

## Board Report

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**Date of Report:** June 18, 2019

**Date of Meeting:** June 25, 2019

**Report Number:** 2019-PAC-009

**File:** 2019BOARD0625

**Subject:** FirstOntario Performing Arts Centre Board Procedural By-Law

### Recommendation

That the Board receive and approve the Board's Procedural By-Law, as attached in *Appendix 1*.

### Background

At its meeting of July 9, 2018, Council approved the transition of the operational control of the FirstOntario Performing Arts Centre (PAC) to a new municipal service board and directed staff to take all necessary steps and actions required to transition the PAC business to the Board. Approving the Procedural By-Law is part of the requirements to establishing a board for the performing arts centre.

### Report

This report is to establish the Procedural By-Law of the Board of Directors. Attached please find the Procedural By-Law.

### Financial Implications

No financial implications.

### Prepared and submitted by:

Steve Solski, Executive Director



**BY-LAW NO. 2019-01**

**PROCEDURES FOR FIRSTONTARIO PERFORMING ARTS CENTRE BOARD (PAC)**

**1. DEFINITIONS**

**Act** and **Municipal Act** means the Municipal Act, 2001, S.O. 2001, c. 25 as amended.

**Board** means the FirstOntario Performing Arts Centre Board.

**Business** means the business associated with operating the PAC, including the management, maintenance and control of the business which has, until the passage of this by-law, operated as the City's performing arts centre.

**Business Day** means Monday through Friday from 8:30 a.m. to 4:30 p.m.

**City** means The Corporation of the City of St. Catharines.

**City Clerk or Clerk** means the Clerk of the City of St. Catharines or delegate.

**Committee** means a standing or ad hoc working group established by the Board that has a membership that is at least 50% Directors.

**Council** means the municipal council of the City.

**Director** means an individual appointed by Council to the Board.

**Executive Director** means the Executive Director of the PAC who shall be the chief executive officer with carriage of the general supervision of the PAC Business;

**Meeting** means any regular, special or other meeting of the Board or a standing or ad hoc Committee of the Board.

**Municipal Service Board** means a body corporate established in accordance with Section 196 of the Act that has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under the Act and any other act.

**Non-voting Participants** means individuals who have been given the right to be notified of and attend, but not vote at, all meetings of the Board, including closed sessions unless otherwise restricted by Council.

**PAC** means the FirstOntario Performing Arts Centre and related facilities known municipally as 250 St. Paul Street in the City of St. Catharines.

**Relationship Agreement** means an agreement between the City and the Board which establishes certain rights, expectations and obligations of the parties relating to the operation of the Business and the provision of services by the City to the Board.

**Recording Secretary** means a person who may be a Director, Member, Administrator or a volunteer who is appointed by the Chair to assume the duties of Secretary at any Board or Committee meeting in the absence of the Secretary or if no Secretary is elected by the Board.

## **2. GENERAL**

- 2.1 The rules and procedures contained in the By-law shall be observed in all proceedings of the Board and Committees. Where greater clarification is required the Board shall seek guidance from the City Clerk.
- 2.2 Should any provision of this By-law be or become in conflict with any statute of the Province of Ontario or with any specific procedure approved by the Board and still in effect for certain matters, the statute or specific procedure shall prevail.

### **Recording Secretary**

- 2.3 The Chair is responsible to ensure that the duties of the Board Secretary are performed by a responsible individual who shall be the Recording Secretary and who may be the Executive Director or another employee of the PAC but that person is not a Director or Officer.
- 2.4 The Recording Secretary will give notice of each regular and special Meeting of the Board and prepare and distribute an agenda of the matters to be considered so that the notice and agenda will reach the Directors, City Clerk and the public in accordance with the notice provisions of this By-law.
- 2.5 The Recording Secretary will prepare and distribute minutes of every Meeting of the Board by attaching them to the agenda for the next regular Meeting, or as soon as possible.
- 2.6 The Recording Secretary shall provide the City Clerk or delegate copies of all minutes within five (5) business days after they are confirmed by the Board.

- 2.7 The Recording Secretary shall be custodian of all books, records, correspondence, contracts and other Board documents and subject to any requirements imposed by the City or by law.
- 2.8 If the Recording Secretary is absent at any Meeting of the Board or a Committee, the Chair shall appoint another person present to be the recording secretary for the Meeting and to prepare the minutes of the Meeting. The appointment shall be recorded in the Minutes.

### **3. ROLE OF OFFICERS**

#### **Chair**

- 3.1 The Chair will preside at all Meetings of the Board, follow the agenda, decide on whether Motions are in order, rule on all procedural matters and maintain decorum.
- 3.2 The Chair will ensure motions and amendments are clearly expressed and, if there is no motion under consideration, summarize the discussion for the purpose of the minutes.
- 3.3 If a procedural matter is not provided for in this By-law, the PAC Establishing Bylaw, or the Act, the matter shall be decided by the Chair, who may have regard to City of St. Catharines Bylaw 2015-170 2015-170 "Council Procedure By-law", as amended, or Robert's Rules of Order, with necessary modifications. The Chair's decision is final.
- 3.4 The Chair is the official spokesperson for the Board and in that capacity is to express only the official opinion or position of the Board. The Board or the Chair may authorize the Executive Director to issue public statements on behalf of the Board.

#### **Vice Chair**

- 3.5 The Vice Chair will perform the duties of the Chair in the Chair's absence or if the Chair is unable for any reason to perform those duties or if the position is vacant.
- 3.6 The Board may from time to time assign additional duties to the Vice Chair.

### **4. COMMITTEES**

- 4.1 Standing and ad hoc Committees may be established by the Board by motion and the motion shall include the specific purpose or terms of reference of the Committee, the members of the Committee, and appoint a Chair.

- 4.2 The Chair of every Committee shall be a Director.
- 4.3 Every Committee shall have a Recording Secretary appointed by the Committee.
- 4.4 All Committees shall report to the Board shall not take any action intended to be binding on the Board and shall not make or incur any liability for the Board.
- 4.5 When an ad hoc Committee has made its final report it is automatically disbanded.
- 4.6 Ad hoc Committees may include members that are not Directors, provided they have been appointed by the Board.
- 4.7 The Chair is ex-officio a member of all Committees established by the Board but does not count towards quorum and does not vote.
- 4.8 Each Committee shall report its activities to the Board at each regularly scheduled Board Meeting, either by the Chair of the Committee or by a Director representing the Committee and the report shall be recorded in the minutes. Any written report is to be attached to the minutes of the Board Meeting at which it is presented.

## **5. RESIGNATIONS, VACANCIES, ABSENCES**

- 5.1 If a Director resigns or is deemed to have resigned, the Board shall report the resignation to the Clerk as soon as practical.
- 5.2 Directors or Committee members that are unable to attend shall notify the Chair or Recording Secretary to report their absence, prior to the Meeting date and/or time.
- 5.3 If a Director misses three consecutive Board Meetings without notification or cause acceptable to the Board, the Chair or Executive Director will contact the absent Director to discuss the reasons for the absenteeism. The Director shall be advised that attendance or the approval of the Board to permit the continued absence is required, or the Board may request Council to declare the seat vacant and replace the Director.
- 5.4 Where a vacancy occurs from any cause, the City Clerk will advise Council of the vacancy and the need for a replacement, if necessary to fill the minimum number of Directors required in the Establishing Bylaw or if the Board requests that the vacancy be filled.

- 5.5 Any Director appointed by Council to fill the vacancy shall hold office for the balance of the term of the Director whose place is vacant, unless otherwise appointed by Council.
- 5.6 The attendance of Committee members that miss Committee Meetings without notification or acceptable cause, or which absence otherwise impacts the Committee work shall be addressed by the Committee Chair who may ask the Board to declare the Committee seat vacant. Vacancies on Committees shall be filled by the Board.

## **6. MEETINGS**

### **Location**

- 6.1 Board and Committee meetings shall be held at the PAC, or such other location approved by resolution of the Board or Committee that is open and accessible by the public for the duration of the Meeting.

### **Notice of Meetings**

- 6.2 The Board shall provide public notice of its regular and any special Meetings, including the date, time and location of the meeting at least three business (3) days in advance of the meeting date by posting the agenda on its website and in a visible location in the PAC if applicable. The agenda shall be considered as notice of a meeting.
- 6.3 Notice shall also be provided to the City Clerk.

### **Schedule of Meetings**

- 6.4 At the first Meeting of each calendar year, the Board shall establish a schedule of regular meetings with the provision that at least four meetings shall be held each year. The regular schedule may be reviewed by the Board from time to time as necessary.
- 6.5 An annual schedule of meetings shall be prepared and made available to the Directors and the public.
- 6.6 Special meetings of the Board may be called by the Chair, on 24 hours' notice, when exceptional or urgent circumstances require the Board to meet. The notice of a special meeting shall include an agenda and indicate the exceptional or urgent circumstances that require the meeting.

- 6.7 If a written request is made by a majority of the Directors to call a special meeting, it is the duty of the Chair to summon a special meeting on 24 hours' notice.
- 6.8 A regular meeting that is rescheduled is not a special meeting.
- 6.9 Meetings of the Board shall not conflict with regular meetings of Council or Council in General Committee.

### **Attendance**

- 6.10 Members of the Board are expected to try to attend every Meeting at the time established, be prepared for the Meeting by reading the Agenda in advance, and to be prepared to discuss agenda items.

### **No Electronic Meetings or Participation**

- 6.11 Meetings shall not be held electronically and no member of a Board or Committee may participate electronically in a meeting.

### **Quorum**

- 6.12 Quorum for Board Meetings shall consist of a simple majority of the Directors appointed by Council. Quorum for Committees shall consist of a simple majority of the members appointed by the Board.
- 6.13 A vacant position will not be counted to calculate quorum.
- 6.14 In the event quorum is not present 15 minutes after the time the Meeting is to start, or if quorum is lost during a Meeting for a period of 15 minutes or the member leaving the Meeting clearly indicates that they will not return to the Meeting, the Meeting will then stand adjourned until the next scheduled Meeting, or at the call of the Chair.
- 6.15 If neither the Chair nor Vice Chair has arrived 15 minutes after the time the Meeting is to start and, if a quorum is present, one of the other members of the Board or Committee may by unanimous consensus assume the Chair and preside at the Meeting until the arrival of the Chair or Vice Chair.
- 6.16 In the event that there is no quorum or if quorum is lost during a Meeting, the members present may agree to proceed informally with the agenda and any proposals made at the informal gathering will be reported by the Recording Secretary to the next scheduled Meeting for consideration. No Motions or votes can be taken at an informal gathering.

### **Agendas, Minutes, Records**

- 6.17 An agenda and minutes are required for every Meeting of the Board or a Committee.
- 6.18 Items to be included on an agenda for a Board Meeting must be submitted to the Recording Secretary by 10 business days before the Meeting, whenever possible, or the Chair, in consultation with the Recording Secretary, may establish a schedule of agenda deadline dates.
- 6.19 Directors may submit items for inclusion on the Board agenda by giving them to the Recording Secretary by the agenda deadline date.
- 6.20 The Chair in consultation with the Executive Director, if applicable, shall set the agenda, based on matters submitted prior to the agenda deadline.
- 6.21 The Chair will accommodate Director requests for inclusion of agenda items, whenever possible, but the Chair has the final decision about which items are included on the agenda.
- 6.22 Any communication or agenda item that is received prior to a Meeting but too late to be included in the agenda may be added to the agenda by the Chair, if it pertains to a matter listed on the agenda or is considered by the Chair to be urgent. Otherwise, it will be included on the agenda of the next subsequent Meeting.
- 6.23 In accordance with the principles of adequate notice, transparency and openness new substantive items should not be introduced on the Agenda during a Meeting as new business.
- 6.24 Confidential material will be distributed by the Executive Director to the Directors under confidential cover, and may also be provided to other selected City officials.
- 6.25 The minutes shall record who was in attendance, where the Meeting took place, when the meeting started and adjourned, who chaired the Meeting, whether any participants left or arrived while the meeting was in progress and if so, what time this occurred, any persons that appeared and addressed the Meeting, a detailed description of the substantive and procedural matters discussed, including any specific documents considered, any motions, including the person moving the Motion, and all votes taken, and all actions approved or directions given.
- 6.26 The minutes of each Board Meeting will be submitted to the Board for confirmation at the next meeting, or as soon as possible.

### **Meetings Open to the Public**



- 6.27 Except as provided in section 239 of the Act, all meetings of the Board or Committees shall be open to any Member and the general public, who may attend but may not take part in the proceedings unless invited to do so by the Chair. No person shall be excluded from a Meeting except for improper conduct.
- 6.28 Open Meetings, requires Directors to discuss and debate the matters on the agenda at the Meeting held for that purpose. It is not appropriate for Directors to discuss or deal with a matter that materially advances the business or decision making of the Board or Committee outside of Meetings, including through electronic communications.

### **Meetings Closed to the Public**

- 6.29 The Board or a Committee may be closed to the public only if the subject matter to be considered is:
- a. the security of the property of the municipality or local board;
  - b. personal matters about an identifiable individual, including municipal or local board employees;
  - c. a proposed or pending acquisition or disposition of land by the municipality or local board;
  - d. labour relations or employee negotiations;
  - e. litigation or potential litigation, including matters before administrative tribunals, affecting the municipality or local board;
  - f. advice that is subject to solicitor-client privilege, including communications necessary for that purpose;
  - g. a matter in respect of which a council, board, committee or other body may hold a closed meeting under another Act;
  - h. information explicitly supplied in confidence to the municipality or local board by Canada, a province or territory or a Crown agency of any of them;
  - i. a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence to the municipality or local board, which, if disclosed, could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
  - j. a trade secret or scientific, technical, commercial or financial information that belongs to the municipality or local board and has monetary value or potential monetary value; or
  - k. a position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board
- 6.30 The Board or Committee shall meet in private if the subject matter being considered is:

- a. A request under the municipal Freedom of information or Public Documents Act, if the Board is the head of the institution for the purposes of the Act; or
  - b. An ongoing investigation respecting the Board by the Ombudsman appointed by the Ombudsman Act or closed meeting's investigation appointed by the Municipal Act.
- 6.31 A motion is required before meeting in private and the motion must identify the general subject matter to be discussed and the reason for meeting in private.
- 6.32 Voting is not permitted in private. Any motions must be moved and voted on in public. Where a matter has been discussed in private, and where the matter remains confidential, Directors shall not disclose the content of the matter discussed or the substance of the discussions.

### **Rules of Debate**

- 6.33 The Chair decides the order in which persons speak or ask questions and makes sure that every person indicating a desire to speak has an opportunity to speak to an item on the agenda.
- 6.34 When a proposal is made, the Chair may re-state the proposal to ensure that everyone understands the intent. The proposal may then be discussed and the discussion may include possible changes to the wording of the proposal. When the discussion is concluded the Chair may frame the resulting proposal as a motion that can be voted upon.
- 6.35 A Board or Committee may act by unanimous consent and a formal vote will not be necessary. The Chair may specify a proposed action and, if there is no objection, announce that the action is approved. If a member disagrees with the proposed action, a formal motion to approve the action and a vote is required.
- 6.36 A motion requires a mover and a seconder.
- 6.37 A motion relating to a matter not within the jurisdiction of the Board or Committee is not in order.
- 6.38 A motion to approve the minutes of a previous Meeting is an opportunity to correct any errors or omissions in the minutes. It is not in order on a motion to approve the minutes to re-open the discussion on any matter recorded in the minutes.
- 6.39 A motion to reconsider any matter previously decided may only be moved by a member that voted on the prevailing side, and requires a two-thirds majority of the members present to pass. No matter may be reconsidered more than once during the term of the Board or Committee that decided it.

- 6.40 A Board or Committee may hear depositions from Members or the public at its discretion and may set limits for speaking time. It is in order for the Board to limit the maximum number of depositions on matters not on the agenda. The Chair may end a deposition if there is disorder or a failure to observe decorum.

### **Voting**

- 6.41 Every member present including the Chair must vote, unless they have declared a conflict of interest.
- 6.42 If a member that has not declared a conflict of interest abstains from voting, it will be counted as a NO vote.
- 6.43 A simple majority of the members present who are eligible to vote is necessary to pass a motion, except a motion to reconsider a matter previously considered by the Board or Committee during the current term or to amend a by-law which shall require a vote passed by two-thirds (2/3) of the members present.
- 6.44 A tie vote means that the motion is defeated.
- 6.45 All votes will take place by show of hands unless a recorded vote is requested by a Director.
- 6.46 Upon the request of any Director, and when the Chair is satisfied that a matter under consideration contains distinct proposals, the vote upon each proposal may be taken separately.
- 6.47 There shall be no proxy voting of any kind at Meetings of the Board or any Committees established by the Board.
- 6.48 Voting is not permitted at an informal gathering.

### **Action to be taken**

- 6.49 Where the Board or Committee approves an action to be taken that is within the authority of the Board or Committee, the person authorized to take the action may do so immediately and does not need to wait for the minutes of the Board or Committee to be approved.

## **7. CODE OF CONDUCT**

- 7.1 The City of St. Catharines Code of Conduct for Elected Officials, Local Boards and Advisory Committees applies to the conduct of all Directors, with necessary modifications.

- 7.2 Code of Conduct complaints are administered by the City Clerk. The Board or the Executive Director shall inform the Clerk forthwith upon the receipt of any complaint, and shall cooperate fully with the Clerk and the Integrity Commissioner appointed to investigate the complaint.

## **8. CONFLICT OF INTEREST**

- 8.1 Directors shall comply with the Municipal Conflict of Interest Act.
- 8.2 Members of Committees that are not Directors or members of Council are not subject to the Municipal Conflict of Interest Act; nevertheless Committee members must disclose any financial interest in a matter under consideration at a Meeting, and must avoid taking part in any discussion of the matter or voting if their financial interest is not an interest in common with other persons interested in the Board's mandate and Committee's terms of reference, and is of a sufficiently significant and personal nature that it could influence their participation.
- 8.3 The Recording Secretary shall record all declarations of an interest in the minutes and whether or not the member participated in the discussions and voted on the matter.
- 8.4 Quorum is not lost if a member that has temporarily left the meeting as a result of declaring an interest.

## **9. FINANCIAL REQUIREMENTS**

### **Remuneration and Expenses**

- 9.1 Directors shall serve without remuneration.
- 9.2 The Board shall adopt an expense policy to reimburse Directors or employees for reasonable expenses incurred in the course of conducting PAC business.
- 9.3 A policy to permit the reimbursement of expenses must comply with the Act, and be in writing.
- 9.4 Documentation of expense claims submitted and reimbursed shall be maintained by the Executive Director and a statement provided annually to the Treasurer for the City of St. Catharines or delegate as required by the Act.

### **Signing Officers**

- 9.5 The Chair and the Executive Director shall jointly be the authorized signing officers for any contracts entered into by the PAC, subject to any delegation authorized pursuant to the procurement policy adopted by the Board.

## **10. REPORTING AND RECORD KEEPING REQUIREMENTS**

- 10.1 Boards shall keep all papers and documents pertaining to the business of the PAC and all books, documents and files kept by the Board and PAC shall be under the custody and control of the City Clerk.
- 10.2 The City of St. Catharines records retention bylaw applies to all Board and PAC records and the records shall be retained and preserved in accordance with the provisions of the bylaw.