



## **RESOLUTION REGARDING THE BOARD OF DIRECTORS AUTHORITY, MEETINGS OF THE BOARD, and GOVERNANCE GUIDELINES**

### **CORPORATE RESOLUTION 2020-x**

The Tahoe Donner Association (“Association”) is a California Mutual Benefit Corporation. The Association is also a Common Interest Development that is subject to the Davis Stirling Act, as well as its own governing documents, which include the First Restated Declaration of Covenants and Restrictions (“Declaration”), Restated Bylaws (“Bylaws”), Articles of Incorporation, duly adopted Rules and Policies, and amendments thereto (all of which are “Governing Documents”).

This Resolution is intended to be a reference guide for the Board and members, and is broken into three categories as follows:

**Section I - Board Duties and Authority.** The management and operation of the Association is delegated to its duly elected Board of Directors, which is assisted by the Association’s professional staff and committees. The Board acts in accordance with the authority granted to it by the Governing Documents and applicable State and Federal laws. While the Board has very broad authority, there are certain significant decisions that require member approval. The authority of the Board to act for the Association is grounded in the principle that each director owes a fiduciary duty to act in the best interest of the community, and thus Section I also provides a summary of that duty, which is more fully described in the separately adopted Director Code of Conduct.

**Section II - Board Meetings.** The means by which the Association Board of Directors conducts the business of the Association is through meetings of the Board. Board meetings are governed by the Davis Stirling Open Meeting Act, which requires the meetings to be open to the members except when the Board is permitted to meet in closed, or Executive Session, on certain matters. The most efficient and functional

board meetings are meetings that are carefully planned, noticed and facilitated, and thus this Section also provides detail on best practices.

### **Section III – Governance Guidelines**

Finally, Tahoe Donner is a large Association with a professional staff, and it is therefore important for the Board and staff to have a clear understanding of the Boards role as a policy making body, and the role of the professional staff and/or committees in implementing policies and priorities set by the Board. Thus, Section III below addresses the governance guidelines set by the Board in order to maximize the efficiency and effectiveness of the business of the Association.

#### **I. Board Duties and Authority**

##### **A. Source and Scope of Board Authority**

The Declaration, at Article II, Section 6 (a), sets forth the powers and authority of the Association and the Board, as follows:

- The Association shall have the responsibility of owning, managing and maintaining the Common Areas and Common Facilities and discharging the other duties and responsibilities imposed on the Association by the Governing Documents.
- In the discharge of such responsibilities and duties, the Association shall have all of the powers of a nonprofit mutual benefit corporation organized under the laws of the State of California in the ownership and management of its properties and the discharge of its responsibilities hereunder for the benefit of its Members, subject only to such limitations upon the exercise of such powers as are expressly set forth in the Governing Documents.
- The Association and its Board of Directors shall have the power to do any and all lawful things which may be authorized, required or permitted to be done under and by virtue of the Governing Documents, and to do and perform any and all acts which may be necessary or proper for, or incidental to, the exercise of any of the express powers of the Association for the peace, health, comfort, safety or general welfare of the Owners. The specific powers of the Association and the limitations thereon shall be as set forth in Article IX of the Bylaws.

The Bylaws, at Article IX, set forth the specific circumstances for which the Board needs to seek and obtain member approval before taking action. For any significant or unique circumstances, the issue of whether member approval is required should be considered. The most common are raising regular assessments or levying special assessments above the Board's discretionary authority, certain borrowings, new capital projects that are not already approved and part of the development fund, permanently terminating the operation of any common area amenities, and of course amending the Declaration or the Bylaws.

B. Summary of Board Authority

While it is impossible to list all of the matters that are within the Board's authority, the most common include:

- Setting Association policy and strategic planning
- Electing officers and determination of the officers' duties
- Engaging professional consultants to assist and guide the Association
- Hiring and overseeing the General Manager
- Overseeing the maintenance, repair, and replacement of facilities
- Adopting and amending rules and policies as needed
- Enforcing the governing documents
- Establishing and overseeing the budget and the levying and collection of assessments
- Approval of other major corporate transactions

C. Duties of a Director

The Board must make decisions as a Board; an individual director cannot act alone, unless pursuant to authority that has been specifically delegated to him or her by the Board. Individual directors cannot act by proxy or appoint alternates to act in their place.

A director is a fiduciary, and that duty generally requires each director act:

- With proper **Authority** (addressed above)

- Based on **Reasonable Inquiry**
- In **Good Faith**, and
- In a manner the director believes are in the **Best Interest** of the community as a whole.

Making reasonable inquiry involves not only being informed on Association matters, it also involves seeking reliable information from qualified persons. The Board is specifically authorized to rely on information, opinions, reports, or statements, including financial statements, prepared or presented by:

- one or more corporate officers or employees the director believes to be reliable and competent in the matters presented;
- counsel, independent accountants, and other persons on matters that the director believes to be within such person's professional or expert competence; and
- a committee of the Board on which the director does not serve, as to matters within the committee's designated authority.

Each Director must also act in good faith, which means the director cannot act based on a selfish personal interest. The most common example of not acting in good faith would be to promote a vendor to contract with the Association without disclosing that the director has a material financial interest in the vendor obtaining the contract. If a director, or other interested party, has a question about a conflict of interest issue, consultation with counsel is warranted.

To act in the best interest of the community as a whole means that each director must disregard their selfish personal interest and instead only promote and support actions and decisions that they believe will benefit the entire community.

There is separate Code of Conduct that each director is required to acknowledge and abide by in terms of the exercise of their fiduciary duty and the conduct expected of a director generally.

## II. BOARD MEETINGS

A. Definition. A Board meeting is defined in *The Davis-Stirling Common Interest Development Act* as either:

- (1) a gathering, "at the same time and place, of a sufficient number of directors to establish a quorum of the Board, to hear, discuss, or deliberate upon any item of business that is within the authority of the Board" (Civ. Code §4090(a)), or
- (2) "a teleconference, where a sufficient number of directors to establish a quorum of the board, in different locations, are connected by electronic means, through audio or video, or both" (Civ. Code §4090(b)).

The purpose of Board meetings is for the Association's Board of Directors to conduct the business of the Association.

### B. Open Board Meetings

1. Most of the business of the Association is conducted at Open Board meetings, which are meeting the members are entitled to attend to observe the Board's deliberations and decision-making process. Except in the case of emergency meetings (discussed below), the Board is required to notify the Members of the date, time, location, and agenda of each Open Board meeting at least four days in advance.
2. Tahoe Donner's Board of Directors holds monthly meetings according to an annual regular meeting schedule, which is discussed and approved by the Board after the annual membership meeting in June. Regular meetings usually begin at 9:00 a.m. and are held at the Northwoods Clubhouse, or via remote audio or video conferencing.
3. The location and method of conducting the meeting is published in the published meeting schedule or the specific meeting notice. Those notices and agendas are also published online at the Association's Membership/Board of Director's page and posted on the bulletin board of the Northwoods Clubhouse. Members can sign up to receive e-mail notification of these Open Board meetings.

C. Emergency Board Meetings

If there are circumstances that could not have been reasonably foreseen which require immediate attention and possible action by the Board, and which of necessity make it impracticable to provide four days' notice to the membership, the Board may hold an emergency meeting without giving notice to the members. Emergency meetings may be called by the president, or by any two directors other than the president. (See Civ. Code §4923.)

D. Executive Session (Closed) Board Meetings

1. The Board is allowed to meet in closed, or executive, session to discuss certain topics. Unless the issue also qualifies as an emergency, the Board is required to notify the Members of the date, time, location, and agenda of each executive session Board meeting at least two days in advance. However, unlike Open Board meetings, non-director members are not allowed to attend executive session Board meetings.
2. The Board may adjourn to executive session from an open Board meeting or may meet separately in an executive session that is not held in conjunction with an open Board meeting. Immediately before adjourning to executive session from an open Board meeting, the Board shall announce the general nature of the matter(s) to be discussed in executive session, without detail and without compromising the confidentiality or privacy of the matter.
3. Pursuant to Civil Code §4935, the Board may meet in "executive session" for the following purposes:
  - litigation (or matters that may lead to litigation)
  - matters relating to the formation of contracts with third parties
  - member discipline
  - personnel matters
  - to meet with a member regarding the member's payment of assessments
  - to discuss a payment plan for delinquent assessments
  - to decide whether to foreclose on a lien for delinquent assessments
4. The Board may also meet in executive session when appropriate to protect the Association's attorney-client privilege. All communications between the Board and the Association's legal

counsel are protected by the attorney-client privilege (Evidence Code §950 et seq.); therefore, the Board may always meet with the Association's legal counsel in executive session, whether or not litigation is pending, or threatened.

5. The Davis Stirling Act provides that any matter discussed in executive session must be generally noted in the minutes of the immediately following meeting that is open to the entire membership. (Civ. Code §4935(e).) The Bylaws, at Article III Section 5 (b), further require that ...”any resolutions adopted or actions authorized in executive session shall be disclosed at the next regularly scheduled meeting of the Board, or if the Board reconvenes the open session at that time...”

E. Agenda

Productive Board meetings are the foundation of a successful community association. As such, these meetings should be carefully planned, facilitated and documented. One of the most effective ways to accomplish productive meetings – and strong governance – is to carefully design an agenda, and then adhere closely to that agenda.

1. It shall be the responsibility of the Association's President to work with the General Manager in preparation of the Board meeting agenda. Each topic should be clearly identified, the person responsible for leading the discussion should be noted, and if the Board decides to use a "timed" agenda, the agenda should identify the length of time expected for each item.
2. The Board will attempt to order the agenda so that topics the Board expects to be of greater importance to non-director members shall be scheduled in the beginning portion of the agenda.
3. Items should be submitted to the President for possible placement on the agenda as soon as possible, preferably not later than 14 calendar days prior to the meeting. Agenda items may be removed, amended, or added up to the time needed to provide the minimum four days' notice to members as required by the Open Meeting Act.
4. Where appropriate, agenda items shall be designated either as an "Action" or a "Discussion" item. Items listed as Action are intended for the Board to make a determination on at that scheduled meeting. Items listed as Discussion are intended to inform the Board on topics that might later be brought before the Board as Action items.

5. Board books shall be ready for Directors no later than the four days prior to the Board meeting.
6. Where appropriate, the Board will endeavor to post supporting documentation for agenda topics online for membership review no later than -four days before Board meetings.
7. Any discussion of items that were not on the agenda should be limited to a discussion of adding it to a continued or subsequent meeting agenda, and to the information or detail needed for said agenda item. If two or more Board Directors concurs, the item will be placed on an upcoming agenda for discussion and or action.

F. Conduct of Meeting

1. The President serves as the Chair of Board Meetings, and it is the President's responsibility to stay on the agenda and to keep Directors, Staff and members on topic and focused. Generally, the procedure for consideration of times on the agenda should follow the following format:
  - The Chair introduces the Agenda Item
  - The GM or Staff presents its report or recommendation for action, if applicable
  - Board members ask questions of the GM or staff re the agenda item
  - Members present are not generally permitted to comment outside of the homeowner's forum, in order to ensure the efficiency of the meeting; however, in the discretion of the Chair member comments may be solicited on the item
  - The Chair closes discussion and calls for a motion and a second on any proposed action.
  - Once the motion is seconded, the Board votes and Chair announces the results of the vote
2. In the absence of the President, the Vice President shall serve as Chair. If both are absent, then the Board members present shall appoint the Chair. The Chair may make a motion or second a motion, despite also serving as Chair.
3. As noted above, Member comments are welcome at each open meeting during the homeowners forum, and are generally limited to 3 minutes for each speaker at the beginning of meeting, unless additional member time is permitted by the chair, or if the Chair permits member comments during the business portion of the meeting. Any member comments that are received in writing



in advance of the meeting on any agenda item shall be provided to the Board for consideration at the meeting.

4. Formal parliamentary procedures are not required for Board Meetings, but the Chair may use any parliamentary process, including "Robert's Rules of Order," to conduct the meeting in the Chair's discretion.
5. While allowing for flexibility in the time frames allotted for discussion of each agenda item, every effort will be made to adhere to the stated time limits.
6. The Secretary will assist the President in moving the agenda along by monitoring agenda time limits.
7. Copies of the following documents will be made available at the meeting for member access: the Agenda for the meeting, draft minutes to be approved at the meeting, and financial reports (excluding private or confidential information).
8. Debate and Decorum. While the Board meeting is in session, the Board members, staff, and members shall preserve proper order and decorum. A member shall neither, by conversation or otherwise, delay or interrupt the proceedings or the peace of the Board, nor disturb any member while speaking or refuse to obey the directives of the Chair. This will include following these guidelines:
  - Board members wishing to speak during meetings shall raise their hand or otherwise indicate to the Chair their desire to speak and gain recognition by the Chair. Board members shall confine themselves to the question under debate. Members will address the chair. The chair will acknowledge the member, with discussion and questioning reserved to Board discussion on the item.
  - Every Board member desiring to question staff shall, after recognition by the Chair, address his/her questions to the presenter of an agenda item or the General Manager. The General Manager shall be entitled either to answer the inquiry himself/herself, or to designate a member of his/her staff for that purpose.

- A Board member, once recognized, shall not be interrupted when speaking unless called to order by the Chair, unless a point of order is raised by another Board member, or unless the speaker chooses to yield to a question by another Board member. If a Board member, while speaking, is called to order, he/she shall cease speaking until the question of order is determined; if determined to be in order, he/she may proceed. Members of the staff, after recognition by the Chair, shall hold the floor until completion of their remarks, or until recognition is withdrawn by the Chair. Each Board member will be provided the opportunity for an opening comment or question before any further discussion by Board members.
- The Chair shall determine all points of order subject to the ability of any Board member to appeal to the Board.
- Members attending Board and or Committee meetings shall observe the same rules of order and decorum applicable to the Board and staff. No person shall use loud, profane, threatening, or personally abusive language, or engage in any other disorderly conduct so as to disrupt, disturb or otherwise impede the orderly conduct of any Board or Committee meeting. Persons who violate this rule may be barred from attendance for the remainder of the Board or Committee meeting, provided that the Chair has notified the person to conduct himself/herself in a manner consistent with this rule, and warned the person that he/she will be removed if he/she continues to disrupt the Board or Committee meeting. If after notification and warning the person persists in disrupting the meeting, the Chair shall order the person to leave the meeting and may recess the meeting if necessary. If the person does not remove himself/herself, the Chair may request a law enforcement officer be requested.
- Use of communication system devices (such as iPads or mobile phones) during Board or Committee meetings by Board members shall be limited to accessing the agenda materials and any information relevant to the meeting.
- The Chair shall be responsible for the maintenance of order and decorum at all meetings. Any decision or ruling of the Chair may be appealed by request of any Board member. The Chair shall call for roll call to see if the Chair's ruling shall be upheld. If the roll call loses, the Chair's ruling may be modified.

#### G. Minutes and Member Input/Communication

1. Minutes of each Board meeting shall be maintained as official Association records. California law requires that the minutes, or a draft of the minutes, or a summary of the minutes, of any board meeting (other than an executive session), shall be available to members within 30 days of the meeting. The Board will endeavor to have a draft of the minutes of each open Board meeting available within 16 days after the meeting. The Board will ordinarily approve the final minutes at the next regularly scheduled open Board meeting.
2. The general rule for minutes is that they should be a summary of the agenda item discussed and a record of any action taken by the Board. For significant matters for which it is prudent to more fully describe the decision making process and the basis for the decision, additional detail may be added as needed, or a separate stand-alone Resolution may be adopted reflecting the action taken and the reason for the action.
3. The Association endeavors to communicate as much as possible in order to keep the members abreast of important issues. This includes member outreach efforts by staff, as well as the right to attend and observe Board meetings and receive Open Board Meeting minutes. The Association also videotapes its Open Board Meetings and making them available to the membership via the Association website, generally within 7 days after the meeting. Audio/Video recording of open Board meetings will be posted on the Association's website and be retained for ten years after the meeting.
4. In addition, any changes to the Rules or the adoption of new Rules can only be adopted by the Board after 45 day advance notice to the membership and an opportunity for the members to comment on the proposed change and attend at a duly noticed Board meeting where the change is on the agenda for approval.

### III. Board Governance Guidelines

1. To increase member confidence in Association governance; assist Board and Committee members with decision-making; and to encourage high standards of professionalism by staff, Board members, and Committee members, the Governance Guidelines in this section shall be followed by the Staff, the Board, and all directors and committee members. First and foremost, it is important to emphasize that The Board of Directors is and should be a policy making body. The goals, policies, and priorities set by the Board should be delegated to professional staff and/or committees for implementation, and administration, and the Board should monitor progress on its actions by regular reports from staff and the committees.
2. The President is shall be the primary point of contact with the GM and staff, unless a matter is delegated to another director. Even if the President is the primary point of contact, the President has no power that is greater than that of any other Board member. Any individual Board member who requests information or action for staff shall communicate through the General Manager, unless the GM has designated a staff member to handle and respond to said communications for the subject matter of the communication.
3. The President shall be the primary point of contact with legal counsel on behalf of the Board. If the issue involves the President, the Vice President shall be the primary point of contact. On all other matters, the General Manager will be the primary point of contact with legal counsel. Unless the matter involves the General Manager, the General Manager shall be copied on all correspondence with legal counsel. The President and General Manager shall brief the Board on correspondence with legal counsel each Executive Session.
4. Communications (including e-mails) received directly by the GM or staff from individual Board members pertaining to Association business should be forwarded to the General Managers Executive assistant for distribution to the entire Board. Such communications requiring a response shall be answered or acknowledged as soon as practicable. Electronic copies of all correspondence received and responses, if any, shall be provided to all members of the Board except in rare instances.
5. Neither the Board or a member of the Board shall give orders or direction to any subordinates of the General Manager. The General Manager shall take orders and instructions from the Board of

Directors majority only when sitting in a duly held meeting of the Board of Directors, and no individual Board member shall give any orders or instructions to the General Manager.

6. No individual Board member shall in any manner attempt to influence the General Manager in the making of any appointment or in the purchase of supplies.
7. Board members shall not attempt to coerce or unduly influence staff in the preparation of staff reports or recommendations regarding the awarding of contracts, the selection of consultants, and any other function or goal that has been delegated to staff. Individual Board members shall not attempt to directly change or interfere with the operating policies and practices of any department in the Association, but rather shall raise any concerns regarding such issues with the General Manager.
8. Board members may attend meetings of Board-appointed committees but are cautioned about becoming involved in the meeting's discussion or business. Board members are not members of said committees, unless expressly permitted by the charter for the committee, and thus involvement in the meetings would not be consistent with the operating charter of a committee. If a Board member wishes to view a Committee meeting, a best practice would be to watch the recorded Committee meeting when practical.
9. If a quorum of the Board (3 of the 5 directors) each attend to observe a committee meeting, such attendance would be a violation of the Open Meeting Act if the matter being discussed at the meeting is "within the authority of the Board. The definition of a meeting which must be open and noticed to the members is a gathering, "at the same time and place, of a sufficient number of directors to establish a quorum of the Board, to hear, discuss, or deliberate upon any item of business that is within the authority of the Board" (Civ. Code §4090(a)). Even if directors do not participate in the meeting, they are "hearing" a discussion that will likely be within the authority of the Board. If a quorum of the Board wishes to attend and participate in the committee meeting, upon consensus of the majority of the Board, the Board Chair shall call a special meeting of the Board to be held in place of the committee meeting, and the meeting shall be noticed as a joint meeting of the Board and the committee.
10. Board members should avoid disclosing information that is confidential or not generally known or readily available to the public, concerning the Association, and do communicate on such matters for personal benefit is strictly forbidden.

11. Unless authorized by a majority of the Board, a Board member shall not have any separate contact or discussions with the other parties or their representatives regarding matters that are discussed or may be discussed in sensitive matters being negotiated (such as contracts) or disputed matters (such as legal actions, enforcement actions, etc), or confidential (such as personnel, member discipline, attorney client privileged, etc). All public statements and communications should be handled by the General Manager or staff spokesperson designated by the General Manager, or a director expressly authorized to be a point of contact. Board members and Committee members shall respect the confidentiality of information concerning the property, personnel or legal affairs of the Association. They shall neither disclose confidential information without proper legal authorization, nor use such information to advance their personal, financial or other private interests.
12. Official use of Tahoe Donner Association letterhead shall be guided by the following criteria:
- Association letterhead shall be used by the Board Chair and Board members only for official Association communications. Association letterhead shall be used by the Board Chair and Board members only for official Association communications.
  - Personal Stationery without Association Logo: Shall be used by any member of the Board to communicate individual positions, conduct personal correspondence.
  - It is the policy of the Board that the use of Association letterhead and/or title on personal matters is not permitted.
  - The use of the Association, logo, or other insignia, on personal matters is not permitted.
  - All business cards printed hereafter will contain only the person's name, title, address and telephone number (home or personal cellular telephone numbers optional). Business names and/or addresses are prohibited.
13. The best Board decisions are made when there is an open and civil discourse between and among members at meetings where the directors are able to see and hear each other. Subject to any

limitations in the Open Meeting Act, between meetings staff will endeavor to provide the Board timely and substantive information, and provide clarifications as needed, prior to the Board meeting. Information should be shared equally between Board members during Board meetings.

14. Each Director and Committee member is a representative of the community and should at all times endeavor to be professional courteous, especially to those who may disagree with any action taken in an official position. Directors shall abide by the Code of Conduct at all times.
15. Use of Association Resources. Board members and Committee members shall not use Association resources, such as staff time, equipment, supplies or facilities, for private gain or personal purposes.
16. Board and Committee members shall represent the official policies or positions of the Board or Committee to the best of their ability when designated as delegates for this purpose. When presenting their individual opinions and positions, Board and Committee members shall explicitly state they do not represent the position of the Board, Committee, or Association.
17. Positive Work Environment. Board members and Committee members shall support the maintenance of a positive and constructive work environment for Association staff, private citizens and businesses dealing with the Association.

**ACCEPTED AND DATED:** \_\_\_\_, 2020

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DON KOENES, President

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JIM ROTH, Vice President

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STEVE MAHONEY, Treasurer

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COURTNEY MURRELL, Secretary

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CHARLES C. WU, Director