

### Section I – Items for Board of Directors Action

**TO:** Chair and Members of the Board of Directors  
Meeting #9/19, Friday, October 25, 2019

**FROM:** John MacKenzie, Chief Executive Officer

**RE:** **AMENDMENTS TO THE BOARD OF DIRECTORS ADMINISTRATIVE BY-LAW**

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#### KEY ISSUE

Approval of the proposed amendments to the Board of Directors Administrative By-law.

#### RECOMMENDATION

**WHEREAS** the Board of Directors Administrative By-law was adopted at the Authority meeting #7/18, held on September 28, 2018;

**WHEREAS** staff was requested to report back on the impact of the changes to the delegation rules whereby delegations are directed to one meeting pertaining to the matter;

**AND WHEREAS** Toronto and Region Conservation Authority (TRCA) is currently undergoing a comprehensive review of governance and corporate policies;

**THEREFORE, LET IT BE RESOLVED THAT** the proposed amendments to the Board of Directors Administrative By-law be approved;

**AND FURTHER THAT** the approved amended Board of Directors Administrative By-law be forwarded to the Minister of Natural Resources and Forestry, the Minister of Environment, Conservation and Parks and Conservation Ontario, and posted on TRCA's website.

#### BACKGROUND

On September 28, 2018, the Board of Directors adopted the Board of Directors Administrative By-law which governs procedures with respect to notices, agendas, meetings (open and closed), elections, rules of debate and code of conduct, repealing Administration Regulation and Rules of Conduct previously in effect. The Administrative By-law was developed in response to Bill 139, *Building Better Communities and Conserving Watersheds Act, 2017*, which came into force on December 12, 2017, amending the *Conservation Authorities Act* (henceforth *the Act*). Under the *Act*, each conservation authority was required to put their Section 19.1 compliant by-laws in place prior to December of 2018.

TRCA has initiated a comprehensive review of its governance and corporate policies, including the review of the Administrative By-law, intended to clarify and streamline existing procedures associated with the conduct of meetings, agenda setting, conduct of Board Members and a number of other topics.

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Additionally, at the Authority meeting #7/18, Resolution #A141/18 was adopted in part as follows:

*THAT staff report back in September 2019 on the impact of the changes to the delegation rules whereby delegations are directed to one meeting pertaining to the matter;*

The requested report has been amalgamated into the current report.

### **RATIONALE**

Board of Directors Administrative By-law is a governing document of the TRCA Board of Directors. Where any part of this By-law conflicts with a provision or a Regulation made under the *Municipal Conflict of Interest Act* or *Municipal Freedom of Information (MFIPPA)* and *Protection of Privacy Act*, the provision of that Act or regulation prevails.

Most amendments proposed in Attachment 1 are concerned with minor wording and structural changes. The proposed major changes to the Administrative By-law are outlined as follows:

1. Section A – Definitions – Terms “Absence” and “Vacancy” were introduced to differentiate between temporary and permanent absence of a Board Member. This distinction helps illustrate two different courses of action in the later sections of the By-law. The “Chief Executive Officer” definition has been updated to combine roles of CEO and Secretary-Treasurer, as described under the Act. Currently Chief Executive Officer is appointed as a Secretary-Treasurer by a resolution. Staff recommends that two roles are combined to eliminate the need to bring forward a motion on this well-established governance matter.
2. Section B.2 - Officers – An update has added a requirement for the Chair and Vice-Chair of the Board of Directors to be elected municipal representatives. This update would help TRCA strengthen relationships with our municipal partners. The Clerk has been added as an officer of TRCA for the purposes of the *MFIPPA* to highlight their current role as the head under the Act.
3. Section B.5 – Election of Chair and Vice-Chair – It is recommended that elections of the Chair and Vice-Chair of the Board of Directors are conducted every two years as opposed to current annual elections. Biennial elections would improve consistency of the Board of Directors operations and closer align TRCA with partnering municipalities.
4. Section B.11 – Advisory Boards and Other Committees – A requirement for timely submission of advisory board and committee Minutes has been added to this section. This will strengthen the current reporting practices and ensure that the Board of Directors receives updates from its advisory boards in a consistent and prompt manner.
5. Section B.12 – Remuneration of Board Members – This section added a requirement for Board Members to attend three-quarters of a meeting to qualify for a remuneration payment. This will improve the ability to maintain quorum throughout the meeting. A portion, related to travel expense remuneration has been expanded to include public transit or rented transportation remuneration, which shall be paid in the amount not to exceed the cost of the per-kilometer rate that would be applied based on the distance travelled. This will ensure that Board Members who elect to commute by public transit, taxi or ride-share companies are fairly compensated. Furthermore, the incidental childcare section has been removed.

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6. Section B.14 Records Available to Public – It is recommended that powers and duties of the head under the MFIPPA are formally delegated to the Clerk through the Board of Directors Administrative By-law, rather than through the resolution, to eliminate the need for reporting on this procedural matter.
7. Section B.16 Enforcement of By-law and Policies – It is recommended that the informal complaint procedure is replaced with an encouragement to resolve disagreements and conflicts through one-on-one discussion, strengthening communication between the Board Members. It is suggested that the Formal Complaint Procedure is amended to delegate responsibility for complaint review and resolution to the Executive Committee. Additionally, the requirement to notify appointing municipality of the received complaint has been added to ensure the appointing municipality is appraised throughout the process and not just at the resolution stage.
8. Section C.5 – Agenda for Board of Directors Meetings – The “Closed Session” has been added as a standing agenda item, which will improve transparency of the Board operations. It is further recommended that “Business Arising from the Minutes” is removed as a standing agenda item as any considerations arising from the minutes may be dealt with through the Minutes approval section. Additionally, an amendment adds an opportunity for staff to add a walk-on item to the agenda on the day of the meeting with two-thirds majority support of the Board Members. This is an existing practice of the Board of Directors, which is now being formally added to the By-law.
9. Section C.7 – Order of Business – The consent agenda procedure description has been expanded to clarify the order in which the items shall be taken up at the meeting. Consent agenda process improves the flow of the meeting and frees up staff once their items are approved. It is also recommended that in cases when a Board Member wishes to discuss an item not appearing on the agenda as an item of new business, they may put forward a Notice of Motion, requesting a report back on the matter at the next scheduled meeting of the Board of Directors or Executive Committee, allowing staff to better address Board Member concerns. In cases when the matter is urgent, the item may still be added to the agenda at the same meeting, as discussed in Section C.8.
10. Section C.11 – Board Member’s Attendance – An expectation of Board Member attendance has been added to this section. Failure to attend two consecutive meetings without a sufficient reason communicated to the Chair, CEO or Clerk would result in a notice to the Member, while failure to attend three consecutive meetings without authorization or notice would deem a position vacant and prompt a reappointment request. This requirement is consistent with Section 259(1)(c) of the *Municipal Act*.
11. Section C.12 – Electronic Participation – It is recommended that an opportunity for electronic participation is removed. Electronic participation negatively affects the discussion flow, makes it difficult to ensure Board Member engagement with the meeting and the debate and could further cause loss of quorum in cases of technological failure. The section further clarified that while TRCA strives to webcast and produce recordings of all Board of Directors, Executive Committee and advisory board meetings, in rare instances of technological failure this might not be feasible, which will bear no impact on the legitimacy of the meeting.
12. Section C.13 – Delegations – It is recommended that all delegations pertain to the items on the agenda before the Board of Directors, Executive Committee or advisory board. The proposed scope alteration is meant to facilitate more focused discussion. Additionally, a procedure for extending standard delegation time limit is clarified.

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13. Section C.15 – Voting – The section is clarified to explicitly preclude proxy voting. This has been a standard practice, now formally added to the Administrative By-law.
14. Section C.16 Motion to Reconsider – The section is clarified and aligned with the participating municipality practice.
15. Appendix 1 – Code of Conduct for Board Members – It is recommended that all Board Members sign an oath of confidentiality when assuming the office due to their exposure to information of a personal, confidential and sensitive nature, which, if shared improperly, may cause harm to TRCA and/or third parties. A new media inquiry section is added, designating the CEO and the Chair as spokespersons for TRCA, aiming to improve consistency in external messaging. Furthermore, Board Members are encouraged to contact divisional Directors when they have questions related to the agenda items, contributing to the clarity of internal reporting, timely, and coordinated responses.
16. Appendix 3 – Procedures for Election of Officers – The previous version of the Administrative By-law requested a resolution to appoint the Chair and Vice-Chair, which is redundant as both are elected to their positions. The requirement for a resolution is removed.
17. Appendix 4 – Board of Directors Terms of Reference – The proposed amendments clarify which TRCA corporate policies require Board of Directors approval. An allowance for approval of staff comments in principle, or after the fact, in the cases when the timeline for submission of comments, for example, Provincial deadlines for comments, does not allow time for Board Approval is formally added, codifying an existing practice. It is further proposed that no meetings of the Board of Directors are scheduled for the months of July and August to accommodate summer vacations, aligning TRCA practices with those of participating municipalities.
18. Appendix 5 – Executive Committee Terms of Reference – Delegated responsibility for reviewing and resolving Formal Complaints is added. It is recommended that no meetings of the executive Committee are scheduled for the months of July, August and December to accommodate for summer vacations and holiday season and to address light agenda and quorum concerns.
19. Appendices 6 and 7 – Advisory Board Terms of Reference – The ToR of Partners Project Green (PPG) and Regional Watershed Alliance (RWA) were previously adopted by the Board of Directors, as advisory boards. The ToR for PPG is updated for the new term of the advisory board. The ToR for RWA is amended to reflect changes to the status of its' subcommittees since the approval of the previous version and ensure consistency with the Board of Directors Administrative By-law.

Further to proposed amendments to the Board of Directors Administrative By-law, staff has reviewed the impact of changes to the delegation rules whereby delegations are directed to one meeting pertaining to the matter, which went into effect on September 28, 2019.

Since the new delegation rules went into effect, TRCA has received a total of 18 delegations. On one occasion, a delegate addressed the Board of Directors at two different meetings, which was associated with two separate reports related to the same matter, and compliant with current delegation rules. No complaints related to the insufficient opportunity to express a concern have been received by the Clerk's Office. It is therefore concluded that the changes to the delegation rules have not negatively impacted the delegate ability to bring forward their concerns to the Board of Directors. TRCA staff will continue to monitor the delegation rule situation and will

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report back to the Board of Directors, if any issues are identified in the future.

### **Relationship to Building the Living City, the TRCA 2013-2022 Strategic Plan**

This report supports the following strategy set forth in the TRCA 2013-2022 Strategic Plan:

### **Strategy 7 – Build partnerships and new business models**

### **DETAILS OF WORK TO BE DONE**

Upon the approval of the amended By-law, it will be posted on the TRCA website.

Staff will report to the Board of Directors for approval of changes to the Board of Directors Administrative By-law as required, as it will be reviewed by staff at the earlier of every five years or as circumstances arise requiring changes. This regular review will ensure the By-law is in compliance with relevant legislation and regulations, and that best management practices in governance are being followed.

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**Date: October 18, 2019**

**Attachments: 1**

Attachment 1: Proposed amended Board of Directors Administrative By-Law