

Management of the Controlled Corporations Considerations and Options

INTRODUCTION

This Appendix addresses various issues with respect to the management of the City's Controlled Corporations, including the relationship between the City and the Controlled Corporations. More specifically, this Appendix addresses key issues such as:

- Should the Controlled Corporations be required to have uniform policies? If so, what might those be?
- Should other more administrative or operational policies be implemented by the Controlled Corporations?
- What services do the City Administration provide to the Controlled Corporations? Should this be expanded? If so, what mechanisms can be implemented to ensure a more efficient and streamlined approach can evolve?
- Should City Council provide additional oversight into the selection of the CEOs for the Controlled Corporations?
- Should the City and the Controlled Corporations establish a Memorandum of Understanding and Operating Agreement for each facility to further clarify and enhance the relationship and roles between the City and the Controlled Corporations?

Where applicable, this Appendix provides options and recommendations for consideration of ways in which to resolve the issues identified above. The proposed recommendations attempt to strike a reasonable balance between corporate independence and shareholder oversight. On one hand, the Controlled Corporations have been created as separate arms' length corporations who operate independently from the City. On the other hand, the City, as the sole Member of the Controlled Corporations and the owner of these major assets, needs to provide some level of oversight to protect its interest.

ISSUES AND OPTIONS

ISSUE #1: ADOPTION OF UNIFORM POLICIES

Appendix 1 contains a list of all policies identified by the Controlled Corporation Boards as being adopted to govern the actions of the Boards and the facilities' staff.

DIRECTORS' CODE OF CONDUCT AND THE DIRECTORS' ANTI-HARASSMENT POLICY

Each of the City's Controlled Corporations have adopted the *Directors' Code of Conduct* (the "Code"), and the *Directors' Anti-Harassment Policy*, in respect of Board Member conduct.

The Code sets out the ethical duties and principles to which Directors are required to adhere, and largely mirror the responsibilities required by the NPCA. For example, the

Code specifically recognizes a Director's fiduciary duties to act in the best interest of the Controlled Corporation, to avoid taking personal advantage of corporate opportunities, to protect confidential information and avoid conflicts of interest, and adhere to the *Directors' Anti-Harassment Policy*.

The Code also describes the complaints investigation process and provides the Board Chair or Vice-Chair, as required, the discretion to investigate complaints. There are no existing obligations for the Board to involve or otherwise inform the City of complaints unless a recommendation for removal of a Board member is made to GPC. City Council, however, has reserved to itself the ability, for any reason it thinks fit, to remove Directors from the Boards.

Attached to the Code is the *Directors' Anti-Harassment Policy*, which defines different forms of harassment, establishes the rights and obligation of Directors to maintain a harassment-free workplace, and outlines the complaint investigation process. The complaints investigation process is the responsibility of the Board Chair or Vice-Chair, as required.

These two policies have existed in their current form since 2006. Accordingly, the Governance Subcommittee recommends that they be reviewed and revised. Such an update is timely considering City Council's recent consideration of its own Code of Ethics Bylaw.

RECOMMENDATION

That the Governance and Priorities Committee recommend to City Council that the Governance Subcommittee update the *Directors' Code of Conduct* and the *Directors' Anti-Harassment Policy* and that the new policies be provided to the Controlled Corporations for adoption.

ADOPTION OF OTHER POLICIES

The Governance Subcommittee also identified a number of other areas where the City would benefit from having the Controlled Corporations implement uniform policies.

These policies would include:

- **Protection of Public Funds:**
 - Financial Responsibility and Transparency
 - A consistent policy addressing borrowing limits, debt limits, financial controls including approval limits, approvals required for a board to apply for capital funds from senior levels of government, budget process, and financial accounting practices would help provide correlation between the practices of the City and the Controlled Corporations. This approach would be helpful when it comes to coordination of budgets.
 - A consistent purchasing policy which ensures compliance with our trade treaty obligations.
 - A consistent travel and expense policy with respect to employees.

- **Ensuring a Safe, Respectful and Harassment-Free Workplace:**
 - Respectful and Harassment-Free Workplace Policy
 - A harassment policy is required by provincial legislation. It would be prudent to provide a comprehensive and standardized process to ensure that complaints are handled appropriately and within a timely fashion.
 - Drug and Alcohol Policy
 - Employee Code of Conduct and Conflict of Interest Policy

SaskTel Centre already has policies in place covering many of these matters in some fashion. Remai Modern and TCU Place have policies addressing some of them.

In drafting these uniform policies the Governance Subcommittee would draw on the policies already developed by the Controlled Corporations, as well as City policies and other sources, to create standard policies that, while uniform, are nonetheless comprehensive enough to be functional for each specific facility. In drawing from the policies already in place, the SaskTel Centre's policies could be the primary source for the Financial Responsibility and Transparency Policy. Engagement with the City's Corporate Financial Services Department would be crucial. The City's own Policy No. A04-026, *Respectful and Harassment-Free Workplace Policy* and Policy No. A04-021, *Alcohol and Drug Policy* could form the basis for the corresponding Controlled Corporation versions.

The above list is not exhaustive. Other policies may be considered. For example, a CEO Recruitment Policy. Likewise, consideration of a Tickets for Board Members or House Seats Policy might be prudent.

Short of requiring the Controlled Corporations to adopt uniform policies drafted by the City, an alternative would be to have the City identify the policies that each Controlled Corporation must have and leave the content of such policies to the discretion of the Controlled Corporations. This would be a reasonable approach recognizing the status of the Controlled Corporations as independent corporations. The Governance Subcommittee is recommending a hybrid whereby the policies identified above would be drafted by the City for adoption by each Controlled Corporation Board and the need for additional policies would be left up to the Board of each Controlled Corporation. The Governance Subcommittee will develop a list of policies that represent good governance and provide it to the Controlled Corporations as part of the Board orientation. Development of those policies will be left up to the Boards of each Controlled Corporation.

RECOMMENDATION

That the Governance and Priorities Committee recommend to City Council:

1. That the Governance Subcommittee draft Financial/Transparency policies, a Respectful and Harassment-Free Workplace Policy, a Drug and Alcohol Policy, an Employee Code of Conduct and Conflict of Interest Policy, and any other policies as required, in consultation with the Controlled Corporations and that the new policies be provided to the Controlled Corporations for adoption.
2. That the Governance Subcommittee develop a list of other policies to be drafted and adopted by the Controlled Corporation Boards.

ISSUE #2: SHARING CITY SERVICES

In response to City Council's resolution of November 26 & 27, 2018, representatives of the City in each of the Human Resources (HR), Information Technology (IT), Corporate Financial Services (Finance), City Solicitor's Office (Legal) and Indigenous Initiatives areas were engaged, along with the Chief Executive Officers of the Controlled Corporations and the Saskatoon Public Library ("SPL") to determine the level of service currently provided to those entities by the City and the extent to which those functions are addressed in house.

Appendix 5A provides details of the shared services engagement. To summarize:

- Legal Services
 - Neither the Controlled Corporations nor the SPL strictly obtain legal services in house.
 - SaskTel Centre and TCU Place reported that such services are strictly provided by the City, while both the Remai Modern and the SPL reported a hybrid of receiving service from the City Solicitor's Office and through the hiring of third-party private counsel.
 - With the exception of annually arranging appropriate insurance coverage for the Controlled Corporations and the SPL, the City Solicitor's Office responds to requests for assistance from each entity.
- Financial Services
 - Each of the Controlled Corporations are largely independent in respect of financial services.
 - Each Controlled Corporation has its own finance employees, manages daily financial transactions, prepares their own budgets and has its own accounting software, processes and policies.
 - However, payroll services are provided by the City for all of the Controlled Corporations and the SPL. Implementation of the ERP system may result in changes.
- IT Support
 - All of the Controlled Corporations and the SPL report that IT support is strictly provided in house. The exception is the VOIP phone system.

- HR Support
 - Each Board has hired or contracted its own Human Resources' personnel; however, assistance from the City is required from time to time.
 - The City handles criminal records and vulnerable sector checks for employees, manages loans for computer/exercise equipment purchases for employees, and provides immigration services if the Boards are hiring from outside Canada.
 - Although each Board has its own payroll clerks, all payments come from and are managed by the City.
 - In addition to these duties, the City provides advice and guidance whenever asked to do so regarding workforce planning, performance management, recruitment/selection of employees, contracts, addressing grievances, succession planning, executive contracts, salary, discipline and harassment consultation/investigation.
 - The City also provides Occupational Health & Safety Services, consulting, disability and attendance management services, pension/benefits consulting services and leads bargaining activities with the various unions.
- Indigenous Initiatives
 - All of the Controlled Corporations report that they manage Indigenous Initiatives in house.
 - All of the Controlled Corporations and the SPL report that they consult with the City's Director of Indigenous Initiatives as needed.

The engagement results reveal that the Controlled Corporations and the SPL are largely independent in how they choose to deliver corporate-type services in their organizations. In situations where the City Administration does provide assistance, it is largely at the request of the respective Controlled Corporation or Statutory Board. Moreover, the noted City departments and/or divisions do not appear to be resourced to manage all of the day-to-day responsibilities of the Controlled Corporations and the SPL.

While there may be areas to realize efficiencies by sharing services, it is prudent to remember that each of the Controlled Corporations and the SPL are arms' length entities from the City. Their independence must be recognized. To that end, it is also noted that City Council has already resolved to maintain a Controlled Corporation governance structure. Requiring that these types of services all be provided by City Administration, or alternatively requiring that City Administration be embedded in the Controlled Corporations and the SPL to perform these functions, would undermine the independence of these entities and run contrary to the governance model chosen. Pursuing either of these avenues would more closely resemble a City department model rather than maintaining the current governance structure.

There would, however, be opportunities short of requiring the performance of these functions by City Administration to potentially realize some efficiencies and streamline processes. As noted in the engagement with the City's Corporate Financial Services Department, it would be more cost-effective and efficient to require the Controlled

Corporations to follow the City's policies and create uniformity and consistency in their financial practices and reporting. In part, this is the reason for the recommendation of uniform policies in this area.

In addition, the Controlled Corporations could ask the City to provide services and the City could likely provide these services at very cost effective rates. We would recommend that this be at the option of each Controlled Corporation. However, clarity is required when the City Administration is asked to provide services to the Controlled Corporations. In those instances where the City Administration is providing services, or is being asked to provide services, the Governance Subcommittee recommends that Service Agreements be entered into between the City and each Controlled Corporation. This provides a clear framework as to what services are being provided and at what cost. The Technical Advisory Committee could assist in the development and administration of these Service Agreements.

RECOMMENDATION

That the Governance and Priorities Committee recommend to City Council that services be provided to the Controlled Corporations only upon request and that Service Agreements be entered into for the provision of those services.

ISSUE #3: CITY COUNCIL OVERSIGHT OF CEO APPOINTMENTS

The *OECD Guidelines* state as follows regarding oversight of CEO appointments for state-owned enterprises (SOEs):

"One key function of SOE boards should be the appointment and dismissal of CEOs. Without this authority it is difficult for SOE boards to fully exercise their monitoring function and assume responsibility for SOEs' performance. In some cases, this might be done in concurrence or consultation with the ownership entity."

*Some countries deviate from this good practice and in the case of fully state owned SOEs allow the state to appoint directly a CEO. To ensure that the integrity of the board is maintained, good practice would at least require consultations with the board."*¹

Given the presence of Council members on each Board, there is an argument that the City should refrain from exerting increased oversight of CEO appointments. This would appear to be in accordance with the practice described above, in respect of a board's discretion in this area. However, the above quote also recognizes that in some cases a state will reserve to itself the right to appoint a CEO directly. Given the desire to achieve standardization of process and to facilitate accountability and transparency in management of the City's Controlled Corporations, City Council should consider whether it wishes to maintain some oversight in the appointment of the respective CEOs and the approval of CEO contracts.

¹ *Guidelines*, *supra* note 6, page 70.

OPTIONS

Option 1: Requiring Establishment of a CEO Recruitment/Performance Committee for Each Controlled Corporation

This option requires the establishment of a uniform CEO Recruitment/Performance Committee for each Controlled Corporation, and requires that its composition include at least one or more members of Council depending on what is decided in terms of Board composition. Consistent terms of reference for such a committee would be required to hopefully ensure consistency in the process. A CEO Recruitment Policy would be one that City Council requires the Boards to adopt. This option would require amendment to the Corporate Bylaws of the Controlled Corporations. There are no other legal, financial, or implementation challenges with this option.

Advantages:

- Provides for a consistent approach to CEO recruitment between the Controlled Corporations.
- Provides a balance between City involvement and independence of the Controlled Corporations.

Disadvantages:

- Provides less flexibility to the Controlled Corporations.

Option 2: Development of a Reporting or Engagement Process Between the City and the Controlled Corporations

This option requires the development of a reporting or engagement process such that GPC, City Council or a member of the City Administration would have the opportunity to participate in the vetting process of potential applicants for a position of CEO. They would also participate in the negotiation of CEO contracts to ensure consistency in the processes and in the terms of employment. This option would require amendment to the Corporate Bylaws of the Controlled Corporations. There would be no other legal, financial or implementation challenges.

Advantages:

- Provides for City input into the recruitment and hiring of a CEO.
- Provides for consistent terms of employment between the Controlled Corporations.

Disadvantages:

- Involves the City heavily in CEO recruitment.
- Does not recognize the independence of the Controlled Corporations.

Option 3: Require the Adoption of a CEO Recruitment Policy for Each Board

This option proposes that each Controlled Corporation develop a CEO Recruitment Policy to address recruitment and employment parameters for the hiring of a CEO. The City would have no involvement in the development of the Policy. Composition of any hiring committee would be left up to each Controlled Corporation. However, as outlined previously, any recommendation of the committee would have to come to the Board for approval. This option could have financial challenges as compensation to CEOs could vary widely between the Controlled Corporations and the City. This option has no legal or other implementation challenges.

Advantages:

- Provides flexibility to the Controlled Corporations.
- Recognizes the independence of the Controlled Corporations.

Disadvantages:

- CEO recruitment between Controlled Corporations could be inconsistent.
- Potentially no City involvement in the CEO recruitment process.

Option 4: Maintain Status Quo

This option proposes that the status quo be maintained and the recruitment of a CEO be left entirely to the Board. It would be up to the Board to determine if a policy was required and to decide on the terms and conditions of employment. This option could have financial challenges as compensation to CEOs could vary widely between the Controlled Corporations and the City. This option has no legal or other implementation challenges.

Advantages:

- Provides flexibility to the Controlled Corporations.
- Recognizes the independence of the Controlled Corporations.

Disadvantages:

- CEO recruitment between Controlled Corporations could be inconsistent.
- Potentially no City involvement in the CEO recruitment process.

RECOMMENDATION

That the Governance and Priorities Committee recommend to City Council that:

1. A uniform CEO Recruitment Policy be drafted by the Governance Subcommittee and provided to the Controlled Corporations for adoption.
2. The Corporate Bylaws of the Controlled Corporations be amended to require the establishment of a CEO Recruitment/Performance Committee for each Controlled Corporation.

3. A City Councillor be appointed to the CEO Recruitment/Performance Committee for each Controlled Corporation (Option 1: Requiring Establishment of a CEO Recruitment/Performance Committee for Each Controlled Corporation).

RATIONALE

The CEO is fundamental to manage the operation of each of the Controlled Corporations. The Controlled Corporations have to be provided with the ability to recruit and retain their own CEOs. It is a key function of the Boards of the Controlled Corporations as outlined by the literature.

However, the City is the sole Member of the Controlled Corporations and public money is being spent to fund the budget of each Controlled Corporation. Therefore, having some consistency between the Controlled Corporations and with the City itself in terms of recruitment practices and terms and conditions of employment is appropriate. However, it is the intention of the Governance Subcommittee to draft a CEO Recruitment Policy with as much flexibility as possible to the Controlled Corporations.

Having a City Councillor appointed to a CEO Recruitment/Performance Committee provides some voice to the City in the process. Despite their allegiance to City Council, the Councillor would be expected to act in the best interests of the Controlled Corporations. Any recommendation of a CEO Recruitment/Performance Committee would require approval by the entire Board.

The Governance Subcommittee feels this option strikes an appropriate balance between independence of the Controlled Corporations and the need for some consistency between the City and the Controlled Corporations.

ISSUE #4: ESTABLISHING ROLES AND RESPONSIBILITIES BETWEEN THE CITY AND THE CONTROLLED CORPORATIONS

Good governance requires that the roles and responsibilities of the Controlled Corporations and the City be clearly articulated and understood by both parties. There are many different ways that the roles and responsibilities between the Controlled Corporations and the City could be recognized.

MEMORANDUM OF UNDERSTANDING

One approach to accomplish this would be through the establishment of an individual Memorandum of Understanding (MOU) between the City and each Controlled Corporation.

The MOU could establish a more clear relationship between the City and an individual Controlled Corporation by clarifying:

- The governance framework of each Controlled Corporation.
- The role of each Controlled Corporation.
- The role of the City.

- The reporting relationship and structure between the City and each Controlled Corporation.
- The desire for consistent employee salaries and terms and conditions of employment for each Controlled Corporation.
- Other such matters as negotiated between the Controlled Corporations and the City.

A MOU would be a high-level framework document to complement the Corporate Bylaws of each Controlled Corporation. The Governance Subcommittee, in consultation with the Controlled Corporations, would draft an MOU for each Controlled Corporation and bring each back to City Council for approval. Each Controlled Corporation would also need to approve the MOU.

RECOMMENDATION

That the Governance and Priorities Committee recommend to City Council that the City Solicitor negotiate a Memorandum of Understanding with each Controlled Corporation and bring each back to City Council for approval.

OPERATING AGREEMENT

Each Controlled Corporation operates a City-owned facility. These facilities are worth significant value to the City of Saskatoon.

Historically, there has been no formal Operating Agreement between the City and the Controlled Corporations regarding the management and/or operation of these facilities. The Governance Subcommittee believes that there would be benefit in having an Operating Agreement between the City and each Controlled Corporation. This Agreement could set out the roles and responsibilities of each party with respect to the day-to-day operation of each facility. This could include insurance, building condition, building upgrades and other similar items.

RECOMMENDATION

That the Governance and Priorities Committee recommend to City Council that the City Solicitor negotiate an Operating Agreement with each Controlled Corporation and bring each back to City Council for approval.

APPENDICES

5A Shared Services Comparison – Controlled Corporations