
Governance Review – Controlled Corporations and Statutory Boards – Governance Structure

Recommendation

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

1. A governance model for the Controlled Corporations be chosen;
2. That the Leadership Team Governance Subcommittee report further on next steps for implementation of the chosen governance model; and
3. It adopt the interim recruitment process for the City's Controlled Corporations and Statutory Boards subject to changing the requirement that the Boards provide their recommendations in advance of the November meeting of the Governance and Priorities Committee.

Topic and Purpose

This report is the third in a series of reports respecting the Governance Review of the City's Advisory Committees, Controlled Corporations, Business Improvement Districts ("BIDs") and other agencies, boards and commissions. The focus of this report, more specifically, is twofold: (1) to provide a comparative analysis of the governance structure of Controlled Corporations; and, (2) to seek direction from Committee on the general governance structure of the City of Saskatoon's Controlled Corporations.

Strategic Goals

This report supports the Strategic Goals of Continuous Improvement and Quality of Life as it supports City Council in providing good governance to the citizens of Saskatoon.

Background

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 provide that the Leadership Team Governance Subcommittee ("Governance Subcommittee") will provide recommendations respecting a general governance model for Controlled Corporations.

Report

Controlled Corporations Current Governance Structure - General

Saskatoon City Council has established a number of Controlled Corporations pursuant to *The Non-Profit Corporations Act, 1995*. This report examines three of them, namely¹:

- The Art Gallery of Saskatchewan Inc. (“Remai Modern”)
- The Centennial Auditorium & Convention Centre Corporation (“TCU Place”)
- Saskatchewan Place Association Inc. (“SaskTel Centre”)

The City is the sole Member of each Controlled Corporation. Pursuant to section 88 of *The Non-Profit Corporations Act, 1995*, the Controlled Corporations are each governed by a Board of Directors, charged with managing the activities and affairs of the Corporation, subject to any unanimous membership agreement. In general, the Board of Directors consists of two City Councillors (two Councillors plus the Mayor, in the case of SaskTel Centre) and several volunteer members-at-large appointed by City Council. The current number of Directors ranges from 12 to 14, depending on the Controlled Corporation. The appointment term for Directors of each Corporation is two years, and no Director can serve for more than six consecutive years.

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.

Citizen appointments to the Boards are the responsibility of City Council, in accordance with *Policy No. C01-003, Appointments to Civic Boards, Commissions, Authorities and Committees Policy*, as amended by the interim recruitment process adopted pursuant to City Council's Resolution of August 28, 2017. The interim recruitment process provides for greater Board involvement in the recruitment and recommendation of new Directors.

As per Council Policy C01-003, Directors are deemed to have resigned if they miss three consecutive meetings without sufficient explanation, or may be removed from their position on breach of the Code of Conduct. However, as sole Member of the Corporations, the City has discretion to remove any Director from office by ordinary resolution at a special Member's meeting.

Statutory Boards Current Governance Structure - General

Aside from the City's Controlled Corporations, there are two independent municipal Boards established in accordance with specific enabling legislation, the Directors of which are also appointed by Council:

- The Saskatoon Public Library Board (the “Library Board”)

¹ The other two Controlled Corporations, not examined for the purposes of this report, are the Safe Streets Commission and the Friends of the Bowl Foundation.

- The Saskatoon Board of Police Commissioners (the “Police Board”)

Because the Statutory Boards are established pursuant to independent provincial legislation, meaningful changes to their governance structure must be enacted by the Province. However, the City has discretion to appoint Board Members of its choosing, has some flexibility in the size of the Boards and has the authority to approve the annual budget for these Boards. Despite that limited control, governance of the Police and Library Boards is determined by the legislation that establishes them. Changes to the governance model established in those acts requires amendment approved by the provincial legislature.

An overview of the governance characteristics of Saskatoon’s Controlled Corporations and Statutory Boards is contained in the table at Attachment 1. Further specifics as to the legislated requirements in respect of the Library Board and the Police Board is contained at Attachment 2. Further analysis of the Statutory Board structure is not included in this report.

Governance Structures – Review of Other Jurisdictions

As part of its review, the Governance Subcommittee examined the city-controlled entities of a number of other jurisdictions, including Edmonton, Calgary, Winnipeg, Regina and London. All of those jurisdictions currently have Controlled Corporations which govern particular municipal facilities in accordance with their respective mandates. Facilities comparable to Saskatoon’s that are currently governed by a Controlled Corporation were also canvassed in each of Toronto, Montreal and Vancouver.

The number of Controlled Corporations and facilities varies widely among jurisdictions, with Calgary having approximately 13 Controlled Corporations, and Regina having only two. A complete list of the Controlled Corporations in each of the surveyed jurisdictions is at Attachment 3.

In comparing different governance models, the Governance Subcommittee looked at how equivalent facilities to those governed by Controlled Corporations in Saskatoon are governed elsewhere. The research reveals that there is a range of governance structures. For example, some facilities are governed by entities established pursuant to separate provincial legislation. With some exceptions, these are governed largely similar to Saskatoon’s Statutory Boards. In other words, the legislation prescribes the rules by which the organization is governed. Others are governed by a city’s administrative department directly. One is governed by a Controlled Corporation which manages more than one matter or facility. Finally, some are operated by private business through contracts with the respective City.

An overview of the governance characteristics of facilities equivalent to Saskatoon’s Controlled Corporations in the surveyed jurisdictions is contained in the table at Attachment 4.

Considerations in Determining the Appropriate Structure

In determining the best governance structure for the City's facilities, City Council could consider the following questions²:

- Does the facility require private sector expertise (ie a separate Board of Directors and/or staff with specific skills not available internally)? Does the facility require a greater degree of operational flexibility than would be available within the City?
 - Considerations may include whether:
 - there is any impediment to the City, as opposed to the Directors, recruiting and hiring staff with special expertise, if required;
 - the duties of senior officers or other management would be impeded by one model or another, considering the purpose and activities of the facilities; and
 - a Board of Directors may offer more diversity in skill or connections in the industry than could be provided through the City.
- Does the facility require a greater degree of financial flexibility than would be available within the City (ie potential for funding from other orders of government)? Will the facility require significant additional funding that is unavailable through the City budget?
 - Considerations may include:
 - the desired degree of control or flexibility of financial policies and reporting that City Council may want to have given the City's obligation to be fiscally responsible and accountable; and
 - whether a Board of Directors or some other model would facilitate access to funds, for example through fundraising efforts, that would not otherwise be available to the City.
- Are there concerns relating to transparency (ie municipal and public awareness of, and input into, key aspects of the facility's service delivery)? Does the facility require the confidentiality afforded by arms-length governance in order to maintain a level playing field with private business competitors?
 - Considerations may include:
 - the desired degree of transparency in respect of the facilities' decision making. For example, all decisions in respect of City operating departments are required to be made in public. Controlled Corporations incorporated under *The Non-Profit Corporations Act* do not have the same obligations; and
 - freedom of information requirements of the City as a local authority under *The Local Authority Freedom of Information and Protection of Privacy Act*, as opposed to the obligations of a Controlled Corporation.
- Does the facility require a greater degree of human resources flexibility than would be available within the City?

² Acknowledgment is given to the authors of the City of Calgary's January 2014 Council orientation manual, "Governance of the City of Calgary's Wholly-Owned Subsidiaries," and to the authors of the "Controlled Corporations" discussion paper which formed part of Alberta Municipal Affairs' *Municipal Government Act* Review, from which a number of these questions are derived.

- Considerations may include whether different models require different hiring practices, working environments or management of staff and employee compensation and benefits?
- Currently, the City's human resources division provides support and the City bargaining units have a presence within the Controlled Corporation model.
- Does the facility operate in a competitive environment?
 - Considerations may include:
 - the nature of the business and whether competition is local or outside of the City's jurisdiction; and
 - whether the activities of the facility are in the nature of a community service.

Typically, these questions would be considered in advance of choosing a governance structure. Given that the Remai Modern, TCU Place and Sasktel Centre are already managed by the Boards under the Controlled Corporation model, City Council could consider these questions in the context of the existing model. In other words, what advantages or disadvantages arise by choosing a brand new model, as opposed to working within the current structure?

Further engagement with the Boards and the Chief Executive Officers is proposed in order to obtain their insights with respect to the questions. Their answers may help further inform Council's choice.

A review of the surveyed jurisdictions demonstrates that several facilities are operated using a model similar to the City's. Within the current governance structure, however, changes could be made to standardize processes, the application of policies and similar matters to simplify City Council's management of these facilities and promote accountability and transparency.

Under the current model, good governance requires a systemic, coherent and transparent approach to operating the Controlled Corporations. The division of powers between City Council and the roles and responsibilities of Board Members, Board Committees and officers of the Corporations need to be clearly defined. Similarly, appropriate reporting structures and processes required to make decisions and to direct and manage the Corporations activities and affairs need to be set out. Establishing mechanisms to achieve accountability between City Council, management and stakeholders and including policies to guide the culture of the organizations and the behaviour of Directors, officers and other staff all contribute to effective and efficient governance.

Governance Structure - Options

There are four broad categories of governance structure that arise from the review:

1. City Non-Profit Controlled Corporation Approach
 - a. governing a single facility
 - This model contemplates a structure similar to the City's current governance model wherein each facility is governed by the Corporations' respective Board of Directors and the sole member of the Controlled Corporation is the municipality. The Remai Modern, TCU Place, and SaskTel Centre all fall under this model.
 - b. governing multiple facilities
 - This model similarly contemplates the municipality as the sole member of the Controlled Corporation, but the Controlled Corporation, with one Board of Directors, is responsible for more than one department or facility. In the course of the research, the only entity identified under this model is the Edmonton Economic Development Corporation. The Edmonton Economic Development Corporation describes itself as a multi-divisional, multi-conglomerate agency. It is comprised of six divisions, including two facilities: the Trade and Investment Division, the Urban Economy Division, Edmonton Tourism, the Shaw Conference Centre, the Edmonton Expo Centre and the EEDC Corporate Services Division.
2. Member Controlled Non-Profit Corporation Approach
 - This model contemplates municipal ownership of the property, but management by Directors who are elected by the members; the members being anyone who buys a membership. The Vancouver Art Gallery Association is an example of this model.
3. In-House Approach
 - This model contemplates disbanding and dissolving the Controlled Corporations and bringing management of the facilities in-house of a City operating department. The leisure centres, Saskatoon Water, and Saskatoon Light and Power are managed under this model.
4. Public-Private Partnership Approach
 - This model contemplates ownership of the facility by the City, but management of the facility by a private third-party corporation under contract. Edmonton's Rogers Place is an example of this model.

These forms of governance are not necessarily mutually exclusive. For example, a City department could manage certain operations of a given facility while other operations are contracted out. This approach is used to govern the City of Edmonton's Commonwealth Stadium.

In consideration of the questions posed above, the Governance Subcommittee offers the following comments:

- Bringing management of the facilities in-house results in the greatest degree of control over the facilities, including oversight of financial and human resource practice and policies and arguably results in the greatest degree of transparency.
- In contrast, creating a Member Controlled Non-Profit Corporation, depending on how it's structured, could result in the least control by the City given that the Directors are elected by a membership comprised of the public.
- The parameters of control in respect of the Public-Private Partnership approach and the existing City Non-profit Controlled Corporation approach would be variable. In the case of the Public-Private Partnership, the controls would be subject to negotiation. In the case of the City Non-Profit Controlled Corporation, the City, as the sole member has the ability to exercise control through the corporate documentation. In addition, a City Controlled Non-Profit Corporation encourages and enables public participation in the governance process in that Council appoints members of the public to their Boards.
- The City's event and convention facilities (Sasktel Centre and TCU Place) are more similar in nature and may therefore more easily lend themselves to oversight by a single board, as opposed to the Remai Modern which is arguably unique in character.

The Governance Subcommittee is seeking direction from City Council as to the appropriate model for Saskatoon. The proposed further engagement with the Boards and the Chief Executive Officers may further inform City Council's decision.

Possible Changes within the Current Governance Structure

Similar to the Advisory Committees' review, should City Council choose the existing governance model, the Governance Subcommittee would look at the composition and qualifications for membership of each Board, onboarding and orientation material, policy documents and any internal governance documents.

In addition, as previously noted, the Directors of each Controlled Corporation are charged with managing the activities and affairs of the Corporation, subject to any unanimous member agreement. A unanimous member agreement is an agreement to which all members of the Corporation enter into that restricts, in whole or in part, the powers of the Directors to manage the activities and affairs of the Corporation. In this manner, City Council could impose similar or the same conditions on all of its Controlled Corporations in an effort to standardize processes and promote accountability and transparency.

Additionally or alternatively, a Director's authority is also restricted by the Articles of Incorporation and Corporate Bylaws. For example, these documents currently limit the number of Directors and require Council member appointments. Further conditions could be placed on the Directors' management of the Controlled Corporations through amendments to these; similarly, in an effort to achieve standardization and to facilitate

accountability and transparency in the management of the facilities. If this is the direction of Council, the Governance Subcommittee will report further on which corporate documents should properly be created or amended, depending on the issues to be addressed and included.

The following types of changes could be made to achieve standardization of processes and to facilitate accountability and transparency in the management of the facilities:

- requiring the adoption of City policies;
- requiring City approval of financial policies, including matters such as borrowing limits, debt limits and contract approvals;
- limiting the types of agreements into which the Board may enter, the kinds of business which the Board can pursue and/or the geographic area;
- requiring City approval for Boards to apply for capital funds from senior levels of government;
- requiring City approval of executive officers or the approval of the executive officers' contracts; and
- requiring City approval of selections for chair and vice-chair of the Boards.

Options to the Recommendation

Prior to choosing a model, GPC could request additional information and analysis. For example, if GPC has a particular interest in more than one model then the Governance Subcommittee would require specific direction from GPC as to its areas of interest if this option is chosen.

Board Chair Engagement

As part of the research for this report, the current Board Chairs of each of the City's Controlled Corporations and Statutory Boards were interviewed in respect of the current functioning and structure of their respective Board. A summary of the engagement responses for the Controlled Corporations and Statutory Boards are found at Attachments 5 and 6 respectively.

Each of the Board Chairs was asked, specifically, about the interim recruitment strategy adopted for the 2018 appointments. In general, the Boards appear satisfied with the new process; with common suggestions for improvement in two respects:

- it was suggested that a one month time frame for vetting applications by the Board is too short; and
- it was requested that a rationale be provided where the Board's recommendations for appointment are not accepted by City Council.

The recruitment process for 2019 will depend on the governance model chosen by City Council, and the time frame within which any changes may be implemented. However, in anticipation that changes may not be implemented in time for 2019 appointments, the Governance Subcommittee is seeking direction that the interim recruitment strategy adopted for the 2018 appointments apply moving forward, subject to a minor change as described below.

The Governance Subcommittee recommends that the time frame for the Boards to vet applicants be increased by one month by pushing back GPC and City Council's consideration of appointments to December (rather than November). This still provides enough time for Council to make the appointments prior to the annual general meetings of the Controlled Corporations. In addition, this approach is preferable to advertising vacancies earlier, as posting during peak holiday season in the summer months may yield fewer applicants.

In consideration of the Board Chairs' request that a rationale be provided by City Council where Board recommendations are not accepted, the Governance Subcommittee suggests that the City Council meeting at which the appointments are made is the appropriate forum to have any questions about City Council's decision answered. As previously reported, reserving the final decision as to appointments recognizes City Council's ultimate responsibility for the respective facilities and the recruitment process. While input from the Boards is valuable, the City's current model contemplates that City Council itself will be the final decision-maker. This is a prudent approach given that the appointment of Board members is one of the key control mechanisms of the Controlled Corporations and Statutory Boards that City Council has currently reserved to itself. Further, *The Cities Act* (section 93) provides that acts of a council are not effective until authorized or adopted by bylaw or resolution at a public meeting of the council. As this is where appointment decisions are made, questions about City Council's decisions are most appropriately answered in this forum.

Future Reporting

The project Terms of Reference for the Governance Review contemplate at least two phases of reporting. The first phase is intended to seek direction from City Council as to the general governance structure desired for each of the City's Advisory Committees, Controlled Corporations, BIDs and other committees or boards on which members of City Council currently sit. Reporting in the second phase is intended to identify and introduce policy and bylaw amendments required to implement Council's desired governance model. The next phase of reporting on the Controlled Corporations will depend on Council's direction arising from this report. In the meantime, the Governance Subcommittee continues to work on other aspects of the Governance Review, including work arising from the Advisory Committees. Further, it is anticipated that the BID review will also commence.

Public and/or Stakeholder Involvement

The Board Chairs were engaged for comment on the current functioning and structure of the respective Boards. The comments are summarized at Attachments 5 and 6. Further, this report is being tabled at the March GPC meeting, with the intention that it be discussed at a subsequent GPC meeting. Once distributed to members of GPC, copies of the report will be distributed to the Boards and the Chief Executive Officers inviting feedback, including a request for comments specifically in respect of the questions posed for consideration by City Council. Further, the Governance Subcommittee will offer to meet with the Boards, upon request.

Communication Plan

Depending on the direction of City Council, a plan for education and communication in respect of any changes would be required and formulated prior to implementation.

Policy Implications

Policy implications will be identified based on the direction of City Council and more generally may be identified as the Governance Review progresses. Further reporting on this area is anticipated in Phase Two of the project.

Public Notice

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

Attachments

1. Overview of Saskatoon Controlled Corporation and Statutory Board Governance Characteristics
2. Library and Police Board Governance Parameters
3. List of Controlled Corporations – Surveyed Jurisdictions
4. Overview of Governance Characteristics of Facilities in Surveyed Jurisdictions
5. Summary of Saskatoon Controlled Corporation Board Chair Engagement
6. Summary of Saskatoon Statutory Board Chair Engagement

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