



## REPORT FOR ACTION

### Toronto Parking Authority Governance

**Date:** January 8, 2019  
**To:** Executive Committee  
**From:** City Manager  
**Wards:** All

#### SUMMARY

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At its meeting of July 2017, City Council considered AU9.12 respecting the Auditor General's findings of her investigation into land acquisition at Finch Avenue West and Arrow Road by the Toronto Parking Authority (TPA). City Council and the TPA took certain actions in response to those findings.

As directed by City Council, City staff retained Torys LLP ("Torys") to review and evaluate the actions of the TPA in this matter. Staff were also requested to report back on the following:

- The governance and composition of the Board of the TPA;
- Whether the Board should be increased by two directors; and
- Whether to update as necessary guidelines and training for agency boards based on the findings in the report from the Auditor General.

This report summarizes the results of the review and final report by Torys and recommends ways in which the City and the TPA Board can improve its governance practices going forward. The final report by Torys LLP is attached as Attachment 1 to this report.

With the completion of the review of the TPA Board, a new Board should be recruited as soon as possible.

#### RECOMMENDATIONS

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The City Manager recommends that:

1. City Council restore the previous composition of the Toronto Parking Authority Board of Directors of two Members of Council and five public members with the restored composition to take effect when City Council appoints the seven members to the Board.

2. City Council direct the City Clerk, in consultation with the City Manager, to recruit a new Toronto Parking Authority Board in accordance with the Public Appointments Policy and Toronto Municipal Code, Chapter 179, Parking Authority.
3. City Council direct that Toronto Municipal Code, Chapter 179, Parking Authority be amended as appropriate to:
  - a. Delete the City's General Manager of Transportation Services as a non-voting member of the board.
  - b. Provide that the General Manager or her designate be entitled to notice, agendas and minutes for all meetings and be entitled to attend all meetings of the Board, including closed sessions.
  - c. Set out the duties of care and loyalty of the members of the Board, as an agent of the City of Toronto, including providing that all duties are owed to the City of Toronto.
  - d. Appoint the City Clerk as the secretary of the Board.
4. City Council amend the qualifications of the citizen Board members to include "previous board governance experience" as a desired qualification
5. City Council request the new Board of the Toronto Parking Authority, once appointed, to develop a governance and procedural policy, which addresses:
  - a. The governance roles and duties of the Board members, the Chair, the Toronto Parking Authority President and staff;
  - b. The duty of collegiality to Toronto Parking Authority Board members and staff;
  - c. The right for directors to dissent;
  - d. The protection of the right for directors to report to an accountability officer, provided they do so in good faith and for a valid reason;
  - e. The directors' roles;
  - f. The process for directors to seek and receive information from management sufficient to properly fulfill their duties as directors;
  - g. The procedure for the approval of material transactions in a manner that is consistent with the Board's duties;
  - h. The requirement for reporting the closings of all material transactions to the Board; and,

- i. The required period by which all Board briefing materials must be provided to directors in advance of a meeting and the provision for exceptional circumstances in which late material is permitted.

## **FINANCIAL IMPACT**

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This report is focused solely on reappointing a new Toronto Parking Authority Board, as well as the composition and qualifications of the new Board. There are no financial implications resulting from the recommendations in this report.

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

## **DECISION HISTORY**

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The Auditor General was contacted and requested to review a pending property acquisition at Finch Avenue West and Arrow Road by the Toronto Parking Authority (TPA).

A report was issued in October 2016 entitled “Auditor General’s Observations of a Land Acquisition at Finch Avenue West and Arrow Road by the Toronto Parking Authority” that focused on one aspect of this acquisition. That was Part 1 of the Auditor General's review and was adopted with amendments by City Council on November 8, 2016.  
<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.AU7.14>

The Auditor General completed Part 2 of her review of this transaction and City Council adopted AU9.12 Auditor General's Observations of a Land Acquisition at Finch Avenue West and Arrow Road by the Toronto Parking Authority - Part 2 on July 4, 2017 with amendments.  
<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.AU9.12>

At its meeting of July 2017, City Council considered CC39.10 Actions Taken to Date Arising from Council's Decision Respecting the Auditor General's Investigation into a Certain Land Transaction, on a land acquisition at Finch Avenue West and Arrow Road by the Toronto Parking Authority. The report also transmitted a report from the Interim Chair of the Toronto Parking Authority (TPA) Board with respect to certain actions the TPA took in response to Council's directions.  
<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2018.CC39.10>

## **COMMENTS**

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The TPA is a City board and agent of the City pursuant to the *City of Toronto Act, 2006*, and is governed by Municipal Code Chapter 179, Parking Authority. The Board exercises delegated authority from City Council for parking related matters in the City of

Toronto. The TPA also manages the Bike Share Program under authority delegated by City Council.

City Council recently adopted a new City-wide real estate model, effective January 1, 2018, that centralized City real estate initiatives, including those of its agencies, under the purview of the Deputy City Manager, Corporate Services. As a result, the TPA Board's authority in respect of real estate matters is now limited to approval of short-term lower value leasing and licencing transactions. All other transactions, including sales and acquisitions of land, are dealt with through the City's process, by way of delegated approval to City staff or Council approval.

### **Auditor General's Report and Actions Taken**

At its meeting in July 2017, City Council considered AU9.12 respecting the Auditor General's findings from her investigation into the land acquisition at Finch Avenue West and Arrow Road by the TPA. City Council and the TPA subsequently took certain actions in response to those findings.

Those actions included placing the Board members on leave and amending the size and composition of the Board on an interim basis to consist of three members: the City Manager as Chair, the Chief Corporate Officer (now Deputy City Manager, Corporate Services) and the Deputy City Manager, Cluster A (now Community and Social Services).

On direction from City Council, City staff retained Torys to review and evaluate the actions of the TPA in this matter. Staff were also requested to report back on the following:

- The governance and composition of the Board of the TPA;
- Whether the Board should be increased by two directors; and
- Whether to update as necessary guidelines and training for agency boards based on the findings in the report from the Auditor General.

### **The Torys Report**

In undertaking the review of the actions of the TPA Board in this matter, Torys reviewed documents provided by the TPA, City staff and interviewees, and interviewed officers and employees of the TPA, staff of the City, former members of the Board of the TPA, including the former chair of the Board, and relevant third parties.

Torys reviewed the actions of the TPA Board and staff against broadly accepted good governance practices and procedures and recommended specific actions for City Council's immediate consideration to ensure the new TPA Board would function and make decisions effectively and transparently. Additional recommendations, with potential broader application to other City Boards, were also put forward for consideration.

## **Toronto Parking Authority Board**

The interim TPA Board has now been in place since July 2017 (eighteen months as of the date of this report), and remains in place until City Council restores the previous composition of the Board and directs the recruitment and appointment of a new TPA Board.

The interim Board was intended to be in place only while the investigations directed by Council were being conducted. The terms of the previously suspended directors have now expired. Now that the Council-directed governance review of the TPA Board is complete, a new Board, composed of both Council and public members should be recruited as soon as possible.

### **Composition**

The previous composition of the Board was two members of Council who serve two-year renewable terms and five public members who serve four-year renewable terms. In undertaking their review, Torys considered the size of the Board and whether it would be beneficial to increase the composition by two directors. Torys determined that increasing the size of the Board would have no benefit on the governance of the TPA, and recommended no change. City staff concur with this recommendation.

The General Manager of Transportation Services sits as a non-voting member on the TPA Board. Torys recommends that City Council continue this appointment, not as a formal member of the Board (non-voting), but rather this position be given "right of access" to attend Board meetings in a technical and liaison , when necessary, with access to Board minutes, reports and other materials.

### **Nominations**

Currently, appointees to the TPA Board are expected to collectively demonstrate a range of qualifications including:

- sound financial and administrative background, including experience in real estate joint ventures,
- sound background in human resources and union-related matters,
- clear understanding of land use and transportation planning,
- understanding of commercial enterprises, including marketing and advertising,
- understanding of public service objectives and operations, and
- commercial sensitively and acumen.

The Torys report recognizes the importance of appointing Board members with a broad range of skills and qualifications, and recommends that experience with governance policies and processes are additional skills critical to the governance and oversight of the agency and informed and transparent decision-making. The Torys report recommends that the Board would benefit if future appointments of public members considered governance experience, either in the private, public or not-for-profit sectors.

## **Role and Appointment of Chair**

The Torys report highlights the significant leadership responsibilities of the Chair in the functioning of the board. In addition to their role as a director, the Chair is responsible for, among other things, facilitating the ability of the Board to collectively make governance decisions; and function independently of management; resolving conflict between directors; and, ensuring that all material information is shared equally amongst board members.

The TPA Board Chair is currently nominated by the Civic Appointments Committee and appointed by Council. Torys notes that this decision dates from a 2011 Council decision to directly appoint the chairs of the Boards of City agencies and was made to create accountability mechanisms to the City. As part of the review of the TPA, Torys recommends that Council reconsider this decision and that members of the Board appoint the Chair for a term of two years so that the Chair has the confidence of the Board both as a leader and a fellow director.

Currently, with the exception of the City's community-based agencies, all board Chairs are selected (or ratified in the case of CreateTO) by City Council to ensure the confidence of Council and to establish a line of accountability between the Board and the City. Changing the way in which the Chair of the TPA Board is appointed would result in an inconsistency with the appointment process for other Board Chairs and a departure from current policy. The process of selecting the TPA Board Chair should be only changed if due consideration is given to the impact of such a policy change on other City agency boards.

## **Governance Best Practices**

As an agent of the City, the TPA board is accountable to City Council for the proper administration and overall functioning of the TPA, in keeping with the mandate established by Council. In turn, TPA staff are accountable to the TPA Board.

As part of its review, Torys was requested to consider ways in which the governance culture at the TPA could be improved.

Torys noted the absence of certain procedures and processes, as well as a culture that did not support regular and open information sharing and dialogue between the board directors and staff and between board directors themselves.

The following section outlines observations and recommendations by Torys with respect to good governance practices as they relate to this review of the TPA. City staff recommend a number of Torys' recommendations be implemented immediately through changes to Chapter 179, Toronto Municipal Code, Parking, while others with application to the governance practices of boards of all City agencies, form part of a more comprehensive orientation and training program for all agency board members.

## ***Duty of Loyalty and Care***

As noted in the Torys report, a fundamental element of good governance is duty of loyalty and care. Board members owe duties of loyalty and care to the organization, whether the organization is private sector, public sector or not-for-profit. Duties of loyalty and care include:

- **Duty of loyalty and good faith.** Board members act with a view to the best interest of the organization and only the organization, while considering a variety of interests. Duty of loyalty and good faith include the duty to act independently, the duty of confidentiality, duty of disclosure and duty to avoid conflicts of interest.
- **Duty of care.** Board members act carefully, prudently and on an informed basis, requiring asking relevant questions and when necessary, undertaking appropriate investigations.

To avoid any question that these duties apply to all board members, Torys recommends that Chapter 179 of the Toronto Municipal Code be amended to make clear that as an agent of the City, the TPA Board members' duty of loyalty and care is also owed to the City of Toronto.

## ***Training and Orientation***

In its review of the TPA Board and staff, Torys observed the absence of a number of processes and procedures that facilitate effective decision-making, as well as a culture that was at times deficient in collegiality and discouraging of dissent amongst Board members. The ability of Board members to seek information and have a dissenting opinion with other Board members is fundamental to the functioning and decision-making of a Board. While these issues cannot always be solved by formal policies, a comprehensive orientation process for new Board members and the development of policies reminding new and long-term Board members of their roles, responsibilities and accountabilities may help.

Torys recommends a number of actions the TPA Board can take to resolve or improve some of these issues. These include:

- A governance and procedure policy which addresses issues such as roles and duties of directors, the Chair, the President and TPA staff; the right of Board members to dissent; the process for directors to seek information from management; and, the period in which all Board briefing materials must be provided to directors in advance of a meeting.
- Systems for information sharing, agenda setting and the regular review of policies.
- Providing incoming directors with reference materials as part of a proper orientation.
- Taking ownership of interacting with an accountability officer, who is undertaking a review of the TPA and directing management to report on implementation of recommendations made by accountability officers, within a reasonable time frame.
- The design of an evaluation framework to evaluate the performance of the Board; committees of the Board; the Chair; and, individual directors.

Torys further recommends that in drafting its governance and procedural policy, the TPA Chair should seek the assistance of the office of the Clerk of the City of Toronto and discuss whether a City agency-centred policy could be drafted as a reference to other City agencies who are considering revising their governance frameworks.

Additional recommendations from Torys regarding training, orientation, evaluation frameworks to evaluate the performance of a board, its committees, Chair and individual directors, as well as consideration of a policy handbook that could be adopted in whole or in part by City agencies. In order to ensure that there is a consistent approach across boards, these recommendations will be considered by the City Manager in consultation with the City Clerk as part of a comprehensive orientation and training program for members of boards of all City agencies.

## **CONTACT**

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## **SIGNATURE**

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Chris Murray  
City Manager

## **ATTACHMENTS**

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Attachment 1: Report (December 17, 2018) from Torys LLP "Toronto Parking Authority Governance Review & Report"