

## **Amendments to the Toronto Atmospheric Fund Governance Documents**

**Date:** May 25, 2022

**To:** Executive Committee

**From:** City Manager and Chief Financial Officer and Treasurer

**Wards:** All

### **SUMMARY**

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This report recommends that City Council approve amendments to the Toronto Atmospheric Fund (TAF) Relationship Framework and Statement of Investment Objectives and Principles (SIOP).

TAF was established by the former City of Toronto Council in 1991 with a \$23 million endowment to advance climate change and air quality solutions. TAF was incorporated by the *Toronto Atmospheric Fund Act* (the TAF Act) in 1992 and continued through a subsequent TAF Act amendment in 2005 as a corporation without share capital that carries out its prescribed mandate through grants and investments in low-carbon technologies, research, and partnerships with business and community organizations. TAF funds its work through the proceeds of investment of its endowment and other external funds such as grants from charitable foundations or governments, without any draw on the City's operating or capital budgets.

In addition to the TAF Act, the governing instruments for TAF include:

- The Relationship Framework, which describes the roles and responsibilities of City Officials, Divisions and TAF and its Board;
- The SIOP, which outlines TAF's investment guidelines to ensure continued prudent and effective investment management, capital preservation and financial well-being; and
- TAF's Operating By-law (also called TAF By-law No. 1), which outlines operational and administrative requirements as a not-for-profit corporation.

Since it was established, and with the support of Council, TAF has grown into an internationally-recognized and high-impact expert and agent for urban climate action. The value of its endowment has grown to an estimated \$90 million through investments and contributions from the Province and the Government of Canada, its geographic mandate broadened to the Greater Toronto and Hamilton Area (GTHA) with the Ontario and Canada funding, and its investment strategies have grown in value and sophistication.

Proposed Amendments to TAF Governance Documents

The City exercises control and custody over various aspects of TAF, in accordance with the TAF Act, specific Council delegations, and certain Council-adopted policies and Council-directed reporting obligations applicable to TAF. As part of its overall fiduciary responsibility to TAF, the Board's role in this process is to ensure generally that TAF is in compliance with Council direction, including approving matters and seeking Council approval where required, and to delegate implementation of Council direction to TAF staff where appropriate.

The proposed amendments to TAF governance documents reflect the maturity of TAF as a 30-year old entity, its relationship with the City, its expanded mandate to the Greater Toronto and Hamilton Area (GTHA), and the significant growth of its endowment funds following a \$17 million contribution from the Province of Ontario in 2016 and a \$40 million contribution from the Government of Canada in 2020.

Together, these amendments are intended to give TAF and the TAF Board more autonomy and responsibility to manage TAF's activities and affairs. Consistent with the TAF Act, City Council still appoints the TAF Board, provides direction to TAF and delegates to TAF's Board, and the City's Chief Financial Officer and Treasurer retains appropriate oversight of TAF funds. However, as part of TAF's greater autonomy, City officials will continue to provide support and confirm due diligence where needed, while TAF and the TAF Board will assume broader responsibilities to manage TAF.

This report recommends Council adopt the amended Relationship Framework and SIOF as attached and delegate certain powers to the TAF Board, as permitted under the TAF Act, to give effect to these proposed amendments. To give effect to these amendments, this report also recommends Council delegate specific responsibilities to TAF and its Board, as permitted under the TAF Act, and to pursue minor changes to the TAF Act with the Province of Ontario.

The TAF Board of Directors has reviewed the Relationship Framework amendments and approved the SIOF amendments, substantially as set out in the attachments to the report, and the City Manager and Chief Financial Officer and Treasurer recommend them to Council for approval.

## **RECOMMENDATIONS**

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The City Manager and Chief Financial Officer and Treasurer recommend that:

1. City Council adopt the amended Toronto Atmospheric Fund Relationship Framework with the City substantially as set out in Attachment 1 to this report.
2. City Council adopt the Toronto Atmospheric Fund's Procedural By-law, which is provided as Schedule 1 of the Relationship Framework.
3. City Council delegate the following authorities to the Toronto Atmospheric Fund (TAF) Board of Directors as permitted under Section 3 of the *Toronto*

*Atmospheric Fund Act, 2005* to give effect to the proposed Relationship Framework amendments:

- a) to appoint its Board Chair;
- b) to create, amend or repeal the provisions of its Operating By-law, also known as TAF By-law No.1, without having to obtain Council approval;
- c) to hire, fire, manage and receive reports on the performance of TAF investment managers; and
- d) to carry out TAF responsibilities under the *Municipal Freedom of Information and Protection of Privacy Act*.

4. City Council approve the amended Statement of Investment Objectives and Principles of the Toronto Atmospheric Fund substantially as set out in Attachment 2 to this report.

5. City Council authorize the City Manager, in consultation with the City Solicitor, to make any changes to the Toronto Atmospheric Fund Relationship Framework, Procedural By-law and Statement of Investment Objectives and Principles as may be required to give effect to Council's decision.

6. City Council authorize the City Manager, in consultation with the City Solicitor, to support the Toronto Atmospheric Fund to pursue certain amendments to the *Toronto Atmospheric Fund Act, 2005*, including:

- a. to remove references to the Corporations Act (Ontario) and instead reference the new *Not-for-Profit Corporations Act, 2010* (Ontario) where applicable;
- b. to remove or adjust outdated references to the Municipal Act;
- c. to remove the requirements for meetings of TAF committees to be open meetings; and
- d. other administrative amendments as required.

7. City Council direct the City Clerk to forward these decisions and final versions of documents to the Province of Ontario and the Federation of Canadian Municipalities, as parties to the Transfer Payment Agreement and Canada Funding Agreement respectively, for their information.

## **FINANCIAL IMPACT**

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There are no financial implications to the City resulting from the adoption of the recommendations in this report, as TAF does not receive City funding on an annual basis, and funds its work through proceeds from the investment of its endowments and from other external funds such as grants from charitable foundations or governments. Currently, TAF has three endowments:

- A Toronto Endowment of \$23 million from the City of Toronto in 1992;
- An Ontario Endowment of \$17 million from the Province of Ontario in 2016; and

- A Canada Endowment of \$38 million (along with a \$2 million contribution to TAF operating funds) from the Federation of Canadian Municipalities (as agent for the Government of Canada) in 2020.

Despite the past contributions from other governments to TAF's endowment, the custodial responsibility over that endowment remains with the City as per the TAF Act. Having said this, the proposed amendments delegate some financial authorities and accountabilities from Council and City Officials to the TAF Board. TAF's requirements for financial reporting to the City are increased along with the City's audit rights.

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

## **DECISION HISTORY**

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On May 25, 2002, the TAF Board conveyed its general agreement with the proposed updates to the Relationship Framework, with suggested technical, non-substantive amendments. The Board also identified additional amendments to the Toronto Atmospheric Fund Act, 2005 that it wishes to pursue.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2022.TA17.3>

At its April 27, 2022 meeting, the TAF Board directed its Chief Executive Officer to update the Statement of Investment Objectives and Principles, as adopted in July 9, 2021, as necessary to be consistent with the proposed amended Relationship Framework and Operating By-law. The Board also requested City Council's approval for the City and TAF to pursue certain amendments to the *Toronto Atmospheric Fund Act, 2005*, including replacing references to the Corporations Act (Ontario) with references to the new *Not-for-Profit Corporations Act, 2010* (Ontario) and make general housekeeping amendments as required.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2022.TA16.2>

City Council on February 2, 2022 adopted interim amendments to the Toronto Atmospheric Fund Statement of Investment Objectives and Principles (SIOP) to introduce an Alternatives Investments asset class, until such time as an amended Relationship Framework, SIOP and Operating By-law were brought to Council for consideration.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2022.MM39.2>

At its July 9, 2021 meeting, the Toronto Atmospheric Fund Board adopted amendments to the Statement of Investment Objectives and Principles and requested Council's approval via the Chief Financial Officer and Treasurer.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2021.TA13.4>

City Council on December 9 and 10, 2015 adopted the current Statement of Investment Objectives and Principles of the Toronto Atmospheric Fund.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2015.EX10.10>

City Council at its meeting of May 7, 8, 9 and 10, 2013 adopted the current Relationship Framework between the City and the Toronto Atmospheric Fund.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.EX31.6>

City Council on April 12 and 13, 2011 adopted recommendations for managing through City agencies and corporations, including that Council appoint the Chair of each board and approve administrative and operational by-laws.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2011.EX4.6>

City Council at its meeting of September 22, 23, 24 and 25, 2003, directed the TAF Board of Directors to amend TAF By-law No. 1 to ensure consistency with the recommendations of its governance review of TAF.

<https://www.toronto.ca/legdocs/2003/agendas/council/cc030922/pof9rpt/cl019.pdf>

## **COMMENTS**

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The proposed amendments to TAF governance documents reflect the maturity of TAF as a 30-year old entity, its relationship with the City, its expanded mandate to the Greater Toronto and Hamilton Area (GTHA), and the significant growth of its endowment funds following a \$17 million contribution from the Province of Ontario in 2016 and a \$40 million contribution from the Government of Canada in 2020.

Together, these amendments are intended to give TAF and the TAF Board more autonomy and responsibility to manage TAF's activities and affairs. Consistent with the TAF Act, City Council still appoints the TAF Board, provides direction to TAF and delegates to TAF's Board, and the City's Chief Financial Officer and Treasurer retains appropriate oversight of TAF funds. However, as part of TAF's greater autonomy, City officials will continue to provide support and confirm due diligence where needed, while TAF and the TAF Board will assume broader responsibilities to manage TAF.

### **Summary of Proposed Amendments to the Relationship Framework**

Under the TAF Act, Council may establish policies at its own discretion governing the structure, composition, appointment, removal, meetings and procedures of the TAF Board, and can also delegate any of these powers to the Board.

Generally, the proposed amendments to the Relationship Framework update and clarify the roles of City Officials and staff and the responsibilities of TAF and its Board to better reflect the current and evolving relationship between the City and TAF. Critically, it also accounts for the contributions from the Province of Ontario and Government of Canada and TAF's expanded mandate in across the Greater Toronto and Hamilton Area that those agreements support.

Below is a summary of key amendments. The full amended Relationship Framework is included with this report as Attachment 1.

## **1. Increases TAF and the TAF Board's autonomy and responsibility to manage its activities and affairs:**

TAF Board members are selected and approved by Council through the Public Appointments Process. The amended Relationship Framework outlines the primary responsibilities of TAF and its Board and those matters that would require Council approval. Under Section 3(3) of the TAF Act, Council may delegate any of its powers to the TAF Board of Directors. From time to time, the Board may delegate matters to TAF staff as appropriate.

Most responsibilities from the current Relationship Framework remain, and this report recommends that Council delegate the following additional matters to the TAF Board:

- Appointing the Chair from among TAF Board members -- this is currently the responsibility of Council, under previous direction regarding the management of City agencies and corporations that currently includes TAF <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2011.EX4.6>;
- Creating, amending or repealing TAF's Operating By-law -- this is also currently the responsibility of Council, under its direction regarding the management of City agencies and corporations;
- Hiring, firing, managing and receiving reports on the performance of TAF investment managers -- this would amend the previous Relationship Framework, which had the City appointing TAF's investment managers; and
- Carrying out TAF's responsibilities under the *Municipal Freedom of Information and Protection of Privacy Act* -- this will assign to TAF the responsibilities related to the processing of Freedom of Information requests and the collection, use, disclosure and retention of personal information, which Council delegated in 1993 to the City Clerk at request of TAF's Board. The City Clerk will continue to offer support to TAF as appropriate.

## **2. Increases financial thresholds where Council approval must be obtained:**

The Relationship Framework proposes would increase the thresholds of financial decisions the Board for which the TAF Board has authority without seeking further Council approval.

- The threshold for the Board to approve investments, guarantees or security on loans or lines of credit would increase to \$5 million from the current \$2 million. This level of increase is recommended given the increase in total TAF endowments, from the previous \$27 million to the present total of \$78 million; and
- The threshold for the Board to approve grants to be made by TAF would increase to \$1.25 million from the current \$500,000. This increase is proportional to the above increase.

## **3. Retains appropriate Council oversight and accountability mechanisms:**

TAF, through its Board, must still seek Council approval for:

- TAF's Annual Budget, which includes strategic and operational objectives and performance indicators;
- Establishment, amendment or dissolution by TAF of subsidiary entities or the material transfer of TAF assets to a subsidiary entity;
- Agreements to which the City and TAF are parties;
- Allocation of any grants or investments that are outside of TAF's mandate;
- Any investments, guarantees or security on loans or lines of credit in excess of \$5 million;
- Any grants made by TAF in excess of \$1.25 million;
- Any proposal to amend the Statement of Investment Objectives and Principles;
- Any proposal to amend the Relationship Framework, including Schedule 1;
- A Debt Policy and any amendments; and
- Any other matter for which Council has explicitly required approval.

TAF must continue to provide timely financial reporting to senior City staff, including:

- An annual three-year Business Plan as part of its operating and capital budget submissions that includes its strategic direction and operational and capital plans;
- Annual consolidated audited financial statements with separate fund accounting for the City, Ontario and Canada endowments;
- Quarterly unaudited financial reporting, risk assessment reporting and investment results; and
- Advance notice and consultation with the City if expecting the City to act as CRA "Qualified donee" for funds from external sources, including charitable foundations and other governments.

The City has expanded audit rights:

- Annual audit requirements remain unchanged. The Relationship Framework expands the City's audit rights, giving the City the rights to audit/inspect and have unrestricted access to all TAF books, records and documents pertaining to its business operations and its role and responsibilities. These amended audit rights are meant to balance the increased autonomy provided to TAF through the recommended amendments to the Relationship Framework and SIOP, and given the City's continued responsibilities under the TAF Act. TAF remains subject to the oversight of the City's Auditor General.

#### **4. Provides a procedural by-law for TAF Board meetings**

The updated Relationship Framework updates and consolidates procedural rules that previously appeared in both the framework and TAF By-law No. 1. The new Schedule 1 of the Relationship Framework acts as TAF's procedural by-law, aligns with Municipal Code Chapter 27 (Procedures), and must be approved by Council.

## Summary of Proposed Amendments to the Statement of Investment Objectives and Principles (SIOP)

TAF's current SIOP was approved by Council in 2015, and serves as TAF's investment guidelines as required under the TAF Act. The SIOP addresses the custody and investment of TAF's funds by setting out the governance, roles and responsibilities, objectives and beliefs, asset classes and allocations, and constraints and prohibitions for investment of TAF's three endowments. The SIOP is crafted by the Board's Investment Committee, with support from TAF's third-party investment advisor, and requires approval from the Board and City Council.

Below is a summary of key amendments. The full amended SIOP is included with this report as Attachment 2.

City staff support the amended SIOP, which substantially reflects the version approved by the TAF Board in July 2021 and those portions subsequently adopted by Council in February 2022. Attachment 2 includes minor changes to align styling and text with proposed amendments to the Relationship Framework and Operating By-law.

### 1. Retains key investment objectives and principles:

The SIOP objectives continue to include:

- earning a sufficient real rate of return giving regard to the risk profile;
- setting a target range for the expenditure of funds to allow TAF to achieve its mandate for grants, programs and related administrative activities;
- ensuring the adequate liquidity and the preservation of capital;
- achieving investment and portfolio risk appetite consistent with the prudent investor standard of the Ontario *Trustee Act*;
- allowing for TAF mandate-related impact while avoiding activities that would contravene the mandate; and
- ensuring compliance with Council's policy direction for the investment of TAF assets, applicable legislation, relevant agreements, and investment objectives.

Guiding principles for TAF investments continue to include:

- achieving greenhouse gas reduction and improving air quality;
- optimizing risk-adjusted return using a long-term investment horizon of at least 20 years;
- prudent management of investment risk, including through diversification of uncorrelated asset classes and investment maturities, investing in high quality assets, and requiring security for loans;
- investing in a manner consistent with TAF's mandate, and as permitted under the *Trustee Act*;
- investment in highly liquid, high-quality fixed income pooled funds or publicly-traded high-quality fixed income securities to protect capital and meet short-term



cash flow needs in the event of economic challenges such as deflation, recession, or various interest rate scenarios; and

- financing via direct investment in mandate-related projects, attracting and leveraging co-investor relationships and additional investment, and using TAF's mandate and shareholder actions to influence other entities to advance a low-carbon economy.

## **2. Reflects the Ontario and Canada endowments:**

The amended SIOPI implements the terms of agreements with the Ontario government, which provided TAF with a \$17 million endowment, and with the Federation of Canadian Municipalities (as agent for the Government of Canada), which provided TAF with a contribution of \$40 million. SIOPI changes that reflect these agreements include:

- References to the Ontario and Canada contributions in its description of TAF's assets;
- Requiring approval from the Federation of Canadian Municipalities of any investment policy that would be applied to the investment of the Government of Canada endowment;
- Requiring TAF to establish and maintain a Direct Investment Committee; and
- Including the provincial and federal agreements in the Board's annual review of SIOPI compliance.

## **3. Establishes a new Direct Investment Committee:**

TAF's direct investments may be structured through (but are not limited to) vehicles such as loans, debentures, mortgages, other financing vehicles, equity investments, limited partnerships and loan guarantees. Such investments may also include additional benefits for example options, rights, warrants and carbon attributes.

TAF already has an Investment Committee which provides TAF with direction in relation to investment policy, asset allocation and rebalancing, and marketable securities. The Investment Committee will continue, and the TAF Board has approved the establishment of a Direct Investment Committee to ensure that there is available expertise in relation to TAF mandate-related investing, given the increasingly complex and specific nature of direct investments. The SIOPI establishes these committees as standing committees of the Board with key responsibilities, and the Board will outline and approve further terms of reference in its Operating By-law.

## **3. Updates TAF's Asset Mix:**

TAF invests its assets in a diversified portfolio across generally uncorrelated asset classes as part of its risk management strategy and to allow a prudent portfolio approach. The recommended SIOPI amendments update TAF's Asset Allocation Table with new minimum and maximum investment percentages for each asset class, and adds target percentages.

The amended SIOPI also adds the requirement for TAF to monitor and undertake a rebalancing of its portfolio when each asset class reaches 90% of maximum, or 105% of

minimum prescribed limits. It also requires TAF to undertake an investment portfolio risk assessment, reporting to the TAF Board at least every five years.

At TAF's request, in February 2022 Council approved an interim change to the SIOF to introduce an "Alternative Investment" class of assets to replace and expand the current "Private Pooled Equity" class to address anticipated risks in the equity marked and inflationary impact on its portfolio. Alternative Investments are those which do not fall into conventional investment categories such as stocks, bonds, and cash, etc, and which tend to be held by institutional and other accredited investors such as banks or hedge funds. While TAF has previously pursued investments in private equity, the amended SIOF allows for an expansion of this asset class to include private debt. The amended SIOF will maintain this change.

Lastly, the SIOF adds a section on constraints and prohibitions on TAF Investments. This section permits the use of financial derivatives for the purposes of risk management only and not for financial speculation. Examples of the use of financial derivatives for risk management include interest rate or currency hedges.

#### **4. Clarifies new benchmarking requirements:**

The amended SIOF requires that TAF's Investment Committee and Direct Investment Committee to advise the Board on appropriate benchmarks for each asset class and for each external investment manager, to monitor performance.

TAF has already consulted with third-party expert professional support in undertaking work to review and update its risk and return profile and to establish benchmarks for each asset class. In doing so, TAF has considered the unique characteristics of Direct Investments, adopting a conservative approach to assessing return expectations and risk profile for this asset class.

### **TAF Operating By-law**

TAF's Operating By-law, also known as TAF By-law No. 1, outlines TAF and TAF Board responsibilities for TAF's operational and administrative matters, including:

- Roles of Board Chair, Vice-Chair, Treasurer and Secretary;
- Formation and terms of reference of Board committees;
- Procedures for Board Committee meetings; and
- Banking arrangements.

TAF's current Relationship Framework and By-law No. 1 contain overlapping and sometimes contradictory provisions, and both require Council approval. With the proposed amendments to the Relationship Framework, all provisions related to Board composition and Board meetings now appear solely as Schedule 1 in the Relationship Framework and require Council approval. The Operating By-law would in turn deal solely with administrative and operational TAF matters. Currently, Council must approve any amendments to the Operating By-law. This report recommends that Council delegate this authority to the TAF Board, and this proposal is reflected in the amended Relationship Framework.

## Amendments to the Toronto Atmospheric Fund Act, 2005

This report supports the request of the TAF Board that Council approve application to the Province of Ontario for amendments to the TAF Act to:

- Replace the current reference to the *Corporations Act* with a new reference to the *Not-for-Profit Corporations Act 2010*. Under the TAF Act, 2005, TAF is a corporation without share capital composed of the members of its board of directors, with specific additional powers as set out in the *Corporations Act* (Ontario). As of October 19, 2021, the *Not-for-Profit Corporations Act, 2010* came into effect and also applies to TAF, except as otherwise provided for in the TAF Act. This legislative change modernizes the regulatory framework for not-for-profit corporations similar to the changes previously brought under the new *Business Corporations Act*. This change does not impact TAF's governance nor the relationship between the City and TAF. Not-for-profit corporations like TAF are subject to the new Act and have until October 19, 2024 to bring their governing documents into compliance. The proposed updates to TAF's Operating By-law align with the requirements of the *Not-for-Profit Corporations Act, 2010*.
- Remove or adjust outdated references to the *Municipal Act* to reflect relevant amendments to the Act and the enactment of the *City of Toronto Act, 2006*.
- Remove the requirement for TAF committees to hold open meetings. TAF committees typically consider matters of a confidential nature and are therefore the meetings are closed to the public. These committees advise the TAF Board where required through reports provided in open public meetings.

City staff, in consultation with Legal Services, will collaborate with TAF to prepare an appropriate application for amendments.

### Implementation of Governance Changes

With Council adoption of these or modified amendments, and any minor changes deemed necessary by the City Solicitor to give effect to TAF Board recommendations and Council direction, the Relationship Framework and SIOP will come into effect. The TAF Board will consider its amended Operating By-law at a future meeting.

### CONTACT

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Karen Jones, I/Director Intergovernmental and Agency Relations  
[Karen.Jones@toronto.ca](mailto:Karen.Jones@toronto.ca) 416-397-4429

Randy LeClair, Director, Capital Markets  
[Randy.LeClair@toronto.ca](mailto:Randy.LeClair@toronto.ca) 416-397-4054

Andrew Flynn, Controller  
[Andrew.Flynn@toronto.ca](mailto:Andrew.Flynn@toronto.ca) 416-392-8427

## **SIGNATURE**

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Chris Murray  
City Manager

Heather Taylor  
Chief Financial Officer and Treasurer

## **ATTACHMENTS**

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Attachment #1 - Amended Toronto Atmospheric Fund Relationship Framework with the City of Toronto

Attachment #2 - Amended Statement of Investment Objectives and Principles