



STAFF REPORT: Technical Update to Policy Resolution 2021 - 4, Board of Directors Code of Conduct

RECOMMENDED ACTION:

By Motion:

The Board of Directors adopts Policy Resolution 2024 – 9 Board of Directors Code of Conduct.

BACKGROUND:

Tahoe Donner’s Strategic Plan Initiative 3, Goal 3.3: Adhere to good governance and management principles and practice. As part of achieving two of the seven objectives under Goal 3.3, staff began reviewing all active policy resolutions adopted by the board to develop a review and update schedule.

The Association has administrative policy resolutions spanning from the late 1980s through those adopted by the Board this year. The last time management and the board proceeded through a comprehensive policy resolution review and update was between the years 2009 and 2017.

At the July 26, 2024 board meeting, staff presented a final schedule for the multi-year policy review and update initiative (See Exhibit C). The following policies are identified for review and updating in 2024:

- 2020-1 Board of Directors Review of Financial Records in Accordance with California Civil Code Section 5500 and 5501
- 2014-5 Club Pot Luck Events and The Lodge Banquet Discounts
- 1997-5 Procedures for Member Appeals from Covenants and Architectural Standards Committee Decisions
- 2013-2 Covenants and Architectural Standards Committee Fines
- 2014-1 Financial Planning, Budgeting and Reporting
- 2015-5 Record Retention and Destruction
- 2010-3 Board of Directors Meeting Minutes Guidelines
- 2021-4 Board of Directors Code of Conduct
- 1991-4 Contacts Between Board Members and Association Staff
- 2022-1 Board of Directors Authority, Meetings of the Board, and Governance Guidelines
- 1998-7 Capital Investments in Association Amenities
- 2023-3 Operating Fund

This staff report is prepared as part of the comprehensive policy resolution review process focusing on Policy Resolution 2021 – 4 Board of Directors Code of Conduct and proposed legal and staff recommended technical updates to the policy.



DISCUSSION:

The Board of Directors is being asked to consider the following technical updates:

1. Preferred legal writing terminology and reference
2. To better align with existing law, an exception and disclosure process to potentially permit board members and their relatives to be hired as non-supervisory seasonal and part-time employees.

On January 1, 2020, Senate Bill 323 took effect. SB 323 amended many sections of the Davis-Stirling Act relating to director elections. One of the most significant amendments was to Civil Code Section 5105, which voided all director qualifications except as permitted by the statute. Under the statute, associations can no longer prohibit association employees from being directors. This applies to Tahoe Donner. When SB 323 took effect, it voided Article VII, Section 2(iv) of Tahoe Donner's Bylaws, which states, "No employee of Tahoe Donner shall be eligible to serve on the Board."

However, Policy Resolution 2021-4 Section F, Self-Dealing and Conflict of Interest states the following: "Use of the Association property, services, equipment or business for their personal gain or benefit, except as may be provided for all members of the association." This language is understood to include personal gain through employment and wages earned.

This language, which has been included in Tahoe Donner's Director Code of Conduct since at least 2016, is broadly written, such that it also prohibits a director's family members from being employed by Tahoe Donner. The Director Code of Conduct underwent an extensive update in 2021. However, this clause was not specifically reviewed during that process.

Tahoe Donner has seasonally employed children and grandchildren of board members in a variety of non-supervisory seasonal and part-time positions. For a period of time following SB 323 taking effect, the Association also seasonally employed a board member. However, since the fall of 2022, no board member has been an employee due to the existing Director Code of Conduct policy language.

Tahoe Donner has employed members who have eventually served as board members, none of whom held positions in supervisory or full-time positions during the last 20 years. Past board members worked as downhill and cross-country ski instructors, water aerobics instructors, and fitness instructors, to name a few. Any future non-supervisory seasonal or part-time member-employee elected to the board would need to resign, potentially leaving these positions unfilled.

In consultation with legal counsel and Tahoe Donner's Human Resources Department, staff recently re-evaluated this provision and recommended the technical update for two reasons. First, the update will clarify the Director Code of Conduct by improving its alignment with current law. Second, because seasonal recruitment continues to be challenging in this high inflationary region, staff considers employment for directors and their relatives as one way to recruit and retain seasonal and part-time staff.



In developing the recommendation before the board, Staff reviewed the potential risks and benefits of allowing board members and their families to apply for and be considered for non-supervisory seasonal and part-time employees. Staff sees the proposed changes as low-risk and beneficial to the community.

Staff met with legal counsel to review the various potential concerns and benefits regarding board members and their relatives as employees. The proposed technical updates are in alignment with legal counsel's advisement, Tahoe Donner Governing Documents, and the Association's employment practices.

When legal counsel reviewed proposed changes, counsel also recommended minor technical updates for preferred legal writing terminology and reference. See Exhibit A for the proposed technical update.

ATTACHMENTS:

Exhibit A: Clean Draft Resolution 2024 – 9 Board of Directors Code of Conduct Resolution

Exhibit B: Draft Redline Resolution 2021 – 4 Board of Directors Code of Conduct Resolution

Exhibit C: Multi-Year Policy Resolution Review and Update Schedule

Staff Report Prepared By: Annie Rosenfeld, General Manager

Board of Directors Meeting: August 23, 2024