

## MEMORANDUM

**TO:** Board of Trustees

**FROM:** Ray Tulloch

**SUBJECT:** Review, discuss and possibly approve the reporting structure for legal counsel as it relates to Policy and Procedure No. 105 – Resolution 1480 Personnel Management Policy.

**STRATEGIC**

**PLAN REFERENCE(S):** Transparency and Fiscal responsibility

**DATE:** January 11, 2023

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### **I. RECOMMENDATION**

- 1.1 That the reporting structure for Legal Counsel shall be amended such that the General Counsel shall:
- Report directly to the Board
  - Provide legal, contractual and policy advice to the Board
  - Be responsible for initiation of and response to all litigation as directed by the Board
  - Review as required the findings and recommendations of any internal or external legal advisors engaged by the District and advise and/or provide recommendations to the Board accordingly.
- 1.2 That the Board shall make the necessary changes to Board Resolution 1480/Policy and Procedure Resolution No. 105 as Adopted November 29, 1984, to enable this change

### **II. BACKGROUND**

Currently, and as per Board Policy 1480, the work of Legal Counsel (described in Policy 1480 as the Attorney) is coordinated through the District General Manager. In recent years, the District has been involved in, and expended significant resources and time, on instances of litigation where it has not ultimately prevailed. As an example of this, the recent Mark Smith Public Records case has cost the District between \$250,000 and \$350,000 in legal

costs. In some instances, the District has initiated such litigation without the knowledge and/or approval of the Board.

This has created a strong perception in the Community that the District is being less than transparent in its actions and that it may be using public funds to litigate to prevent public information becoming publicly available.

In recent years, the District has incurred the following amounts in direct legal expenses.

- FY19/20 - \$251,908
- FY20/21 - \$229,725
- FY21/22 – \$183,258

**\*\*Note –** The amount(s) shown represents costs incurred for direct legal services, including District's General Counsel as well as Special Counsel (for attorney's hired to review specific issues). This data **excludes** costs associated with settlement payments related to litigation where the payments are issued via the legal representative, or (in some cases) directly to plaintiff.

These costs are ultimately borne directly by parcel holders.

The Board carries the ultimate legal and fiduciary responsibility and accountability for the actions of the District. Board members, as elected representatives, are also directly answerable to the Community for any and all such legal expenditures. As such, it is essential that the Board is able to directly request and receive independent legal advice from Legal Counsel in order to:

- Make informed decisions on whether or not the District should pursue or defend against litigation
- Reach decisions which support the interests and rights of the Community as a whole
- Minimize risk and cost of litigation for or against the District.
- Receive advice that is transparently free from any real or perceived conflict of interest and which is, to the fullest extent possible, transparent to the Community
- Have prior knowledge of, and ability to reach a legally defensible decision, on any pending or potential litigation

To effectively achieve these objectives, it should be considered whether Legal Counsel should report directly to, and be answerable to, the Board rather than these activities being coordinated through the General Manager.

As such, Legal Counsel shall provide legal advice on all matters, including Board policies and practices directly and solely to the Board as necessary and as requested.

Where District Management require legal resources for operational issues – such as Human Resources or contractual issues – such support could be engaged separately from Legal Counsel. Legal Counsel shall advise on selection of such legal support where necessary. Legal support as may be engaged by District Management shall not be engaged for review of Board or District Policies and Practices. Where District Management, Advisory committees or Board committees require advice on policy, they shall pass the request to the Board who shall instruct Legal Counsel as necessary.

Legal Counsel shall be responsible for initiation and management of all litigation on behalf of or against the District at the direction of the Board.

Initiation of any and all such litigation by the District shall in every instance require the approval by a majority vote – or alternatively a two-thirds majority - of the Board. All invoices for work by Legal Counsel shall be submitted to and be subject to review and approval by the Board.

Implementation of these changes will require some changes to Board Resolution 1480/ Policy and Procedure Resolution No. 105 including among others at page 4 of Appendix A

- *The General Manager shall be responsible for coordinating the work of the Attorney with the activities of IVGID Staff, and the Board of Trustees.*

### **III. FINANCIAL IMPACT AND BUDGET**

By ensuring the Board receives legal advice that is demonstrably independent; and by ensuring the Board is responsible for approving any litigation and associated expenditure; the District should:

- Have reduced exposure to being entangled in unnecessary litigation.
- See a reduction in legal costs over the longer term
- Minimize the risk to Directors and Officers liability insurance cost increases
- Ensure that the interests of parcel holders and the Community are adequately protected and defended in accordance with all statutes and deeds

### **IV. ALTERNATIVES**

That the District continue with the current legal advisory structure and continue to be subject to increases in total legal expenditures, as well as incurring potential risks and liabilities for parcel holders and the Community.

**V. BUSINESS IMPACT**

This item is not a "rule" within the meaning of Nevada Revised Statutes, Chapter 237, and does not require a Business Impact Statement.

Appendix A

Board Resolution 1480/ Policy and Procedure Resolution No. 105

RESOLUTION NO. 1480

A RESOLUTION ADOPTING A  
PERSONNEL MANAGEMENT POLICY

INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT

WHEREAS, the Board of Trustees of the Incline Village General Improvement District desires to establish a framework for the Board and General Manager to use in addressing personnel matters within IVGID;

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

The Policy Statement titled "Personnel Management" attached hereto as Exhibit A, is adopted as Policy and Procedure Resolution No. 105.

\* \* \* \* \*

I hereby certify that the foregoing is a full, true and correct copy of a resolution duly passed and adopted at a regularly held meeting of the Board of Trustees of the Incline Village General Improvement District on the 29th day of November 1984, by the following vote:

AYES, and in favor thereof, Trustees:  
Jane Maxfield, Bob Wolf, Bob Jones, Syd Brosten

NOES, Trustees: None

ABSENT, Trustees: None

ABSTENTION, Trustee: Tom Duggan

  
Secretary

Resolution Number 1480  
Adopted November 29, 1984

Policy Statement  
PERSONNEL MANAGEMENT  
Incline Village General Improvement District

I. PURPOSE

The Incline Village General Improvement District (IVGID) is committed to maintaining a dedicated and motivated work force, while developing its Staff's technical and professional standards to meeting changing demands for services with the Village. This policy statement establishes a framework which the Board of Trustees and the General Manager will use in addressing personnel matters within IVGID.

II. ROLES

The District operates under a Board-Manager form of government which places the Board of Trustees in the role of establishing overall IVGID policy direction. IVGID Staff is appointed to administer and execute day-to-day operations. The Manager is responsible for supervising these operations and providing general administrative direction.

With regarding to IVGID personnel, it is the Board's responsibility to establish overall guidelines governing IVGID's approach to personnel matters. The Manager's role is to put these guidelines into the day-to-day practice of hiring, firing, motivating, promoting, demoting, compensating, and training individual employees.

III. GENERAL OBJECTIVES

The Board hereby establishes the following general personnel objectives for IVGID.

- Employee Development. IVGID will motivate and train existing employees to become more productive and proficient in their current jobs. Where appropriate, IVGID will encourage employees to develop new skills which might lead to job advancement. Where appropriate, IVGID will cross-train employees to cover temporary vacancies on related jobs.

**EXHIBIT A**

Resolution Number 1480  
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Policy Statement  
PERSONNEL MANAGEMENT  
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- Attrition Management. IVGID will evaluate alternatives to filling positions which become vacant, as a means to reduce costs. These alternatives may include changes in work routines, job descriptions, work hours, or scope of services. They may include combining positions or reassigning work or personnel from one department to another.
- Recruitment. When vacancies must be filled from outside the ranks of the existing work force, IVGID will recruit and hire the most qualified candidates for the job, based strictly upon merit. Merit selection implies that anyone may apply, and that candidates are evaluated fairly by the appointing authority, based upon job-related criteria established in advance. In general, local recruitment is sufficient for clerical positions, semiskilled laborer positions, lower level technical positions, and all part-time or temporary positions. A larger recruitment area may be required for more highly skilled positions. Where local and non-local candidate are being considered which have equal or nearly equivalent qualifications, the local candidate will be preferred.
- Performance Standards and Evaluations. IVGID will establish clear standards for employee performance, and encourage employees to maintain these standards through ongoing communication with supervisors, performance evaluations, and where necessary, disciplinary procedures, demotion or termination.
- Longevity. IVGID will ensure the longevity of loyal and hard-working employees which have provided many years of faithful service to the community.
- Management. IVIGD will develop senior department heads as a management team which can work with the General Manager in addressing overall IVGID administrative needs and assist the Board of Trustees in policy development.

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PERSONNEL MANAGEMENT  
Incline Village General Improvement District

- Guidelines. IVGID will develop a uniform set of guidelines to direct the administration of the District's personnel matters.
- Planning. IVGID will develop a strategic approach to personnel administration which will diagnose long-term problems, anticipate future needs, and develop a stable framework for addressing these problems and needs in an orderly fashion.
- Unions. IVGID will maintain a cooperative relationship with collective bargaining units and their representatives, which establishes a clear understanding of the proper roles for both unions and management.

#### IV. PROCEDURES

The General Manager is accountable to the Board of Trustees for the fair and efficient execution of these guidelines, as well as the overall performance of IVGID. In order to maintain this accountability, the General Manager must be given the authority to administer personnel matters without direct Trustee intervention or influence.

The following procedures shall govern the personnel practices of IVGID:

- The General Manager shall maintain direct, day-to-day supervision over all District employees, with the exception of the Attorney. Supervision includes the power to hire, fire, motivate, discipline, evaluate, promote, demote, transfer, and train employees, subject to established personnel guidelines, union contracts, Board policy, and generally accepted personnel practices.
- The General Manager will keep the Trustees informed about the status of all major personnel actions relating to department head positions. Department head appointments and terminations shall be discussed with the Trustees in advance. Information on personnel actions relating to non-department head positions will be provided on an as-requested basis.

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- Trustees are encouraged to express their opinion and/or concerns on any personnel matter to the General Manager in private. Trustees, individually or as a body, will refrain from directly intervening in or publicly influencing any personnel matter within the jurisdiction of the General Manager.
- Trustees will exercise their authority to direct Staff, collectively, through the General Manager, at Board meetings. Individual Trustees shall refrain from directing or attempting to directly supervise Staff. This policy statement is not intended to prevent individual Trustees from occasionally making suggestions to supervisor Staff, when such suggestions do not imply supervisory direction.
- All union matters, other than overall negotiation strategy, will be handled by the General Manager. The Board will maintain responsibility for establishing overall negotiation strategy and approving final union contracts.
- The General Manager shall be responsible for coordinating the work of the Attorney with the activities of IVGID Staff, and the Board of Trustees.
- The General Manager shall recommend, and the Board of Trustees shall establish, salary ranges for all non-contract, full-time permanent employment classifications. Salary ranges shall be based upon objective criteria not specific to individual employees, relating to union contracts, market conditions, cost of living, budgetary guidelines, legal considerations, and job descriptions.
- The General Manager shall set a specific salary for each employee within the salary range established by the Board of Trustees. Specific salaries shall be based upon employee-specific information, including qualifications, experience, longevity, and performance evaluations.

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- The Board of Trustees shall exercise its exclusive power to create full-time permanent employment positions, considering the recommendations, if any, of the General Manager. The General Manager shall establish, and as deemed necessary, amend detailed job descriptions for positions of employment. The General Manager may create temporary, seasonal and part-time positions of employment, and the wages and terms of employment thereof, subject to general personnel and budgetary guidelines, Board policies, and union contracts.
- The General Manager shall have the authority to establish and revise chains of command, reporting relationships among personnel, organization charts, and other structural matters pertaining to the organization of the District, provided that the Board of Trustees shall exercise the exclusive power to create or abolish operating departments of the District. The Board's power shall be exercised by resolution.
- The General Manager may eliminate positions, combine positions, lay off personnel, or reduce work hours, as deemed necessary to maintain a balanced budget, improve efficiency, or accomplish other administrative objectives, subject to general personnel guidelines, union contracts, legal considerations, or Board policy. Where such actions pertain to full-time permanent personnel, the General Manager shall notify the Board of Trustees of the actions in advance, and the Board may, by majority vote, override such proposals.

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