



IN CAMERA

ADMINISTRATIVE REPORT

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TO: Vancouver City Council

FROM: Paul Mochrie, Deputy City Manager and
Malcolm Bromley, General Manager, Vancouver Board of Parks and
Recreation

SUBJECT: Renewal of the Joint Operating Agreements between the Vancouver Park
Board and Community Centre Associations

IN CAMERA RATIONALE

This report is recommended for consideration by Council on the In Camera agenda as it relates to Section 165.2(1) of the *Vancouver Charter*: (k) negotiations and related discussions respecting the proposed provision of an activity, work or facility that are at their preliminary stages and that, in the view of the Council, could reasonably be expected to harm the interests of the city if they were held in public.

RECOMMENDATION

- A. THAT Council endorse the provisions of the proposed Joint Operating Agreement between the Park Board and Community Centre Associations that address ownership of community centre assets, human resources and indemnification of Community Centre Association activities.

REPORT SUMMARY

This report provides a summary of the efforts undertaken by Park Board and City staff to achieve an updated legal agreement that reflects a contemporary, accountable working relationship between the Park Board and Community Centre Associations (CCAs) delivering programming in civic facilities. The culmination of that work is a proposed Joint Operating Agreement (JOA) that will be considered by Park Board in the near term and, if approved, offered to CCAs for acceptance by March 1, 2017.

Although the operation of community centres and the relationship with CCAs are matters within the jurisdiction of the Park Board, certain dimensions of that relationship intersect with authorities that rest exclusively with City Council, as set out in the Vancouver Charter. Accordingly, the proposed JOA is presented to Council for its review and endorsement of provisions which address those specific matters within Council's jurisdiction.

COUNCIL AUTHORITY/PREVIOUS DECISIONS

On May 16, 2013, Council approved the following resolution:

THAT Council direct Human Resources staff to work with Community Centre Associations to undertake processes to align staff and contractors with the Park Board and Community Centre Associations as appropriate under the Labour Code;

FURTHER THAT this work be completed by year end 2013;

FURTHER THAT staff work with Community Centre Associations to initiate an internal audit review of HR related financial issues and overhead issue under the existing Joint Operating Agreement.

CITY MANAGER'S/GENERAL MANAGER'S COMMENTS

The City Manager agrees with the compelling need for renewal of the current operating arrangement between the Park Board and Community Centre Associations and supports the process that has been undertaken to develop an updated Joint Operating Agreement. The proposed JOA represents a significant improvement over the existing contract, including those specific elements of the operating relationship over which Council retains jurisdiction pursuant to the Vancouver Charter. The City Manager concurs with the staff recommendation that Councils endorse the relevant provisions of the proposed JOA.

REPORT

Background/Context

Across the network of 24 community centres operated by the Park Board, there are several different operating models for the delivery of programming. The majority of the community centres (21 of 24) operate under the terms of bilateral arrangements between Park Board and a non-profit Community Centre Association (CCA). Pursuant to these contractual arrangements, referred to as Joint Operating Agreements, community centre programming is determined and delivered by the CCA. The operation of the centre, including maintenance, provision of core facility staffing and all overhead costs, as well as the operation and programming of all pools and ice rinks, is the responsibility of Park Board.

The following table identifies the 24 community centres and the applicable operating model.

Table 1. Community Centre Operating Model

Community Centre	Operating Model
Champlain, , Douglas Park, Dunbar, False Creek, Hastings, Hillcrest, Kensington, Kerrisdale, Killarney, Kitsilano, Mt. Pleasant, Marpole-Oakridge, Renfrew, Roundhouse, Strathcona, Sunset, Thunderbird, Trout Lake, West End/Coal Harbour, West Point Grey	Association/Park Board Joint Operating Agreements (JOA)
Ray-Cam	Tripartite Operating Agreement (Association, Park Board, BC Housing)
Britannia	Tripartite Operating Agreement (Association, Park Board, VSB)
Creekside	Direct Park Board operation (no Community Centre Association)

With the exception of the agreement with the West End Community Centre Association, the Joint Operating Agreements (JOAs) presently in effect were last updated in 1979. The existing JOAs do not reflect current practices or operations of the parties, nor do they adequately acknowledge the statutory jurisdiction and responsibility of the Park Board as the steward of the community centre facilities and the public funding allocated to construct and maintain those assets and support their ongoing operation. s.14

s.14

s.14

The City of Vancouver also indemnifies the activities of the Community Centre Associations under individual agreements that exist in parallel but separate from the JOA.

Historical Efforts to Renew the Park Board-CCA Relationship

The deficiencies inherent in the JOAs and the resultant constraints on Park Board’s ability to influence and fully leverage the community centre network have been a point of concern for several decades. In the 1990’s, the Park Board made an attempt to modernize the relationship with Community Centre Associations through a working group model. That process resulted in no change.

From 2001-2005, a Joint Operating Agreement Task Force comprising representation from CCAs and Park Board staff developed recommendations for updating the relationship. Subsequently, from 2005-2009, the Park Board engaged in negotiations with individual Community Centre Associations reflecting the recommendations of the Joint Operating Agreement Task Force. This process resulted in one CCA, the West End Community Centre Association, entering into a revised JOA with Park Board. Agreements were not concluded with any other CCAs.

In 2008, a Park Board Core Services Review was undertaken to address revenue and service inequities across the network of community centres. However, this exercise did not result in any amendment to the existing JOA construct.

In 2012, the Park Board approved a framework for management of the community centre network and entered into discussions with 18 CCAs regarding renewal of the relationship. 6 CCAs subsequently elected to withdraw from that process.

In 2013, Park Board concluded an Interim Agreement with 12 Community Centre Associations. This Agreement outlined a set of changes to the existing relationship between the parties, including the implementation of the OneCard as a single mechanism for access to CCA and Park Board programs and services, the elimination of CCA membership as a requirement to access CCA programming and expansion of the Park Board's Leisure Access Pass subsidy to include CCA programs.

The six CCAs that did not sign the Interim Agreement undertook legal action to block the implementation of the OneCard at this time. The CCAs claim in this action included an assertion of shared ownership of the community centre facilities, as well as an implied license to operate in the facilities indefinitely.

Upon receiving the claims by the 6 CCAs, the Park Board served notice under the termination provisions of the JOA of its intention to discontinue the relationship with those Associations. The CCAs then sought and obtained an injunction to preclude termination of the JOA pending the full litigation of their claims of ownership and implied license to operate. Those matters remain unresolved; to date, neither Park Board nor the CCAs have taken action to secure trial dates or advance the litigation in any substantive way.

From 2013 through 2015, Park Board staff engaged in extensive negotiation with the group of 6 CCAs involved in the litigation and, separately, with the 12 CCAs that signed the Interim Agreement. Both sets of negotiations were supported by experienced professional mediators. Neither process resulted in anything close to an agreement on a renewed JOA.

A New Way Forward - 2016

On March 15, 2016 the Vancouver Park Board passed the following motion:

BE IT RESOLVED THAT the Board endorse the letter to the CCAs drafted by the Chair and the approach outlined for "A New Way Forward" to reach a new Joint Operating Agreement with the Community Centre Associations.

The approach adopted by Park Board with this motion comprised a comprehensive consultation involving all of the CCAs with the explicit intent of finalizing a new Joint Operating Agreement by the end of 2016. As distinct from the negotiations that preceded it, this consultation process provided an opportunity for all 20 CCAs to engage with Park Board concurrently and did not pre-suppose a consensus as the outcome. Rather, Park Board's stated objective for the consultation was to obtain input on terms of a renewed JOA. Taking into account the feedback provided by the

CCAs, Park Board confirmed its intent to draft a new JOA that would be offered for acceptance by individual Associations.

A neutral third party facilitator was engaged to support the process. The facilitator met with CCA representatives and Park Board staff, facilitated consultation sessions and reported findings to the CCAs, the Park Board and the public throughout the process.

Since 2012, Park Board and City staff have conducted over 100 meetings with various groups of CCAs, both with and without mediators, facilitators, and lawyers in an attempt to renew the JOA. To date, the Vancouver Park Board and City of Vancouver have spent over \$1.5 million in direct costs on these efforts, not including the significant time invested by senior leaders, staff and the City's Legal Services department. The CCAs have also invested significant time and resources into these efforts.

Current Status

The City of Vancouver and the Vancouver Park Board are at a critical juncture in the process of renewing the relationship with the CCAs.

Since March 2016, there have been thirteen consultation sessions with CCA presidents and directors. These sessions have been well attended. Additionally, CCAs provided 275 pages of written feedback on the draft JOA concepts and specific terms through an online survey. Park Board Staff have considered all feedback provided by the CCAs and, where possible and aligned with the Park Board's fundamental policy objectives for the community centre network, CCA perspectives and interests are reflected in the proposed JOA.

The proposed JOA is attached as Appendix A.

Next Steps

Subject to Council's endorsement of the elements of the draft JOA outlined below, Park Board staff plan to distribute the proposed JOA to CCAs on December 1, 2016 and make the document available publicly. Park Board will then consider the proposed JOA at a special public meeting to be scheduled in January and, if approved, it will be issued formally to each CCA for consideration and a March 1, 2017 deadline for acceptance by each CCA. Park Board staff are recommending June 1, 2017 as the effective date for the new JOA.

Strategic Analysis

The operation of the community centre network and delivery of public programs in those centres are matters which rest within the mandate of the Park Board. The existing JOAs are contractual arrangements entered into by the Park Board in its capacity as steward of Vancouver's parks and community centre assets and its remit for the delivery of services utilizing those assets.

Notwithstanding the Park Board's general jurisdiction in this regard, the nature of the relationship with the CCAs and the content of the JOA extends to certain matters that

fall within the exclusive jurisdiction of Council as delineated by the *Vancouver Charter*:

- Ownership of community centre facilities;
- Employment of Park Board and CCA personnel.

Additionally, the City has historically agreed to indemnify the activities of the CCAs. As such, the City has an overriding interest in the management of risks arising in respect of those activities.

Staff strongly support the objective of a renewed relationship between the Park Board and the non-profit associations that deliver programming in City-owned community centres. City staff have worked closely with Park Board staff in identifying opportunities to clarify, update and improve the JOA and in developing a contemporary contractual agreement to replace the existing JOA.

The terms of the proposed JOA developed through the consultation process with the CCAs reflects a marked improvement over the status quo and represents an appropriate balance of interests on the specific dimensions of the agreement over which Council has ultimate jurisdiction. The proposed JOA provisions addressing such matters are summarized below:

I. Ownership of Community Centre Assets

The proposed JOA includes explicit language confirming that the City is the sole owner of the community centres and any fixtures. Any CCA signatory to the agreement would acknowledge that it has no interest in such assets and no license or other right to occupy the community centre, except only as provided in the JOA. CCAs will retain ownership of assets purchased and utilized by the Association in its activities; CCA assets will be documented in a schedule to the JOA.

The JOA terms provide CCAs with the right to determine the use of defined spaces within the community centre facilities consistent with a defined set of priorities. However, the City and Park Board retain the ability to supersede the CCA's access, with reasonable notice, for civic priorities or special events such as elections, major sporting or cultural events.

The JOA provides for a fixed term of 5 years, with 2 5-year extensions by mutual agreement between the CCA and Park Board. The Agreement is also subject to termination by either part on 90 days' notice in the event of material, unresolved breach by the other party.

In the case of the 6 CCAs that have asserted claims to joint ownership of the community centres in which they operate, execution of a renewed JOA will be contingent on the withdrawal of those claims by the CCAs and resolution of the outstanding litigation.

II. *Human Resources*

The relationship between Park Board and the CCAs in respect of the engagement and oversight of employees, contractors and volunteers is unique and inherently complicated. While CCAs engage instructors to deliver programs, the practical exercise of that function is supported almost entirely by Park Board staff. On a day-to-day basis, Park Board staff provide oversight to those instructors and administer the employment or services contracts between instructors and the CCAs. CCAs do not have any capacity for operational management but rather rely on the Park Board to provide that capacity as a service; CCA non-instructional personnel are typically limited to administrative and bookkeeping functions.

The foregoing construct creates the potential for confusion and risk in regards to employment-related liabilities. While Park Board does not act in the capacity of an employer pursuant to the Vancouver Charter, the oversight role exercised by Park Board staff gives rise to a material likelihood that the City could be deemed liable for statutory or contractual obligations arising in relation to individuals notionally engaged by a CCAs.

The proposed JOA sets out a clear delineation of roles and responsibilities between the CCA and Park Board in respect of employment and engagement of contracted service providers. Where the CCA delegates authority to Park Board staff to act on its behalf in employment-related matters, that delegation must be documented and agreed by Park Board.

The proposed terms also include an agreement on the part of the CCA to indemnify the Park Board and City for liabilities arising in relation to CCA personnel and an obligation for the CCA to purchase third-party employment practices insurance. Conversely, the CCA is indemnified for liabilities arising in relation to its personnel where such liability arises out of a negligent or willful misconduct by Park Board staff acting in their capacity as agents for the CCA.

III. *Indemnification*

All CCAs presently enjoy the protection of an indemnity provided by the City for liabilities arising out of CCA activities in community centres. This indemnity is provided pursuant to individual agreements between each CCA and the City. These agreements exist separately from the JOA and are subject to termination by the City on 30 days' notice.

The proposed JOA does not impose any obligation on the City in respect of the Indemnification Agreements. The City retains the right to terminate or pursue mutually-acceptable amendments to those Agreements at its discretion.

In addition to the continued right for the City to discontinue the indemnification of CCAs, the proposed JOA provides for a range of measures which support the exercise of appropriate risk management for the community centre network and provide Park Board with mechanisms to mitigate the City's exposure to direct and indirect costs.

i. Establishment of Public Policy, Standards

The JOA confirms Park Board's authority to set public policy objectives for the community centre network and establish performance standards, provided such standard are not inconsistent with the express terms of the JOA.

Specifically in relation to the delivery of childcare services by CCAs, a matter which gives rise to significant risk that has been the subject of concern in the past, the proposed JOA incorporates compliance with all regulatory and licensing conditions as a contractual obligation.

Of note, the proposed JOA sets out a process for resolution of disputes that includes third party arbitration. However, decisions of the Park Board regarding public policy, standards and allocation of Park Board resources are explicitly exempt from arbitration.

ii. Reporting and Audit

The proposed JOA establishes a robust framework for budgeting, record keeping and reporting of CCA expenditures. The Park Board maintains the right to audit CCA records at any time upon reasonable notice. The proposed terms also set out specific requirements governing the disposition of any surplus revenues generated by CCAs through community centre-based operations.

iii. Information Technology

The proposed JOA confirms the City's exclusive ownership of IT assets supporting community centres operations and prohibits CCAs from using or connecting any device to the City's network without express prior approval.

The JOA also mandates the use of a common recreation management and registration system procured and operated by the City and Park Board, including the terms for CCAs participation in the use of such system for their operations.

Implications/Related Issues/Risk (if applicable)

Financial

The proposed provisions summarized above addressing ownership of assets, human resources and risk management represent a material improvement over the existing JOA and would dramatically reduce the City's exposure to operating costs and other financial loss associated with community centre operations.

Additionally, the proposed JOA provides a mechanism for Park Board to recover outstanding expenses payable by CCAs, redistribute a small proportion of CCA revenues to achieve network-wide objectives and to obtain the value of reinvestment of \$13M

currently held by individual Associations as retained earnings from their community centre operations.

Human Resources/Labour Relations

Staff are of the opinion that the terms of the proposed JOA provide much-needed clarification of the respective roles of Park Board and CCAs in relation to employment and clearly establish the obligation of CCAs to cover employment-related liabilities associated with their personnel. While employment remains a complex dimension of the relationship with the CCAs, the proposed JOA would support effective management of the associated issues and significantly mitigate the City's risk exposure under the current JOA.

Historically, CUPE 15 has expressed dissatisfaction and disagreement with the reliance on non-profit societies to deliver community centre programming. The City has committed to share the proposed JOA with CUPE 15 once the document is in the public domain, along with an offer to explain and discuss any matters of interest to the union.

Staff do not believe that there is inconsistency between the proposed JOA and the collective agreements covering City and Park Board employees.

Legal

The proposed JOA was drafted by Legal Services and reflects Legal Services' advice regarding the protection of City and Park Board interests.

As noted, 6 CCAs maintain an active claim to joint ownership of community centre facilities and a perpetual implied license to operate in those facilities. Absent agreement with those parties on a renewed JOA and withdrawal of the suit, the Park Board and City are facing a complex and costly process to litigate those issues and preserve the City's exclusive interest in its valuable community centre assets.

CONCLUSION

The attached proposal for a renewed JOA between the Park Board and CCAs represents the culmination of an extensive effort by Park Board and City staff over the past four years. Staff are of the view that this revised JOA adequately preserves the fundamental nature of the historical relationship with the CCAs and reflects the legitimate interests of those Associations, but also addresses the City's critical interests in the operation of the community centre network.

Accordingly, staff recommend that Council endorse the provisions of the proposed JOA that pertain to ownership of assets, human resources and indemnification of CCA activities.

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