

# TORONTO TRANSIT COMMISSION REPORT NO.

**MEETING DATE:** October 29, 2009

**SUBJECT:** TTC CORPORATE POLICY - DONATIONS TO THE  
COMMISSION FOR COMMUNITY BENEFITS

## **ACTION ITEM**

---

### **RECOMMENDATION:**

It is recommended that:

1. The Commission adopt the policy "Donations to the Commission for Community Benefits", as set out in Attachment #1;
2. This report be forwarded to the City Clerk, noting its adoption in accordance with Toronto City Council's request; and,
3. The appropriate Commission staff and officials be authorized and directed to take the necessary actions to give effect to the policy "Donations to the Commission for Community Benefits".

### **FUNDING**

There are no funding implications arising out of this report.

### **BACKGROUND**

The City of Toronto ("City") through its "Policy on Donations to the City for Community Benefits" ("Policy") adopted by City Council at its meeting of September 25, 26, 27 and 28, 2006, recognized the role that voluntary donations to the City and its agencies, boards and commissions (collectively "Agencies") for community benefits play in city building. The City intended that the Policy apply to all Agencies and it has requested that all Agencies adopt a policy on donations consistent with their Policy.

### **DISCUSSION**

At this time, the TTC does not have a policy on voluntary donations. The proposed new policy (Attachment #1 to this report) is based on the premises that all donations are made at arm's length from the TTC's decision making processes; respect the legislative and policy

framework within which the TTC operates; and preserve the integrity of the TTC's decision making processes, most notably with respect to property, planning approvals and procurement matters.

The following distinctions were made with respect to particular aspects of the City's policy and are reflected in the proposed policy:

- Donations for community benefits encompass property, cash, assets or activities that provide a public good; are distinct from gifts, hospitality or favours that provide a personal benefit and donations made in support of charity fundraising efforts. Statutory contributions, such as Section 37 of the Planning Act ("Section 37") contributions (a requirement), sponsorship arrangements (benefits exchanged) and donations of services in-kind (intangible), do not meet the criteria of a donation for community benefit. Rules and procedures for personal gifts and benefits are addressed in the TTC's "Code of Conduct".
- A matching funding contribution from TTC is not a donation. Any preset requirement to match a donation or Section 37 contribution would have the affect of superseding TTC priorities and objectives without considered evaluation of their financial impact.
- No donations (cash, durable asset, property, large or small, anonymous or otherwise) for community benefits are exempted from this policy.
- To preserve accountability and transparency, the proposed new policy requires that a public register be kept of donations received.
- Where a cash donation would create a further financial impact on the TTC that is material or adversely affects approved program objectives requiring budget adjustments or creating binding future year financial impacts, the proposed policy requires that approval is sought from City Finance and/or City Council before a donation is accepted.

The proposed policy will not affect the role of Commissioners or TTC staff in identifying appropriate Section 37 benefits. It will prohibit concurrent donations from applicants seeking approvals under the Planning Act and the solicitation of donations from applicants seeking approvals for planning matters from the TTC. Staff and Commissioners will be expected to clarify that there are no concurrent applications for approval when donations for community benefits are proposed. Similarly, existing policies require that procurements be carried out in an open and objective manner, personal conflict be avoided and procurement processes be free from influence and interference by bidders, lobbyists, Commissioners or TTC staff. Therefore, donations for community benefits should not be sought or accepted if offered concurrent to a procurement process. In her report on the Toronto Computer Leasing Enquiry, Justice Bellamy recommended a blackout period when communication between the City and bidders should be prohibited. The proposed policy requires a similar blackout period applied to voluntary donations to the TTC. Commissioners and staff would be required to respect the blackout period to preserve the integrity of both the donation and the procurement process. Property acquisitions and disposals, including leases, are a specialized

form of procurement process and as such, the principles applying to procurements in general, apply to real estate transactions.

When a donation is made for a specific purpose, in accepting the donation, the TTC assumes an obligation to apply the donation to that purpose. Donations for specific purposes therefore should only be accepted if the Commission has approved the purpose and the spending authority in the appropriate budget. In addition, donations to operational activities, donations that provide durable assets or cash to create or improve durable assets need to be assessed as to their benefit and impact, including impact on service delivery, work force requirements and approved priorities. In order to protect the TTC from unexpected financial obligations, once approved, capital projects arising out of such donations should have clear objectives and timeframes reflecting the purpose of the donation, including sunset provisions should funding targets not be achieved. If a donation is not large enough to achieve its purpose, the Commission, as a condition of the donation, may approve matching funds or approve a fund raising effort to obtain sufficient funds to carry out the purpose of the donation.

**JUSTIFICATION**

Approval of the proposed new policy “Donations to the Commission for Community Benefits” is recommended to bring the Toronto Transit Commission into conformity with the requirements of the City of Toronto Act and the City of Toronto’s policies on voluntary donations.

-----

October 29, 2009

22-7-10

Attachment #1: Proposed Policy – Donations to the Commission for Community Benefits

## Toronto Transit Commission

### POLICY/INSTRUCTION

SUBJECT	CLASSIFICATION	DATE APPROVED	P/I NUMBER
Donations to the Commission for Community Benefits	Property Development		New

#### 1.0 RESPONSIBILITY

- 1.1 Manager - Property Development for solicitation and acceptance of donations and notifications to City of Toronto councillors.
- 1.2 Assistant General Secretary for keeping a public registry of donations.

#### 2.0 PURPOSE

To establish a policy on voluntary donations for community benefits which enhance TTC services or facilities, are compatible with TTC priorities and objectives; and are consistent with the policies established by the City of Toronto for donations to the City for community benefits. This policy on voluntary donations to the TTC for community benefits includes donations made to the TTC for both durable assets and operational purposes and donations requested or encouraged by Commissioners or employees.

#### 3.0 DEFINITIONS

- 3.1 Approve or Approval refers to any request, consent, determination, acceptance, satisfaction, opinion, requirement, decision, review, discretion or approval from the TTC with respect to any matter pertaining to a donation for a public benefit.
- 3.2 The City refers to the City of Toronto.
- 3.3 Commission refers to the City of Toronto board established pursuant to the City of Toronto Act, 2006, S.O. 2006, c11, Sched. A.
- 3.4 Community Benefit encompasses projects, initiatives, assets and activities that provide a public good and excludes statutory contributions, sponsorship arrangements, donations made in support of TTC charity fundraising activities and donations of services in-kind.
- 3.5 Planning Review refers to review and approval of development applications made to the City of Toronto and the TTC pursuant to the Planning Act.
- 3.6 Toronto Council refers to the elected councillors of the City of Toronto meeting

APPROVED	REVISION NO.	SUPERSEDES	PAGE
Commission/Gary Webster Chief General Manager	New	- - -	1 of 7

## Toronto Transit Commission

### POLICY/INSTRUCTION

SUBJECT	CLASSIFICATION	DATE APPROVED	P/I NUMBER
Donations to the Commission for Community Benefits	Property Development		New

as Council and decisions of Council.

- 3.7 TTC refers to the Toronto Transit Commission, its officials, employees, contractors, consultants and agents.
- 3.8 TTC Technical Review or Technical Review refers to the technical review undertaken by TTC with respect to the documents setting out the design and construction of a proposed development or entrance connection to a transit station to ensure that, where applicable, it is designed in accordance with TTC's standards and that construction of the development or entrance connection will not have an adverse affect on existing and planned future transit facilities.

#### 4.0 GENERAL

##### 4.1 Donations in relation to TTC decision making processes:

- 4.1.1 Conditions, contributions and Community Benefits may only be requested from an applicant seeking an Approval from the TTC if such requests are permitted or required by the decision making process.
- 4.1.2 In the case of an applicant seeking an Approval from the TTC beyond matters permitted or required as part of the decision making process, voluntary donations from the applicant or their representative may only be requested or accepted at arm's length from the decision making process.
- 4.1.3 Applicants seeking an Approval shall not concurrently offer or make voluntary donations for Community Benefits.
- 4.1.4 Voluntary donations for Community Benefits shall not be solicited or accepted from applicants with a concurrent application for an Approval.
- 4.1.5 Where a voluntary donation is solicited or offered, there is an obligation on the parties to confirm that there are no concurrent applications or proposals for an Approval.

APPROVED	REVISION NO.	SUPERSEDES	PAGE
Commission/Gary Webster Chief General Manager	New	- - -	2 of 7

**Toronto Transit Commission**

**POLICY/INSTRUCTION**

SUBJECT	CLASSIFICATION	DATE APPROVED	P/I NUMBER
Donations to the Commission for Community Benefits	Property Development		New

4.1.6 Planning and Technical Review Approvals:

- 4.1.6.1 Voluntary donations for Community Benefits that fall outside the scope of a planning approval may not be solicited and offers may not be accepted from an applicant or their representative concurrent with a Planning Review or TTC Technical Review approval or from a party making or proposing to make a Planning Review or TTC Technical Review application.
- 4.1.6.2 No voluntary donations for Community Benefits may be offered, solicited or accepted during the Planning Review and Technical Review approval process (blackout period).
- 4.1.6.3 The blackout period shall commence for Commissioners and staff when they receive information, formally or informally, that an individual, organization or company has an interest or intent in submitting an application for Planning Review or Technical Review approval.
- 4.1.6.4 The blackout period shall end as follows:
  - a) For official plan amendments, zoning by-law amendments and combined applications upon the expiry date of the appeal period after City Council makes its decision on the by-law(s) and there is no appeal; or, if appealed, is the date the Ontario Municipal Board makes its decision;
  - b) For plans of subdivision and condominium upon the expiry date of the appeal period after the City makes its decision on draft plan approval and there is no appeal; or if appealed, is the date the Ontario Municipal Board makes its decision;
  - c) For site plan approval upon execution of the site plan agreement, or if appealed, the date the Ontario Municipal Board makes its decision; and

APPROVED	REVISION NO.	SUPERSEDES	PAGE
Commission/Gary Webster Chief General Manager	New	- - -	3 of 7

## Toronto Transit Commission

### POLICY/INSTRUCTION

SUBJECT	CLASSIFICATION	DATE APPROVED	P/I NUMBER
Donations to the Commission for Community Benefits	Property Development		New

- d) For Technical Review upon the date that Property Development indicates to the applicant or their representative that it has completed the TTC Technical Review to the satisfaction of the TTC and entered into all agreements arising out of the TTC Technical Review.

#### 4.1.7 Procurement Decisions:

- 4.1.7.1 Voluntary donations for Community Benefits may not be solicited and offers may not be made by or accepted from a bidder, proponent, applicant or their representatives to a procurement, concurrent with the procurement process. The term procurement includes but is not limited to Offers to Lease, Offers to Purchase real property and disposal of real property.
- 4.1.7.2 Discussions about voluntary donations for Community Benefits are not permitted and voluntary donations may not be offered, solicited or accepted during the procurement process. The procurement process begins when the request or call for a bid, quote, tender or proposal is formally issued and it ends on the date when the procurement decision is made by the Commission.
- 4.1.7.3 Successful bidders, proponents or applicants or their representatives to a formal procurement or formal procurement process may be required to sign a declaration that they have read and understood this section of the policy prior to the Commission entering into a contract or prior to the renewal of an existing contract.

#### 5.0 Donations of Real Property:

- 5.1 Donations of real property to the TTC or for use by the TTC, may only be accepted with the prior consent of the Commission, which consent is to include approval of the budget for any future or ongoing obligations arising out of the donation.

APPROVED	REVISION NO.	SUPERSEDES	PAGE
Commission/Gary Webster Chief General Manager	New	- - -	4 of 7

## Toronto Transit Commission

### POLICY/INSTRUCTION

SUBJECT	CLASSIFICATION	DATE APPROVED	P/I NUMBER
Donations to the Commission for Community Benefits	Property Development		New

- 5.2 Where appropriate, the request to accept a donation of real property is to include the use and disposition of the real property including the net proceeds arising from any property transaction.
- 5.3 Donations of real property are exempt from the Disposal of Surplus Property, Acquisition of Real Property, Office and Short Term Leases Policy.
- 5.4 Unless specifically stated by the donor that the real property is to be retained and used by the Commission and not sold or disposed of, the Commission shall make the determination in consultation with the Manager - Property Development and General Counsel as to whether the property will be retained; or disposed of and the proceeds used for the specific use specified by the donor.

#### 6.0 Accepting and Managing Donations:

- 6.1 Eligible donations for Community Benefit are those which support durable assets; capital projects; or asset improvement, restoration; or capital maintenance of the public transit system operated by the TTC.
- 6.2 Donations of cash and financial instruments such as bonds and guaranteed income certificates or equities made for specific purposes will only be accepted where the Commission has approved the donation and authorized the specific purpose. Where a donation would create further financial impact on the TTC in the form of an unbudgeted expenditure which cannot be accommodated within the approved capital or operating budget, further approvals may need to be sought.
- 6.3 Where the Commission has authorized the specific purpose and a donation(s) is made in the form of bonds or equities, the financial instruments shall immediately on receipt be forwarded to the City's Finance Department to be disposed of in accordance with the City's processes and procedures.
- 6.4 Donations designated for a specific purpose or for the general purpose of a specific program or project, including donations of real property and the net proceeds of any property transaction or sale of equities, shall be used by the program or project for the purpose specified by the donor.

APPROVED	REVISION NO.	SUPERSEDES	PAGE
Commission/Gary Webster Chief General Manager	New	- - -	5 of 7



## Toronto Transit Commission

### POLICY/INSTRUCTION

SUBJECT	CLASSIFICATION	DATE APPROVED	P/I NUMBER
Donations to the Commission for Community Benefits	Property Development		New

- 6.5 Where a donation is not designated by the donor for a specific purpose or the general purpose of a specific program or project, the donation shall be taken into general revenue.
- 6.6 Approved budgets are required to proceed with any expenditure towards which donations will be applied.
- 6.7 Donations may not be managed informally or held in personal or external accounts or trust funds.
- 6.8 Funds from donations may not be released and the proposed project may not commence until sufficient funds to complete the project have been assembled and spending authority obtained. Sunset provisions shall be identified at the outset of projects with fundraising plans to provide guidance on the timeframe in which funds shall be sought and the termination of efforts in cases where funding targets are not attained.
- 6.9 Proposed donations to the TTC for operational activities are to be assessed by the General Manager – Operations for potential operational and financial impacts prior to acceptance by the Commission.
- 6.10 The TTC shall keep a registry of donations which, subject to the provisions of this policy, shall be available to the public.
- 6.11 Staff shall notify the local City Councillor of any donations under this policy that are made for specific projects in their ward in accordance with Notification Protocol – TTC Real Estate Matters – Commission Report November 20, 2002.

#### 8.0 REFERENCE SOURCES

- City of Toronto Act
- Planning Act
- City of Toronto “Policy on Donations to the City for Community Benefits”
- Notification Protocol – TTC Real Estate Matters - Commission Report November 20, 2002

APPROVED	REVISION NO.	SUPERSEDES	PAGE
Commission/Gary Webster Chief General Manager	New	- - -	6 of 7

**Toronto Transit Commission**

**POLICY/INSTRUCTION**

<b>SUBJECT</b>	<b>CLASSIFICATION</b>	<b>DATE APPROVED</b>	<b>P/I NUMBER</b>
Donations to the Commission for Community Benefits	Property Development		New

- Process to Declare Properties Surplus and to Facilitate Jurisdictional Transfer - City process
- Disposal of Surplus Property, Acquisition of Real Property, Office and Short Term Leases Policy
- TTC By-Law #2
- Procurement Policy

<b>APPROVED</b>	<b>REVISION NO.</b>	<b>SUPERSEDES</b>	<b>PAGE</b>
Commission/Gary Webster Chief General Manager	New	- - -	7 of 7