

Governance Review of Controlled Corporations – Governance Details

ISSUE

The City of Saskatoon has established non-profit controlled corporations to oversee the operations of three arts, culture and event facilities: Saskatchewan Place Association Inc. (“SaskTel Centre”), The Centennial Auditorium & Convention Centre Corporation (“TCU Place”) and The Art Gallery of Saskatchewan Inc. (“Remai Modern”) (collectively, the “Controlled Corporation(s)”). City Council has decided to continue with the Controlled Corporation model, but what additional changes are required to further refine the selected governance model?

BACKGROUND

2.1 History

At the February 13, 2017 meeting of the Governance and Priorities Committee (“GPC”), the Committee resolved:

"That the project parameters for the review of governance structures, models, practices and procedures of Advisory Committees, Controlled Corporations, Business Improvement Districts and any other agency, board or commission established by the City of Saskatoon be approved."

In Phase One of the governance review, the approved project parameters provided that the Leadership Team Governance Subcommittee (“Governance Subcommittee”) will provide recommendations respecting a general governance model for Controlled Corporations.

At GPC's June 18, 2018 meeting, GPC resolved to recommend to City Council that:

1. The City Non-Profit Controlled Corporation Approach (governing a single facility), as outlined in the report of the Leadership Team Governance Subcommittee dated March 19, 2018 and described as option 1a. under Governance Structure, be chosen as the governance model for the Controlled Corporations; [and]
2. The Leadership Team Governance Subcommittee report further on next steps for implementation of the chosen governance model.
... ”

At the Regular Business Meeting of City Council on June 25-26, 2018, City Council adopted GPC's recommendations. The relevant reports and attachments can be found at Item 8.5.2: [here](#) . City Council's direction is aligned with Phase Two reporting as described in the governance review approved project parameters, which provide that the Governance Subcommittee will provide recommendations respecting specific policy and bylaw amendments, in light of the general governance model selected.

Also referred to the Governance Subcommittee are a number of matters related to the Controlled Corporation review:

- At its Regular Business Meeting held on January 25, 2016, City Council resolved that:
“Would the Administration please report back to the appropriate committee regarding the possible implementation of an orientation process for new members of Civic boards, committees, and commissions.”
- At its Regular Business Meeting held on December 12, 2016, City Council resolved, in part:
“That the matter of proposed changes to The Art Gallery of Saskatchewan Inc. Articles and Bylaws be referred to the Leadership Team Governance Subcommittee for further review and report in time for the 2018 board appointments.”

The Remai Board had proposed changes including:

- Increasing the size of the Board from a maximum of 14 to 16 Directors.
- Permitting the Board to set the actual number of Directors within the specified range.
- Requiring that City Council appoint Directors from a list prepared by the Board.
- Permitting Board members to serve for longer than a six-year maximum.
- Creating a position of Director Emeritus.
- Providing for the ability of Board members to meet outside of Saskatoon city limits.
- Specifying the committees to be established by the Board and the ability to have non-Directors serve as members of a committee.
- Codifying that a Director who also serves as a member of City Council has the ability to report to City Council and GPC *In Camera*.

Finally, at the Preliminary Business Plan and Budget meeting of City Council held on November 26 and 27, 2018, City Council resolved in part:

- “3. That the Administration do a detailed review (requirements, what can be provided in-house, etc.) of the HR, IT, Finance, Legal and Indigenous Relations of the Controlled Corporations and Saskatoon Public Library Board for consideration by the Governance and Priorities Committee prior to 2020 Corporate Business Plan and Budget deliberations.”

2.2 Current Status

The City Administration is continuing the process of reviewing and proposing recommendations for potential improvements to the governance of the City of Saskatoon’s various Advisory Committees, Controlled Corporations, Business Improvement Districts (“BIDs”) and other agencies, boards and commissions.

The focus of this report is to provide recommendations for changes to the existing governance model of the City’s Controlled Corporations. Changes are intended to standardize processes and simplify Council’s management of the facilities while promoting accountability and transparency.

2.3 Engagement

In preparing this decision report and previous reports on the governance of the City’s Controlled Corporations, the City Administration engaged with the Board Chairs of the Controlled Corporations. The Board Chairs’ comments, attached to the previous report, also informed some of the recommendations in this report. In addition, an external consultant was retained to review the results of the Governance Subcommittee and provide input on a possible governance structure. This consultant may be engaged to provide further review and input as this discussion proceeds.

2.4 City of Saskatoon’s Current Approach

The City is the sole Member of each Controlled Corporation. Pursuant to section 88 of *The Non-Profit Corporations Act, 1995* (the “NPCA”), the Controlled Corporations are each governed by a Board of Directors, charged with managing the activities and affairs of the Corporation. In general, the Board of Directors consists of members of City Council and several volunteer members-at-large.

The Boards govern the Corporations according to the corporate purpose set out in the respective Articles of Incorporation, and within the parameters of the respective Articles and Corporate Bylaws more generally. The Boards report to City Council on financial statements, auditor’s reports, and any other business as may properly be brought

before an annual Member's meeting, such as consideration of any Articles or Bylaw amendments proposed by the Boards. Appointments to the Boards are the sole responsibility of City Council.

While similar, the internal governance structure of each of the City's Controlled Corporations has some nuances. For example, size and composition varies between the Boards. So too does the types and mandates of internal committees and the establishment and adoption of internal policies applicable to the Boards, CEOs and facilities' staff.

Appendix 1 provides a more detailed overview of the internal governance of the City's Controlled Corporations, including the size of the respective Boards, a list of each Board's committees. Appendix 1 also contains a general description of their mandate and composition, and a list of the policies that have been established by each Controlled Corporation.

2.5 Approaches in Other Jurisdictions

A summary of the various approaches used in other Canadian jurisdictions were described in a previous report, found: [here](#). In writing this report, the Governance Subcommittee reviewed *The Cities Act*, the NPCA, the internal policies, the Articles of Incorporation and the Corporate Bylaws of the Controlled Corporations. In addition to reviewing these sources, the Governance Subcommittee also reviewed the following other sources of information:

- Articles and bylaws of municipally controlled corporations in other jurisdictions.
- Statistic indexes of board sizes, compositions and policies in the private sector.
- International guidelines on corporate governance, including material specifically related to governance of state-owned enterprises.
- Guidelines on governance of crown corporations published by other Canadian provinces.
- Academic and other articles on board and committee size and composition.

OPTIONS

City Council has decided to retain the City non-profit, controlled corporation model as the method of governance for TCU Place, SaskTel Centre and the Remail Modern. Under this model, the Controlled Corporations are separate arms' length corporations and not City departments. However, as the sole Member of the Controlled Corporations, the City does retain ultimate control.

Governance of the City's Controlled Corporations is a complex topic and there are several different, yet interrelated issues to consider. The Governance Subcommittee

believes that it is important for City Council to understand the interplay of the different issues.

Thus, rather than splitting them into a series of separate reports, the Governance Subcommittee has included them in this report. However, in an effort to address the issues, the report and its accompanying appendices breaks them down into smaller, more understandable sections. More specifically the Governance Subcommittee has grouped appropriate decision areas together and attached them as separate documents to this report.

The following is an outline of this report and its accompanying appendices:

- Board of Directors of Controlled Corporations – Considerations and Options (Appendix 2):
 - Board Size.
 - Board Composition.
 - Board Meetings:
 - Meeting Procedures.
 - Meetings Outside City Limits.
 - Board Orientation.
- Directors of the Controlled Corporations – Considerations and Options (Appendix 3):
 - Appointment of Directors.
 - Residency of Directors.
 - Length of Appointment.
 - Board Recruitment.
- Committees of the Boards – Considerations and Options (Appendix 4):
 - Types of Committees.
 - Composition of Committees.
- Management of the Controlled Corporations – Considerations and Options (Appendix 5):
 - Adoption of Uniform Policies.
 - Directors’ Code of Conduct and the Directors’ Anti-Harassment Policy.
 - Adoption of Other Policies.
 - Sharing City Services.
 - City Council Oversight of CEO Appointments.
 - Establishing Roles and Responsibilities Between the City and the Controlled Corporations.
 - Memorandum of Understanding.
 - Operating Agreement.

With that context in mind, this report and its accompanying appendices evaluates various options and makes a series of recommendations that attempt to build upon and improve the current governance structure. The recommendations should be viewed as

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a series of building blocks aimed at clarifying the relationship, roles and responsibilities of both the Controlled Corporations and the City. They also attempt to strike a balance between respecting the independence of the City's Controlled Corporations while maintaining the principles of transparency and accountability.

In making these recommendations, the Governance Subcommittee has been guided by the following principles, which were highlighted in the June 25, 2018 report:

- Provide a clear and transparent division of powers between City Council and the role and responsibilities of Board members, Board committees and officers of the Controlled Corporations.
- Ensure appropriate reporting structures and processes are in place to make decisions and direct and manage the activities and affairs of the Controlled Corporations.
- Establish mechanisms to achieve accountability between City Council, management and stakeholders, including creating policies to guide the culture of the Controlled Corporations and the behaviour of Board members, officers and other staff.

In order to assist City Council in making its decisions, this report provides a consolidated list of the recommendations:

RECOMMENDATION

That the Governance and Priorities Committee recommend to City Council:

Board of Directors of Controlled Corporations (Appendix 2):

1. That it set a range for Board size of 6 to 15 Directors for each Controlled Corporation (*Option 2: Establish a Consistent Range for Board Size Between Controlled Corporations, Issue #1: Board Size*).
2. That two City Councillors be appointed to the Board of each Controlled Corporation (*Option 2: Appoint Only Two Councillors, Issue #2: Board Composition*).
3. That the Corporate Bylaws be amended to codify that a Director who also serves as a member of Council has the ability to report to City Council and the Governance and Priorities Committee *In Camera* (*Option 2: Appoint Only Two Councillors, Issue #2: Board Composition*).
4. That each Controlled Corporation adopt meeting procedures within 60 days of this resolution being passed by City Council (*Meeting Procedures, Issue #3: Board Meetings*).
5. That it maintain the status quo and limit meetings to occur within Saskatoon city limits (*Option 1: Maintain the Status Quo and Limit Meetings to Occur Within Saskatoon City Limits, Meeting Outside City Limits, Issue #3: Board Meetings*).
6. That the City Clerk's Office conduct mandatory Board Orientation with each of the Controlled Corporations on an annual basis (*Issue #4: Board Orientation*).

Directors of the Controlled Corporations (Appendix 3):

1. That the appointments of Directors continue to be made by City Council in its sole discretion and the Corporate Bylaws of the Controlled Corporations be amended to make this clear (*Issue #1: Appointment of Directors*).
2. That the Corporate Bylaws and Policy No. C01-003, *Appointments to Civic Boards, Commissions, Authorities and Committees* be amended to allow each Controlled Corporation to have a maximum of two non-resident members but that the non-resident members not be allowed to vote on the annual budget (*Option 2: Allow Appointment of Two Non-Resident Board Members, Issue #2: Residency of Board Members*).
3. That the status quo of two-year appointments to a maximum of six consecutive years remain in place (*Issue #3: Length of Appointment*).
4. That the Board Recruitment Process remain status quo (*Issue #4: Board Recruitment*).

Committees of the Boards (Appendix 4)

1. That an Audit Committee be required to be established and that the Corporate Bylaws of the Controlled Corporations be amended to clarify that committees shall be advisory in nature only and that all decisions must be made by the Boards (*Option 1: Maintain Status Quo, Issue #1: Types of Committees*).
2. That the determination of committee composition be left up to the Boards (*Option 1: Maintain Status Quo, Issue #2: Composition of Committees*).

Management of the Controlled Corporations (Appendix 5)

1. 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 (*Directors' Code of Conduct and the Directors' Anti-Harassment Policy, Issue #1: Uniform Policies*).
2. 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 (*Issue #1: Uniform Policies*).
3. That the Governance Subcommittee develop a list of other policies to be drafted and adopted by the Controlled Corporation Boards (*Issue #1: Uniform Policies*).

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4. 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 #2: Sharing City Services*).
5. A uniform CEO Recruitment Policy be drafted by the Governance Subcommittee and provided to the Controlled Corporations for adoption (*Option 1: Requiring Establishment of a CEO Recruitment/Performance Committee for Each Controlled Corporation, Issue #3: City Council Oversight of CEO Appointments*).
6. The Corporate Bylaws of the Controlled Corporations be amended to require the establishment of a CEO Recruitment/Performance Committee for each Controlled Corporation (*Option 1: Requiring Establishment of a CEO Recruitment/Performance Committee for Each Controlled Corporation, Issue #3: City Council Oversight of CEO Appointments*).
7. 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, Issue #3: City Council Oversight of CEO Appointments*).
8. That the City Solicitor negotiate a Memorandum of Understanding with each Controlled Corporation and bring each back to City Council for approval (*Memorandum of Understanding, Issue #4: Establishing Roles and Responsibilities Between the City and the Controlled Corporations*).
9. That the City Solicitor negotiate an Operating Agreement with each Controlled Corporation and bring each back to City Council for approval (*Operating Agreement, Issue #4: Establishing Roles and Responsibilities Between the City and the Controlled Corporations*).

RATIONALE

The rationale for each recommendation is provided in the relevant section as outlined in the accompanying appendices.

ADDITIONAL IMPLICATIONS/CONSIDERATIONS

If the recommendations are adopted by City Council, further work will be required by the Governance Subcommittee, in consultation with other members of the City Administration and the Controlled Corporations, to draft:

- Corporate Bylaw amendments.
- Uniform policies.
- A Memorandum of Understanding with each Controlled Corporation.
- An Operating Agreement with each Controlled Corporation.
- Service Agreements, where the City Administration is being asked to provide services to Controlled Corporations.

Where necessary, these documents will be presented to City Council for approval.

COMMUNICATION ACTIVITIES

It is intended that this report be tabled until the November 2019 meeting of GPC. The Governance Subcommittee will offer to meet with each Board of the Controlled Corporations to get their feedback on the contents of the report. This feedback will be consolidated and brought back to the November 2019 meeting of GPC.

PUBLIC NOTICE

Public Notice pursuant to Section 3 of Policy No. C01-021, Public Notice Policy, is not required.

APPENDICES

1. Overview of Current Internal Governance Structure - City of Saskatoon
Controlled Corporations
2. Board of Directors of Controlled Corporations - Considerations and Options
3. Directors of the Controlled Corporations – Considerations and Options
4. Committees of the Boards – Considerations and Options
5. Management of the Controlled Corporations – Considerations and Options

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