



## **STAFF REPORT**

**March 19, 2021**

### **TITLE:**

Board of Directors Code of Conduct

### **RECOMMENDATION:**

#### **By Motion:**

Approve the draft Board of Directors Code of Conduct

### **BACKGROUND and ANALYSIS:**

The existing Code of Conduct and Ethics adopted by TDA Corporate Resolution 2018-1 is a generic Code of Conduct that should be revised in order to (i) integrate the Corporate Resolution 2020-3, which addresses Governance Guidelines, (ii) clarify expected ethical conduct of TDA Directors, and (iii) provide for practical enforcement mechanisms. The revised Code of Conduct provides for a more practical and effective enforcement mechanism, which recognizes the right of an accused director to be heard.

The revisions are also intended to address issues that arose during the 2020 election when sitting directors became involved with endorsing or advocating points of view on the election.

In August of 2020, the Board directed staff and the Elections Committee to work with counsel to revise and update the election related documents. Over the last several months the Elections Committee, staff and interested stake holders have weighed in on the attached draft proposed Board of Director Code of Conduct.

To date:

- The Elections Committee has met and discussed the Elections portion of the Code of Conduct with interested stake holders.
- On March 12, the Board of Directors reviewed and discussed the components of the Code of Conduct. Staff direction to provide a comprehensive revised code of conduct using the components that have been prepared by Benjamin Levine, Laura Lindgren and others to be presented at the next meeting.
- On March 18, 2021, staff met with Dave Feingold, legal counsel, Benjamin Levine and Laura Lindgren to discuss and prepare a draft of the Board of Directors Code of Conduct.



To avoid confusion on the various draft, redline versions, we did not include a redline document for review. A comprehensive draft has been provided for consideration. Staff is in agreement with the consolidated document that has been prepared in collaboration with legal, the Elections Committee and the interested stakeholders.

**There is one section on the Draft recommended Board of Directors Code of Conduct that the board will need to discuss and provide direction to staff:**

1. **Section G Membership Votes and Related Obligation** – there are three options listed below, staff recommendation is option C. Legal has also provided alternative language for Section G.(listed below the table)

Option A	Option B	Option C
Unless advocating for his or her own reelection, to ensure member confidence in a fair and impartial election process, and to promote an amicable and productive working relationship within the Board, Directors <b><u>should/shall</u></b> not advocate for the election or defeat of any candidate that is on an Association election ballot.	Unless advocating for his or her own reelection, to ensure member confidence in a fair and impartial election process, and to promote an amicable and productive working relationship within the Board, <b><u>it is the best practice for Directors to refrain from advocating</u></b> for the election or defeat of any candidate on an Association ballot.	Unless advocating for his or her own reelection, to ensure member confidence in a fair and impartial election process, and to promote an amicable and productive working relationship within the Board, <b><u>it is the best practice and strongly recommended</u></b> for Directors to refrain from advocating for the election or defeat of any candidate on an Association ballot.

- a. **Staff recommendation is to adopt the “revised Option C” option which is included in the final recommended draft. Option B may be acceptable in terms of the statement that it is a best practice, but not strongly recommended, that directors who are not candidates not become directly involved in elections. However, staff does not feel it fully captures the intent of the Code of Conduct revisions. Although the Option A is stated as “should” rather than “shall”, it is not a preferred option. Whether it is shall or should, it impacts First Amendment Free Speech rights of directors, and a Board member who advocates or endorses during an election could be claimed to have committed a violation of the Code of Conduct and be subject to censure or other action.**



Alternative language for section G. from legal counsel

## **G. MEMBERSHIP VOTES AND RELATED OBLIGATIONS**

A Director is obligated to act and speak in all matters pertaining to Tahoe Donner in accordance with his or her fiduciary duties and this Code of Conduct, including during elections and other membership votes.

Directors have a right to participate in an election of directors in their individual capacity as a member. However, such participation must not in any way impact the fair and impartial election process administered by the Association. In addition, Director involvement in direct advocacy during an election can lead to dissension and disharmony among Board members, as well as erode member confidence in a fair and impartial election process.

Therefore, it is considered a best practice and recommended that individual Directors who are not running for reelection refrain from personally endorsing or advocating for the election or defeat of any candidate during an election.

If despite this best practice and recommendation, a Director chooses to endorse a candidate or advocate a position by communicating to the members in their personal capacity, the Director shall include an express statement that the views expressed are in the Director's personal capacity only, and do not in any way reflect the views or position of the Association. The following sample is provided for use in any such communications:

**The endorsement and/or positions set forth are my personal views, and do not represent the views or opinions of the Tahoe Donner Association, the Board of Directors, or any other official Tahoe Donner group or body.**

### **OUTREACH/MEMBER INVOLVEMENT:**

This process started in August of 2020 and has included the Elections Committee, interested stakeholders, staff and legal counsel.

### **FISCAL IMPACT:**

N/A



**ALTERNATIVE:**

1. Maintain the current Code of Conduct and Ethics,
2. Provide additional direction to staff on specific changes to the proposed draft of Director Code of Conduct

**ATTACHMENTS:**

- 1) Draft Board of Directors Code of Conduct recommended by staff

Prepared by: **Robin Bennett, Executive Project Manager/Asst. to GM 3/19/2021**

Reviewed by: David Mickaelian, General Manager

Board Meeting Date: 3/26/2021

General Manager Approval to Place on the Agenda: \_\_\_\_\_

