

## Governance Documents Updates

**Date:** April 11, 2022  
**To:** Board of Directors of the Toronto Atmospheric Fund  
**From:** Chief Executive Officer

### SUMMARY

---

TAF and the City have been updating TAF's governance documents – the Relationship Framework with the City of Toronto (RF), TAF By-law No. 1 (By-laws) and the Toronto Atmospheric Fund Statement of Investment Objectives and Principles (SIOP) – with the goals of reflecting TAF's growing capacities, endowment and mandate since the documents were last amended; clarifying mechanisms for communication and collaboration with the City; and ensuring that appropriate accountability measures remain in place.

To clarify and streamline the governance documents:

- the By-laws will contain only operational and administrative matters which are within the purview of TAF to develop and approve;
- the RF will contain Council's requirements and will be approved by Council; and
- the SIOP will contain only investment-related requirements which will be approved by both the Board and Council.

TAF and City staff will provide an overview of the proposed content of the RF, including how the Board's recommendations from its meeting of February 14, 2022 have been addressed. A draft Operating By-law is presented for Board approval (Attachment 1), which would come into effect once Council approves the new RF. Housekeeping amendments would be required to the SIOP to align with the RF and By-laws as the substantive elements approved by the Board in July 2021 and by Council in February 2022 would remain unchanged. It is anticipated that a report from the City Manager seeking approval of the RF and SIOP will be on Council's June 2022 agenda.

### RECOMMENDATIONS

---

The Chief Executive Officer Recommends that The Board of Directors of the Toronto Atmospheric Fund:

1. Approve Operating By-law #1 as presented in Attachment 1, to come into effect following Council's approval of the revised Relationship Framework.

2. Direct TAF's CEO to update the SIOP approved by the Board on July 9, 2021 as necessary to be consistent with proposed amendments to the Operating By-law #1 and the Relationship Framework.
3. Convey to Council, via the City Manager, the Board of Directors' general agreement with the proposed updates of the Relationship Framework.
4. Request, via the City Manager, Council's approval for TAF and the City to pursue certain amendments to the TAF Act, including:
  - a. to remove references to the *Corporations Act* (Ontario) and instead reference the new *Not-for-Profit Corporations Act, 2010* (Ontario) where applicable; and
  - b. general housekeeping amendments as required.

## FINANCIAL IMPACT

---

None to the City.

## DECISION HISTORY

---

At its February 14, 2022 meeting, the TAF Board articulated the following principles that should be used to guide the process of updating the RF, SIOP, By-laws, and Toronto City Council directives to agencies/boards (together, Governance Documents) (<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2022.TA15.11>)

- The Governance Documents should clearly delineate those areas of TAF operations over which the City maintains oversight (due to legislative authority or responsibility) and those areas of TAF operations over which TAF has sole authority such that, in particular, the RF contains only those provisions that require City direction, approval, consultation and/or accountabilities and the By-laws contain all provisions pertaining to the internal governance and functioning of TAF;
- The Governance Documents should include background information describing the financial independence of TAF from the City and the limited liability of the City with respect to TAF obligations;
- TAF shall have the authority to amend and approve its By-laws, which shall not require City approval so long as the By-laws comply with the RF and all relevant legislation;
- TAF shall have the authority to set the procedures for, and to call and hold, TAF Board and committee meetings, subject to such City requirements as it is legally required to follow with respect to public meetings in accordance with relevant legislation;
- TAF shall have a direct involvement in the recruitment process for directors of TAF's Board, including the Chair of Board, subject to the City's final appointment, including the right to advise the City of qualified candidates, attend and present questions at interviews, and be consulted in respect of the City's preliminary decisions regarding appointments;
- TAF shall have the ability to provide for greater regional perspectives by increasing the representation of citizen members on its Board of Directors by adding individuals residing outside of Toronto but not to exceed a majority of the citizen members;

- The Governance Documents shall or may include such further and other revisions as the Chief Executive Officer determines appropriate to recognize TAF's increased capacity, wider accountabilities, expanded geographic mandate, and financial independence.

At its February 2, 2022 meeting, City Council adopted interim SIOB amendments to introduce an Alternatives Investments asset class, and the TAF Board provided the City with written assurance that these amendments would not introduce any new risk for the City until such time as the RF, By-law and SIOB were brought to Council for consideration. (<https://www.toronto.ca/legdocs/mmis/2022/mm/bgrd/backgroundfile-175540.pdf>)

At its July 9, 2021 meeting, the TAF Board adopted amendments to the SIOB and requested Council's approval via the Chief Financial Officer and Treasurer. (<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2021.TA13.4>)

The RF was adopted June 2006 and amended and restated by City Council at its meeting of May 7, 2013. (<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.EX31.6>)

TAF's [Bylaw #1](#) was adopted October 31, 1995 and amended March 24, 2003.

## COMMENTS

---

TAF and City have been working to review and update the RF and By-laws. The objectives of these updates are to facilitate achievement of TAF's and the City's shared climate goals; to ensure appropriate governance, accountability, and delegation; to recognize TAF's organizational growth, maturity and independence; to streamline and simplify the content of TAF's Governance Documents; and to minimize administrative burden. Given the extent of changes required to the documents, the updates have been undertaken using a "bottom up" approach with consideration to the expressed needs and goals of TAF and the City, as opposed to proposing line-by-line edits of the existing versions of the Governance Documents. The SIOB approved by the Board in July 2021 has been reviewed and adjusted to conform with the RF and the By-laws.

The Relationship Framework describes the relationship between the City and TAF as set out in the TAF Act and other documents and decisions of Council, and addresses relevant requirements arising out of agreements related to TAF; details the accountabilities of TAF to the City; articulates Council's objectives for and expectations of TAF; identifies the support provided by the City to TAF along with the applicable procedures for communication and approvals; and identifies where responsibilities have been delegated to the TAF Board, and where further Council authorities are required to be sought. The RF is to be approved by Council, although TAF's agreement is desired. City staff have taken the lead in drafting the RF updates with significant input from TAF's staff, Board and Solicitor.

Operating By-law #1 focuses on operational and administrative matters and generally follows convention for not-for-profit corporations. Notably, however it does not include a section about Board Members because appointment of Board Members is the authority of Council as set out in the TAF Act; nor does it include Board meeting procedures as

Council approval is also required. Both are included in the RF. TAF's By-laws are within the powers of the Board to approve and require member confirmation at the TAF AGM. TAF's Solicitor has taken the lead in drafting the updated By-laws with input from City staff.

TAF's SIOP sets out the policy for investment of TAF's endowments. The Investment Committee is tasked with undertaking an annual review and recommending any amendments to the Board; TAF staff will engage City staff in that process. The SIOP is approved by the Board and then by Council. The updates approved by the Board in July 2021 and interim amendments adopted by Council in February, which were developed in collaboration with the City, do not require further amendment beyond editorial changes to conform with language in the RF. The Board has already given TAF staff approval to finalize SIOP changes with the Board Chair and Investment Committee Chair and requested, via the CFO, Council approval.

The TAF Act contains two references to the *Corporations Act* (Ontario) (OCA) Section 5(1) refers to specific clauses in the OCA that provide TAF with specific corporate powers. Section 9(6) refers to accounting standards under the OCA. Both are now obsolete since the *Not-for-Profit Corporations Act, 2010* (Ontario) (ONCA) came into effect on October 19, 2021, and applies to TAF on matters where the TAF Act is silent. Additionally, the reference to the OCA in section 5(1) of the TAF Act is problematic since it effectively limits TAF's powers to the specifically enumerated clauses in the OCA. Under the ONCA, all corporations have the powers of a natural person. These references to the OCA in the TAF Act should be replaced with references to the ONCA and section 5(1) of the TAF Act should be amended to provide TAF will all the powers of a natural person, subject only to the ONCA and the TAF Act, which will eliminate uncertainty in considering what TAF has the power to do, especially with respect to borrowing funds.

There may be other minor housekeeping amendments recommended by the provincial legislative drafters to bring the TAF Act up to the required legislative standards.

## **CONTACT**

---

Julia Langer, Chief Executive Officer

## **SIGNATURE**

---

Julia Langer  
Chief Executive Officer

## **ATTACHMENTS**

---

1. Draft Operating By-law #1