

Attachment 2 – Council's Governance Authority Respecting City Agencies (including selection of the Chair)

The City's authority and governance relationship are different for City agencies*, those City agencies subject to other specific legislation, and City corporations.

1. City Agencies

(a) General City Authority

The *City of Toronto Act, 2006* (COTA) provides authority in Part IV, section 141 for the City to establish agencies. Section 143 provides authority for the City to delegate powers and duties of the City to agencies for those municipal services and activities that the City considers appropriate. The City may decide on limits to delegated powers and duties, policy and procedural requirements, approvals and other conditions.

With the exceptions noted below, COTA provides authority for the City to determine the governance of its agencies. Sections 145 and 146 provide the City with broad powers to dissolve or change City agencies, including board mandate, composition, eligibility criteria, appointments, selection of chairs, terms, remuneration, delegation of functions, rules and procedures, budget process and reporting relationships. These governance matters should be set out in City by-laws.

There are few City by-laws in place that deal with these matters, but transition measures were included in COTA for most existing City agencies:

- Section 426 of COTA provides that governance matters relating to these City agencies would remain as they were prior to the day COTA came into force, and the City is deemed to have passed a by-law to that effect.
- The old governance structures and processes remain in effect until such time as the City changes them through Council by-laws. It is intended that new by-laws addressing governance matters for these agencies will be developed and included in the Municipal Code.

(b) Authority Regarding Board of Health, Police Services Board and Public Library Board

Part IV of COTA limits the City's authority with respect to the Board of Health, Police Services Board and Public Library Board; for example, the City is unable to dissolve, assume the powers or appoint the chairs of these agencies. Part V of COTA prevents the City from bringing these agencies under the jurisdiction of the Integrity Commissioner, Auditor General and Ombudsman. However, there are other legislative provisions for the City to provide policy and governance direction for these 3 agencies as outlined below:

Board of Health: The *Health Protection and Promotion Act (HPPA)* sets the minimum mandate, term of office and remuneration requirements, and authorizes the board to elect its chair and vice-chair. The *HPPA* and Part XVII, section 405 of COTA also provide the City with powers to determine the size and composition of the board, provided it is from 3 to 13 members; recruitment and appointment of members; and the appointment of the Medical Officer of Health. City policy direction is provided to staff of the public health unit who are City staff and therefore subject to City policy.

* City agencies are those bodies defined by the *City of Toronto Act, 2006* as local boards.

Police Services Board: The composition of the board is set by the *Police Services Act*. The *Act* provides the City with powers to: appoint 4 of the 7 board members; determine the term of office (to a maximum of the Council term), reappointment policies, and remuneration (the minimum is prescribed by regulation); and approve budget estimates. The board may give direction to the Chief of Police including objectives and priorities for police services and the effective management of the police force, but not with respect to specific operational decisions or the day-to-day operation of the force, and City Council may request the board to consider the City's recommendations on such matters.

Public Library Board: The *Public Libraries Act* provides the City with powers to: determine the composition of the board and balance of members provided that there are at least 5 members and more public members than Council members; recruit and appoint board members; and approve budget estimates. The *Act* provides the board with powers to determine policies on expense reimbursements and whether the chair may vote, but City Council may request that the board consider establishing specific policies on these matters.

(c) Authority Regarding Committee of Adjustment

The Committee of Adjustment is a quasi-judicial board of the City established under the *Planning Act* to conduct hearings on applications for minor zoning variances and land severances. The City has the authority to determine the composition of the Committee of Adjustment provided there are at least 3 members, determine the structure of hearing panels, recruit and appoint members, and determine remuneration and expense policies. However, the City's governance authority is restricted. For all committees of adjustment in Ontario municipalities, the *Planning Act* sets the term of office consistent with the term of Council, determines quorum and voting requirements, requires election of the chair by the members, determines powers and mandate, and defines rules and procedures.

2. City Corporations

Section 148 of COTA and Ontario Regulation 609/06 set out the City's authority to establish municipal services corporations to provide any service that the City may provide except for ambulance, child and family services, fire, health, long-term care homes, police, and libraries, and services under the *Public Works Act*, but such corporation may provide administrative services to these functions. Corporations that were incorporated prior to COTA fall under the jurisdiction of other legislation. Only Invest Toronto and Build Toronto are corporations established by the City pursuant to Section 148.

With the exception of Waterfront Toronto, a partnered corporation established by provincial legislation, the City, as shareholder, has authority over City-owned corporations under the *Ontario Business Corporations Act* and through Shareholder Directions issued by the City to set the corporation mandates; elect the board of directors of corporations; determine the size, composition, required qualifications and remuneration of corporation boards; and may determine the structure and mandate of any board committees as appropriate.

3. Selection of Chairs of Boards

(a) Responsibility for Selecting the Chairs of Boards

Currently, City Council selects the chairs for the boards of all City-owned corporations. For Enwave, a partnered corporation, City Council selects the chair as long as the City owns at least

43% of its shares. For Waterfront Toronto, a partnered corporation, the board member appointed jointly by City Council, the provincial and federal governments, following intergovernmental consultations, is chair of the board. For City agencies, City Council currently selects the chairs of the Sign Variance Committee, the Toronto Licensing Tribunal and the Rooming House Licensing Commissioner. The chairs of all other City agencies are currently determined by the members of the boards of the agencies.

The chair of the board is a leadership position, and having City Council select the chair of all agency boards (where this is not restricted by legislation) will enhance policy alignment and agency accountability. This recommendation does not apply to the community-based agencies, namely the arena boards, AOCCs and BIAs.

Municipal authority is restricted regarding selection of the chair for the Board of Health, Police Services Board, Public Library Board and Committee of Adjustment. Under the specific legislation pertaining to each of these boards, the members of the board are authorized to elect one of their board members as chair and, in the case of the board of health, the vice-chair. To change this, City Council would have to request the provincial government to amend the *Health Protection and Promotion Act*, the *Police Services Act*, the *Public Libraries Act* and the *Planning Act* to provide Council with the power to select the chairs of these boards. However, Council could recommend to each board the person to be named as chair. This may not be appropriate for the Police Services Board because 3 of the 7 members are appointed by the Province.

(b) Public Members or Council Members as Chairs

In managing certain programs through arm's length agencies and corporations, the City is able to provide opportunities for the public to participate in municipal government. For the same reason, the chair of the board of most City agencies and corporations has been a public member.

In a few cases, the City has determined that it is appropriate to have a Council member as chair of the board. Having a Council member as the chair for Invest Toronto is beneficial to its mandate to promote the City regionally, nationally and internationally. The chair of the TTC is a Council member because the size of the organization, significant operational issues and budget impacts on the City place similar demands on the board chair as on a chair of a standing committee of Council. The Board of Health oversees the Public Health unit, which is comprised of City staff who are subject to City policy, and this close administrative relationship is reflected in having a Council member as the chair of its board. The only other agencies where the chair is not a public member are the boards of TAF and Exhibition Place.

4. Role and Responsibilities

The responsibilities of the Executive Committee of City Council are set out in Appendix B to Municipal Code Chapter 27 – Council Procedures. The Executive Committee recommends governance policy and structure to Council (including the Public Appointments Policy), and no other committee has this responsibility. The role of the Civic Appointments Committee is to consider and recommend to City Council the names of public members to be appointed to boards of agencies and through that process implement the City's Public Appointments Policy.

The City Manager provides advice and recommendations to the Executive Committee on matters relating to the establishment, delegation of powers, and governance structures and policies for City agencies and corporations, including Relationship Frameworks and Shareholder Direction.