

## **Amendment to By-law No.1-2022**

**Date:** November 6, 2024  
**To:** Board of Directors of the Toronto Atmospheric Fund  
**From:** Chief Executive Officer

### **SUMMARY**

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This report recommends an amendment to TAF's By-law No. 1-2022, reintroducing the authority to borrow.

### **RECOMMENDATIONS**

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

1. Approve the proposed new content to be inserted into Amended By-Law No. 1-2022 with the subsequent sections re-numbered accordingly, as presented in Attachment 1.
2. Present the amended By-Law No. 1-2022 to the Members of the Toronto Atmospheric Fund for their confirmation.

### **FINANCIAL IMPACT**

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There is no financial impact resulting from the adoption of the recommendations in this report.

### **DECISION HISTORY**

On July 13, 2022, the TAF Board of Directors approved By-law No. 1-2022, which repealed and replaced the former Amended and Restated By-law Number 1, originally enacted October 31, 1995 and amended March 24, 2003, and presented By-law Number No. 1-2022 to the Members for confirmation.

(<https://secure.toronto.ca/council/agenda-item.do?item=2022.TA18.10>)

On July 13, 2022, the Members of the Toronto Atmospheric Fund adopted the following resolutions: Be it Resolved that By-law No. 1-2022 be confirmed in the form presented to the Members, which repeals and replaces the former Amended and Restated By-law Number 1, originally enacted October 31, 1995 and amended March 24, 2003.

(<https://secure.toronto.ca/council/agenda-item.do?item=2022.AF5.4>)

On June 15, 2022, City Council adopted the amended Relationship Framework and the Procedural By-law as Schedule 1 of the Relationship Framework, and delegated additional authority to the TAF Board to give effect to the Relationship Framework amendments, including to create, amend or repeal the provisions of its Operating Bylaw, also known as By-law No. 1-2022, without having to obtain council approval. (<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2022.EX33.8>)

## COMMENTS

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For reference, TAF's previous By-law Number 1 included the following section from inception until July 2022:

### 12. BORROWING BY THE CORPORATION

12.1. a. Subject to the limitations set out in the By-laws or in the Act, the Board may:

- (1) borrow money on the credit of the Corporation;
  - (2) issue, sell or pledge securities of the Corporation; or
  - (3) charge, mortgage, hypothecate or pledge all or any of the real or personal property of the Corporation, including book debts, rights, powers, franchises and undertakings, to secure any securities or any money borrowed, or other debt, or any other obligation or liability of the Corporation;
- provided that, except where the Corporation borrows on the security of its real or personal property, its borrowing power shall be limited to borrowing money for current operating expenses.

b. If the Corporation borrows or otherwise receives money from the City pursuant to Section 9 of the Act, the Corporation shall not use such money for the purpose of directly or indirectly inducing any industrial, commercial, manufacturing or business enterprise to locate in the City.

12.2 From time to time the Board may authorize any director, officer or employee of the Corporation or any other person to make arrangements with reference to the money so borrowed or to be borrowed and as to the terms and conditions of the loan thereof, and as to the security to be given therefor, with power to vary or modify such arrangements, terms and conditions and to give such additional security as the Board may authorize, and generally to manage, transact and settle the borrowing of money by the Corporation.

TAF's Operating By-law was updated concurrently with the update of the City of Toronto/Toronto Atmospheric Fund Relationship Framework (the RF). The RF, which was approved by City Council in June 2022, includes a requirement for TAF to adopt a Debt Policy.

#### 10.4 Debt Policy

The Board will adopt a Debt Policy, to be approved by Council, which includes the following elements:

- i) Permissible purposes for borrowing;

- ii) Debt service ratios and their maximum limits;
- iii) Total debt limits; and
- iv) Debt terms and term limits

The rationale for removing the above referenced section of the By-law pertaining to borrowing was that a Debt Policy would be established and reflected in the By-law as necessary.

With support from TAF's third-party investment advisor, HUB/Proteus, TAF staff drafted a Debt Policy which was shared with City staff in late 2023 and discussed with the CFO's office in May 2024. This includes reference to the relevant authorities and responsibilities in respect of taking on debt, purpose of borrowing, terms and limits, and compliance and accountability requirements. TAF staff are awaiting response to several questions raised by the CFO's office. For clarity, the Debt Policy will not confer authority to borrow – that is the function of the By-law, TAF Act and RF -- but rather set the boundary conditions and responsibilities for any borrowing.

However and in the meantime, TAF now needs to draw the loan from the Federation of Canadian Municipalities Green Municipal Fund which was duly approved on April 30, 2018 by the TAF Board (<https://secure.toronto.ca/council/agenda-item.do?item=2018.TA20.4>) and June 26, 2018 by City Council (<https://secure.toronto.ca/council/agenda-item.do?item=2018.TA20.4>). The funds will be used to finance the deep retrofit of a large TCHC building; this project and the terms and conditions for financing are spelled out in a separate item for this meeting (Item TA8.3). TAF cannot complete the legal documentation required to draw the loan without the confirmation of TAF's authority to borrow as specified in a By-law.

Borrowing authority is a standard feature of corporate By-laws and within TAF's ambit as a non-share capital corporation under the relevant sections of the *Corporations Act* referenced in the TAF Act and the recent *Not-for-Profit Corporations Act, 2010*. TAF's Solicitor has drafted the authority to borrow language which is proposed. The provisions are based on the provisions of the pre-2022 by-law, with some updates to reflect changes to the TAF Act and changes to the regulation of non-profits in Ontario. If the Debt Policy approved at a later date by Council requires any changes to the authority to borrow as set out in the proposed By-law, these can be specified and directed by Council and amendments will be brought to the Board for approval.

The process for amending TAF's By-law is spelled out in the by-law, specifically:

10.1 By-law Enactment, Amendment or Repeal

Unless the Act, the TAF Act, or any By-law otherwise provide, the Directors may, by resolution, make, amend, or repeal any By-law and any such By-law or amendment or repeal shall be effective when approved by the Board, with the exception of matters referred to in subsections 103(1)(g), (k) and (l) of the Act. If the By-law amendment or repeal is so confirmed, or confirmed as amended, by the Members entitled to vote thereon, it remains effective in the form in which it was confirmed. The By-law amendment or repeal ceases to have effect if it is not submitted by the Directors to the Members at or before the next annual meeting or if it is so presented but rejected by the Members entitled to vote thereon. If a

By-law, amendment, or repeal ceases to have effect, a subsequent resolution of the Directors that has substantially the same purpose or effect is not effective until it is confirmed, or confirmed as amended, by the Members entitled to vote thereon.

A special meeting of the Members of the Toronto Atmospheric Fund has been called to consider and vote on a proposed amendment of the TAF By-law No. 1 -2022.

## **CONTACT**

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## **SIGNATURE**

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Julia Langer  
Chief Executive Officer

## **ATTACHMENTS**

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1. New content for Bylaw No. 1-2022: Article 9 Borrowing Powers