

Governance Review – Controlled Corporations – Repeal and Replacement of Bylaw No. 1 – Member Resolution

ISSUE

Implementation of City Council’s resolutions arising from the Governance Review of the Controlled Corporations requires that amendments to the corporate bylaws be made. This report submits resolutions of the sole member, the City of Saskatoon (“Member”) to repeal and replace Bylaw No. 1 for each of The Art Gallery of Saskatchewan Inc. (“Remai Modern”), Saskatchewan Place Association Inc. (“SaskTel Centre”) and The Centennial Auditorium & Convention Centre Corporation (“TCUP”). The proposed corporate bylaw amendments implement the changes directed by City Council. In addition, the new Bylaw No. 1 for each of the Controlled Corporations consolidates previous amendments bringing the corporate bylaws current and contains housekeeping amendments and proposed edits to achieve consistency as between the Controlled Corporations’ corporate bylaws and in accordance with *The Non-profit Corporations Act, 1995* (“NPCA”).

As directed by City Council, proposed revisions to the *Directors’ Code of Conduct and Directors’ Anti-Harassment Policy* are also presented for consideration and approval. The revisions aim to modernize these documents.

RECOMMENDATION

1. That City Council authorize the City Clerk as its representative to execute a resolution of the Member of The Art Gallery of Saskatchewan Inc. approving the repeal and replacement of The Art Gallery of Saskatchewan Inc.’s Bylaw No. 1 as attached to this report.
2. That City Council authorize the City Clerk as its representative to execute a resolution of the Member of Saskatchewan Place Association Inc. approving the repeal and replacement of Saskatchewan Place Association Inc.’s Bylaw No. 1 as attached to this report.
3. That City Council authorize the City Clerk as its representative to execute a resolution of the Member of The Centennial Auditorium & Convention Centre Corporation approving the repeal and replacement of The Centennial Auditorium & Convention Centre Corporation’s Bylaw No. 1 as attached to this report.
4. That City Council approve the revisions to the *Directors’ Code of Conduct* and the *Directors’ Anti-Harassment Policy* as presented in this report.

BACKGROUND

Governance review of the Controlled Corporations by the Leadership Team Governance Subcommittee (“Governance Subcommittee”) has been an ongoing project since the spring of 2018. The following is a list of the relevant reports and links:

- [February 13, 2017](#)
 - Governance and Priorities Committee (“GPC”) approved the project parameters for the Governance Review
- [June 18, 2018](#)
 - GPC recommended continuation of the existing governance structure for the Controlled Corporations
- [June 25/26, 2018](#)
 - City Council approved continuation of the existing governance structure for the Controlled Corporations and referred proposed corporate bylaw amendments and Articles of Amendment by Remai Modern to the Governance Subcommittee
- [November 12, 2019](#)
 - GPC considered the governance details report and created a Special Subcommittee to consider some of the proposed recommendations for change
- [November 18, 2019](#)
 - City Council approved governance details
- [February 22, 2021](#)
 - City Council approved further governance details on recommendation of the Special Subcommittee

A more fulsome explanation and history of the progress of the project and related resolutions can be found at Appendix 1.

Implementation of City Council’s resolutions requires amendments to the corporate bylaws of each of the Controlled Corporations. In accordance with City Council’s instructions, a review of the *Directors’ Code of Conduct*, including the *Directors’ Anti-Harassment Policy* has been undertaken and proposed amendments also identified.

The proposed changes to the corporate bylaws and the *Directors’ Code of Conduct* and *Anti-Harassment Policy* have been the subject of engagement with each of the Controlled Corporations. The Governance Subcommittee has received confirmation from the respective Controlled Corporations that all the proposed amendments are satisfactory.

DISCUSSION/ANALYSIS

City Council resolutions that contemplate potential amendments to the corporate bylaws of the Controlled Corporations include that:

- Two City Councillors be appointed to the board of each Controlled Corporation;

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- The corporate bylaws codify that a director who also serves as a member of City Council has the ability to report to City Council and GPC *in camera*;
- Each Controlled Corporation adopt meeting procedures;
- Meetings of the board occur within the Saskatoon census metropolitan area;
- The establishment of an Audit Committee be required;
- The corporate bylaws clarify that all committees of the board be advisory in nature and that all decisions must be made by the board;
- The determination of committee composition be left in the discretion of the board;
- The establishment of a CEO Recruitment/Performance Committee be required; the composition to include a City Councillor;
- A maximum of two non-resident board members be permitted for appointment to the board; and
- Appointments to the board remain within the sole discretion of City Council.

The corporate bylaws were reviewed and amendments were made to implement City Council's direction.

Because the corporate bylaws have not been the subject of review for many years, other supporting amendments were identified, especially after a review of the NPCA and a comparison of the corporate bylaws as between the Controlled Corporations. Also, suggested changes were identified and proposed by the Controlled Corporations. These proposed amendments include:

- The inclusion of section 3.20 Abstentions and Dissents to reflect the requirements of the NPCA. Previously such a provision was absent from the Remai Modern and TCUP corporate bylaws and SaskTel Centre's bylaw provision was not in accordance with the NPCA.
- A change to section 3.21 Conflict of Interest/Code of Conduct to remove the *Directors' Code of Conduct* and the *Directors' Anti-Harassment Policy* as attachments to each respective Bylaw No. 1. While compliance with these documents is still required, removing them as a schedule relieves of the obligation to amend the corporate bylaws in the event that either the *Directors' Code of Conduct* or *Directors' Anti-Harassment Policy* require amendment.
- A change to section 3.22 Remuneration and Expenses to clarify for all of the Controlled Corporations that reimbursement of expenses need to be supported by receipts and to require that payment be in accordance with the board's direction either via policy or resolution instead of in accordance with City of Saskatoon appointment policies. This change is made in anticipation of the financial suite of policies to be adopted by the boards.
- In addition to the establishment of a CEO Recruitment/Performance Committee, a condition that the powers and duties of the Committee are to be as prescribed in the *CEO Recruitment and Monitoring Policy*, as adopted by the board. City Council can expect to see a draft of this policy in the coming months; it is currently the subject of engagement with the Controlled Corporations.

- Changes to sections 5.03 and 5.04 regarding the appointment of a board chair and vice-chair. During the engagement process, a Controlled Corporation requested that the previous one-year maximum term for chairs and vice-chairs be extended in recognition of the learning curve and significant responsibilities associated with these roles. What has been included is the proposed election of a chair or vice-chair for an initial term of no more than two years with the option of the board to renew for a further maximum term of one year.
- A change to section 8.04 Place of Meetings to make reference to section 13.02 of *The Non-profit Corporation Regulations, 1997* that now permits virtual participation at meetings of members.

Finally, housekeeping amendments such as legislation reference updates, section reference updates and general wordsmithing to clean up the language of the corporate bylaws are also included.

Except for one section, the corporate bylaws of all the Controlled Corporations are now alike. During engagement with the Controlled Corporations, section 5.04, Past Chair/President, was a section of particular discussion. The existing provision is confusing. While we believe the intention was to permit a past chair to remain on the board longer than the maximum term permitted, it arguably limited the amount of time that a past chair could serve on the board depending on which years during the six-year maximum term were served as board chair.

After an opportunity for discussion, both the Remail Modern and TCUP agreed to removal of the provision. This is in line with City Council's direction to maintain a maximum six-year term for board members of the Controlled Corporations and still respects these boards' internal governance process in the appointment of a board chair.

SaskTel Centre, however, has asked that the provision remain and be modified to permit a limited exception to the six-year maximum term imposed by City Council. We understand SaskTel Centre's request better reflects its internal governance process. We have been advised that the SaskTel Centre board endeavours to have new board appointees participate on committees during the first two years of their appointment to "learn the ropes". For board members interested in an appointment as chair, years three and four of their term are typically served as vice-chair, with the final two years of their term, years five and six served as chair.

For succession planning purposes, SaskTel Centre has requested that they be granted an exception to the six-year maximum term in circumstances where this internal governance process is followed to permit the chair, at the end of their six-year term, to continue on the board as "past chair" for a period of one extra year. The language proposed for inclusion at section 5.04 of SaskTel Centre's Bylaw No. 1 reflects this request and would permit this extra board member for a year at a time provided that the maximum number of board members permitted (15) would still be respected. The proposed section 5.04 wording for SaskTel Centre's Bylaw is reproduced below for ease of reference:

5.04 Past Chair

Notwithstanding section 3.04(2), and City of Saskatoon appointments policies, the person who occupies the office of chair may, upon vacating such office at the end of the sixth year of their term, remain a director for a further period of one year from the date that such person vacates the office of chair, notwithstanding that this may increase the size of the board within the maximum number permitted by the Articles. At any particular time, only one person shall be qualified to hold office as a director pursuant to this section, and should more than one person apparently so qualify, the immediate past chair shall fill the office and the other person shall immediately retire.

Attached at Appendix 2 is the draft Resolution of the Member, City of Saskatoon, to repeal and replace Bylaw No. 1 of The Art Gallery of Saskatchewan Inc., including the new draft Bylaw No. 1 for City Council's consideration.

Attached at Appendix 3 is the draft Resolution of the Member, City of Saskatoon, to repeal and replace Bylaw No. 1 of Saskatchewan Place Association Inc., including the new draft Bylaw No. 1 for City Council's consideration.

Attached at Appendix 4 is the draft Resolution of the Member, City of Saskatoon, to repeal and replace Bylaw No. 1 of The Centennial Auditorium & Convention Centre Corporation, including the new draft Bylaw No. 1 for City Council's consideration.

As the City is the sole Member of each Controlled Corporation, the prudent course is for the City to repeal and replace the corporate bylaw of each Controlled Corporation by written resolution (in lieu of a meeting), pursuant to section 132 of the NPCA. The resolution would take effect upon signing; there would be no need for the directors to take action, or for the corporate bylaws to be discussed further at a subsequent meeting.

Each of the Controlled Corporations has been engaged extensively regarding the proposed amendments and all feedback was considered and all questions answered. Each of the Controlled Corporations has communicated to the Governance Subcommittee that the proposed amendments are acceptable.

Attached at Appendix 5(a) is a clean copy of the revised *Directors' Code of Conduct*, including the revised *Directors' Anti-Harassment Policy* (now *Directors' Respectful and Harassment-Free Workplace Policy*). Appendix 5(b) presents a blackline version of the old Code and Policy for City Council's easy identification of the changes. Once approved by City Council, the respective boards of the Controlled Corporations will be asked to adopt these new versions.

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This report has been shared with the Controlled Corporations and they were advised of the date that this matter was to be considered by City Council.

NEXT STEPS

Notice of the amendment to the corporate bylaws will be provided to the respective Controlled Corporations once the Resolution of the Member is executed. Likewise, the Controlled Corporations will be advised of City Council's approval of the revised *Directors' Code of Conduct*, including the new *Directors' Respectful and Harassment-Free Workplace Policy* and asked to adopt same.

APPENDICES

1. Controlled Corporation Governance Review Project Background and History of Resolutions
2. Draft Resolution of the Member including Schedule "A", Bylaw No. 1, "[a] bylaw relating generally to the conduct of the business and affairs of The Art Gallery of Saskatchewan Inc."
3. Draft Resolution of the Member including Schedule "A", Bylaw No. 1, "[a] bylaw relating generally to the conduct of the business and affairs of Saskatchewan Place Association Inc."
4. Draft Resolution of the Member including Schedule "A", Bylaw No. 1, "[a] bylaw relating generally to the conduct of the business and affairs of The Centennial Auditorium & Convention Centre Corporation"
5.
 - (a) Clean copy of the revised *Directors' Code of Conduct*, including a clean copy of the new *Directors' Respectful and Harassment-Free Workplace Policy*.
 - (b) Blackline version of the *Directors' Code of Conduct*, including a blackline of the *Directors' Respectful and Harassment-Free Workplace Policy*.

Report Approval

Written by: Christine G. Bogad, Director of Legal Services
Reviewed by: Mike Jordan, Chief Public Policy & Government Relations Officer
Adam Tittlemore, City Clerk
Jeff Jorgenson, City Manager
Approved by: Cindy Yelland, City Solicitor