



Toronto Atmospheric Fund Board recommendation to amend open meeting requirements of the Toronto Atmospheric Act, 2005

Date: October 12, 2017
To: Executive Committee
From: City Manager
Wards: All

SUMMARY

At its June 29, 2017 meeting, the Board of Directors of the Toronto Atmospheric Fund (TAF) requested City Council, through the City Manager, to ask the Province of Ontario to amend Subsection 7(1) of the Toronto Atmospheric Fund Act, 2005 (TAF Act) to remove the open meeting requirements for its committees.

RECOMMENDATIONS

The City Manager recommends that City Council either:

1. Approve the Toronto Atmospheric Fund (TAF) Board of Directors' request that City Council request the Province of Ontario to remove the open meeting requirements of TAF Committees, by amending Subsection 7(1) of the Toronto Atmospheric Fund Act, 2005, by deleting the phrase "and to meetings of its committees", so that the revised Subsection 7(1) would read as follows: "Section 239 of the Municipal Act, 2001 applies with necessary modifications to meetings of the Fund's board of directors."

OR

2. Advise the Toronto Atmospheric Fund (TAF) Board of Directors that City Council does not support the exemption of Toronto Atmospheric Fund Committees from the open meeting requirements of the Municipal Act.

FINANCIAL IMPACT

There are no financial implications resulting from the implementation of the recommendations in this report.

The Deputy City Manager & Chief Financial Officer has reviewed this report and agrees with the financial impact information.

DECISION HISTORY

At its June 29, 2017 meeting, the Toronto Atmospheric Fund Board of Directors adopted a June 20, 2017 report from its Chief Executive Officer entitled "Electronic Participation in Meetings" that included the recommendation to request, through the City Manager, that City Council request the Province of Ontario to remove the open meeting requirements of Toronto Atmospheric Fund Committees, by amending Subsection 7(1) of the Toronto Atmospheric Fund Act, 2005, by deleting the phrase "and to meetings of its committees", so that the revised Subsection 7(1) would read as follows: "Section 239 of the Municipal Act, 2001 applies with necessary modifications to meetings of the Fund's board of directors."

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.TA16.4>

City Council at its October 5, 6 and 7, 2016 meeting adopted a recommendation from the TAF Board to request the Government of Ontario to amend subsections 11(8) and (9) of the Toronto Atmospheric Fund Act to authorize the Toronto Atmospheric Fund to undertake financial commitments, liabilities or contractual obligations that extend beyond the term of any City Council.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.EX17.6>

COMMENTS

The attached June 20, 2017 report from the Chief Executive Officer of the Toronto Atmospheric Fund (TAF) was adopted by the TAF Board at its June 29, 2017 meeting.

Amendments to the City of Toronto Act, 2006, which go into effect January 1, 2018, permit electronic participation for meetings that are open to the public, which is supported by Council. The TAF Board is of the view that the open meeting requirement in the TAF legislation limits the ability of TAF committees to meet electronically in light of ongoing needs to discuss confidential items in closed meetings. Removing the open meeting requirements would also make it easier for TAF committee members from beyond Toronto to participate.

If approved by Council, Legal Services, together with TAF's Legal Counsel, TAF staff and CAP (Clean Air Partnership) would prepare a joint application to the Province requesting an amendment to the TAF Act. The application would include the outstanding request adopted by City Council in October 2016 to amend subsections

11(8) and (9) of the TAF Act to authorize TAF to undertake financial commitments, liabilities or contractual obligations that extend beyond the term of any City Council.

CONTACT

Gwen McIntosh, Executive Director, Strategic and Corporate Policy, 416.392.4995
Gwen.McIntosh@toronto.ca

Meg Shields, A/Director, Corporate Policy, Strategic & Corporate Policy, 416.392.0523,
Meg.Shields@toronto.ca

SIGNATURE

Peter Wallace
City Manager

ATTACHMENTS

Attachment 1: June 20, 2017 report "Electronic Participation in Meetings" from the Chief Executive Officer, Toronto Atmospheric Fund

Tracking Status

- This item was considered by [Board of Directors of the Toronto Atmospheric Fund](#) on June 29, 2017 and was adopted with amendments.

Board of Directors of the Toronto Atmospheric Fund consideration on June 29, 2017

TA16.4	ACTION	Amended		
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Electronic Participation in Meetings

Board Decision

The Board of Directors of the Toronto Atmospheric Fund:

1. Permitted Board and Committee meetings through electronic or other telecommunications means, as approved by City Council on September 22, 23, 24 and 25, 2003 (Policy and Finance Committee Report No. 9, Clause 19), and directed that Amended and Restated Bylaw No. 1, a By-law relating generally to the transaction of the business and affairs of the Toronto Atmospheric Fund, be amended accordingly.
2. Did not waive the quorum requirement for meetings where only in-camera items are being addressed, or in emergency situations as declared by the Chair of the Board, as approved by City Council on September 22, 23, 24 and 25, 2003, as enacting such a waiver is contrary to Section 239 (4) of the Municipal Act, 2001, Toronto Atmospheric Fund Amended and Restated Bylaw No. 1, and City Council's decision of May 11 and 12, 2010 (Item MM49.15).
3. Requested that staff from the City Manager's Office, City Clerk's Office and City Legal assist Toronto Atmospheric Fund staff in establishing the operational guidelines to implement the electronic meeting protocol.
4. Requested, via the City Manager's Office, that City Council request the Province of Ontario to remove the open meeting requirements of Toronto Atmospheric Fund Committees, by amending Subsection 7(1) of the Toronto Atmospheric Fund Act, 2005, by deleting the phrase "and to meetings of its committees", so that the revised Subsection 7(1) would read as follows: "Section 239 of the Municipal Act, 2001 applies with necessary modifications to meetings of the Fund's board of directors."
5. Directed that the Board keep record of the in-person and electronic participation of members present during Board and Committees in the minutes of meetings and to report this information

by members in the annual report.

Origin

(June 20, 2017) Report from the Chief Executive Officer

Summary

City Council, in 2003, approved an amendment to the Toronto Atmospheric Fund (TAF) Board By-law to permit Toronto Atmospheric Fund's Board of Directors and Committee members to participate in Board and Committee meetings by telephonic or electronic communications facilities while remaining in compliance with the requirements of the Municipal Act Section 239 for open meetings. That amendment is now before the Toronto Atmospheric Fund Board for approval. Part of City Council's approval cannot be implemented, since waiving the requirement for a Quorum of members to be physically present in the publicly accessible location, where the only items are in-camera or where there is an emergency meeting called by the Board does not comply with Section 239 of Municipal Act, 2001 and Toronto Atmospheric Fund's By-law No. 1. An amendment to Toronto Atmospheric Fund's By-Law No. 1 will be required to authorize this procedure. The Toronto Atmospheric Fund Board is requesting that Toronto Atmospheric Fund's Committees not be subject to Open Meeting requirements through an amendment to the Toronto Atmospheric Fund Act, 2005.

Background Information

(June 20, 2017) Report and Attachment 1 from the Chief Executive Officer on Electronic Participation in Meetings

(<http://www.toronto.ca/legdocs/mmis/2017/ta/bgrd/backgroundfile-105324.pdf>)

Motions

1 - Motion to Receive Item moved by Councillor Stephen Holyday (Lost)

That the item be received for information.

2 - Motion to Amend Item (Additional) moved by Councillor Stephen Holyday (Carried)

That the Board keep record of the in-person and electronic participation of members present during Board and Committees in the minutes of meetings and to report this information by members in the annual report.

3 - Motion to Adopt Item as Amended moved by Rob Roberti (Carried)



REPORT FOR ACTION

Electronic Participation in Meetings

Date: June 20, 2017
To: Toronto Atmospheric Fund Board of Directors
From: Chief Executive Officer

SUMMARY

City Council, in 2003, approved an amendment to the Toronto Atmospheric Fund (TAF) Board By-law to permit TAF's Board of Directors and Committee members to participate in Board and Committee meetings by telephonic or electronic communications facilities while remaining in compliance with the requirements of the *Municipal Act* Section 239 for open meetings. That amendment is now before the TAF Board for approval. Part of City Council's approval cannot be implemented, since waiving the requirement for a Quorum of members to be physically present in the publicly accessible location, where the only items are in-camera or where there is an emergency meeting called by the Board does not comply with Section 239 of Municipal Act, 2001 and TAF's By-law No. 1. An amendment to TAF's By-Law No. 1 will be required to authorize this procedure. The TAF Board is requesting that TAF's Committees not be subject to Open Meeting requirements through an amendment to the *Toronto Atmospheric Fund Act, 2005*.

RECOMMENDATIONS

The CEO recommends that:

1. The Board of Directors of TAF permit Board and Committee meetings through electronic or other telecommunications means, as approved by City Council on September 22, 23, 24 and 25, 2003 (Policy and Finance Committee Report No. 9, Clause 19), and direct that Amended and Restated Bylaw No. 1, a By-law relating generally to the transaction of the business and affairs of the Toronto Atmospheric Fund, be amended accordingly.
2. The Board of Directors of TAF not waive the quorum requirement for meetings where only in-camera items are being addressed, or in emergency situations as declared by the Chair of the Board, as approved by City Council on September 22, 23, 24 and 25, 2003, as enacting such a waiver is contrary to Section 239 (4) of the Municipal Act, 2001, TAF Amended and Restated Bylaw No. 1, and City Council's decision of May 11 and 12, 2010 (Item MM49.15).

3. The Board of Directors of TAF request that staff from the City Manager's Office, City Clerk's Office and City Legal assist TAF staff in establishing the operational guidelines to implement the electronic meeting protocol.
4. The Board of Directors of TAF request, via the City Manager's Office, that City Council request the Province of Ontario to remove the open meeting requirements of TAF Committees, by amending Subsection 7(1) of the Toronto Atmospheric Fund Act, 2005, by deleting the phrase "and to meetings of its committees", so that the revised Subsection 7(1) would read as follows: "Section 239 of the Municipal Act, 2001 applies with necessary modifications to meetings of the Fund's board of directors."

FINANCIAL IMPACT

None.

BACKGROUND

TAF Board members have, over the years and most recently at the February 9, 2017 meeting, indicated an interest in participating electronically in TAF board meetings, as have members of TAF's Committees. This has also been a topic of consideration between TAF and City staff in the context of formulating amendments of TAF's By-Law No. 1.

TAF was originally established through special provincial legislation, namely the *Toronto Atmospheric Fund Act, 1992*. Following amalgamation in 1998 and a governance review in 2003, the TAF Act was amended in 2005 and introduced several additional governance requirements including adding "committees" to Section 7 (1): Open meetings. Section 239 of the *Municipal Act, 2001* applies with necessary modifications to meetings of the Fund's board of directors and to meetings of its committees.

In short, TAF Board Meetings and Committee Meetings have to be open to the public, which requires a physical location, access for the public, and the ability of everyone (directors and committee members) to communicate with each other while the public can overhear (except for in-camera items where there is a specific rationale).

City Council, at its meeting of September 22 to 25, 2003, adopted an amendment to the TAF By-law, authorizing TAF and its Committees to hold electronic meetings (set out in Attachment 1 to this report). That authorization was never reflected in an amendment to the TAF By-law No. 1. There was, however, a provision in section 4.4 of the by-law addressing electronic meetings; but that provision had never been approved by Council, since it pre-dated the requirement to have such a provision approved by Council having been inserted under the authority of the *Toronto Atmospheric Fund Act, 1992*. The TAF Board and its Committees have never conducted meetings with electronic participation by its members.

The Council electronic meeting approval allowed for a waiver of the requirement for physical on-site quorum for meetings where only in-camera items are being addressed, or in emergency situations as declared by the Chair of the Board. Unfortunately this waiver does not comply with the provisions of ss. 239(4) of Municipal Act, 2001 (incorporated by reference into ss. 7(1) of the TAF Act), which requires a resolution to close the meeting, which must be done by quorum; and conversely, a resolution is required to resume the public portion of the meeting.

The Board should also be aware of Bill 68, An Act to amend various Acts in relation to municipalities, 2017, which received Royal Assent on May 30, since it deals specifically with electronic participation in meetings under Municipal Act, 2001 and the City of Toronto Act, 2006 (COTA). It is also important to note the relevant clauses in Bill 68 which will amend COTA when they come into force.

Current COTA provision:

Electronic participation

(4) The procedure by-law may provide that a member of city council can participate electronically in a meeting of city council which is open to the public to the extent and in the manner set out in the by-law provided that any such member shall not be counted in determining whether or not a quorum of members is present at any point in time.

Bill 68 Amendments to COTA (Royal Assent, May 30, 2017; not yet in force)

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 189 (4) of the Act is repealed and the following substituted: (See: 2017, c. 10, Sched. 2, s. 21 (2))

(4) The applicable procedure by-law may provide that a member of city council, of a local board of the City or of a committee of either of them, can participate electronically in a meeting which is open to the public to the extent and in the manner set out in the by-law provided that any such member shall not be counted in determining whether or not a quorum of members is present at any point in time. 2017, c. 10, Sched. 2, s. 21 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 189 of the Act is amended by adding the following subsection: (See: 2017, c. 10, Sched. 2, s. 21 (3))

Same

(4.1) The applicable procedure by-law shall not provide that a member of city council, of a local board of the City or of a committee of either of them, can participate electronically in a meeting which is closed to the public. 2017, c. 10, Sched. 2, s. 21 (3).

While these provisions will not explicitly apply to TAF given that TAF is a Local Board only for limited purposes, the Board should be aware that given the recent amendments to the Municipal Act, 2001 and COTA, there may be a risk that both the province and

City Council may wish to ensure that TAF mirrors/follows these governance principles with respect to electronic meetings, which would be accomplished through the any further City Council approval of TAF's Procedural By Law and any City Council agreement to request the Province to amend the TAF legislation with respect to open meetings for committees.

Rules for electronic meetings, both for Board and Committee meetings will need to be established by amending the TAF By-law No. 1. One option mirrors the approach established for City Council under COTA, specifically that only a minority of members be able to participate electronically by requiring that there be a physical quorum at Board meetings. Subject to City Council approval, and subject to physical quorum presence requirements, TAF could provide public notice of its meetings, have a physical location such that the public can attend and hear everything that's going on, and the meeting would comply with the open meeting requirements of the Municipal Act, 2001. Theoretically, compliance could also be achieved via a webinar, which might make public participation even easier, subject to any City Clerk meeting management concerns. TAF staff, together with staff from the City Manager's Office, the City Clerk's Office and City Legal should work together to establish the operational guidelines to implement the electronic meeting protocol.

Specific rules are also needed for an in-camera session, which will need to be considered in consultation with the City Clerk since many confidential items are sheltering under "security of the property of the City". For instance, a mechanism is needed to ensure only members physically present and comprising quorum and designated staff are participating when the Board or Committee meeting goes in camera. Once the meeting goes in camera, those participating electronically would be excluded from the in camera discussion.

TAF Committees are subject to the open meeting requirements under the TAF Act. The ability to participate electronically is also of interest to members of TAF's Standing Committees, whose business is predominantly undertaken in-camera because they pertain to "the security of property belonging to the City or one of its agencies or corporations" and/or deal with "personal matters about an identifiable individual" and/or is about "labour relations or employee negotiations". The ability to hold electronic meetings, is increasingly important as TAF's mandate has expanded to the Greater Toronto & Hamilton Area (GTHA) and in keeping with the agreement with the Province of Ontario, the organization has recruited committee members from throughout the region and amendments should be approved amend the TAF By-law No. 1 to reflect the City Council authority with respect to electronic meetings, subject to any refinements which the Board may make requiring further City Council approval. TAF Staff are recommending the TAF Board seek an amendment to the TAF Act to remove "committees" under s.7(1) of the TAF Act from having to comply with the Municipal Act, 2001 s.239 "open meeting" requirements. If the TAF Act amendments are enacted, the Board will seek subsequent City Council approval for corresponding amendments to the Committee procedures section of the TAF Procedural By-Law, to address this.

CONTACT

Julia Langer, CEO, The Atmospheric Fund, jlanger@taf.ca, 416-392-0253

SIGNATURE

Julia Langer
CEO

ATTACHMENTS

Attachment 1 – Governance Review of the Toronto Atmospheric Fund

Attachment 1 – Governance Review of the Toronto Atmospheric Fund

(City Council on September 22, 23, 24 and 25, 2003, adopted this Clause, without amendment.)

The Policy and Finance Committee recommends:

- (1) the adoption of the Recommendations of the ABC Ad Hoc Committee embodied in the communication (July 18, 2003) from the City Clerk; and
- (2) the report (September 2, 2003) from the Chief Administrative Officer.

The Policy and Finance Committee submits the following communication (July 18, 2003) from the City Clerk:

- (18) TAF Board procedures be amended as follows:
 - (a) Although committees of the Board may include persons who are not members of the Board of Directors, all committees of the Board are to be chaired by a member of the Board, and the majority of the members of committees that have responsibility for internal operating matters must be directors of the Council-appointed Board;
 - (b) To ensure open meetings and promote public access and input, meetings of the TAF Board and committees of the Board must be held within Toronto, although members of the Board or committee may participate in such meetings through electronic or other telecommunication means provided that a quorum is present, in person, at the meeting location within Toronto; the quorum requirement may be waived for meetings where only in-camera items are being addressed, or in emergency situations as declared by the Chair of the Board;
 - (c) In the absence of the Chair or Vice-Chair, another member of the Board shall preside at meetings of the directors of the Board; except that the Executive Director, Chief Executive Officer or other employees are permitted to preside at meetings of the Board for the purpose of selecting a new Chair of the Board.