

## MEMORANDUM

**TO:** Board of Trustees

**FROM:** Matthew Dent  
Chair

Josh Nelson  
General Counsel

**SUBJECT:** Review, discuss, and potentially adopt Board Policy 23.1.0 regarding access to confidential and non-public information

**RELATED STRATEGIC PLAN INITIATIVES:** Long Range Principle #6 Communication  
Long Range Principle #7 Governance

**DATE:** September 13, 2023

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### **I. RECOMMENDATION**

That the Board of Trustees review, discuss, and potentially adopt Board Policy 23.1.0 regarding access to confidential and non-public information.

### **II. BACKGROUND**

The District has a strong commitment to transparency. However, there is some information that must or should be kept private. Trustees must have access to this private information while still ensuring that it does not become public. The District has considered different approaches to balancing this tension. Historically, the District provided very limited information to Trustees upon request and treated most requests as public records requests. More recently, the District has provided this information upon request to Trustees. However, there is no formal policy on this matter.

At a recent Board of Trustees meeting, Chair Dent requested that the General Counsel prepare a policy to provide greater clarity around the requirements for providing private information to Trustees. Enclosed is a draft policy for the Board's consideration. Trustee Schmitz requested the opportunity to review and comment on the draft, and staff incorporated some of her suggestions.

Staff will provide an overview of the draft policy at the Board meeting. However, highlights include:

- Confidential vs. Non-Public Information: The policy defines and distinguishes between “Confidential Information” which must be private and should not be discussed in any forum without Board approval and “Non-Public Information” which are documents that are not public records. However, the underlying facts and circumstances of Non-Public Information may be discussed publicly. The policy outlines this distinction and requires staff to notify Trustees of the status of information.
- Procedures for Providing Information to Trustees: The policy outlines a process to provide information to Trustees upon request. Trustees would contact the General Manager and Counsel. Information would then be provided. The rest of the Board would be notified if a Trustee requested private information so other Trustees had the opportunity to view the same information. The policy also includes optional language in highlights brackets that would limit access to read only/view only copies. Staff would appreciate feedback on whether the Board wishes to include this limitation.
- Employee Access: The policy would require the General Manager to adopt personnel policies to implement the policy and that outline when and how employees may access Confidential and Non-Public Information.

### III. FINANCIAL IMPACT AND BUDGET

No direct impact by adoption of the policy.

### IV. ALTERNATIVES

Below are alternatives to the recommended action:

1. Adopt the proposed policy.
2. Decline to move forward at this time.
3. Suggest changes to the proposed policy and bring it back for discussion at the next meeting.

**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.

**VI. ATTACHMENT**

Draft Policy 23.1.0



## **Access to Confidential and Non-Public Information Policy 23.1.0**

**0.1 PURPOSE.** The Incline Village General Improvement District is governed by a five-member Board of Trustees. The Board of Trustees has elected to manage IVGID under the “Board-manager” form of government. Under this form of government, the Board hires a General Manager who hires, disciplines, and otherwise manages IVGID personnel subject to Board oversight and District policies. The only other staff member that reports directly to the Board of Trustees is the General Counsel.

Board of Trustees deliberations and the maintenance of IVGID records are subject to the general rule that they are “the public’s business” and subject to a general obligation of transparency. However, the Board and IVGID staff also have a superior duty not to disclose some information, including, but not limited to attorney-client confidences and work product, matters of employment, and other recognized exceptions as set forth in this Policy. To ensure Trustees are informed and can effectively govern the District, they may receive Confidential and Non-Public Information that members of the public would not receive in response to a request for public records. This Policy outlines the terms and conditions applicable to Trustee and employee access of Confidential and Non-Public Information.

**0.2 CONFIDENTIAL AND NON-PUBLIC INFORMATION.** The following terms shall have the definitions below in this Policy:

- a. Confidential Information. Information and documents that are related to IVGID that are not disclosable publicly without the concurrence of a majority of the Board of Directors. This is information protected by the attorney-client communication or work product privileges, pending labor negotiations, matters discussed in a closed session, and other legally recognized protected or privileged information.
- b. Non-Public Information. Documents that are related to IVGID that are not Confidential Information and are not a public record under NRS 239. The facts and circumstances underlying Non-Public Information may be discussed publicly to the extent it is relevant to IVGID business but personally identifying information should not be disclosed to the extent possible. Non-Public Information shall not be provided to any third party. Examples of Non-Public Information include documents regarding recreational privileges or fees for individuals or parcels and draft documents.



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**0.3 INFORMATION TO BOARD.** Confidential and Non-Public Information shall be provided by staff or legal counsel as necessary to inform the Board’s discussion, deliberation, or general oversight of IVGID matters. Staff shall ensure the Board understands the Confidential or Non-Public status of the information.

**0.4 INFORMATION UPON REQUEST.** Trustees may request access to Confidential or Non-Public Information by contacting the General Manager with a copy to General Counsel. Requests shall be based on a legitimate IVGID-related purpose and not for political, financial, or other personal reasons. Requests will be received and reviewed by the General Manager and General Counsel. The Director of Human Resources will be consulted regarding any requests for documents that are maintained by the Department of Human Resources. If the requested document is available for review, it will be provided [in a read only electronic format or in hard copy for viewing only. Appropriate staff or legal counsel will be present for document viewing, and no photos of documents are allowed. After viewing, staff is responsible for shredding of the materials reviewed.] Staff shall ensure that Trustees understand if a document is Confidential or Non-Public Information. The entire Board of Trustees will be promptly notified of any request under this subsection and provided an opportunity to review the provided document.

### **0.5 LIMITATIONS ON ACCESS.**

Notwithstanding the foregoing, individual Trustees may not access confidential documents held in employment or personnel files for staff reporting to the General Manager.

### **0.6 DUTY NOT TO DISCLOSE.**

Trustees must not disclose any Confidential Information unless permitted to do so by a majority of the Board. Trustees may not disclose copies or excerpts of Non-Public Information but may be entitled to discuss the underlying facts and circumstances. Trustees shall confer with the General Manager and General Counsel prior to discussing any underlying facts and circumstances of Non-Public Information with non-IVGID third parties.

### **0.7 EMPLOYEE ACCESS TO INFORMATION**

The General Manager shall adopt and implement personnel policies that implement this Policy and outline when and how employees may access Confidential and Non-Public Information.



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### **0.8 RIGHT TO DISCLOSE UNDER APPLICABLE LAW**

This Policy shall not be interpreted or applied in a manner that prevents a Trustee from complying with or exercising his or her rights under applicable law to disclose information, including, but not limited to, whistleblower laws and policies. Disclosures shall be as limited as possible to ensure the compliance with or exercise of such legal rights.

### **0.9 REMEDIES FOR VIOLATIONS**

Violations of this Policy by Trustees shall be subject to discipline as set forth in the Code of Conduct. The Board may also enforce this Policy through other legally available remedies.