educated. Holding board retreats and encouraging them to attend conferences and seminars on various subjects, especially in those areas where they are committee members, will increase their interest in issues, improve their ability to make quality decisions, and enhance their overall value as a member of the board.

Step 7: Evaluate. Like any other organization, the board must go through evaluation. Each board member and the board as a whole need to self-evaluate and determine how they can improve. What goals are not being met? What committees are not performing and why? What can be done better to increase the overall quality of both the board and the overall organization?

Step 8: Rotate. The structure of a board contributes to its freshness and stability. The organization wants a board that is vital, relevant, and responsive to the changing needs of the organization while providing the members a long-term view of the organization and an acquaintance with the organization's values, temperament, and goals. Establishing formal terms of three to five years is useful. It is recommended that only one-third of the board members' terms expire at the same time. This staggering of board terms allows the members to become well enough acquainted to develop group dynamics, or chemistry, that can improve the quality of decision-making and guarantees experienced members on the board at all times. Board members who work together long enough develop a sense of each other's strengths, enabling them to tap expertise efficiently.

Effective members often serve several terms; however, it is advisable that they rotate off the board for a period of time (a minimum of one year) after serving two consecutive terms. This allows for fresh ideas and new energy to be brought to the board.

Step 9: Celebrate. It is important to recognize victories and to enjoy the time on the board. A board member who is thanked for a contribution is more likely to continue working for the good of the organization. People who laugh and enjoy their group are more apt to attend the meetings. Each member is essential to a quality board.

Since regular attendance at meetings is essential for the board to optimally function, the attendance policy should be well publicized. Most boards require a percentage of meetings attended to include the regular meetings, committee meetings and special meetings. A board needs a method to self-prune members when it becomes advisable and members seem uninterested or are no longer attending meetings. An orderly and well-understood procedure for dismissing members within the operating procedures of the board alleviates possible hurt feelings.

Number of Members

The bylaws usually set forth the number of members, which may depend on the size of the organization and the homogeneity of the group the board represents. Public entity governing boards have between five and 15 members, with most having five to seven. Nonprofit boards are usually larger. According to BoardSource's *Nonprofit Governance Index 2007*, the average board has 16 members (Dambach, Davis & Gale, 2009). Private for-profit corporate boards can be larger still. A board with fewer than five has little room to include the variety of experienced people who can make useful contributions and does not have enough members to get things done. However, excessively large boards are less effective because a small group of vocal members typically dominate the discussion. Seven to nine is the preferred size of a public board to maximize group dynamics and allow each member to speak. Groups of seven to 11 members are large enough to form a majority and allow for diverse input, yet small enough to avoid the negative outcomes often associated with large groups (such as domination by a few members, development of subgroups, inhibited participation by some members, and excessive time taken to reach a decision). The advantages of a large group of more than 12 are that the board still has a quorum when a few members cannot make the meeting, and there is more diverse input. Better decisions tend to be made by larger groups. It is also wise to keep the number odd so that there will not be ties when voting.

Board Operating Procedures

The board needs specific procedures for operating. Basic legislative procedures are set forth in the bylaws.

Bylaws

Along with the Articles of Incorporation an organization must operate under a set of bylaws (see Compendium 3-11). The bylaws are the code of rules adopted for the regulation or management of the affairs of the organization. This is the document that directs the way the board handles business in the organization. Each member receives a copy and is responsible for being familiar with its requirements. Bylaws typically include the following information:

- board membership rules, including the number of board members, the length and rotation of terms, composition or representation of membership, and methods for removal from the board;
- board leadership information, including officer positions and responsibilities, and length of terms;
- committee structures, including what committees, their responsibilities and the method and number of meetings;
- voting rights, including who has the right to vote for officers, board decisions, and proxy and quorum requirements;
- meeting requirements, including how often the board will meet, how notice will be given, and methods for calling special meetings; and
- methods for amending the bylaws (see Compendium 3-11 for Bylaw Checklist).

Operating Procedures

Beyond the bylaws, there are operating procedures that define how the day to day operations flow. Bylaws are difficult to change, but operating procedures can be done through a vote of the board. The elements of the board structure that are important to structure should be in the bylaws, but the elements that may need to change should be in the operating procedures. For example, it is important to have certain committee structures; however, it may be less important how those committees are set up and how often they meet. The bylaws will give the minimum requirements and then the procedures may fill in the blanks.

Leadership

There are two people who are crucial to board leadership; the CEO, the recreation director, or superintendent—the paid individual who will run the agency; and the chair of the board. (See Exhibit 3.8 for division of responsibilities between the CEO, Chair, and the Board.)

The CEO is not voting and acts as an advisor to the board. His or her day-to-day involvement with the organization is to manage the organization and lead the staff. The CEO is the person who identifies the major issues that occur in the agency and brings them to the board's attention. Because their understanding of the field is stronger they can also advise as to possible solutions. The job of the CEO is to implement policies of the board.

The Chair of the board is an elected position, usually by the board itself. No one should be a chair unless he has the time and dedication to do it. The Chair is the person who directs the business of the board and therefore must have effective leadership skills and an excellent grasp of the organization and its mission.

Committee Structures

Committees allow the board to work efficiently. The committees work between board meetings, do research for the board, and then bring recommendations to the board for a vote. Generally, the recommendation from a committee comes in the form of a motion after a report has been offered.

There are two types of committees: task force and standing committees. The task force is a committee that is developed to look into certain issues in more detail. It lasts as long as necessary and is dissolved when the need for the committee is over. The standing committees, on the other hand, are listed in the bylaws with the committees' job description or what it is they are charged to oversee. There are many kinds of typical standing committees.

- Governance committee is in charge of identifying and recruiting new board members, as well as handling new member training and board evaluations.
- *Finance committee* works with the staff to develop the budget, ensure reports and audits are completed, makes sure essential tax information is reported, and puts forth budget control strategies. It may also be in charge of fundraising and revenue projections, if they are not given to another, separate committee.
- *Executive committee* is a subgroup of the board that can act on the board's behalf in the event of an emergency or when a decision must be made quickly.
- *Marketing and public relations committee* is involved in selling the organization to increase the number of stakeholders and to develop the reputation of the organization.
- *Personnel committee* deals with issues of the CEO and personnel policy, including the annual evaluation of the CEO, pay policies, benefits, etc.

Exhibit 3.8

Twelve Elements of Service Delivery and Director-Board-Officials Relationships

	Recreation Director	Board	Elected Officials
Board	<ul style="list-style-type: none"> Responsible to Board and serves their needs Identifies individuals to serve on Board Trains/orients new board members 	<ul style="list-style-type: none"> Responsible to elected body Operates within bylaws Recommends persons to elected officials for Board service Approves training program 	<ul style="list-style-type: none"> Establishes local legal mandate Identifies and appoints citizens to Board (representative of total community) Serves exofficio on Board
Staff	<ul style="list-style-type: none"> Recruits, trains, supervises, and evaluates Recommended to governing body for appointment 	<ul style="list-style-type: none"> Serves, orients, supervises, and evaluates director (if policy board) Defines powers and duties Approves training program 	<ul style="list-style-type: none"> Relays problems or potential problems to Board
Planning	<ul style="list-style-type: none"> Conducts and coordinates studies and planning sessions Ensures citizen participation Develops goals and objectives 	<ul style="list-style-type: none"> Assists in planning process Helps formulate and approve goals and objectives Encourages citizen participation 	<ul style="list-style-type: none"> Requires, reviews, and adopts Master Plan Provides support and resource assistance
Budget	<ul style="list-style-type: none"> Identifies funding sources Develops and justifies Administers 	<ul style="list-style-type: none"> Approves, submits, and justifies to elected officials Secures funds 	<ul style="list-style-type: none"> Responsible for adequate appropriation to provide comprehensive recreation services Provides matching funds for grants Approves and justifies to public
Accounting and Financial Control	<ul style="list-style-type: none"> Develops forms and reports Supervises 	<ul style="list-style-type: none"> Develops system Authorizes and controls expenditures Accounts to public 	<ul style="list-style-type: none"> Could provide service mechanism Requires audit and control system
Policies	<ul style="list-style-type: none"> Provides input and advice Develops department manual Administers 	<ul style="list-style-type: none"> Formulates, reviews, adopts, and evaluates 	<ul style="list-style-type: none"> Awareness: Review and support Assures compliance with government laws and policies
Programs	<ul style="list-style-type: none"> Observes, evaluates, promotes Assures comprehensive and diversified program delivery 	<ul style="list-style-type: none"> Observes, evaluates, and promotes Advises on program needs Interprets to elected officials and public 	<ul style="list-style-type: none"> Refers problems and questions to Board Promotes programs and policies
Facilities	<ul style="list-style-type: none"> Develops master plan with Board Develops, manages through staff Promotes usage 	<ul style="list-style-type: none"> Develops master plan Regulates policy no usage Promotes usage 	<ul style="list-style-type: none"> Requires master plan Provides assistance by sponsoring grants Provides planning assistance Promotes usage
Maintenance	<ul style="list-style-type: none"> Equally maintains facilities to assure safe and satisfactory use Inspects regularly 	<ul style="list-style-type: none"> Develops and requires standards of care and maintenance Inspects 	<ul style="list-style-type: none"> Promotes maximum utilization of resources Provides needed assistance
Public	<ul style="list-style-type: none"> Interprets program and its goals and objectives 	<ul style="list-style-type: none"> Is responsive to needs Helps to ensure involvement Reports on activities of the department 	<ul style="list-style-type: none"> Is responsive to needs Receives complaints and suggestions and refers to Board
Reports	<ul style="list-style-type: none"> Presents regular report to Board elected officials, and public 	<ul style="list-style-type: none"> Requests reports from director Presents regular reports to elected officials and public 	<ul style="list-style-type: none"> Requires and reviews report comment
Other Agencies	<ul style="list-style-type: none"> Establishing cooperative planning and working relationship Serves on committees 	<ul style="list-style-type: none"> Strengthens support base for local program Works cooperatively with agencies and organizations to improve local services 	<ul style="list-style-type: none"> Provides liaison with state and federal officials Provides communication with other agencies

- *Program development committee* is involved with developing program policies and ensuring that the programs meet the mission of the organization.
- *Facilities committee* is in charge of policies for facilities, including any new building campaigns, land purchases, and other decisions involving facility use and costs.

To have committees that perform well, they must have a charge and specific goals to accomplish. There should be at least two board members on each committee, or possibly a staff member or stakeholders from outside the board. The committees should make a report each month when some of its goals are met.

Board Meetings

To be successful, board meetings must be structured and carefully prepared. This includes the frequency of meetings and the agenda.

The frequency of board meetings is an important factor in making an effective board. The frequency and length of board meetings depend on a number of variables, such as the amount of work that is done before making board policy decisions and the geographical proximity of individual board members. Meeting intervals vary from once a month to once a year. The most effective practice in the nonprofit and public sectors is to hold a board meeting every month, with executive committee meetings held during the interim. Special board meetings may be called before the next scheduled meeting, if action is necessary by the whole board.

The agenda for the meeting includes every item to be presented. Careful planning, with emphasis on the most important issues, is crucial to the success of a meeting. Only items specific to the needs of the board should be discussed. The general policy concerning any board meeting should be: no surprises. Nothing should be presented at the board meeting, except in an unusual emergency, that is not listed on the agenda and for which no supporting detail and explanation is included in the advance information package. Items can be added by an addendum to the original agenda, if the need arises, after the agenda has been prepared and distributed. Such items should be presented at the beginning of the meeting. If the additional item calls for an action of magnitude, it may have to be delayed until full supporting data can be developed and prepared. Boards must handle emergency measures, but they should be the exception. When a decision is made on an emergency matter, supporting evidence and data prepared after the action can lend support or provide an opportunity to reexamine the soundness of the decision.

Like the agenda, the preparatory board packet can greatly influence the quality of the time board mem-

bers spend together at each meeting. Board members should receive the agenda and any background information, staff analysis, recommendations, and financial statements about five to ten days before each meeting. Minutes from the previous meeting should also be included for board members to gather information on major agenda topics.

The board agenda, advance meeting materials, meeting schedule, and other board communications are designed to guide the board in effective and efficient decisions. The board should be committed to reviewing materials before a meeting.

For any governing board, the minutes become a legal document. They need to be taken carefully and completely. They must be appropriately approved. They serve as a legal record of actions of the board on behalf of the organization.

The board needs to specify parliamentary procedures and then adhere to them.

Citizen Advisory Boards

Nonprofit associations and public agencies often use citizen advisory boards and committees. The purpose of the advisory board is to provide guidance, support and advocacy for the organizations. Advisory boards may serve an entire local governmental area or a specific neighborhood function, activity, center, or particular site. The mayor and the city council, the county commissioners, or a nonprofit manager may appoint the board, or it may be elected. It may be delegated authority to manage its own affairs; however, it has no final authority or responsibility for policy or administration. This type of board is purely advisory to the governing body of the agency or jurisdiction that appoints it. Such boards may be composed of a relatively large body of representatives from all interested factions of the locality. In addition to those members appointed, interested civic groups may select representatives. The advisory board may serve several important functions:

- interpreting the program, facilities, and services to other stakeholders;
- making studies and recommendations that help advance park and recreation services; and
- being a sounding board that exerts broad influence throughout the community to improve and expand park and recreation services.

The advisory board provides for vital citizen involvement and participation. Citizen advocacy is an important element in determining, implementing, and gaining financial support for services and programs.

An advisory board is not a governing board; it has limited powers in that it may only make recommendations to the ultimate governing authority. It has

no legal power or ability to enforce recommendations. Its members do, however, offer perspective in decisions and help perform some of the organization's activities. A local park and recreation manager may answer directly to the city council. However, the manager who is interested in regular citizen input and receiving some assistance in terms of political influence may want an advisory board. Their advantage is that they can add power to the organization they serve as it gains more influence and more people who are interested in the program's success.

Essentially, the advisory board is organized much the same way that policy-making boards are organized. They will have a chairman, bylaws, policies and procedures, and regular meetings. They may even create a committee structure.

One of the issues of the advisory board is that of power. Why should someone become a member of an

advisory board if their say is just a recommendation? The answer lies in how they are treated by the CEO. If they are ignored, the board will be short-lived. If the CEO believes an advisory board is important, she or he had better listen to their recommendations. A good advisory board has members who wield a lot of political power in the community and can help make things happen.

Conclusion

To be a quality agency, there must be appropriate organization and governance. It does not just happen. One must be aware of the laws, interested in recruiting the right people and providing them with the proper tools. Whether private, nonprofit, or public, a big part of success is good governance in an organization that is set up properly.

Resources

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U.S. Department of Justice. (2004). *Freedom of information act guide*. Retrieved July 12, 2009 from <http://www.usdoj.gov/oip/introduc.htm>.

Internet Resources

- National Center for Nonprofit Boards.
<http://www.boardsource.org/>
- Internet Nonprofit Center.
http://www.uscharterschools.org/cs/r/view/uscs_rs/1214
- Learning Institute for Nonprofit Organizations.
<http://www.nonprofitcourses.org/li/>

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Connie Edmonston has been the Director of Parks and Recreation for the City of Fayetteville AR since 1997; prior to that appointment, she served as the Assistant Parks Director for over 12. Her duties include the administration of the parks and recreation programs for the City of Fayetteville, with a population of 73,000. The department maintains 71 parks consisting of over 3,400 acres and has a staff of 45 full-time employees. Connie has served on the Arkansas Recreation and Parks Association Board of Directors for over 15 years, including acting in the capacity of President, Treasurer, and SW Regional Representative. She has been a Certified Parks and Recreation Professional for over 15 years.

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Dr. Kimberly Bodey was involved in the first and second edition of this chapter. Dr. Bodey's biography can be seen at the end of Chapter 4.