



STAFF REPORT Action Required

Date:	January 28, 2016
To:	TAF Board of Directors
From:	Julia Langer, CEO
Re:	Adoption of Updated Ethical Policies consistent with the provisions of the Toronto Public Service By-law

SUMMARY

Updates of TAF's ethical policies, consistent with the provisions of the Toronto Public Service By-law, are proposed for adoption.

BACKGROUND

In [June 2014](#), City Council adopted a Toronto Public Service By-law which defines the roles and responsibilities of the Toronto public service including providing impartial advice to government that considers evidence based information covering a range of aspects related to the public interest and set out the ethical rights, duties and protections for the public service. While the Toronto Public Service By-law does not apply to the Toronto Atmospheric Fund (TAF), Council did direct that TAF adopt and implement conflict of interest and political activity provisions consistent with the City of Toronto's, and adopt and implement disclosure of wrongdoing and reprisal protection provisions meeting the minimum requirements established for City agencies. In addition, City Council directed that the TAF Relationship Framework be amended to reflect these requirements.

This report responds to Council's requests. TAF staff have reviewed TAF's existing conflict of interest, political activity and disclosure of wrongdoing and reprisal protection policies and have updated these to ensure that they are consistent with the City's provisions. The approach has been to use the City's policies as a base, with the necessary modifications consistent with TAF's governance framework. TAF has worked collaboratively with City staff to familiar with the Public Service By-law policy provisions to formulate the TAF policies. To bring into force these policies, existing policies must be rescinded.

RECOMMENDATION

It is recommended that the Toronto Atmospheric Fund Board

1. Rescind TAF's current policies relating to conflict of interest, political activity and disclosure of wrongdoing and reprisal protection; and
2. Adopt the enclosed policies set out in Appendixes A, B and C.

DECISION HISTORY

In [June 2014](#), City Council adopted the Toronto Public Service By-law which applies to most City agencies. While the Toronto Public Service By-law does not apply to the Toronto Atmospheric Fund (TAF), Council did direct that TAF adopt and implement conflict of interest and political activity provisions consistent with the City of Toronto's, and adopt and implement disclosure of wrongdoing and reprisal protection provisions meeting the minimum requirements established for City agencies.

CONTACT

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Appendix A: TAF Conflict of Interest and Confidentiality Policy

1. Policy Statement

Toronto Atmospheric Fund (TAF) employees are expected to conduct themselves with personal integrity, ethics, honesty and diligence in performing their duties. TAF employees are required to support and advance the interests of TAF and avoid placing themselves in situations where their private interests may be in conflict with, or be perceived to be in conflict with the interests of TAF.

In certain circumstances, the duties and obligations imposed by this Policy will continue after the employee leaves TAF including that a TAF employee will not directly or indirectly use or disclose confidential information unless required by law or authorized by TAF after the employee leaves the public service.

2. Definitions

Conflict of Interest - A conflict of interest refers to a situation in which a public servant has private interests that could compete with or that may be perceived to compete with their duties and responsibilities as an employee.

A conflict of interest can also be a situation where an employee can use their position for private gain or expectation of private gain, non-monetary or otherwise. A conflict may also occur when the private interest benefits an employee's family, friends or organizations in which the employee or his or her family or friends have a financial interest.

Private Interest - Private (or personal) interest means a relationship, obligation, duty, responsibility or benefit unique to the employee or a person related to the employee.

Confidential Information - Confidential information includes, but is not limited to, privileged information, draft by-laws or staff reports, third party information, personal information, technical, financial or scientific information and any other information collected, obtained or derived for or from City records that must or may be kept confidential under the *Municipal Freedom of Information of Privacy Act, 1990*, the *Personal Health Information Protection Act, 2004* or the *City of Toronto Act, 2006*.

3. Requirement to Report Conflict of Interest

Employees of TAF may seek advice in relation to the application of this Policy from, and must report any conflict of interest or perceived conflict of interest to, their immediate supervisor/manager or the TAF CEO.

4. Conditions

The rules and examples that follow do not exhaust the possibilities for conflict of interest, but they identify obvious situations covered by these provisions. The obligations and duties applicable to a TAF employee resulting from these provisions do not replace, remove or supersede the duties and obligations required by applicable professional designations or regulatory bodies.

5. Preferential Treatment

TAF employees are not allowed to use their positions to give any one preferential treatment that would advance their own interest or that of any party where such advance is contrary to the interests of TAF, or would be otherwise contrary to the expectations set out in this policy.

6. Gifts

A TAF employee will not accept, arrange to accept, give or request to be given a reward, gift, advantage or benefit of any kind from any person or entity that influences or could be perceived to influence the performance of the employee's duties.

A TAF employee, who receives a gift in the performance of their duties, will immediately notify his or her manager/supervisor.

A TAF employee may accept a gift of nominal value given as an expression of courtesy or hospitality if doing so does not influence, or would not be perceived to influence, the performance of the employee's duties. The CEO of TAF may pre-determine that no gift may be accepted under any circumstance.

7. Employment of Relatives

TAF will maintain a policy that governs the employment of relatives. The Policy at a minimum must outline the rules restricting supervisory relationships between relatives, and the recruitment and appointment of a relative.

8. Use of TAF Property

A TAF employee may not use, or permit the use of, TAF property, including facilities, equipment, supplies or other resources, for activities not associated with the proper performance of their duties. Any exceptions must be approved by TAF's CEO.

9. Use or Disclosure of Confidential Information

A TAF employee may not, during the term of his or her employment or any time thereafter, directly or indirectly use or disclose any confidential information obtained by him or her during the course of his or her employment with TAF to another person or entity unless the employee is required by law, or authorized by TAF. The obligation to maintain confidentiality, except as required or permitted by law or TAF, continues after the employee leaves the employment with TAF.

10. Disclosure of Financial Interests

A TAF employee involved in a decision-making process related to a contract, sale, or business transaction who knowingly has a financial interest in the TAF contract, sale or business transaction, or has family members, friends or business associates with such interests, must disclose their interest to their immediate supervisor/manager and remove themselves from any decision-making process.

11. Participating in Decision-Making

A TAF employee will not participate in a decision-making process with respect to a matter that they are able to influence in the course of his or her duties if they could benefit from the decision, unless they are authorized by TAF's CEO.

12. Engaging in Outside Work or Business Activities

A TAF employee may not engage in any outside work or business activity that conflicts with his or her

duties to TAF; or could benefit from confidential information obtained during the course of his or her employment.

13. Appearing Before City or Agency Committees

A TAF employee may not appear before a City or Agency committee on behalf of a private citizen or third party other than for themselves or a family member.

TAF employees must identify themselves as such if they are making a deputation to a City or Agency committee, unless they appear as a private citizen on matters that do not relate to their employment.

14. Conduct Respecting Lobbyists

All TAF employees should be familiar with the requirements and expectations for dealing with lobbyists as outlined in Toronto Municipal Code Chapter 140, Lobbying.

15. Failure to Comply with the Policy

Individuals who fail to comply with the conflict of interest provisions may be subject to disciplinary action up to and including dismissal and, where warranted, legal proceedings.

Approved By: The Board of the Toronto Atmospheric Fund

Date Approved:

Appendix B: TAF Disclosure of Wrongdoing and Reprisal Protection Policy

1. Background

In June 2014, Toronto City Council approved the Toronto Public Service By-law (TPS By-law). Council directed the Toronto Atmospheric Fund (TAF) to adopt and implement a disclosure of wrongdoing and reprisal protection policy that meet the following minimum requirements established for City Agencies:

- Defines wrongdoing
- Establishes mechanisms for employees to disclose wrongdoing;
- Establishes a clear investigative process to investigate allegations of wrongdoing;
- Establishes reprisal protection for employees who make an allegation of wrongdoing in good faith; and
- Includes annual reporting to the Agency Board of allegations of wrongdoing and their resolution.

2. Policy Statement

The purpose of this Policy is to:

- Encourage and facilitate the disclosure of wrongdoing that is contrary to the public interest;
- Ensure that all disclosures are investigated, and appropriately resolved; and
- Protect those employees who report wrongdoing in good faith from reprisal to the fullest extent possible.

This Policy addresses only those matters of wrongdoing that are in the public interest and for which there are no established mechanisms for consideration and investigation. For example, it is not intended to address matters that can be dealt with through existing procedures, established through TAF policies such as health and safety and human rights and anti-harassment/discrimination, or other policies where applicable.

3. Definitions

3.1. *Wrongdoing* – Serious actions that are contrary to the public interest including but not limited to:

- Fraud. Examples can include:
 - Deliberate misuse of TAF and/or City equipment, facilities, supplies or funds for purposes unrelated to the TAF's operations for personal gain
 - Obtaining TAF and/or City funds or compensation through dishonesty
 - Repeated dishonest claims for reimbursement of expenses.
- Theft of TAF and/or City assets;
- Waste which is the gross mismanagement or abuse of TAF and/or City resources or assets in a wilful, intentional or negligent manner. Examples can include:
 - Deliberately or through negligence, destroying TAF and/or City assets and/or information
 - Improper conduct that causes damage or expense to the TAF and/or the City or its assets
- Serious violations of conflict of interest including the misuse of one's position for significant personal gain; and

- Breach of public trust. Examples can include:
 - Lying or hiding public information about the operations of the TAF, including the financial management of the TAF;
 - Causing danger to public health or safety.
- 3.2. *Reprisal* – Any measure taken or threatened against an employee as a direct result of disclosing or being suspected of disclosing an allegation of wrongdoing, initiating or co-operating in an investigation into an alleged wrongdoing. Reprisal includes but is not limited to:
 - Disciplinary measures;
 - Demotion of the employee;
 - Suspension of the employee;
 - Termination of the employee;
 - Intimidation or harassment of the employee;
 - Any punitive measure that adversely affects the employment or working conditions of the employee; and
 - Directing or counselling someone to commit a reprisal.
- 3.3. *CEO* - the individual appointed to serve as the TAF Administrative Head by the TAF Board.

4. Disclosure of Suspected Wrongdoing

- 4.1. Disclosure of suspected wrongdoing involving a TAF employee (other than the CEO of TAF):
 - TAF employees must immediately report suspected wrongdoing to the CEO if they suspect wrongdoing involving a TAF employee has occurred.
 - Employees can use various channels to report suspected wrongdoing, as provided for by the TAF, including for example by email or letter to the CEO (which can be signed or unsigned).
- 4.2. Disclosure of suspected wrongdoing involving the CEO of TAF:
 - TAF employees must report suspected wrongdoing to the Board Chair if they suspect wrongdoing involving the CEO has occurred.
 - An employee who reports wrongdoing in good faith will be protected from reprisal to the fullest extent possible, as described in this Policy.
 - Any employee who knowingly makes a false complaint in bad faith or who knowingly makes a false or misleading statement that is intended to mislead an investigation of a complaint, may be subject to disciplinary action up to and including dismissal as determined by the CEO.

5. Investigation of Alleged Wrongdoing

- 5.1. Investigation of alleged wrongdoing involving a TAF employee (other than the CEO):
 - Disclosures of alleged wrongdoing involving a TAF employee will be investigated by the CEO.

- If alleged wrongdoing by an employee is substantiated through an investigation, the employee will be subject to disciplinary action up to and including dismissal as determined by the CEO.

5.2. Investigation of alleged wrongdoing involving the CEO:

- Where it is alleged that the CEO has committed wrongdoing, the Board will conduct an investigation and take appropriate actions based on the findings of the investigation.

6. Confidentiality

- 6.1. The identity of individuals involved in an investigation, including the identity of an individual alleging wrongdoing and the identity of an individual alleged to have committed wrongdoing, will be protected to the fullest extent possible.
- 6.2. Anyone aware of or participating in an investigation of wrongdoing shall treat all information received confidentially.

7. Reporting

- 7.1. The CEO will report to the TAF Board on an annual basis with a summary related to allegations of wrongdoing, investigations, their resolutions, and any recommendations to minimize future risks.

8. Reprisal Protection

- 8.1. No person shall take a reprisal against a TAF employee because the employee has:
- sought information or advice about making a disclosure about wrongdoing;
 - made a disclosure about wrongdoing in good faith;
 - acted in compliance with this Policy;
 - initiated or co-operated in an investigation or other process related to a disclosure of wrongdoing;
 - appeared as a witness, given evidence or participated in any proceeding relating to the wrongdoing, or is required to do so;
 - alleged or reported a reprisal; or
 - suspected any of the above actions.

9. Reporting and Investigating Reprisal

- 9.1. Reporting and investigating reprisal involving a TAF employee (other than the CEO):
- A TAF employee who believes that they are the subject of a reprisal following a disclosure of wrongdoing shall notify the CEO immediately.
 - A TAF employee informed of, or who becomes aware of a reprisal against an employee, has a duty to notify the CEO.
 - The CEO will undertake to ensure that the employee is protected from any further reprisal.
 - The CEO will lead the investigations of alleged reprisals involving staff.

- Where the investigation substantiates the allegations of reprisals the employee(s) involved will be subject to disciplinary action up to and including dismissal.
- The CEO will determine and take appropriate actions to stop, reverse or remedy a reprisal against an employee.

9.2. Reporting and investigating reprisal involving the CEO

- A TAF employee who believes that they are the subject of a reprisal by the CEO following a disclosure of wrongdoing shall notify the Board Chair.
- A TAF employee informed of, or who becomes aware of a reprisal against an employee by the CEO has a duty to notify the Board Chair.
- The Board Chair will notify the Board of the allegation who will ensure the employee is protected from further reprisal.
- The Board will investigate the alleged reprisal. Where the investigation substantiates the allegations of reprisal by the CEO, the Board will take appropriate action.

10. **Allegations of Wrongdoing or Reprisal involving a Member of the Board**

10.1. The Integrity Commissioner is responsible for receiving, reviewing, investigating and reporting allegations of wrongdoing or reprisals against members of the TAF Board, pursuant to the *City of Toronto Act, 2006* and *Code of Conduct for Members of Local Boards*.

10.2. Any TAF employee who believes that a member of the TAF Board has committed wrongdoing or committed a reprisal against an employee, shall notify the Integrity Commissioner using any of the methods below:

Telephone: 416-392-3826 Email: integrity@toronto.ca Fax: 416-696-3615

Letter: 375 University Avenue, Suite 202, Toronto ON M5G 2J5

10.3. Board Members will cooperate with the Integrity Commissioner during investigations and provide the Integrity Commissioner with access to information.

Approved By: The Board of the Toronto Atmospheric Fund

Date Approved:

Appendix C: TAF Policy Regarding Political Activity

1. Policy Statement

The Toronto Atmospheric Fund (TAF) recognizes the right of TAF employees to participate in political activity balanced against TAF's legitimate interest in having an administration that both is and appears to be impartial. All TAF employees have the fundamental right to vote and attend all-candidates meetings.

The political activity provisions set out restrictions on the use of TAF resources while engaging in political activity and while at work; and establish requirements for TAF employees when they seek appointment or election to public office. These provisions also set out limitations for some TAF employees.

The political activity provisions address the need for a balance between an employees' right to engage in political activity and the requirement for staff to be politically impartial.

2. Right to Engage

All TAF employees are entitled to vote and attend all-candidate meetings and engage in political activity subject to TAF's political activity policy.

3. Definition of Political Activity

Political activity includes:

- supporting or opposing a political party and/or candidate before or during an election;
- seeking nomination or being a candidate in an election;
- seeking appointment to a municipal council or school board; or
- canvassing or campaigning on a Toronto municipal referendum question.

Political activity is applicable to municipal, school board, provincial and federal elections and Toronto municipal referendum questions.

4. Prohibited Political Activities

A TAF employee will not:

- Use TAF or City resources, including facilities, equipment or supplies while engaging in political activity.
- Engage in political activity during working hours.
- Engage in political activity while wearing a TAF or City uniform.
- Wear clothing or buttons that advertise any candidate, political party or referendum issue while at work or while wearing a TAF or City uniform.
- Use his or her title or position within the TAF in a way that would lead a member of the public to infer that the TAF or the City is endorsing a candidate, political party or a particular response to a referendum question.

5. Designated Positions

The CEO of TAF is a "Designated Employee" and has limitations on the political activity they may engage in.

The CEO of TAF is restricted from campaigning or canvassing to support or oppose a candidate before or during a Toronto municipal election or campaigning or canvassing on a Toronto referendum question.

6. Employees Not Designated

Where TAF employees not identified as 'Designated Employees' in section 5 are uncertain of whether intended political activity may impair or be perceived to impair their ability to perform their duties in a politically impartial manner, they are required to disclose such political activity and seek guidance from their immediate supervisor/ manager or the TAF CEO.

7. Seeking Election or Appointment to Political Office

TAF employees may seek election or appointment to political office, subject to the requirements set out below.

7a. TAF Employees Seeking Election to Toronto City Council

A TAF employee is eligible to be a candidate for and to be elected as a member of Toronto City Council. In accordance with the *Municipal Elections Act, 1996*, a TAF employee:

- Must take an unpaid leave of absence to become a candidate for Toronto City Council; this must begin no later than the day the employee files his or her nomination papers and end no sooner than voting day.
- Must provide written notice, in advance, of his or her intentions to take unpaid leave pursuant to TAF procedures.
- Is entitled to be paid out any vacation pay or overtime pay owing during the period of the unpaid leave of absence.

If the TAF employee who takes a leave of absence is not elected, the leave will not be counted in determining the length of his or her service for any purpose and the service before and after the leave shall be deemed to be continuous for all purposes.

7b. TAF Employees Seeking Appointment to Toronto City Council

A TAF employee is eligible to seek appointment to and be appointed as a member of Toronto City Council. A TAF employee seeking appointment must take an unpaid leave of absence or resign from TAF. The employee must, as soon as reasonably possible, provide written notice pursuant to TAF procedures, of his or her intentions to seek appointment. The leave will begin no later than the day the employee files his or her declaration of qualification and consent papers with the City Clerk and will end no sooner than when City Council determines who will be appointed.

If the TAF employee is elected or appointed to Toronto City Council, he or she will be deemed to have resigned from employment with TAF immediately before making the declaration of office referred to in section 186 of the *City of Toronto Act, 2006*.

7c. TAF Employees Seeking Election or Appointment to Other Municipal Councils or School Boards

A TAF employee is eligible to be a candidate for and to be elected as a member of any municipal council or school board or seek appointment to and to be appointed as a member of any municipal council or school board.

To become a candidate or seek appointment, a TAF employee may take an unpaid leave of absence. If the employee intends to take unpaid leave, he or she must provide written notice to request an unpaid leave pursuant to TAF procedures.

If a TAF employee is elected or appointed to another municipal council or school board, the employee is not required to resign, but is subject to the *Conflict of Interest* policy, other applicable employment policies and performance expectations.

7d. TAF Employees Seeking Election to Provincial and Federal Office

A TAF employee is eligible to be a candidate for and to be elected as a member of Provincial legislature or Federal parliament. To become a candidate, a TAF employee must take an unpaid leave of absence and provide written notice to request an unpaid leave pursuant to TAF procedures.

If a TAF employee is elected to provincial or federal office, they shall be deemed to have resigned from employment with TAF.

8. Use of Corporate Resources

A TAF employee who is on a leave of absence while seeking election or appointment to any elected office cannot use any TAF or City resources during that time or act in a manner that could reasonably give rise to a presumption that they are using TAF or City resources during the leave period. All access to TAF or City resources, including security, parking, voice-mail, and computer access will be temporarily disabled during the employee's leave.

9. Employee Time to Vote

TAF will ensure that every employee who is qualified to vote will have three consecutive hours available to vote while the polls are open on Election Day.

10. Seeking Guidance and Advice

If a TAF employee is unsure about the appropriateness of his or her participation in political activity, they should consult with their immediate supervisor/manager or the TAF CEO.

11. Failure to Comply with the Policy

A TAF employee who fails to comply with the political activity provisions may be subject to disciplinary action up to and including dismissal.

Approved By: The Board of the Toronto Atmospheric Fund

Date Approved: