TORONTO

STAFF REPORT
ACTION REQUIRED

Board Governance for Not-for-Profit Corporations

Date:	September 24. 2015
To:	City Council
From:	Executive Director, Social Development, Finance and Administration General Manager, Shelter, Support and Housing Administration
Wards:	All
Reference Number:	

SUMMARY

The purpose of this report is to advise City Council on the theme of Board governance for not-for-profit corporations and to detail the available City supports and requirements in place to encourage Board member training on good governance.

RECOMMENDATIONS

It is recommended that:

1.   City Council receive this report for information.

Financial Impact

There are no financial implications resulting from the adoption of this report.

Equity Impact

Shelter, Support and Housing Administration (SSHA) and Social Development, Finance and Administration (SDFA) have funding relationships and service agreements with community based not-for-profit corporations that serve a range of equity seeking groups including people experiencing homelessness, the working poor, youth, seniors, Aboriginal people, and other vulnerable groups.

Support of not-for-profit Boards is, in all cases, aimed at building the capacity and improving the long-term sustainability of these corporations so that the services they provide and the benefits to community members can continue to be sustained.

DECISION HISTORY

At its meeting of September 17, 2015, the Community Development and Recreation Committee requested the General Manager, Shelter, Support and Housing Administration, to report directly to City Council at its meeting on September 30, 2015 on the theme of Board Governance including city requirements on Board member training for good governance.

http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2015.CD6.5

COMMENTS

Several City divisions have funding relationships and service agreements with community based not-for-profit corporations. This report focuses on the relationships that Shelter, Support and Housing Administration (SSHA) and Social Development, Finance and Administration (SDFA) have with not-for-profits.

The Nature of Non-Profits

Not-for-profit corporations in Ontario are governed by the *Corporations Act* (the "**Act**") and the *Regulations* made under it (the "**Regulations**").   Not-for-profit corporations are incorporated under Part III of the Act" (corporations without share capital) and are lawfully required to carry on their activities and objects without pecuniary gain.

As creatures of statute, not-for-profit corporations are subject to some supervision by the Government of Ontario. For example the *Act* and *Regulations* prescribe certain requirements in respect of the make-up of a not-for-profit's: (a) constitution, (b) process for election of directors, (c) corporate by-laws, and (d) processes for the calling of meetings of members. There are also certain requirements about regular reports to the Government of Ontario on information about the not-for-profit. A not-for-profit corporation is further required (among other things) to meet certain record keeping obligations (e.g. proper books of account and accounting records, minutes of meetings of members and directors, etc.) If a not-for-profit corporation fails to comply with any of the above requirements, it (and its directors) may be subject to certain penalties, including the cancellation of the corporation.

Nowhere in the *Act* is a governmental body provided with the authority to intervene and resolve internal disputes between a not-for-profit's members and its Board of Directors. While the *Act* provides members of a non-profit with various self-directed remedies, no authority is established for the City or the Province to intervene for the purposes of resolving an internal dispute. However, there is nothing in the *Act* that prohibits the City from voluntarily supporting not-for-profit corporations at their request.

Tools Currently Available to the City to Support Not-for-Profit Corporations

In conjunction with the reporting and compliance requirements outlined above, SSHA and SDFA have also taken measures to proactively ensure that the not-for-profit they contract with are able to effectively provide their services throughout the term of their agreement with the City. As described below, in many cases these tools for review and specialized interventions are common between both SDFA and SSHA.

SSHA

SSHA has funding relationships with not-for-profit organizations in two different statutory contexts, each of which provides different avenues for City intervention when board governance is at issue.

(a)   Homeless Shelters and Support Services

In its operating agreements with Purchase of Service Shelters, SSHA requires that not-for-profit organizations ensure that all persons who provide services on their behalf receive adequate training and are knowledgeable in respect of the Toronto Shelter Standards. These requirements give SSHA a legal mechanism to enforce the requirement that Board members receive necessary training in order to effectively carry out their duties.

Furthermore, the Toronto Shelter Standards have always included provisions related to not-for-profit Board governance. These provisions require that Directors: (a) be skilled in certain areas needed to carry out the role of Director, (b) attend meetings in accordance with a pre-established and approved schedule, and (c) hold and attend annual general meetings and submit minutes of same to SSHA.

Annual budget reviews are also carried out by SSHA staff, and include a review of approved agency by-laws to ensure compliance regarding Board activities and general membership meetings. During this review, staff also examine: (a) public health inspection reports for compliance; (b) emergency plans for thoroughness, approval and updates; (c) mandatory training schedules for staff to determine compliance with Toronto Shelter Standards training requirements, and (d) financial review and analysis of Audited Statements. Regular site visits and communication with agencies by staff ensure that the agencies are aware of program, financial and governance expectations as stipulated by the Toronto Shelter Standards. Any potential concerns or issues that arise through regular contact would result in enhanced monitoring that may involve the Board of Directors and include SSHA staff participation in governance meetings to support Agency capacity.

In addition to the aforementioned, SSHA has also contracted with the Toronto Hostels Training Centre, a not-for-profit agency, to ensure that training opportunities are available to purchase of service shelters in respect of issues related to good Board

governance. Since 2009, the City has funded the Toronto Hostels Training Centre to provide training in the areas of: not-for-profit Board governance, quality assurance for shelters, managing and leading on diversity, policy development, anti-racism anti-oppression, and promoting excellence in a unionized environment. These training programs are available to service providers upon their request or when required by staff in SSHA.

(b)   Social Housing

The *Housing Services Act, 2011* establishes the City as the Service Manager for regulatory oversight of social housing that was transferred from the province. The Act provides some additional specific powers for the City to intervene when social housing provider governance is in difficulty. Within this framework, SSHA staff carry out a number of oversight procedures that assess outcomes that indirectly assess the performance of social housing providers. Each year, annual reviews are carried out in respect of housing providers' financial performance and program compliance.

Staff carry out operational reviews on a cyclical basis (3-5 year cycle). Operational reviews include a number of questions regarding the policies and procedures established by the Boards and used to govern their operations. The findings are communicated to the board with "recommendations" regarding good business practices. These recommendations are not mandatory and no legislative authority exists to make these a requirement.

As part of operational reviews and at other times, as needed, SSHA provides decision templates to assist social housing provider Boards in developing policies and procedures. Staff follow-up on all operational reviews to ensure that all requirements are being addressed and to provide assistance to the Board as needed. Where staff determine that a housing provider's Board may benefit from additional training on governance, staff from the SSHA's Social Housing Unit may be directed to facilitate the provision of assistance. Both the Ontario Non-Profit Housing Association and the Co-operative Housing Federation of Toronto provide such governance training.

As an additional layer of monitoring, the *Housing Services Act* provides a detailed list of "triggering events". Where a triggering event occurs, the City may take certain actions. Such triggering events include:

1)   Contravening the *Housing Services Act*
2)   Insolvency
3)   Incurring material and excessive expenditures
4)   Incurring an accumulated deficit
5)   Failing to operate a housing project properly

Notice of these events, where they occur, is provided to the social housing provider Board and an appropriate response, based on the specific triggering event and the facts that surround it, is carried out. If the response includes requiring the housing provider to

rectify a triggering event and the housing provider fails to do so, the City, as statutory Service Manager under the *Housing Services Act*, may invoke certain remedies. These remedies include:

1)   Appointment of a receiver
2)   Reduction of subsidy payments
3)   Exercise any powers or perform any duties of the housing provider
4)   Appointing an operational advisor
5)   Removing board members
6)   Appointing new board members.

The notice of these triggering events, the opportunity for SSHA to respond, and the breadth of possible remedies provide the City with certain safeguards necessary to ensure effective Board governance and management of these organizations.

SDFA

SDFA has undertaken a number of different initiatives to proactively manage risks related to Board management and to provide necessary supports to ensure the continued benefits of grant and community development programming. Generally, organizations receive core business supports or operational funding supports (or both). The core business supports are generally aimed at building capacity for grant recipients and service providers. These funds are used to support training initiatives of not-for-profit Boards and to ensure the appropriate resources are available to Board members to ensure effectiveness and accountability.

Staff in SDFA regularly monitor these not-for-profit organizations it both funds and supports. With respect to its Community Service Partnership funded agencies, staff in SDFA use the Organization Health Assessment Tool (OHAT) as part of its monitoring and engagement with not-for-profit corporations. The OHAT provides a mechanism to evaluate the strength, sustainability and operational dependability of the not-for-profit organizations with whom it contracts. SDFA staff also carry out Operational Reviews of organizations throughout the term of their funding.

The information required to carry out these evaluations is obtained through application submissions, annual reports, bylaws, policies, Letters Patent and other required corporate documents. Staff also attend Annual General Meetings and more frequently make site visits to meet with management and Board members of funded not-for-profit agencies.

As part of these assessments, staff examine a number of different factors, including: the degree of open membership, the number of different and active Board members, the agency's strategic plans, evaluation and risk management plans in place within the organization, Board representation (e.g. reflective of the community).

When governance issues arise or complaints regarding agencies are received, staff may: (a) refer agencies to supports available in the sector, (b) refer agencies to other agencies

for mentoring, or (c) insert comments and conditions on the agency's summary sheet, which are then incorporated into the signed Letter of Understanding between the City and the agency. Staff in SDFA respond to individual Board needs on a case by case basis and may request that agencies develop a plan to address identified concerns (along with clear timelines for follow up). Where conditions are not satisfied or where the risk to the City is significant, staff may also withdraw funding from an organization.

In an effort to support agencies and their Boards, staff in SDFA use the above tools to work with agencies and their funders to help ensure the provision of information, training and additional supports that may be required to improve overall Board governance.

Developing City Measures for Good Governance

The updated Toronto Shelter Standards, currently before Council, provide an opportunity to further the work of the City in supporting not-for-profit Boards of directors within the purchase of service shelter sector.

These updated Toronto Shelter Standards expand on previous standards by requiring more involvement by Boards in the development of mandate, mission and values. Further, they require Board members to participate in evaluating models of service delivery, soliciting diverse membership to reflect the community served by the shelter, making explicit the different roles of the Board, and assigning responsibility to the chairs of all not-for-profit Boards for approving and signing the minutes of the Annual General Meeting. In the context of good governance, the Conflict of Interest section in the Toronto Shelter Standards has also been updated to reflect Board member obligations and Board involvement in declaring and reporting actual and perceived conflicts of interests.

SSHA is considering adding to this section of the revised Toronto Shelter Standards a requirement that Board members attend training related to shelter provision and Board governance to ensure good governance and excellent client service. As part of this recommendation, SSHA staff believe that these new Board member training requirements should include mandatory training in the areas of: (1) good governance, (2) fiduciary responsibilities, (3) human resource management, (4) legislative responsibilities regarding not-for-profits, and (5) identifying and managing conflicts of interest.

The revised Toronto Shelter Standards require shelter staff to receive training in: health and safety obligations, mental health in the workplace, AODA, anti-racism anti-oppression, LGBTQ2S Cultural competency/LGBTQ2S Youth inclusion/Trans Awareness and Harm Reduction. SSHA is considering incorporating a requirement for Board members to receive such training as well.

In keeping with the consultative and inclusive approach taken by SSHA in the development of the revised Toronto Shelter Standards, shelter providers will be consulted before finalizing the list of required Board member training to ensure a fulsome understanding of the implications, risks and benefits of requiring such training.

Potential Risks

City staff sought advice from Legal Services regarding potential risks associated with the City's role in vetting and reviewing practices and procedures of the not-for-profit Boards with which it works. In response, Legal Services staff caution that the more involved the City gets with issues related to a not-for-profit's Board management, the less likely it is that the City will be considered arms' length from that not-for-profit corporation. Implications of this proximity include the City possibly be considered the employer of the organization's employees, or the organization being considered the agent of the City, possibly rendering the City liable for the organization's debts and other liabilities.

While it may well be acceptable for the City to require an organization to get appropriate training, an important distinction must be drawn between such a requirement and the City providing the training itself.

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