

## MEMORANDUM

**TO:** Board of Trustees

**THROUGH:** Tim Callicrate  
Board Chairman

**FROM:** Audit Committee

**SUBJECT:** Review, discuss and possibly direct Staff to price long term rentals and/or the lease of property at market rates, with the exception of non-profit organizations which would be provided a 10% discount. Additionally, to discuss and determine the direction for updating necessary policies

### **RELATED**

**POLICY:** Board Policy and Procedure Resolution 132/Resolution 1701 (attached); Pricing Policy (to be obtained from the Director of Finance)

**DATE:** May 24, 2021

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### **I. RECOMMENDATION**

The Audit Committee recommends to the Board of Trustees to price all venues for non-profits to cover full operating expenses and long term rentals and/or lease of property should be at market rates, if non-profit, less 10%.

To accomplish this recommendation would require Board Policy and Procedure Resolution 132/Resolution 1701 and the District's Pricing Policy to be updated.

The Audit Committee also discussed that to implement the recommendation, the Board may wish to direct legal counsel and Staff to revise current policies or direct staff to solicit proposals.

### **II. BACKGROUND**

NRS 268.001(2) states "In Nevada's jurisprudence, the Nevada Supreme Court has adopted and applied Dillon's Rule to county, city and other local governments". *Local governments* include General Improvement Districts (GIDs).

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NRS provides clear evidence that donations are permissible by Counties (NRS 244.1505) and Cities (NRS 268.028). There is no language in NRS 318 (General Improvement Districts - GIDs) providing the expressed authority for GIDs to make donations of any kind.

Based on no expressed authority to make donations under NRS Chapter 318, a General Improvement District does not have the expressed power to provide cash or in-kind donations to non-profit organizations and such authority can only be drawn from implied or assumed authority in other sections of NRS.

Contained in the November 10<sup>th</sup>, 2020 memorandum from District Legal Counsel, it was stated that “actual donations are most likely permitted under IVGID's implied or incidental powers provided that they are in furtherance of some express IVGID power. To that end, the Board of Trustees has adopted policies to this effect. In addition to Policy and Procedure Resolution No. 132/Resolution No. 1701, the Board adopted Policy and Procedure Resolution No. 110/Resolution No. 1493 which authorizes IVGID staff, with advance notice to the Board of Trustees, to make reasonable (i.e., generally less than \$1,000) monetary expenditures to support community groups provided that the support is " ... related to a purpose authorized by NRS Chapter 318, and delegated to IVG ID thereunder." Importantly, this must in furtherance of some express power. General grants of funds are most likely impermissible absent express statutory authority. (See 2000 Nev. Op. Atty. Gen. No. 10.)”

Board of Trustees Policy and Procedure Resolution 132, Resolution 1701 assumes that through the use of "yield management" it provides a fair rental value for the facilities to be used by non-profits. In other words, since the facility or venue is not being utilized any amount of revenue received is fair. Since most non-profits plan their events far in advance of the actual event day, IVGID staff does not have any knowledge that a facility or venue would not be used on a future date. In addition, if yield management is the objective to obtain maximum revenues, then the unused facility or venue must be made to all, not limited to non-profits. Such an approach to limiting the use of yield management to non-profits would be discriminatory.

The Audit Committee determined the Audit Committee should not make a decision on the validity of an opinion from IVGID legal counsel when a remedy is provided in Nevada Revised Statutes and instead is bringing this issue to the attention of the Board of Trustees.

## Further Background Information

On June 30, 2020, Josh Nelson, IVGID's Legal Counsel, provided a presentation on his review and conclusions of IVGID's compliance with Dillon's Rule relating to the questioned expenditures brought forth by citizens. Mr. Nelson found that the IVGID had proper authority under Dillon's Rule, however, suggested that certain Board Policies be adopted to allow certain expenditures. Audit Committee member Schmitz asked Mr. Nelson to identify the policies that needed to be drafted or revised. Ms. Schmitz concluded the policy review might be a good next step.

On September 2, 2020, Mr. Nelson's June presentation was again reviewed by the Audit Committee. According to meeting minutes, the Audit Committee purported to request that Mr. Nelson provide a written opinion on his conclusions regarding the questioned expenditures and the opinion could then be posted on the District's website. Mr. Nelson requested that he provide his written opinion to the Audit Committee prior to the Audit Committee requesting an opinion from the Nevada Attorney General.

At large Audit Committee member Mr. Aaron asked Mr. Nelson if the list of staff expenditures was all inclusive and Mr. Nelson indicated it was limited to the 8 items listed in the citizens April and May correspondence.

On September 30, 2020, the agenda called for Mr. Nelson to present his written opinion which was not on Nelson's firm letterhead. At large Audit Committee member Mr. Tulloch requested the opinion be on Mr. Nelson's firm letterhead. The agenda item was postponed.

On November 19, 2020, Mr. Nelson's written opinion was reviewed by the Audit Committee and a request was made for Mr. Nelson to provide the content on each and every NRS Statute and Board Policy and Practice stated in his opinion. The agenda item was limited to only acknowledging receipt of Mr. Nelson's written opinion.

In the November 10, 2020 written opinion by IVGID's Legal Counsel ANY IVGID property which is leased to a non-profit organization at below market rates is allowed under NRS chapter 318.

The authorities cited for leasing property were:

***NRS 318.160 Acquisition and disposal of and encumbrances on property. Except as otherwise provided in NRS 318.512 to 318.5126,***

*inclusive, the board shall have the power to acquire, dispose of and encumber real and personal property, and any interest therein, including leases, easements, and revenues derived from the operation thereof.*

**NRS 318.210 Implied powers.** *The board shall have and exercise all rights and powers necessary or incidental to or implied from the specific powers granted in this chapter. Such specific powers shall not be considered as a limitation upon any power necessary or appropriate to carry out the purposes and intent of this chapter*

- Creating a benefit for non-profits by providing below market rents would be considered an "in kind donations". IVGID's Legal Counsel states: "Even if considered a "donation" it would be authorized as incidental to this express power" (leasing of property) under NRS 318-160 and NRS 318.210 would apply as the below market rents would be 'incidental' as to the basic powers to lease property under NRS. 318.160.

Further and as discussed with the Audit Committee, IVGID's legal counsel believes the power to provide access to IVGID recreational venues at "below market" rates is authorized by IVGID's powers to set and charge fees for access to recreational facilities. (NRS 318.197.)

**NRS 318.205 Bylaws.** *The board shall have the power to adopt and amend bylaws, not in conflict with the Constitution and laws of the State:*

1. *For carrying on the business, objects and affairs of the board and of the district.*
2. *Regulating the use or right of use of any project or improvement.*  
(Added to NRS by [1959, 465](#); A [1967, 1715](#))

At its March 11, 2021 meeting, the Audit Committee again reviewed the issue and recommended that the Board of Trustees to price all venues for non-profits to cover full operating expenses and long-term rentals and leases of property should be at market rates, if non-profit, less 10%. This motion was approved 4-0-1 (Aaron).

This item provides an opportunity for the Board to consider and act on the Audit Committee's recommendation. To implement the recommendation, the Board may wish to direct legal counsel and Staff to revise current policies or direct staff to solicit proposals from special counsel to do so.

Review, discuss and possibly direct Staff to price -5-  
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#### **IV. FINANCIAL IMPACT AND BUDGET**

Updating pricing policies for non-profits and all venue offerings would improve the financial sustainability of the District's venues and reduce the reliance on the Community Services Facility Fee for operational expenses.

#### **V. ALTERNATIVES**

Do nothing which continues the confusion on the Districts compliance to Dillion's Rule as it relates to District pricing policies.

Engage an attorney to review and recommend updates to comply with Dillion's Rule and the direction of the Board related to pricing policies.

#### **VI. COMMENTS**

None.

#### **VII. BUSINESS IMPACT**

A change of policy would impact the point of sale systems. Additionally, updating the policies would bring clarity to the discounts offered to non-profits.



## Policy and Procedure Resolution No. 132 Resolution No. 1701

### USE OF IVGID FACILITIES BY QUALIFIED LOCAL NON-PROFIT, VOLUNTEER ORGANIZATION, NATIONAL ORGANIZATION WITH A LOCAL CHAPTER, OR ACTIVITY BASED IN OR BENEFITTING INCLINE VILLAGE/CRYSTAL BAY, NORTH TAHOE REGION, GOVERNMENT AGENCY, OR A LOCAL SCHOOL, THAT ADMINISTERS AND CONDUCTS THE ACTIVITY THEMSELVES

**WHEREAS**, the Incline Village General Improvement District (IVGID) receives requests for activities at its facilities by local non-profit, volunteer organization, national organization with a local chapter, or activity based in or benefitting Incline Village/Crystal Bay, North Tahoe Region, government agency, or a local school, that administers and conducts the activity themselves; and

**WHEREAS**, it is necessary to establish policies governing the activities that may take place at IVGID's facilities, to guide staff in administering a consistent policy throughout IVGID;

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Trustees of the Incline Village General Improvement District that activities that fit within the following criteria will be allowed, upon approval by the appropriate level of management up to and including the Board of Trustees.

#### POLICY AND PROCEDURE STEP 1 APPLICABLE TO ALL ACTIVITIES

1. The sponsor must be a qualified local non-profit, volunteer organization, national organization with a local chapter, or activity (as outlined later in this document) based in or benefitting Incline Village/Crystal Bay, North Tahoe Region, government agency, or a local school, that administers and conducts the activity themselves.
2. Request will be considered on a first-come, first-served basis and use of District facilities will be evaluated on a venue by venue basis balancing capacity and the resident's needs as the key criteria. All requests will be made to the applicable District Venue Manager.
3. The activity must not be for commercial or personal gain with the exception that business collaboration results in advertisements and its benefit to business.
4. The activity must be overseen by the sponsoring organization and a lead individual identified to handle details up and through the day of the event. This person must be someone who is in attendance at all times the day of the event.
5. IVGID will have no responsibility for the administration of the event or for the funds collected by the activity.



## Policy and Procedure Resolution No. 132 Resolution No. 1701

6. When applicable, the sponsor must provide insurance, list IVGID as an additional insured (when applicable) and any other paperwork required by the District Risk Manager.
7. The sponsor of the activity will agree to indemnify and hold the District harmless from any claims arising out of the activity.
8. The profits derived from the activity must materially benefit the community of Incline Village/Crystal Bay, and be used within the North Tahoe Basin for the length of their useful life.
9. A signed contract and applicable paperwork are to be executed not less than thirty (30) days prior to the event. If the event is cancelled within 30 days of the event, the deposit may be forfeited.
10. Qualified, non-profit, volunteer organization or activity requests are to be ranked and evaluated in accordance with the Internal Revenue Service (IRS) Code as follows:
  - a. IRS Code 501(c) (3), tax-exempt organizations. The organization description must fit one of the following: Charitable, religious, educational, scientific, literary, and testing for Public Safety, foster national or international amateur sports, or prevention of cruelty to children or animals.
  - b. Other tax-exempt IRS Code 501 (c) organizations, such as Civic Leagues, Social Welfare Organizations, Labor, Agricultural, and Horticultural organization, Business Leagues, Veterans' Organization, and Chamber of Commerce.
11. In all cases, an IRS letter of determination is to be provided to the District (or on file with the District) as documentation of status. The letter of determination shall be provided at the time of request.
12. All events, as a minimum, will be charged a \$50 Administrative charge which is to cover the required paperwork, etc.
13. The attached application is required for each event and is herewith incorporated and made effective as of July 1, 2013.
14. During the budget cycle, the Board of Trustees approves the District's Key Rates which include the rack rate for each District venue. This is the guiding document for each District Venue Manager to make their discounting decision, using yield management, for each event/venue.
15. Within sixty (60) days of the conclusion of the activity, the sponsoring organization must submit a financial statement to the District Venue Manager, giving details of income and expenses for the activity and expected contributions to the beneficiary(ies). If sponsor



## Policy and Procedure Resolution No. 132 Resolution No. 1701

does not provide an activity financial statement within the stated timeframes, they will not be allowed to hold another activity at District facilities for one year.

16. A report, for Fiscal Year 2013/2014, shall be provided to the Board of Trustees no later than September 30, 2014.

### POLICY AND PROCEDURE STEP 2 APPLICABLE SPECIFIC REQUIREMENT FOR EACH OF THE DISTRICT VENUES

#### GOLF VENUES

1. The sponsor must apply in advance, in writing, to the District Venue Manager. The following is to be included in the request:
  - a. Details of the activity (including, but not limited to, proposed date of activity, proposed venue, etc.)
  - b. Projected finances and how funds are to be distributed
  - c. Beneficiary of the event (who is it and where do they reside)
  - d. Geographical area served
  - e. IRS Letter of Determination
2. Availability of Golf Courses
  - a. Golf activities: It is strongly recommended that charity tournaments be held prior to June 15 and after September 15 on the Championship Course.
  - b. Golf activities: It is strongly recommended that charity tournaments be held prior to July 1 and after September 15 on the Mountain Course.
  - c. Should a charity tournament desire a date before or after those listed in a. or b. above, it is the representative's responsibility to discuss their desire with the District Venue Manager who will make the determination.
3. Charges To Use Each Golf Course
  - a. Golf activities will be charged on the Championship Golf Course as determined during the annual budget process.
  - b. The Mountain Golf Course will be offered as determined during the annual budget process.
4. Event organizers shall be encouraged to plan golf activities on Mondays through Thursdays in the afternoon.





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5. If the activity is cancelled ninety (90) days prior to the scheduled activity, the group will forfeit their deposit fee.

### CHATEAU AND ASPEN GROVE VENUES

The following shall apply in addition to Policy and Procedure Step 1. listed above. The full rack rate prices in place is the basis for the non-profit discounting as outlined below for high season and low season (Blackout dates apply to high season dates). The Chateau and Aspen Grove Facilities, discounts to non profits will be set each year during the budget process.

At the discretion of the Chateau and Aspen Grove sales team, with the approval of the Sales Manager and/or the Director of Finance, Accounting and Risk Management greater discounting or a further advanced reservation can occur if the following conditions exist:

- (a) The date being requested is unsold; **and**
- (b) the likelihood of selling the date is quickly diminishing; **and**
- (c) the activity will engage in other District ancillary revenue producing areas such as catering and golf outings during the activity.

High and Low season and Midweek dates are defined as follows:

High Season dates are May through October and December

- Mid-week (Monday through Thursday) may be reserved up to 3 months prior to the requested date
- Friday and Sunday may be reserved up to 2 months prior to the requested date

Low Season dates January through April and November

- Mid-week (Monday through Thursday) may be reserved up to 6 months prior to the requested date
- Friday, Sunday and Holidays may be reserved up to 2 months prior to the requested date

Blackout Dates are High Season dates Friday through Sunday that are charged at the full rack rate. Discounting may be available at the discretion of the District General Manager

Saturdays and Holidays may be made available at the discretion of the District General Manager.

### DIAMOND PEAK SKI RESORT (EXCLUDING SNOWFLAKE LODGE)

The following shall apply in addition to the Policy and Procedure Step 1. listed above. The use of Diamond Peak Ski Resort for activities will be at the discretion of the Venue Manager. The time of the year, capacity and the availability of Diamond Peak resort and its facilities will be factors for consideration for discounting.



**Policy and Procedure Resolution No. 132  
Resolution No. 1701**

Snowflake Lodge, whose use is already limited by a Tahoe Regional Planning Agency use permit, is excluded from this resolution.

**PARKS AND RECREATION VENUES (EXCLUDING BEACHES)**

The following shall apply in addition to the Policy and Procedure Step 1. listed above. The use of Parks, Recreation Center, and Tennis Courts for activities will be at the discretion of the Venue Manager. The time of the year, capacity and availability of recreational facilities will be factors for consideration for discounting.


**ALL BEACHES**

All of the beaches within the Incline Village General Improvement District have restricted access and are available for the exclusive use of the Incline Village property owners. On a case by case basis, uses of the beaches by a qualified, non-profit, volunteer organization or activity based in Incline Village will be directed, for possible consideration, to the District Venue Manager.

\* \* \* \* \*

I hereby certify that the foregoing is a full, true and correct copy of Policy and Procedure Resolution No. 132, Resolution No. 1701, as amended at a regular meeting of the Board of Trustees of the Incline Village General Improvement District on the 10th day of July, 2013, by the following vote:

AYES, and in favor thereof, Trustees: Trustees Joe Wolfe, Bill Devine, Bruce Simonian, Jim Smith and Jim Hammerel  
NOES, Trustees: None  
ABSENT, Trustees: None

  
\_\_\_\_\_  
Jim Smith, Secretary

POLICY AND PROCEDURE RESOLUTION NO. 132, RESOLUTION NO. 1701  
As amended April 12, 2000  
As amended April 30, 2003  
As amended May 15, 2003  
As amended February 25, 2004  
As amended October 11, 2006  
As amended June 27, 2007  
As amended July 10, 2013



POLICY AND PROCEDURE RESOLUTION 132, RESOLUTION 1701  
APPLICATION

Organization Name:

Contact Name:

Address (Mailing):

City, State & Zip Code:

E-Mail Address:

Telephone Number:

EIN#/Taxpayer ID#:

Venue/Location:

Date(s) of Event:

Time Range:

Qualify as a 501(c)3  Yes  No

OR

Qualify as a Non-Profit  Yes  No

OR

Volunteer Organization  Yes  No



If yes, please attach a copy of the organization's IRS Determination Letter or a copy of the last Form 990 filed with the IRS.

Service Objective and Beneficiaries:

Confirm no commercial or personal gain comes from Event (Resolution, paragraph 2)  Yes  No

Confirm organization will post Certificate of Insurance to IVGID (Resolution, paragraph 6.)  Yes  No

Confirm organization agrees to indemnify and hold IVGID harmless (Resolution, paragraph 7.)  Yes  No

Confirm that organization complied with financial records (Resolution, paragraph 15)  Yes  No

Rack Rate for Venue/Location requested:

*(Based on Board approved Key Rates)*

Yield Management (Comment/Remark):

Charge approved by Venue Manager for this Event:

*(\$50 minimum) (Coded to 4293)*

Venue Manager Signature and Date: \_\_\_\_\_

Administrative Concurrence: \_\_\_\_\_

*(General Manager or designee, Signature & Date)*

Distribution: Public Records Officer, Director of Finance, Controller, Venue Manager