

**Green Line Board Report to
Special Meeting of Council – Boards,
Commissions and Committees**

**ISC: UNRESTRICTED
C2021-0652**

2021 May 3

Page 4 of 4

Amendments to the Green Line Board Bylaw 21M2020

The proposed amendments do not change the intent of the Bylaw as originally discussed with Council and as reflected in Green Line Board Report GC2020-0772.

STAKEHOLDER ENGAGEMENT AND COMMUNICATION (EXTERNAL)

- Public Engagement was undertaken
- Public Communication or Engagement was not required
- Public/Stakeholders were informed
- Stakeholder dialogue/relations were undertaken

The perceived technical gaps in interpretation that may affect the authority of the Board with respect to fulfilling the Board's duties and obligations to the Program creates an urgent need to address this matter. The *Municipal Government Act* does not require bylaws or bylaw amendments for establishing committees of council to be advertised, go through a Standing Policy Committee, or be subject to a public hearing. No public consultation or engagement is legally required.

IMPLICATIONS

Without the amendments to further clarify the delegated authority of the Green Line Board and the authority of Council, there are potential perceived technical gaps relating to interpretation of the Bylaw that may affect both the timely decision-making of the Green Line Board and create a lack of clarity regarding the role of Council, which could impact the Program.

RISK

The recommended amendments to the Bylaw help to address risks concerning a perceived lack of specificity regarding the Board's duties and authority, and will further support the Green Line Board's ability to respond to issues related to the Program expeditiously and effectively as they arise.

ATTACHMENT(S)

1. Proposed Bylaw 33M2021
2. Blackline showing amendments to the Green Line Board Bylaw 21M2020 as approved by Council in 2020 July
3. Previous Council Direction, Green Line Board Report GC2020-0772

Department Circulation

Name	Title	Approve/Consult/Inform
Don Fairbairn (Chair)	Chair, Green Line Board	Approve
Marcia Nelson	Chair, Governance and HR Committee	Consult
Michael Thompson	General Manager, Green Line	Consult

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Page 3 of 4

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The Governance and HR Committee of the Board reviews remuneration on an annual basis and the Chair of that Committee will seek Council's direction to address any changes to remuneration for the Board.

The City Manager's duties as a Board member are part of his normal duties as City Manager and the City Manager is not paid any additional remuneration for his work as a Board member.

d) *Further Clarification of the Board's Duties in relation to Procurement*

Finally, the Bylaw further clarifies the duties and authority of the Board in relation to governance and oversight of the Program and decision-making as part of the Board's governance and oversight role. In particular, more specificity is added in relation to the Board's role in managing procurements.

As discussed in Green Line Board Report GC2020-0772, to preserve the fairness, openness, and transparency of The City's procurement processes, Council typically delegates responsibility for procurement to The City's administration. This means that Administration finalizes design development, prepares procurement documents, and manages procurement processes or contracting strategies and awards contracts. This approach aligns with the P3 Policy, wherein administration is delegated the authority to make decisions concerning the management and conduct of all procurement matters for public-private partnership ("P3") contracts. Accordingly, the Bylaw delegates the authority to manage and conduct all aspects of procurements to the Board. The Bylaw amendments expressly specify Council's delegation of authority to the Board in relation to the foregoing matters to avoid any perceived technical gaps in interpretation that may arise in the future.

e) *Further Clarification of Council's Role*

As referenced earlier in this report, Council has approved a P3 delivery model of Design-Build-Finance (DBF) for the Program's P3 contracts pursuant to Council's P3 Policy. The Board will manage the procurement processes or contracting strategies for P3 contracts to align with the DBF delivery model approved by Council. The proposed amendments clarify that Council has approved the delivery model for P3 contracts and remains responsible for approving the Capital Budget for the Program, the scope, schedule, and plans for the Program, and that the Board will deliver the Program in a manner consistent with the foregoing Council direction.

Recommendation – Bylaw Amendments

In summary, the amendments to the Green Line Board Bylaw address potential perceived technical gaps in interpretation that relate to the duties and authority delegated to the Board. By giving three readings to proposed Bylaw 33M2021, Council will also further clarify its own role and authority with respect to the Program, and ensure the Board has clear authority to fulfil its delegated duties and obligations under the Bylaw to deliver the Program.

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Page 2 of 4

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Council passed the Green Line Board Bylaw in 2020 July 21. The Green Line Board Report GC2020-0772, to which the Bylaw was attached, explained the intention of the Bylaw's provisions. The report stated that Council retains decision making authority over scope (alignment, station locations, and guiding principles), budget, schedule, and real estate matters. Council also approved the delivery model for the P3 contracts of the Program in the Green Line Light Rail Transit Project Delivery Model Recommendation Report PFC2018-0207 in 2018 March 06 in accordance with P3 Policy CFO011 (the "P3 Policy").

The proposed amendments to the Bylaw further clarify the above authority of Council and also further clarify the powers, duties, and functions delegated to the Board by Council. Some of the amendments are merely administrative, such as the change from "Administrative Leadership Team" to "Executive Leadership Team", which arose from the organizational changes implemented by City Manager Duckworth. The remainder of the amendments clarify the following:

- a) the authority of the Board to establish Committees and appoint Committee Chairs, and assign senior executive responsibilities as may be considered appropriate by the Board;
- b) the definition of "Capital Budget" and authority related to the Capital Budget;
- c) authority for setting the remuneration for the Board;
- d) the duties and authority of the Board in relation to procurement; and
- e) Council's role in relation to the Program.

a) *Establishment of Committees and Committee Chairs and Assignment of Senior Executive Responsibilities*

The requirement for the Board to establish Committees and appoint Committee Chairs arises from the breadth and the depth of the work that the Board is undertaking in the discharge of its duties. The Board quickly realized that it needed smaller working groups utilizing the expertise of specific individuals on the Board to address particular areas of the Program, namely Budget and Risk, Planning, Governance and Human Resources and Recruitment. The Committee members on each Committee will apply their expertise to the matters brought before the Committee and bring recommendations to the Board for decision-making. The Bylaw as originally drafted did not specifically allow for the establishment of Committees and the appointment of Committee Chairs, or the assignment of senior executive responsibilities by the Board on a temporary basis to assist with transition periods or other challenging periods during the delivery of the Green Line Program.

b) *Clarification of "Capital Budget"*

The definition of "Capital Budget" is added to specify what is included in the capital budget. The defined term is then referenced appropriately within the Bylaw.

c) *Remuneration for the Board*

In accordance with the Bylaw (as passed 2020 July 21), the City Manager, in conjunction with a discussion with Council, set the original remuneration for the Board members, the Board Chair, and the Board Vice-Chair prior to the appointment of members to the Board. The remuneration which the City Manager discussed with Council is reflected in the Board members' retainer agreements. Now that the Board is established and the City Manager is also a member of the Board, the Bylaw is being amended to reflect that Council will approve any future changes to the remuneration for Board members, the Board Chair, and the Board Vice-Chair, as well as set the remuneration for Committee Chairs.

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ITEM: 5.1.1 C2021-0652
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CITY CLERK'S DEPARTMENT

Page 1 of 4

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RECOMMENDATION(S):

That Council:

1. Give three readings to Proposed Bylaw 33M2021 in Attachment 1 to amend Bylaw 21M2020, the Green Line Board Bylaw.
2. Direct that the Report and attachments be held confidential pursuant to Section 27 (Privileged Information) of the *Freedom of Information and Protection of Privacy Act* until such time as Council rises and reports on this matter.

HIGHLIGHTS

- This report proposes amendments to the Green Line Board Bylaw 21M2020 (the "Bylaw") which was given three readings and approved by Council after considering the Green Line Board Report GC2020-0772 (Attachment 3) in 2020 July 21.
- The Bylaw delegates certain authority from Council to a committee of Council (the Green Line Board) pursuant to Section 203 of the *Municipal Government Act*.
- Due to a recent court decision, which identified that delegated authority must be expressly specified, or reasonably inferable from an expressly specified delegation, it was determined that the Bylaw should be amended to further clarify the authority of both Council and the Green Line Board within the Bylaw respecting certain matters.
- Without the amendments, there may be a potential for a perceived technical gap in interpretation related to the authority of both the Green Line Board and Council.
- The amendments to the Bylaw, with minor exceptions, are consistent with Green Line Board Report GC2020-0772 and do not change the intention of the Bylaw and the respective authority of Council and the Green Line Board as described in the Report.
- Council, the City Auditor, and the Technical and Risk Committee all identified the need to strengthen governance for the Green Line Stage 1 Program, as the size, complexity, and demand for timely and focused decision-making by persons with the appropriate expertise is critical for the Program's success, which resulted in the establishment by Council of the Green Line Board.
- Following consideration of Green Line Board Members Verbal Report C2020-1433, the Green Line Board was appointed by Council 2020 December 14.

DISCUSSION

Background

The Green Line Stage 1 Program is the largest infrastructure investment ever made by The City of Calgary. It is critical to ensure that the governance framework in place for delivery of the Program allows for effective decisions to be made on a timely basis. For a Program of this magnitude and complexity, decisions must often be made in an expedited manner by persons experienced in the management of similar programs. For this reason, Council established the Green Line Board as a committee of Council, and appointed members to the Green Line Board in 2020 December 14. The Board members have significant expertise in governance, leadership, procurement, engineering, design, construction, project management, urban design and P3 projects, which enable them to make effective and timely decisions for the Program.