

Governance Documents Updates

Date: May 16, 2022
To: Board of Directors of the Toronto Atmospheric Fund
From: Chief Executive Officer

SUMMARY

The Toronto Atmospheric Fund (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:

- By-law No. 1 will contain only operational and administrative matters which, with Council approval, will be within the purview of TAF's Board to approve;
- the RF will contain Council's requirements and the Procedural By-law which would be approved by Council; and
- the SIOP will contain only investment-related requirements which would be approved by both the Board and Council.

TAF staff will provide an update on the proposed content of the RF, including progress since the April 25 Board meeting. In addition, desirable amendments to the Toronto Atmospheric Fund Act (TAF Act) and several other City policies have been identified through the process of updating the governance documents. It is anticipated that a report from the City Manager seeking approval of the RF (which contains the Procedural By-law) and SIOP will be on Council's June 2022 agenda. Updates to By-Law No. 1 will be presented to the Board for approval at its July meeting, after Council's decision, and the Procedural By-Law for adoption.

RECOMMENDATIONS

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

1. Convey to Council, via the City Manager, the Board of Directors' general agreement with the proposed updates to the Relationship Framework, as set out in Attachment 1.
2. Request, via the City Manager, that TAF be added to Schedule A of the Lobbying By-law under the Toronto Municipal Code, Chapter 140.
3. Request, via the City Manager, City Council's approval for TAF and the City to pursue certain amendments to the TAF Act, including:
 - a. To remove or amend outdated references to the Municipal Act; and
 - b. To remove the requirement for committees of TAF to hold Open Meetings.
4. Delegate to TAF's CEO the responsibility to implement the Relationship Framework and SIOP requirements, as appropriate, once approved by City Council.

FINANCIAL IMPACT

None to the City.

DECISION HISTORY

On April 27, 2022, the TAF Board directed the CEO to update the Statement of Investment Objectives and Principles to be consistent with proposed amendments to the Operating By-Law No. 1 and Relationship Framework, and to report to the Board on Operating By-Law No. 1 and an update to the Relationship Framework at the May 25 Special Board meeting.

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

At its February 14, 2022 meeting, the TAF Board articulated seven 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>)

At its February 2, 2022 meeting, City Council adopted interim SIOP 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 SIOP 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 SIOP 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.

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

COMMENTS

TAF and the City have been working to review and update the Relationship Framework, By-laws and investment policy (SIOP). The objectives of these updates are to: facilitate achievement of TAF's and the City's shared climate goals; ensure appropriate governance, accountability, and delegation; recognize TAF's organizational growth, maturity and independence; streamline and simplify the content of TAF's Governance Documents; and minimize administrative burden. This has also been an opportunity to focus Council's direction to TAF – the organization – recognizing that the Board's fiduciary responsibility is to ensure that TAF complies with all requirements by directing TAF's CEO and staff to implement.

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.

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 relating to appointment of Board Members nor Board meeting procedures. Since these elements are subject to the authority of Council as set out in the TAF Act; 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 SIOP sets out the policy for investment of TAF's endowments. 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 City's Chief Financial Officer, Council approval.

The TAF Act (2005) was recently amended to remove Section 11(8) and (9) and, instead, the RF will require TAF to establish a Debt Policy for Council to approve. Several other updates have been identified as needed. First, the TAF Act contains two references to the *Corporations Act* (Ontario) (OCA). Section 5(1) refers to 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 with 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. Secondly, Section 7(1) requires both Board and Committee meetings to be Open Meetings and since most Committees deal with confidential information of one type or another, eliminating this requirement for Committees would be more respectful of the public and in keeping with committee function. In addition, there are outdated references to the Municipal Act which complicate TAF's governance which should be removed or updated. There may be other minor housekeeping amendments recommended by the provincial legislative drafters to bring the TAF Act up to the required legislative standards.

The City has advised that TAF and its employees are not required to register as lobbyists when acting in their official capacity, as it is expected that they are doing so within their obligations to preserve political neutrality and to provide objective advice to the City. TAF scrupulously adheres to these principles when participating in City decision-making on matters relevant to TAF's mandate. TAF is therefore seeking to have this exemption from lobbying registration requirements codified by having TAF added to the list of exempted municipal level corporations under Schedule A of the Toronto Municipal Code, Chapter 140.

CONTACT

Julia Langer, Chief Executive Officer

SIGNATURE

Julia Langer
Chief Executive Officer

ATTACHMENTS

1. DRAFT City of Toronto Relationship Framework for the Toronto Atmospheric Fund
2. DRAFT Statement of Investment Objectives and Principles (SIOP)