



## **DECISION PAPER**

**December 30, 2020**

### **TITLE:**

Proposed Revised Tahoe Donner Elections Committee Charter

### **RECOMMENDATION:**

#### **By Motion:**

The Board of Directors by resolution adopts the Revised Elections Committee Charter

### **BACKGROUND and ANALYSIS:**

Following some issues arising during the 2020 Election summarized by the Elections Committee at the July regular board meeting, the board directed staff and the Elections Committee to work with legal counsel to recommend revisions to the Elections Committee Charter, as part of the overall revisions to the Election Rules and Fair Campaign Guidelines.

Over the last several months the Committee has conferred with legal counsel and staff and recommends the revised charter presented with this Decision Paper.

The revisions are necessary to clarify the role of the Elections Committee in facilitating and monitoring the Association's election process. The Elections Committee's mandate under the Bylaws is "...to monitor the election process to help assure its fairness and impartiality." The fundamental purpose of the Elections Committee is thus to monitor the election process administered by the Association, to ensure it follows the law and its own policies and remains neutral as an organization.

In the 2020 election, demands were made on the Elections Committee to investigate and take action on allegedly misleading or false campaign advocacy outside of Association channels. The revisions make it clear that the Elections Committee's role is not to respond to complaints and investigate the content of campaign advocacy outside of Association channels. Individual members, including directors in their capacity as a member, have wide latitude grounded in fundamental free speech rights during an election, and the Association should not become involved in fact checking or addressing election related communications outside of Association channels, except in the most extreme circumstances.

Another important clarification in the revised Charter is to clarify the Elections Committee's obligation to comply with the Davis Stirling Open Meeting Act in its activities. The Bylaws at Article X, Section 2, provide that:

*Section 2. Meetings and Actions of Committees. Meetings and actions of committees shall be governed by, and held and taken in accordance with, the provisions of Article VIII of these Bylaws, concerning meetings of directors, with such changes in the context of those Bylaws as are necessary to substitute the committee and its members for the Board of Directors and its members, except that the time for regular meetings of committees may be determined either by resolution of the Board of Directors or by resolution of the committee. Special meetings of committees may also be called by resolution of the Board of Directors. Notice of special meetings of committees shall also be given to any and all alternate members, who shall have the right to attend all meetings of the committee. **Minutes shall be kept of each meeting of any committee and shall be filed with the Association records unless the mission or charter of the committee, as determined by the Board, does not require such formality. The Board of Directors may adopt rules not inconsistent with the provisions of these Bylaws for the governance of any committee and those rules may dispense with record keeping and procedural requirements otherwise applicable by virtue of this section 2 if the responsibilities of the committee do not necessitate such formality.***

**(emphasis added)**

The reference to Article VIII is essentially to require the committee to comply with the same Open Meeting Act requirements as the Board. As the Elections Committee by its nature is a working committee that necessarily meets often and sometimes must meet quickly to address election issues on an ongoing basis during an election cycle, the strong recommendation of the Committee is to make it clear in the Charter its responsibilities do not necessitate such formality. Requiring such formality would hinder its activities, which as noted, are largely creating the Election Timeline, and facilitating the election related activities.

The revised Charter does not dispense with the reporting requirements to the Board or the Committee's accountability, nor does it prohibit the Committee (or the Board) from choosing to provide notice to members and an opportunity to attend its meetings on an ad hoc basis, as may be warranted.

#### **OUTREACH:**

Member outreach may take place as needed as part of educating members on election related policies and procedures.

#### **FISCAL IMPACT:**

N/A

**ALTERNATIVE:**

1. Provide additional direction to staff and the committee on specific changes to the draft revised Committee Charter

**ATTACHMENTS:**

- 1) Current Elections Committee Charter
- 2) Proposed Revised Committee Charter
- 3) Redline version showing revisions.

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Reviewed by: <u>David Mickaelian, General Manager</u>
Board Meeting Date: <u>1/8/2021</u>
General Manager Approval to Place on the Agenda: _____

