



**Nicole Galloway, CPA**

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**Missouri State Auditor**

**Black Mountain  
Community Improvement District**

Report No. 2019-119

December 2019

[auditor.mo.gov](http://auditor.mo.gov)



**Nicole Galloway, CPA**  
Missouri State Auditor

# CITIZENS SUMMARY

## Findings in the audit of the Black Mountain Community Improvement District

<p>Misappropriation of District Revenues</p>	<p>The Black Mountain Community Improvement District (CID), which was approved by the City of Van Buren to create a sales tax for the purpose of making public infrastructure improvements inside the district's boundaries, was instead used by its creators and former Board members to pay off private business debts and to improve private commercial property for resale. Also, documentation was not retained to support some payments made to companies owned by board members.</p>
<p>Noncompliance with State Law</p>	<p>The CID Board did not prepare or post meeting notices with agendas, meeting minutes were not always maintained, and the board has not adopted a written policy regarding public access to district records as required by state law. The CID Board did not enter into a written contract to support the agreement to reimburse \$135,000 in construction costs to a developer. The Board repeatedly failed to submit the required annual performance reports to the city and the state's Department of Economic Development as required by state law. The CID Board failed to submit its annual budgets for the years ended December 31, 2010 through December 31, 2017, to the city as required by state law. Also, district budgets did not contain all the elements required by state law.</p>

In the areas audited, the overall performance of this entity was **Poor**.\*

\*The rating(s) cover only audited areas and do not reflect an opinion on the overall operation of the entity. Within that context, the rating scale indicates the following:

- Excellent:** The audit results indicate this entity is very well managed. The report contains no findings. In addition, if applicable, prior recommendations have been implemented.
- Good:** The audit results indicate this entity is well managed. The report contains few findings, and the entity has indicated most or all recommendations have already been, or will be, implemented. In addition, if applicable, many of the prior recommendations have been implemented.
- Fair:** The audit results indicate this entity needs to improve operations in several areas. The report contains several findings, or one or more findings that require management's immediate attention, and/or the entity has indicated several recommendations will not be implemented. In addition, if applicable, several prior recommendations have not been implemented.
- Poor:** The audit results indicate this entity needs to significantly improve operations. The report contains numerous findings that require management's immediate attention, and/or the entity has indicated most recommendations will not be implemented. In addition, if applicable, most prior recommendations have not been implemented.

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# Black Mountain Community Improvement District

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## **NICOLE GALLOWAY, CPA** **Missouri State Auditor**

Andy Dazey, Chairman  
and  
Board of Directors  
Black Mountain Community Improvement District  
Van Buren, Missouri

We have audited certain operations of the Black Mountain Community Improvement District as authorized under Section 67.1471.5, RSMo. The scope of our audit included, but was not necessarily limited to, the year ended December 31, 2018. The objectives of our audit were to:

1. Evaluate the district's internal controls over significant management and financial functions.
2. Evaluate the district's compliance with certain legal provisions.
3. Evaluate the economy and efficiency of certain management practices and procedures, including certain financial transactions.

We conducted our audit in accordance with the standards applicable to performance audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform our audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides such a basis.

For the areas audited, we identified (1) deficiencies in internal controls over significant management and financial functions, (2) noncompliance with certain legal provisions, and (3) the need for improvement in management practices and procedures including financial transactions. The accompanying Management Advisory Report presents our findings arising from our audit of the Black Mountain Community Improvement District.

A handwritten signature in black ink that reads "Nicole R. Galloway".

Nicole R. Galloway, CPA  
State Auditor

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# Black Mountain Community Improvement District

## Introduction

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### Background

In December 2018, two Directors from the Black Mountain Community Improvement District (CID) contacted and met with the State Auditor's Office (SAO) and requested an audit based on concerns with the previous Board's use of public monies. Based on information provided by the current Board, the SAO conducted an initial review of these matters under Section 29.221, RSMo. After completion of this review of documentation and communications provided, the SAO determined further investigation was warranted under Section 29.221, RSMo. On December 30, 2018, the Board passed an ordinance formally requesting and authorizing an audit and the audit began on January 7, 2019.

The CID is located in the City of Van Buren. The CID was organized in August 2010 by an ordinance passed by the city's Board of Alderman. The CID is governed by a five member Board of Directors. Pursuant to the petition approved by the city creating the district, the five members must be either a property owner of real property within the district, a business owner within the district, an authorized representative of a property or business owner, or a registered voter living within the district.

The CID boundaries consist of an estimated 17 acres. The CID had an existing convenience store with a fast food operation within the same building and a discount store. According to petition documents, the CID was formed for the purpose of funding the cost of public infrastructure, storm water controls, and other eligible site costs. The CID was not seeking a blighted status for the district and the area was not declared blighted by the city. The CID has a fiscal year end of December 31. The CID has not received an independent audit of its financial statements.

Board members serve 4-year terms and are appointed by the city's Board of Alderman. The initial CID Board appointed by the city was as follows:

Name	Term Ended
Donald L. Black II (1) (4)	August 2018
Chris D. Black (4)	August 2018
Jacob W. Black (3) (4)	August 2018
Nicolas S. Black	August 2018
Curtis L. Black (2) (4)	December 2018

- (1) Chairman
- (2) Vice Chairman
- (3) Treasurer and Secretary
- (4) Property owner and/or business owner

### Obligations

The CID obtained multiple loans to fund two district projects. One loan was obtained from a local bank for \$238,309 in March 2013 to consolidate previous private business loans and to fund the remodeling of the convenience store owned by three of the Board members. A second loan was obtained from



## Black Mountain Community Improvement District Introduction

a private individual for \$214,672 in February 2015 to refinance the prior bank loan. A third loan was then obtained from a local bank for \$137,200 in October 2018 to refinance the second loan with a balance of \$127,066 and the remaining funds were deposited into the CID bank account for future administrative and legal expenses. As of December 31, 2018 the district had an outstanding principal balance on these bank debts of \$133,167.

The initial Board then agreed to pay \$135,000 (payable at a rate of \$800 per month) to the person who provided the second loan discussed in the previous paragraph to finance a portion of the costs associated with constructing a restaurant. As of December 31, 2018, the district had a remaining balance of \$107,000 on this obligation.

### Revenues

In November of 2010, the qualified property owners of the CID approved the imposition of a sales tax of up to 1 percent on all taxable transactions within the boundaries of the district for 30 years. The Board of Directors subsequently passed a resolution that set the sales tax rate 1-cent (1 percent), effective December 2010.

Current businesses within the district include Current River Express, McDonald's, Subway, and Dollar General.

### Governance

Board members at December 31, 2018, were:

Name	Term Expires
Andy Dazey (1)(5)	August 29, 2020
Lisa Burke (2) (3)	August 29, 2022
Kevin Dazey (3)	August 29, 2022
Greg Pryor (3)	August 29, 2020
Vacant Board Seat (4)	

- (1) Chairman
- (2) Vice Chairman, Treasurer and Secretary
- (3) Property owner and/or business owner
- (4) Vacant until a successor is appointed by the city pursuant to Section 67.1451.4, RSMo.
- (5) Representative of a business owner as allowed by Section 7 of the Petition.

## Scope and Methodology

The scope of our audit included, but was not necessarily limited to, the year ended December 31, 2018.

We reviewed relevant laws, regulations and CID agreements; including Sections 67.1401 through 67.1571, RSMo; the petition approved by the city creating the CID; the ordinance forming the CID; the development agreement between the district and the property owners; and the bylaws of the CID. Our review of these statutes and agreements covered the legal responsibilities of the district and the CID Board. In addition, we reviewed the loans issued to fund the projects to obtain an understanding of the terms of the obligations and the requirements imposed on the district. We also reviewed Board



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## Black Mountain Community Improvement District Introduction

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meeting minutes to obtain an understanding of actions taken by the Board and to determine the attendance and the oversight provided by the Board members.

We held discussions with former and current CID Board members, the former consultant and custodian of records for the CID, certain city officials, business owners or franchisees of businesses in the CID, an individual and representatives of banks who made loans to the CID, and certain contractors that worked on CID projects. The purpose of these conversations was to obtain an understanding of the district's operations and decisions made by the district's Board of Directors as well as obtaining evidence of compliance with certain legal requirements. We obtained bank information from the current board and former custodian of records. We obtained CID loan information from West Plains Bank after issuing a subpoena for the information. We obtained and reviewed available invoices and canceled checks of the CID to evaluate if all CID costs were allowable and appropriate.

We obtained an understanding of the internal controls that are significant within the context of the audit objectives and assessed whether such controls have been properly designed and placed in operation. We also obtained an understanding of legal provisions that are significant within the context of the audit objectives, and we assessed the risk that illegal acts, including fraud, and violation of applicable contract or other legal provisions could occur. Based on that risk assessment, we designed and performed procedures to provide reasonable assurance of detecting instances of noncompliance significant to those provisions.

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# Black Mountain Community Improvement District Management Advisory Report State Auditor's Findings

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## **1. Misappropriation of District Revenues**

The Black Mountain Community Improvement District (CID), which was approved by the City of Van Buren to establish a sales tax for the purpose of making public infrastructure improvements inside the district's boundaries, was instead used by its creators and former Board members to pay off private business debts and to improve private commercial property for resale. In addition, the former CID Board approved the payment of CID funds for the construction of a private commercial property owned by a local developer with past business connections with the Chairman of the Board as well as the CID. The former Board<sup>1</sup> spent \$296,937 in CID monies for purposes not allowed by state law, including approximately \$100,603 to pay off private business debts of members of the Board.<sup>2</sup> An additional \$77,669 in expenses were not supported by invoices or adequate documentation to determine the propriety of the expenditures. However, the majority of the unsupported expenses were paid to entities associated with members of the Board.

Taxpayer funds used to pay off private business debts

Public monies were used to secure a bank loan to consolidate \$100,603 for three of the five the Board members' existing private business loans. The CID obtained a loan from the West Plains Bank for \$238,309 on March 11, 2013. The initial loan disbursement included \$100,603 that did not go through the CID bank account, but was disbursed as follows:

- \$54,284 - West Plains Bank - Farmland Real Estate Loan (personal loan collateralized with personal farm land)
- \$12,550 - West Plains Bank - Auto Loan (personal loan collateralized with a semi-truck and trailer)
- \$16,875 - Scott Hilderbrand - Private Individual Loan (personal loan)
- \$10,144 - West Plains Bank - Commercial Real Estate Loan (personal loan collateralized with commercial real estate)
- \$ 6,750 - Dennis Young - Private Individual Loan (personal loan)

According to Donald Black II, former CID Chairman of the Board, these 5 loans were private business loans used to purchase inventory for resale, equipment, provide cash flows for operational expenses, and performing

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<sup>1</sup> All subsequent references to the CID Board in the rest of this report pertain to the former CID Board members listed on page 3 unless reference is made to the new Board of Directors.

<sup>2</sup> See Appendix C for a listing of unallowable disbursements by project.





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Taxpayer funds used to  
improve private business  
asset for resale

repairs and maintenance to the Black Mountain Convenience Store.<sup>3</sup> These disbursements paid off personal business expenses that provided a benefit to the Board members and not for public improvements to the CID.

Using CID monies to pay for private business debts for the purchase of inventory for resale, purchase of equipment, to provide cash flows for operational expenses, and performing repairs violates state law<sup>4</sup> and the Missouri Constitution.<sup>5</sup>

Public monies were used to make improvements to a private asset in an area not designated as blighted, in violation of state law. The use of CID funds for this purpose is also not in accordance with the petition approved by the city to form the district. CID funds were used to make \$125,972<sup>6</sup> of improvements to the Black Mountain Convenience Store while the store was owned by Board members Donald L. Black II, Curtis L. Black, and Jacob W. Black via Black Mountain Lodge, LLC. These improvements included:

- \$52,324 for new fuel pumps and a new point-of-sale system for the fuel pumps
- \$25,866 for a new canopy for the fuel pumps
- \$9,960 for a new walk-in beer cave

Other expenses included remodeling of restrooms, new wallpaper and painting, electrical work, and labor expenses. These improvements were complete by June 2014. Black Mountain Lodge, LLC, then sold the convenience store 6 months later in December 2014. The public was not reimbursed for the public funds used to renovate the convenience store.

The former Chairman, through his attorney, claimed a formal blight designation is not needed in order to use public money to renovate a private business under the CID statutes. However, state law<sup>7</sup> requires the petition document to state whether or not the petitioners are seeking a blighted determination. In addition, Section 9 of the CID petition document indicates the petitioners did not seek a blighted status for the district.

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<sup>3</sup> The Black Mountain Convenience Store was sold in December 2014 and the name was changed by the new owner to the Current River Xpress Convenience Store.

<sup>4</sup> Section 67.1461, RSMo, does not grant the authority to the Board to use public monies for private business purposes.

<sup>5</sup> Article VI, Sec. 23.

<sup>6</sup> Of this amount, \$109,082 was expended through the checking account, with an additional \$16,890 being expended directly from loan funds. See Appendixes A and B.

<sup>7</sup> Section 67.1421.2(i), RSMo.



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The former Chairman, through his attorney, also stated that even if a blight designation is required, a Tax Increment Finance (TIF) Redevelopment plan was adopted by the city, which designated the area as blighted. However, Section 1.3 of the TIF Plan states the area inside the CID boundaries is not considered blighted. Also, as part of our fieldwork, we confirmed with a city official that the area within the CID boundaries had never been recognized by the city as being blighted. We requested the former Chairman to provide any evidence that any area within the CID had been recognized as blighted. He could not provide any evidence and stated there may have been evidence in the Carter County Courthouse that was destroyed during the flood in spring of 2017.

The petition document requesting the creation of the district gives the appearance the public monies will be used for public improvements and not to rehabilitate a private asset. Also, using public monies to improve a private asset inside the CID boundaries without a blight designation is not in accordance with Section 67.1461.2, RSMo.<sup>8</sup>

Taxpayer funds used to assist in construction of a private business

Public monies were used to reimburse a portion of the construction costs of a private business owned by a local developer who recently provided financing to the district Board and who had previously made private business loans to the Chairman of the Board.

The CID Board approved the reimbursement of \$135,000 in construction costs to the local developer on December 15, 2015, payable at a rate of \$800 per month. The construction expenses related to building a Subway restaurant inside the district's boundaries. See MAR finding number 2.2 for additional discussion of this agreement. These expenses were incurred between January 2016 and May 2016 and included the following:

- \$72,900 for dirt work, concrete, and rebar
- \$23,500 for legal and consulting fees
- \$9,925 for surveying

Other expenses included electrical work, inspections, and striping the parking lot. While the local developer submitted invoices totaling \$146,382, the CID only agreed to reimburse the developer for \$135,000 in costs and paid for \$3,725 in construction expenses directly from the CID checking account.<sup>9</sup>

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<sup>8</sup> While Section 67.1461.2, RSMo, allows the Board to renovate a building owned by a private property owner if the area is a blighted, the CID does not have any blighted areas within the district's boundaries.

<sup>9</sup> See Appendix E for a listing of project expenses.



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The CID has paid approximately \$28,000 to satisfy this agreement and has \$107,000 still outstanding as of December 31, 2018.

These expenses were incurred approximately 11 months after the CID received financing from this developer when the West Plains Bank called the \$238,309 note discussed on page 6. Additionally, Donald Black II stated he had received loans in the past from this developer. The only businesses that received CID assistance in the district were the Black Mountain Convenience Store owned by Black Mountain Lodge LLC and the Subway owned by a business associate of Donald Black II. No other businesses received any assistance from the CID. Donald Black II stated the other businesses in the district, including the McDonald's and the Dollar General, could have requested assistance from the CID but those businesses did not request assistance. We discussed this matter with the owners of those businesses who stated they were never told they could request assistance from the CID. Those business owners also did not have a previous business relationship with Donald Black II.

Using CID monies to finance the construction of a new private business asset is not allowed by Section 67.1461.1(16), RSMo, which allows only for the construction or repair of public improvements, and violates the Missouri Constitution.<sup>10</sup>

Public misled about the  
purpose of the district

The creators of the CID misled the city and the public regarding the purpose of the CID. Donald Black II was the primary petitioner. Chris D. Black was also a petitioner, and both of these individuals privately benefited at the expense of the public.

In order to form a CID, a petition must be filed with the governing body (in this case the City of Van Buren) requesting the formation of the district. State law requires the petitions to contain several elements, including a 5 year plan stating a description of the purposes of the proposed district.<sup>11</sup> Exhibit C of the petition filed with the city requesting the formation of the CID states the CID will be formed to fund the cost of needed public infrastructure, storm water controls, and other eligible site costs. Exhibit C includes a section titled "Public Improvements to be Funded By District" and lists specific public infrastructure the CID will fund such as utility installation, streets, sidewalks, alleys, bridges, ramps, tunnels, overpasses, underpasses, traffic signs and signals, drainage, water, storm and sewer systems, and other site improvements such as parking lots, garages, lades (sic), dams and waterways, streetscape, lighting, benches or other seating furniture, trash receptacles, marquees, awnings, canopies, walls, barriers, telephone and information

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<sup>10</sup> Article VI, Sec. 23.

<sup>11</sup> Section 67.1421.2(3)(d), RSMo.



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booths. However, the petition document also includes a statement which allows "any other useful, necessary, or desired improvement to the District as allowed by Section 67.1401 to 67.1571 of RSMo, as amended," which would potentially allow CID monies to be used for private assets if a blight designation had been obtained. Exhibit C of the CID petition is included at Appendix F.

As documented in this report, no CID monies were expended on public infrastructure.

CID monies used for personal and private gain

Public monies were used to directly benefit the private interests of Donald L. Black II, and the business interests of Black Mountain Lodge LLC, which is owned by Donald L. Black II, Curtis L. Black, and Jacob W. Black; all of which were board members of Black Mountain CID. Instances include:

- Donald L. Black II used CID loan funds to pay off three private business loans totaling 77,909.<sup>12</sup>
- Approximately \$126,000 in CID funds were used to remodel and improve Black Mountain Convenience Store<sup>13</sup> while the store was owned by Black Mountain Lodge, LLC. Black Mountain Lodge, LLC sold the convenience store 6 months after the renovations were complete. The public was not reimbursed for the public funds used to renovate the convenience store.
- More than \$22,000 in business loans taken out by Black Mountain Lodge, LLC were later paid off with CID monies.<sup>14</sup>
- CID monies were used to lease land in the CID boundaries from Black Mountain Lodge LLC. The lease was for 3 years at a total cost of \$28,000 for signage for the convenience store. The sign being leased was constructed in 2000, however, the lease for the sign began in 2015 after the convenience store was sold by Black Mountain Lodge LLC. The Board made lease payments from 2015 through 2018 until the new CID Board stopped making them. These payments are an unreasonable use of CID funds and serve no purpose other than to benefit Black Mountain Lodge LLC.

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<sup>12</sup> See the \$54,284 farmland real estate loan, the \$16,875 private individual loan, and the \$6,750 private individual loan in the *Taxpayer funds used to consolidate private business debts* section on page 6.

<sup>13</sup> See the *Taxpayer funds used to improve private business asset for resale* section on page 7.

<sup>14</sup> See the \$12,550 auto loan and the \$10,144 commercial real estate loan in the *Taxpayer funds used to consolidate private business debts* section on page 6.



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- \$10,000 was paid to a consultant for drafting a TIF plan. The TIF plan was proposed by Black Mountain Lodge, LLC. This payment is a business expense of Black Mountain Lodge, LLC and is not an allowable use of CID funds.
- \$638 was paid for a title search and mortgage premium related to the convenience store. This expense was incurred while Black Mountain Lodge, LLC owned the property. This payment is a business expense of Black Mountain Lodge, LLC and is not an allowable use of CID funds.

Section 105.452.1(4), RSMo, prohibits elected and public officials from favorably acting on any matter that provides a special monetary benefit<sup>15</sup> to the official. In addition, Section 105.452.1(5), RSMo, prohibits public officials from using their decision making authority for the purpose of obtaining a financial gain.

#### Unsupported expenditures

The CID Board could not provide adequate documentation to support \$77,669<sup>16</sup> of expenses. The CID did not retain sufficient documentation to support these disbursements and we could not determine the propriety or impropriety of them based on information obtained. These unsupported payments include:

- \$51,259 to entities owned by Board members<sup>17</sup>
- \$15,296 to the CID consultant for unknown purposes
- \$6,153 to unknown vendors for unknown purposes
- \$4,955 for backhoe services for an unknown purpose

To ensure disbursements are necessary and legitimate, the CID should implement a procedure to require adequate documentation as proof of the disbursement incurred by the district. Taxpayers have placed a fiduciary trust in the Board to spend public funds only on items necessary and beneficial to the district.

#### Conclusion

Members of the CID Board violated state law by using public monies to enrich themselves by paying off previous private business loans, renovating a convenience store (a private asset) prior to selling the store, and providing

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<sup>15</sup> This section defines a special monetary benefit as being materially affected in a substantially different manner or degree than the manner or degree in which the public in general will be affected.

<sup>16</sup> See Appendix D for the listing of unsupported payments.

<sup>17</sup> The following entities received payments: \$25,000 to Black Brothers Convenience, \$14,259 to Black Mountain Convenience, and \$12,000 to Black Mountain Lodge.



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public money to a previous business associate to build a private asset. The petitioners of the district misled the public by telling the city the district would be used to fund public improvements. Other expenditures lacked adequate documentation to determine their purpose, but also involved companies related to the former Board members. All of these issues would have been detected sooner if the district had a governance structure without significant conflicts of interest and a significant lack of oversight.

## Recommendation

The new CID Board work with law enforcement officials regarding criminal prosecution of the improper payments made for private business loans, private convenience store renovations, and Subway construction expenses, and take the necessary actions to seek restitution. In addition, supporting documentation should be obtained to support all district expenditures and ensure that expenditures do not violate state law and are a reasonable use of public funds.

## Auditee's Response

*The new CID Board provided a written response. See Appendix G.*

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## 2. Noncompliance With State Law

The CID Board did not prepare or post meeting notices with agendas, meeting minutes were not always maintained, and the Board has not adopted a written policy regarding public access to district records as required by state law. In addition, the CID Board did not enter into a written contract for the agreement to reimburse \$135,000 in expenses related to the construction of the Subway restaurant as required by state law. Also, the Board failed to submit financial and performance reports to the city, the Department of Economic Development (DED), and the State Auditor's Office (SAO) in accordance with state law. The Board also did not include all required elements in annual district budgets, and the Board failed to submit annual budgets to the city in accordance with state law.

### 2.1 Sunshine Law

The CID Board did not prepare or post meeting notices with agendas, meeting minutes were not always maintained, one meeting had two different sets of minutes, and the Board has not adopted a written policy regarding public access to district records as required by state law.

#### Notices and agendas

No one could locate meeting notices or tentative agendas for 23 of 39 (59 percent) Board meetings held during period September 2010 through December 2018. No notices or agendas were prepared for the 15 meetings occurring between July 2014 and January 2018. In addition, notices were not signed by the Board Chairman.

Section 610.020, RSMo, requires notice of the time and place of future meetings be posted. In addition, state law<sup>18</sup> requires public entities to give

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<sup>18</sup> Section 610.020, RSMo.



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notice of the time, date, and place of each meeting and its tentative agenda to advise the public of matters to be considered. The notice shall be given at least 24 hours prior to the meeting.

Meeting minutes

The district did not prepare or could not locate meeting minutes for any Board meetings occurring after October 4, 2016, and prior to September 4, 2018. An agenda was provided for a meeting on February 6, 2018; however, no minutes were prepared for the meeting. In addition, the CID Board approved and signed two Board resolutions on March 11, 2013; however, no meeting minutes were maintained documenting a Board meeting occurred on this date. In addition, there were two different sets of minutes provided for a Board meeting held on December 15, 2015. No documentation could be provided indicating the original minutes were amended or approved and one set reports the discussion of the reimbursement of \$135,000 in costs for the Subway.

Section 610.020.7, RSMo, requires minutes of meetings (open and closed) be taken and retained by the public governmental body. Meeting minutes serve as an official record of district business conducted and district actions and decisions.

Public access policy and requests for records

The CID has not adopted a written policy regarding public access to district records as required by state law. A written policy regarding public access to district records would establish guidelines for the district to make records available to the public. This policy should identify a person to contact, provide an address to mail such requests, and establish fees that may be assessed for providing copies of public records.

Section 610.023, RSMo, requires all Board meeting minutes and other records be available for public inspection. In addition, state law<sup>19</sup> lists requirements for making records available to the public. Also, state law<sup>20</sup> allows the district to charge fees for providing access to and/or copies of public records and provides requirements related to fees. In addition, state law<sup>21</sup> requires a written policy regarding release of information under the Sunshine Law.

2.2 Contracts

The CID Board did not enter into a written contract to support the agreement to reimburse \$135,000 in construction costs to the developer of the Subway restaurant discussed in MAR finding number 1. As a result, the CID made 35 monthly \$800 payments, totaling \$28,000, to an entity without a written agreement.

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<sup>19</sup> Section 610.023, RSMo.

<sup>20</sup> Section 610.026, RSMo.

<sup>21</sup> Section 610.028, RSMo.



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## Black Mountain Community Improvement District Management Advisory Report - State Auditor's Findings

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Section 432.070, RSMo, requires contracts for political subdivisions to be in writing. Written agreements, signed by the parties involved, should specify the services to be rendered and the manner and amount of compensation to be paid. Written contracts are necessary to ensure all parties are aware of their duties and responsibilities and to prevent misunderstandings.

### 2.3 Reporting

The Board repeatedly did not timely submit required annual performance reports to the city and the DED as required by state law. In addition, the Board repeatedly did not timely submit required annual financial reports to the SAO as required by state law.

- The Board did not submit any of the fiscal year 2010 through 2017 annual performance reports to the city as required by state law. The fiscal year 2018 annual performance report was submitted to the city on January 30, 2019, after appointment of the new Board.
- The Board submitted the fiscal year 2010 through 2016 annual performance reports to the DED on June 15, 2018.
- The Board did not submit the required financial reports to the SAO for fiscal years 2010 and 2011 until June 14, 2018, did not submit the required financial reports for fiscal year 2012 until February 6, 2018, and did not submit the required financial reports for fiscal years 2013 through 2016 until February 5, 2018.

Section 67.1471.4, RSMo, requires the CID to submit its annual performance report to the municipal clerk and the DED within 120 days after the end of the fiscal year. State law<sup>22</sup> also requires all political subdivisions, including CIDs, to file annual financial reports with the SAO. In addition, 15 CSR 40-3.030, requires each political subdivision to file annual financial reports within 6 months of the end of the subdivision's fiscal year. Effective August 28, 2017, under Section 105.145, RSMo, the SAO must notify the Missouri Department of Revenue if a political subdivision fails to file a timely financial statement. Failure to timely file a financial statement may subject the political subdivision to a fine of \$500 per day. Good governance and the conduct of district business requires transparency, openness, and accountability. Financial statement filing would increase transparency and allow the public to be better informed of district activities.

### 2.4 Budgets

The CID Board failed to submit its annual budgets for the years ended December 31, 2010 through December 31, 2017, to the city as required by state law. In addition, the Board failed to approve budgets for fiscal years

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<sup>22</sup> Section 105.145, RSMo.





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Black Mountain Community Improvement District  
Management Advisory Report - State Auditor's Findings

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2010, 2011, and 2015 through 2018. Also, while the Board approved budgets for fiscal years 2012, 2013 and 2014, they were not approved in the time frame as required by Section 67.1471.3, RSMo. In addition, the district's budgets for fiscal years 2010 through 2018 did not contain all the elements required by state law. These budgets did not include a budget message and budget summary to describe a general overview, important features, and major changes of the budget.

Section 67.1471.2, RSMo, requires the CID to submit their proposed budget to the governing body of the city between 180 and 90 days prior to the first day of the fiscal year. Additionally, state law<sup>23</sup> requires the Board to present a budget with a complete financial plan to include a general budget summary and a budget message describing the important features of the budget and major changes from the preceding year.

## Recommendations

The new CID Board:

- 2.1 Ensure proper notification and agendas for public meetings are given, meeting minutes are prepared and maintained for all CID Board meetings, and develop written policies regarding procedures to obtain access to, or copies of, public records.
- 2.2 Ensure all contracts are in writing. Additionally, consult with legal counsel to determine if continuing to make payments pursuant to the verbal agreement is in the best interest of the district.
- 2.3 Ensure annual performance reports and annual financial reports are filed with the appropriate entities within the time frames established by state law.
- 2.4 Ensure compliance with state law by submitting the budgets timely to the city and including a budget message describing the important features of the budget and major changes from the preceding year along with a general budget summary in the district's budgets.

## Auditee's Response

*The new CID Board provided a written response. See Appendix G.*

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<sup>23</sup> Section 67.010.1, RSMo.



Black Mountain Community Improvement District  
 Appendix A  
 Statement of Receipts, Disbursements, and Ending Cash Balances for the CID Checking Account  
 January 1, 2011 through December 31, 2018

	Year Ended December 31,								Total
	2011	2012	2013	2014	2015	2016	2017	2018	
<b>RECEIPTS</b>									
Sales tax	\$ 21,920	41,477	42,834	41,992	43,155	44,464	50,765	47,373	333,980
Loan proceeds	-	-	114,296	-	-	-	-	137,000	251,296
Total Receipts	<u>21,920</u>	<u>41,477</u>	<u>157,130</u>	<u>41,992</u>	<u>43,155</u>	<u>44,464</u>	<u>50,765</u>	<u>184,373</u>	<u>585,276</u>
<b>DISBURSEMENTS</b>									
Convenience Store	-	-	102,824	3,980	-	2,278	-	-	109,082
Subway project	-	-	-	-	3,725	8,800	9,600	9,600	31,725
Miscellaneous	-	-	-	650	100	125	295	70	1,240
Sign lease	-	-	-	-	16,600	5,400	4,200	1,800	28,000
Unknown	14,259	1,600	45,000	2,405	4,587	-	-	172	68,023
Professional fees	7,468	750	10,000	875	-	1,100	-	-	20,193
Debt service payments	-	-	19,604	30,580	33,740	33,816	33,816	160,433	311,989
Total Disbursements	<u>21,727</u>	<u>2,350</u>	<u>177,428</u>	<u>38,490</u>	<u>58,752</u>	<u>51,519</u>	<u>47,911</u>	<u>172,075</u>	<u>570,252</u>
RECEIPTS OVER (UNDER) DISBURSEMENTS	193	39,127	(20,298)	3,502	(15,597)	(7,055)	2,854	12,298	
Cash, beginning of year	-	193	39,320	19,022	22,524	6,927	(128)	2,726	
Cash, end of year	\$ <u>193</u>	<u>39,320</u>	<u>19,022</u>	<u>22,524</u>	<u>6,927</u>	<u>(128)</u>	<u>2,726</u>	<u>15,024</u>	

Source: Sales Tax Reports from the Department of Revenue, bank statements, invoices, and canceled checks.



Black Mountain Community Improvement District  
 Appendix B  
 Loan Sources, Uses, and Payments  
 January 1, 2011 to December 31, 2018

	Year Ended December 31,								Total
	2011	2012	2013	2014	2015	2016	2017	2018	
<b>LOAN SOURCES</b>									
West Plains Bank	\$ -	-	238,329	3,744	-	-	-	-	242,073
Dennis Young	-	-	-	-	214,672	-	-	-	214,672
First Midwest Bank	-	-	-	-	-	-	-	137,200	137,200
<b>Total Loan Sources</b>	<b>\$ -</b>	<b>-</b>	<b>238,329</b>	<b>3,744</b>	<b>214,672</b>	<b>-</b>	<b>-</b>	<b>137,200</b>	<b>593,945</b>
<b>LOAN USES</b>									
Convenience Store Project	\$ -	-	13,146	3,744	-	-	-	-	16,890
Personal Business Expenses	-	-	100,603	-	-	-	-	-	100,603
Deposit into Checking Account	-	-	114,296	-	-	-	-	137,000	251,296
Professional Fees	-	-	9,646	-	-	-	-	200	9,846
Unknown	-	-	638	-	2,370	-	-	-	3,008
Refinance Existing Debt	-	-	-	-	212,302	-	-	-	212,302
<b>Total Loan Uses</b>	<b>\$ -</b>	<b>-</b>	<b>238,329</b>	<b>3,744</b>	<b>214,672</b>	<b>-</b>	<b>-</b>	<b>137,200</b>	<b>593,945</b>
<b>LOAN PAYMENTS</b>	<b>\$ -</b>	<b>-</b>	<b>19,604</b>	<b>30,580</b>	<b>33,740</b>	<b>33,816</b>	<b>33,816</b>	<b>33,367</b>	<b>184,923</b>

Source: Loan records, bank statements, and discussions with the former Board Chairman.



Black Mountain Community Improvement District  
 Appendix C  
 Unallowable Disbursements by Project  
 January 1, 2011 to December 31, 2018

Project	Date Cleared	Vendor	Amount
Convenience Store	3/12/2013	Mid South Steel	\$ 52,324
	3/14/2013	L&S Electric, Kenny Sellinger, and Phil Oesch	1,920
	3/18/2013	Bluff Heating and Cooling Refrigeration	5,000
	3/18/2013	Pryor Construction	1,278
	3/18/2013	Brown Window, Inc.	1,928
	3/25/2013	Grassham Lumber	2,699
	3/25/2013	Maverick Glass	1,112
	3/29/2013	Supertints Window & Tinting, L&S Electric, Phil Oesch, and Kenny Sellinger, Pryor Construction	2,296
	4/30/2013	David Ardnt	3,000
	5/13/2013	Pryor Construction	8,300
	5/13/2013	Wallpapers Plus	732
	5/31/2013	Crafton Farm and Home, Grassham Lumber, and L&S Electric Phil Oesch, and Kenny Sellinger	1,114
	7/19/2013	Audio Acoustics, Crafton Farm & Home Center, and Grassham Lumber Co.	4,088
	8/22/2013	Kelly Sign Works	25,866
	11/8/2013	L&S Electric	2,350
	3/7/2014	Mid South Steel	3,744
	6/2/2014	Pryor Construction	900
	8/21/2014	Pryor Construction	3,080
	2/5/2016	L&S Electric	2,278
	7/19/2013	SMV Inc., L&S Electric, Christy Sanders	1,963
Total Convenience Store			<u>125,972</u>
Personal Business Expenses	3/13/2013	Dennis Young	6,750
	3/13/2013	Scott Hilderbrand	16,875
	3/13/2013	West Plains Bank	54,284
	3/13/2013	West Plains Bank	10,144
	3/13/2013	West Plains Bank	12,550
Total Personal Business Expenses			<u>100,603</u>



Black Mountain Community Improvement District  
Appendix C  
Unallowable Disbursements by Project  
January 1, 2011 to December 31, 2018

<u>Project</u>	<u>Date Cleared</u>	<u>Vendor</u>	<u>Amount</u>
Subway Restaurant	10/19/2015	Smith & Company Engineers	3,275
	11/20/2015	Smith & Company Engineers	450
	2/12/2016	Dennis Young	800
	3/15/2016	Dennis Young	800
	4/15/2016	Dennis Young	800
	5/13/2016	Dennis Young	800
	6/15/2016	Dennis Young	800
	7/15/2016	Dennis Young	800
	8/16/2016	Dennis Young	800
	9/15/2016	Dennis Young	800
	10/14/2016	Dennis Young	800
	12/7/2016	Dennis Young	800
	12/16/2016	Dennis Young	800
	1/13/2017	Dennis Young	800
	2/16/2017	Dennis Young	800
	3/16/2017	Dennis Young	800
	4/14/2017	Dennis Young	800
	6/7/2017	Dennis Young	800
	7/7/2017	Dennis Young	800
	7/17/2017	Dennis Young	800
	8/15/2017	Dennis Young	800
	9/15/2017	Dennis Young	800
	10/16/2017	Dennis Young	800
	11/15/2017	Dennis Young	800
	12/15/2017	Dennis Young	800
	1/12/2018	Dennis Young	800
	2/15/2018	Dennis Young	800
	3/15/2018	Dennis Young	800
	4/13/2018	Dennis Young	800
	6/7/2018	Dennis Young	800
	7/6/2018	Dennis Young	800
	7/13/2018	Dennis Young	800
	8/15/2018	Dennis Young	800
	9/14/2018	Dennis Young	800
	10/15/2018	Dennis Young	800
	11/20/2018	Dennis Young	800
	12/12/2018	Dennis Young	800
Total Subway Restaurant			<u>31,725</u>



Black Mountain Community Improvement District  
 Appendix C  
 Unallowable Disbursements by Project  
 January 1, 2011 to December 31, 2018

Project	Date Cleared	Vendor	Amount
Sign Lease	1/12/2015	Black Mountain Lodge III, LLC	10,000
	2/20/2015	Black Mountain Lodge III, LLC	600
	3/18/2015	Black Mountain Lodge III, LLC	600
	7/24/2015	Black Mountain Lodge III, LLC	600
	7/24/2015	Black Mountain Lodge III, LLC	600
	7/24/2015	Black Mountain Lodge III, LLC	600
	7/24/2015	Black Mountain Lodge III, LLC	600
	7/24/2015	Black Mountain Lodge III, LLC	600
	8/19/2015	Black Mountain Lodge III, LLC	600
	9/21/2015	Black Mountain Lodge III, LLC	600
	11/10/2015	Black Mountain Lodge III, LLC	600
	12/3/2015	Black Mountain Lodge III, LLC	600
	1/7/2016	Black Mountain Lodge III, LLC	600
	2/16/2016	Black Mountain Lodge III, LLC	600
	3/3/2016	Black Mountain Lodge III, LLC	600
	6/2/2016	Black Mountain Lodge III, LLC	600
	7/26/2016	Black Mountain Lodge III, LLC	600
	8/9/2016	Black Mountain Lodge III, LLC	600
	9/13/2016	Black Mountain Lodge III, LLC	600
	10/5/2016	Black Mountain Lodge III, LLC	600
	12/8/2016	Black Mountain Lodge III, LLC	600
	1/10/2017	Black Mountain Lodge III, LLC	600
	7/12/2017	Black Mountain Lodge III, LLC	600
	7/12/2017	Black Mountain Lodge III, LLC	600
	7/12/2017	Black Mountain Lodge III, LLC	600
	9/8/2017	Black Mountain Lodge III, LLC	600
	9/8/2017	Black Mountain Lodge III, LLC	600
	9/8/2017	Black Mountain Lodge III, LLC	600
4/17/2018	Black Mountain Lodge III, LLC	600	
4/17/2018	Black Mountain Lodge III, LLC	600	
4/17/2018	Black Mountain Lodge III, LLC	600	
Total Sign Lease			<u>28,000</u>
General Expenses	1/9/2013	Gross and Associates for TIF Plan	10,000
	3/19/2013	Carter County Abstract	637
Total General Expenses			<u>10,637</u>
Total Unallowable Disbursements			<u>\$ 296,937</u>

Source: Bank statements, invoices, canceled checks, and discussions with the former Board Chairman.



Black Mountain Community Improvement District  
 Appendix D  
 Unsupported Disbursements by Payee  
 January 1, 2011 to December 31, 2018

<u>Payee</u>	<u>Date Cleared</u>	<u>Amount</u>
Black Brothers Convenience	3/12/2013	\$ 25,000
Total Black Brothers Convenience		<u>25,000</u>
Black Mountain Convenience	12/9/2011	3,259
Black Mountain Convenience	12/1/2011	2,000
Black Mountain Convenience	11/1/2011	9,000
Total Black Mountain Convenience		<u>14,259</u>
Black Mountain Lodge	2/19/2013	12,000
Total Black Mountain Lodge		<u>12,000</u>
Gross & Associates	4/2/2013	2,250
Gross & Associates	3/13/2013	9,646
Gross & Associates	12/16/2015	300
Gross & Associates	6/19/2015	350
Gross & Associates	6/1/2015	1,250
Gross & Associates	2/18/2015	1,500
Total Gross & Associates		<u>15,296</u>
Ron Kenney Backhoe Service	4/30/2012	1,600
Ron Kenney Backhoe Service	11/12/2014	2,405
Ron Kenney Backhoe Service	12/17/2015	950
Total Ron Kenney Backhoe Service		<u>4,955</u>
Unknown Payee	3/19/2013	5,750
Unknown Payee	3/18/2015	237
Unknown Payee	11/2/2018	165
Total Unknown Payee		<u>6,152</u>
Van Buren Postmaster	12/4/2018	7
Total Van Buren Postmaster		<u>7</u>
Total Unsupported Payments		\$ <u><u>77,669</u></u>

Source: Bank statements and cancelled checks.



Black Mountain Community Improvement District  
Appendix E  
Subway Project Expenses

<u>Date</u>	<u>Vendor</u>	<u>Amount</u>	<u>Allowable by State Law</u>
10/7/2015	Smith & Company Engineers	\$ 3,275	No
10/7/2015	Smith & Company Engineers	450	No
1/25/2016	Boothel Sign, LLC	16,450	No
3/12/2016	City of Van Buren	3,000	No
4/12/2016	Eubanks Electric	5,000	No
4/25/2016	Shaffer & Hines, Inc.	5,600	No
4/29/2016	Young's General Contracting	13,500	No
4/29/2016	Young's General Contracting	51,743 *	No
4/29/2016	Shaffer & Hines, Inc.	6,200	No
5/3/2016	Eubanks Electric	9,407	No
5/3/2016	Kirby Law Firm	23,500	No
5/6/2016	Rocky Top Seal Coating	600	No
		<u>\$ 138,725</u>	

\* This invoice was submitted for \$59,400. However, the CID Board did not approve to repay the full amount of the invoices submitted by the developer for reimbursement.

Source: Invoices and Board meeting minutes.





Black Mountain Community Improvement District  
Appendix F  
Exhibit C of the Petition

**EXHIBIT C**

**FIVE YEAR PLAN OF THE BLACK MOUNTAIN COMMUNITY IMPROVEMENT DISTRICT**

**FIVE YEAR DEVELOPMENT PLAN**

**BLACK MOUNTAIN COMMUNITY IMPROVEMENT DISTRICT**

**OBJECTIVES AND PURPOSE OF DISTRICT:**

The Black Mountain Community Improvement District comprises estimated 17+/- acres of land lying north of U. S. Highway 60, south of Business Hwy 60, west of Current Express and south of Commercial Drive in the City of Van Buren, Missouri. The proposed District currently has an existing convenience store with a fast food operation within the same building, plus a discount store. The owners propose to develop the remainder of the property. It is proposed that a commercial building be constructed, estimated at 5,000 square feet, fronting U.S. Hwy 60 which will be operated or leased as a gift store operation. It is proposed to construct a restaurant, estimated at 5,000 square feet fronting Current Express and an estimated 54 unit hotel/motel operation. Another commercial building is proposed fronting Current Express of an estimated 5,000 square feet which will be operated or leased as a retail furniture operation. The land owners finds that the cost of developing the property to be excessive and can not afford to make all of the public improvements needed to serve the property. It is proposed that the Black Mountain Community Improvement District be formed to impose a sales tax of 1% to fund the cost of needed public infrastructure, storm water controls and other site cost eligible. The project will cost an estimated \$5,750,000 with an estimated \$1,200,000 in public site improvements and cost. The land owner proposes to provide all funds for the project and seek to be reimbursed by the Black Mountain Community Improvement District from tax revenue generated. The property owners conclude that without the assistance of the District the property and the needed improvements and development could not occur. District proposed to take ownership of and maintain streets known as Commercial Drive and Current Express.

**PUBLIC IMPROVEMENTS TO BE FUNDED BY DISTRICT:**

The District will be responsible for the funding of all public infrastructure cost for the entire development, which will include all utilities installation, streets, sidewalks, alleys, bridges, ramps, tunnels, overpasses and underpasses, traffic signs and signals, drainage, water, storm and sewer systems, and other site improvements such as; parking lots, garages, lades, dams and waterways, streetscape, lighting, benches or other seating furniture, trash receptacles, marquees, awnings, canopies, walls, barriers, telephone and information booths, bus stop and other shelters, rest rooms, kiosks, paintings, murals, display cases, sculptures, fountains, parks, trails, lawns, trees, and any other landscape, pedestrian or shopping malls and plazas, and any other useful, necessary, or desired improvement to the District as allowed by Section 67.1401 to 67.1571 of RSMo, as amended.

**ESTIMATED COST OF IMPROVEMENTS:**

Utilities Work	\$75,000
Demolition/Excavation/Fill/Grading/Storm Water Control	\$650,000
Paving -Parking Lot-Curbs-Sidewalks-Streets-Drives	\$300,000
Landscaping	\$100,000
Signage	\$50,000
Professional Fees	\$25,000
<b>TOTAL</b>	<b>\$850,000</b>



Black Mountain Community Improvement District  
Appendix G  
Black Mountain CID Board's Responses

October 23, 2017

Black Mountain Community Improvement District  
101 Current Expressway  
PO Box 62  
Van Buren, MO. 63965

The Honorable Nicole R. Galloway  
Missouri State Auditor  
PO Box 869  
Jefferson City, MO. 65102

Sent Via Email and USPS

Dear Auditor Galloway:

We are providing this letter in response to the recommendations in the audit of the Black Mountain Community Improvement District (CID)

Recommendation 1.

The new CID Board work with law enforcement officials regarding criminal prosecution of the improper payments made for private business loans, private convenience store renovations, and Subway construction expenses, and take necessary actions to seek restitution. In addition, supporting documentation should be obtained to support all district expenditures and ensure that expenditures do not violate state law and are a reasonable use of public funds.

1. We agree with the recommendation. We have already, and will continue, to take necessary steps to implement the recommendation.

Recommendation 2.1

The new CID Board ensure proper notification and agendas for public meetings are given, meeting minutes are prepared and maintained for all CID meetings, and develop written policies regarding procedures to obtain access to, or copies of, public records.

- 2.1 We agree with the recommendation. We already have procedures on proper notification, agendas for public meetings, and meeting minutes are prepared and maintained. At our next CID meeting, we will develop written policies regarding procedures to obtain access to, or copies of, public records. No request for access to or copies of public records has been made to date.

Recommendation 2.2

The new CID Board ensure all contracts are in writing. Additionally, consult with legal counsel to determine if continuing to make payments pursuant to the verbal agreement is in the best interest of the district.



Black Mountain Community Improvement District  
Appendix G  
Black Mountain CID Board's Responses

2.2 We agree with the recommendation. All contracts will be in writing and consult with legal counsel to determine is continuing to make payments pursuant to the verbal agreement is in the best interest of the district.

Recommendation 2.3

The new CID Board ensure annual performance reports and annual financial reports are filed with the appropriate entities within the time frame established by state law.

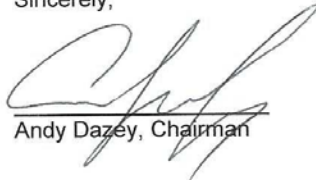
2.3 We agree with the recommendation. We have already, and will continue, to take necessary steps to implement the recommendation.

Recommendation 2.4

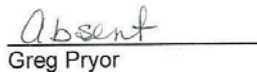
The new CID Board ensure compliance with state law by submitting budgets timely to the city and include a budget message describing the important features of the budget and major changes from the preceding year along with a general budget summary in the district's budgets.

2.4 We agree with the recommendation. We have already, and will continue, to take necessary steps to implement the recommendation.

Sincerely,

  
Andy Dazey, Chairman

  
Lisa Burke, Secretary/Treasurer

  
Greg Pryor

  
Kevin Dazey