

MEMORANDUM

TO: Economic Development Task Force Members
City of Nanaimo

CC: Bill Corsan
Director of Community Development

FROM: Allan Neilson
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DATE: July 11, 2020

SUBJECT: **NANAIMO PROSPERITY AGENCY DRAFT CHARTER**
REVISED VERSION

REVISED VERSION

Please see attached a handout titled *Nanaimo Prosperity Agency: Revised (Draft) Charter*. The document incorporates the key points that were raised by Task Force members on the earlier version of the *Draft Charter* at the recent June 23, 2020, Task Force meeting. Specific points to note are as follows:

- > *Mandate* — The proposed mandate of the Nanaimo Prosperity Agency (NPA) has been expanded to allow for initiatives aimed at promoting business retention and expansion. In considering the Agency's mandate, it is important to remember from the *Economic Development Function Service Model Review* that there are already several agencies in Nanaimo focused on retention and expansion efforts. This finding informed the proposal to focus the NPA on business attraction efforts. An expansion of the mandate to allow for some retention and expansion activity is possible; however, the Agency will need to be careful to avoid duplicating others' initiatives.
- > *Shared Ownership* — The revised version leaves unchanged the assumption of shared ownership. During the stakeholder consultations and the discussions with Council that were undertaken for the *Service Model Review*, two points on ownership emerged clearly:
 - the City of Nanaimo should be the primary but not the sole shareholder of the NPA
 - other key agencies important to Nanaimo's economic development should have an ownership stake in the NPA

A shared ownership structure was considered important to achieving broad support for and buy-in to the corporation and its efforts. Such a structure was also deemed to be critical to

ensuring the corporation's existence in the community should the City's support for the Agency change.

- > *Shareholders* — The earlier version of the *Draft Charter* used the term *Members* to identify the owners of the NPA. This version uses the term *Shareholders*, which more accurately describes the role of the stakeholder groups, and which is consistent with the terminology in the *Business Corporations Act* and the *Community Charter*.
- > *Owners* — On June 23, 2020, the consultant was asked if the agencies identified as potential owners have been approached. The agencies have not been approached with the *Draft Charter*; however, the issue of shared ownership was discussed during the consultations with the agencies during the *Service Model Review*. If the Task Force approves in principle this revised version the City will approach the agencies to determine interest.
- > *Classes of Shares* — The document continues to make the distinction between Class A and Class B shareholders for the purpose of shareholder decision-making. All shareholders (i.e., both classes) participate in, and receive one vote on, most decisions that are assigned to the Agency's owners. The City, as the Agency's only Class A shareholder, is solely responsible certain decisions, the key ones of which relate to the borrowing of monies.

The distinction between Class A and B shares, and the assignment of certain powers to the Class A shareholder (i.e., the City), reflects the reality that the NPA is established as a local government corporation, funded primarily by the City on behalf of Nanaimo taxpayers. The City is ultimately accountable to taxpayers for the NPA's use of public monies. The requirement for the City — and the City alone — to approve borrowing by or on behalf of the NPA may be viewed as a necessary control mechanism.

The earlier version of the *Draft Charter* assigned to the City the power to dissolve the Agency. This clause has been removed the current version.

- > *Board of Directors* — The shareholders collectively appoint the Board of Directors for the NPA. The Board is an autonomous decision-making body, responsible for all decisions other than those that are explicitly assigned to the Agency's owners. The Board is accountable to the Agency's shareholders and is required to report to the shareholders on the activities, performance, and finances of the Agency. The Board does not, however, report to City Council in the same way as a Council Committee or Commission would be expected to report. The Board's level of autonomy as a decision-making body is considerable.
- > *Board of Directors (Composition)* — This version incorporates the points made by the Task Force with respect to Board composition. Specifically, this version:
 - identifies the City's elected official appointee to the Board as an *ex officio* member without voting rights

- increases the number of at-large Directors from two to three
 - recognizes the importance of sector representation in addition to skill sets
- > *Dispute Resolution* — A simple dispute resolution process is included to address any disputes that may arise among shareholders.
- > *Five Year Review* — The final provision in the *Draft Charter* calls on the founding shareholders to commit to the Agency for an initial period of five years. This clause is designed to provide stability and certainty during the Agency's early years.

QUESTIONS TO ADDRESS

To complete the blueprint for the Nanaimo Prosperity Agency, the Task Force needs to address a number of questions, including:

- > Does the Task Force support the shared-ownership structure?
- > Does the preliminary list of owners contain names that should not be present, or omit names that should be present?
- > Is the distinction between Class A and Class B shareholders understood and supported?
- > Are changes to the Board of Directors' composition required?
- > Is the funding model appropriate and practicable?
- > Is the operations model outlined sufficiently, or is more detail required?
- > The "Five Year Review" commits the City and the other shareholders to five years' of support for the Agency, including financial support.
 - Is the call for a review in year five of operations reasonable?
 - Does the provision dealing with termination of membership make sense?

SUGGESTED NEXT STEPS

A key role of the Task Force is to develop for recommendation to Council the structure, governance, staffing, funding, and other elements of the Nanaimo Prosperity Agency. The *Draft Charter* attempts to set out the Task Force's views on these topics in the form of an NPA blueprint. To complete its role, the Task Force needs to determine, first, if further changes are needed to the *Draft Charter*. Once the document accurately reflects the consensus of Task Force members, the Task Force will need to consult the potential shareholders to determine their interest in taking ownership positions. The Task Force will then need to recommend the blueprint to Council.

If the Task Force's recommendation is accepted by Council, the City will need to undertake a

number of steps to bring the NPA to fruition:

- > *Legal Documents* — The *Charter* is a working, non-legal document that captures the intent of the City and key economic development stakeholders to develop a separate economic development corporation. The contents of the *Charter* need to be incorporated into two legal documents, namely a *Shareholder Agreement* and *Articles of Incorporation*.
- > *Inspector of Municipalities* — Pursuant to section 185 of the *Community Charter*, British Columbia's Inspector of Municipalities must approve the City's establishment of the Nanaimo Prosperity Agency as a local government corporation.
- > *Registrar of Companies* — The City, with the cooperation of other founding shareholders, must apply to the Registrar of Companies to incorporate the Nanaimo Prosperity Agency under the terms of the *Business Corporations Act*.

The shareholders of the new Agency will need to provide start-up funding and appoint the inaugural Board of Directors. One of the Board's first tasks will be to hire an Executive Director.



Nanaimo Prosperity Agency
July 15, 2020

REVISED CHARTER

NAME:	Nanaimo Prosperity Agency Inc.
PURPOSE:	The Nanaimo Prosperity Agency is the economic development <u>corporation</u> through which business, government, First Nation, and community partners collaborate to build Nanaimo's economy, and increase the level of shared prosperity enjoyed by those who live here.
MANDATE:	<p>The Nanaimo Prosperity Agency has <u>the following responsibilities:</u></p> <ul style="list-style-type: none">> to implement, maintain, and update as required the Nanaimo Economic Development Strategy> <u>to coordinate the sector-specific and other economic development activities undertaken by a range of stakeholder organizations</u>> <u>to develop and directly undertake initiatives aimed at retaining and expanding existing businesses</u>> to develop and directly undertake initiatives aimed at attracting businesses, employers, talent, and investment to the community
LEGAL STRUCTURE:	<p>The Nanaimo Prosperity Agency is a City of Nanaimo local government corporation, created pursuant to section 185 of the <i>Community Charter</i>. The Agency is incorporated under the British Columbia <i>Business Corporations Act</i>, and is registered as a non-profit corporation under the <i>Income Tax Act</i> of Canada, exempt from paying income taxes.</p>
<u>SHAREHOLDERS:</u>	<p>The Nanaimo Prosperity Agency is jointly-owned by the City of Nanaimo and five other governments and organizations, including (in alphabetical order):</p> <ul style="list-style-type: none">> Nanaimo Chamber of Commerce> Nanaimo Airport Commission> Nanaimo Port Authority> Snuneymuxw First Nation> Vancouver Island University

All six partner organizations, including the City, are designated as the founding Shareholders in the Agency's *Articles of Incorporation*.

The City of Nanaimo, as the lead shareholder, holds one Class A share in the Agency; each of the other shareholders holds one Class B share. All Class A and Class B shares are without par value.

SHAREHOLDER DECISIONS:

Key decisions related to the mandate, governance, expansion, funding, membership, and dissolution of the Agency are made by the shareholders in accordance with the following voting rules:

- > All shareholders (i.e., Class A and Class B shareholders) participate in, and receive one vote on, decisions related to:
 - the Agency's purpose and mandate
 - the composition and authority of, and method of appointment to, the Agency's Board of Directors
 - the appointment of individual Directors to the Board
 - the Agency's funding model, including changes to cost-sharing arrangements to support the work of the Agency
 - the categories of Agency expenses to be included under "base funding"
 - the inclusion of additional Class B shareholders

Decisions on these matters require a simple majority of shareholders present.

- > The City of Nanaimo, as the sole Class A shareholder, makes all decisions related to:
 - the borrowing of monies by or on behalf of the Agency
 - any change to the Agency's non-profit status
 - the inclusion of additional Class A shareholders

BOARD OF DIRECTORS (Composition):

The Nanaimo Prosperity Agency is governed by its own Board of Directors which is comprised of nine (9) voting Directors appointed by the shareholders at the corporation's Annual General Meeting, in accordance with the following rules on composition:

- > the City of Nanaimo designates one (1) senior staff member to individual to serve as a voting Director
- > each of the other shareholders designates one (1) individual to serve as a voting Director
- > the shareholders together select and appoint the remaining three (3) voting Directors from persons who apply to the Board through a public call for applicants

In addition to these nine (9) voting Directors, the City of Nanaimo designates one (1) elected official to serve on the Board, *ex officio*, as a non-voting Director.

In appointing Directors, the shareholders take into consideration:

- > the skill sets and backgrounds (e.g., finance, business development, marketing, community development) that should, to the extent possible, inform the decisions of the Board
- > the economic sectors in Nanaimo that candidates represent

**BOARD OF
DIRECTORS
(Term):**

Each voting Director is appointed for a term of two (2) years, and may be reappointed by the shareholders for two (2) consecutive additional terms, for a maximum period of six (6) years. Additional rules on term of office intended to promote continuity in Agency governance are as follows:

- > Five (5) of the nine (9) voting Directors of the inaugural Board are appointed for a three (3) year term; these Directors may be re-appointed for an additional two (2) consecutive terms, each of which is two (2) years in duration.
- > Directors are appointed (or reappointed, as the case may be) on a staggered basis beginning at the end of year two when four (4) voting Director positions become open.

**BOARD OF
DIRECTORS
(Chair/Vice):**

At the first Board meeting of each calendar year, following the Annual General Meeting, the Board Directors elect from among their numbers a Board Chair and Vice Chair. The duties of the Chair include:

- > presiding at all meetings of the Board
- > providing leadership to the Board, including by recommending resolutions
- > providing, on behalf of the Board, general direction to the Agency's Executive Director
- > acting as the Board's chief liaison with the shareholders, the media, and external agencies
- > signing contracts and other legal documents in accordance with Board decisions
- > carrying out other duties assigned by the Board

The Vice Chair acts in place of the Chair when the Chair is absent.

**BOARD OF
DIRECTORS
(Remuneration):**

All Board members serve without remuneration. Expenses incurred to conduct Agency business may be claimed in accordance with Board policies.

**BOARD OF
DIRECTORS
(Decisions):**

The Board of Directors is an autonomous decision-making body, appointed to direct and oversee the activities of the Nanaimo Prosperity Agency. The Board is empowered to make a broad range of decisions, including those related to:

- > the Agency's annual five-year financial plan (i.e., operating and capital budgets)
- > the Economic Development Strategy for Nanaimo
- > the hiring of the Executive Director for the Agency
- > empowering and holding to account the Agency's Executive Director
- > the development of policies and protocols to govern Agency business
- > entering into agreements and contracts, and terminating such agreements and contracts
- > initiating projects and programs to implement the Economic Development Strategy
- > appointing an independent auditor to prepare the Agency's *Annual Financial Statements*
- > the creation, and appointment of members to, Board advisory committees

All Directors vote on all decisions of the Board; each Director including the Chair holds one vote. Decisions in favour of a resolution require a straight majority of Directors present.

**BOARD OF
DIRECTORS
(Committees):**

The Board of Directors creates advisory committees to engage the broader community in the economic development of Nanaimo, to assist in implementing the Economic Development Strategy, to provide advice on new and ongoing initiatives, and to attend to the business of the Board. The Board's choice of committees is informed by the Economic Development Strategy, opportunities or issues that arise, requests made by different sectors of the community, and the Board's own needs.

The list of specific Committees is determined by the Board, but includes:

- > Governance Committee
- > Finance Committee

All committee members are appointed by the Board as a whole. The Board as a whole also appoints a Chair and Vice Chair for each committee.

**BOARD OF
DIRECTORS
(Reporting):**

The Board is accountable to the shareholders for the operation and performance of the Nanaimo Prosperity Agency. Accountability is achieved through:

- > the presentation to the shareholders, and to the public, of Annual Financial Statements prepared by an independent auditor
- > the presentation to the shareholders, and to the public, of an Annual Report that:
 - provides information on the Agency's initiatives and efforts over the previous year
 - assesses the Agency's past year performance using progress measures that are informed by the Economic Development Strategy
 - sets out important initiatives and events that are planned for the upcoming year, as per the Economic Development Strategy
- > presentations to the shareholders at the Agency's Annual General Meeting
- > semi-annual briefings to each shareholders
- > other means, formal and informal, that the shareholders may request

**FUNDING
MODEL
(Base Funding):**

Base funding is provided by the shareholders in accordance with the following formula:

- > the City of Nanaimo, as the sole Class A shareholder, provides 85% of the total base funding required
- > the remaining shareholders together provide 15%

Base funding is intended to cover:

- > Agency staffing costs
- > the operation of the Board
- > office expenses including rent/lease
- > an amount for destination marketing, business development, talent development, and other initiatives aimed at attracting business and investment to Nanaimo
- > community outreach and reporting
- > other costs identified by the Board and approved as "base funding" by the shareholders

**FUNDING
MODEL
(Projects):**

Project funding is provided in part by shareholders through their investment in base funding, and in part by private businesses, governments, and public agencies in the form of conditional, initiative-

related grants. In identifying the need for project funding, and in pursuing sources of funds, the Agency is guided by the Economic Development Strategy.

**EXECUTIVE
DIRECTOR:**

Nanaimo Prosperity Agency is headed by an Executive Director who is hired by and accountable to the Board of Directors. The Executive Director:

- > directs and oversees the work of Agency staff, contractors, and consultants
- > recommends to the Board the development of new staff and contract positions
- > advises the Board on the implementation, updating, and maintenance of the Economic Development Strategy
- > identifies for Board approval initiatives aimed at fulfilling the Agency's mandate
- > liaises with senior staff at the City of Nanaimo, key representatives of the other shareholders, and businesses, associations, and other groups in Nanaimo
- > represents the Agency at various events inside and outside of Nanaimo

OPERATIONS:

The Nanaimo Prosperity Agency leases its own office space in Downtown Nanaimo. The Agency attends to its own operational needs, including those related to financial management and accounting, legal matters, human resources, purchasing, information technology, and others.

Where cost-effective, the Agency may contract the City of Nanaimo to provide corporate and other services required for the Agency's operations.

**DISPUTE
RESOLUTION:**

The shareholders attempt to resolve disagreements and disputes among themselves through discussion. Where necessary, shareholders may seek the assistance of a third-party mediator to provide non-binding recommendations.

Where discussion and mediation fail, shareholders agree to resolve disputes through the appointment of a single arbitrator, using final proposal arbitration under the provisions of the *Arbitration Act*.

**FIVE YEAR
REVIEW:**

All founding shareholders, including the City of Nanaimo, agree to support, fund, and participate in the Nanaimo Prosperity Agency for an initial period of five years.

In the Agency's fifth year of operations, the City will initiate and complete a review of the Agency that:

- > examines the Agency's mandate, structure, funding, and performance, along with other factors that the shareholders may identify
- > assesses the level of community and shareholder support for the Agency
- > examines the potential to expand the Agency's service area to include the broader Mid-Island economic region
- > identifies changes to the Agency and/or corporation model for consideration by the shareholders

At the fiscal year end of the fifth year of operations, any shareholder of the Nanaimo Prosperity Agency may terminate its position in the Agency, provided that:

- > notice of termination is provided in writing at least six months prior to the fiscal year end
- > the shareholder recognizes that its termination of membership does not impact any financial commitment made by the shareholder to an ongoing project or initiative of the Agency

For clarity, none of the founding shareholders may terminate its position in the Agency before the end of year five.