



City of Richmond

Report to Committee

To: Parks, Recreation and Cultural Services Committee
Date: March 22, 2021

From: Marie Fenwick
 Director, Arts, Culture and Heritage Services
File: 11-7000-01/2021-Vol 01

Re: City Appointees to the Richmond Gateway Theatre Society Board of Directors

Staff Recommendation

That the Richmond Gateway Theatre Society be advised that, in response to its letter, three City appointments will be made to its Board of Directors in 2022.

CM Fenwick

Marie Fenwick
 Director, Arts, Culture and Heritage Services
 (604-276-4288)

Att. 2

REPORT CONCURRENCE	
CONCURRENCE OF GENERAL MANAGER	
<i>Sevener</i>	
SENIOR STAFF REPORT REVIEW	INITIALS:
	<i>W</i>
APPROVED BY CAO	
<i>[Signature]</i>	

Staff Report

Origin

On March 15, 2021, the City received a letter from the Richmond Gateway Theatre Society (the Society) in regards to the status of its eligibility for a British Columbia Gaming Commission Grant (Attachment 1). The letter indicates that the Society is at risk of losing its eligibility to receive annual funding of \$80,000 from the Gaming Commission due to the number of appointed Board members, as opposed to Board members elected by the Society's membership. The Gaming Commission grant program requires that the Society has a minimum of 2/3 board members elected by its voting membership.

The purpose of this report is to inform Council of a proposed change to the number of City appointees allowed under the terms of the current agreement which will preserve the Society's eligibility for this annual grant and advise the Society accordingly.

This report supports Council's Strategic Plan 2018-2022 Strategy #3 One Community Together:

Vibrant and diverse arts and cultural activities and opportunities for community engagement and connection.

3.1 Foster community resiliency, neighbourhood identity, sense of belonging, and intercultural harmony.

3.2 Enhance arts and cultural programs and activities.

3.3 Utilize an interagency and intercultural approach to service provision.

Analysis

Richmond Gateway Theatre Society Operating Agreement and Richmond Gateway Theatre Society Bylaws

The City of Richmond entered into a five year operating agreement with the Richmond Gateway Theatre Society in January 2019. Clause 21(a) speaks to Council appointees to the Board of Directors. It states:

The City may, at its sole discretion, appoint up to and including five (5) persons selected by the City to be members of the Board of Directors of the Society.

The Richmond Gateway Theatre Society's Bylaws allow for between 11 and 13 members.

Historically, the City has exercised its right under the terms of the operating agreement to appoint five Board members, with the remainder elected at the Society's Annual General Meeting. The Society is an independent non-profit organization, not a Council-appointed advisory committee. As such, the terms for these appointments are outlined in the City's operating agreement with the Society, as opposed to in a Terms of Reference.

Under the terms of the current agreement, the City has multiple opportunities to maintain oversight of the Gateway's operations. These include required annual reporting on the Society's operations, strategic and business plans, financial statements and budgets. In addition, the City reserves the right to conduct more in-depth financial and operational reviews, and to have a City employee serve as an ex-officio member of the Society's Finance Committee. Should the City have concerns with the Gateway Theatre's operations or finances, the agreement outlines termination options. The relevant sections of the agreement with the Society are found in Attachment 2.

Current Richmond Gateway Theatre Society Board Appointment Process

The considerations for appointed and elected board members are the same, and the process happens concurrently to ensure a diverse board with the range of expertise required. The selection process is led by the Society Board's Governance and Nominating Committee.

Before applicants are considered, the Board Skills Matrix is reviewed to identify current skills, expertise needed, and any existing or upcoming gaps. Attention is also paid to the mix of age, race, gender and sexual orientation. City applications are reviewed to identify individuals who have selected Gateway as their first choice, and any individuals who have skillsets, such as law or accounting, that are required.

Applicants are sent the Board Prospect Package to review. This package explains:

- the nature of the position, which is a board role with fiduciary responsibility;
- the requirements of board members including meeting attendance and committee service; and
- the need to be a society member.

Should the prospective candidate wish to proceed, further screening includes a discussion with the Chair of the Governance and Nominating Committee, and an interview with members of the committee and senior staff.

If the candidate is to be a City appointment, the Governance and Nominating Committee introduces a motion to recommend the candidate to the City as an appointee. If the motion passes, the Director of Arts, Culture and Heritage Services reviews the recommendation and prepares a report for Council's consideration.

If the candidate is to be elected by the membership, the process is the same, except that the recommendation is that the membership elect the proposed candidate at the AGM.

Once a candidate becomes a board member, their fiduciary duty is to the Society, regardless of their status as an elected or appointed incumbent.

Proposed Revision to Number of Appointees

As permitted under the terms of the current agreement, staff propose Council appoint three members to the Society's Board of Directors, which will allow the Society to remain eligible for

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\$80,000 of Gaming Commission funding annually. This does not require a change to the current operating agreement, which allows for, but does not require, up to five appointments to the Board. The current City appointees would complete their terms and the change would take effect in 2022.

Financial Impact

None

Conclusion

The Richmond Gateway Theatre Society has a robust Board recruitment and selection process. This process, in addition to a positive working relationship and a comprehensive written operating agreement ensures that the interests of Richmond residents are well represented in the operations of the Gateway Theatre. As such, staff propose reducing the number of City appointees to three to ensure that the Gateway Theatre remains eligible for British Columbia Gaming Commission funding. By leaving the current agreement in place, the City also reserves the right to increase its number of appointees back to five in the future.



Marie Fenwick
Director, Arts, Culture and Heritage Services
(604-276-4288)

- Att. 1: Letter from the Richmond Gateway Theatre Society dated March 15, 2021
- Att. 2: Richmond Gateway Theatre Society Relevant Operating Agreement Terms



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Marie Fenwick
Director, Arts, Culture & Heritage
City of Richmond
6911 No. 3 Rd
Richmond, BC V6Y 2C1

15 March 2021

Dear Ms Fenwick,

On behalf of the Board of Directors of Richmond Gateway Theatre Society, I am writing with respect to a provision in our Operating Agreement which is currently a stumbling block for Gateway.

In the Agreement, it is stated that the City can appoint *up to* five people to the Society's board, and to date, the City has typically appointed a full five. However, we have recently been notified by the BC Gaming Branch that in future we will be ineligible for a Community Gaming Grant due to the number of appointed board members. The grant program has an eligibility rule that requires that at least 2/3 of a society's board be elected by the membership. Gateway's bylaws state that our board should comprise between 11 and 13 members, a size that functions well for us, and with five appointed members, we do not meet the 2/3 requirement. Gateway staff have had conversations with the leadership at the Gaming Branch and have formally appealed the decision on the grounds that all board members have a fiduciary duty to the Society but the appeal was rejected.

Each year, Gateway receives approximately \$80,000 in Gaming funding. This is the single largest grant annually, second only to the City's funding. The grant is intended to ensure access to arts and culture events for the BC public and helps off-set reduced ticket prices and Academy fees. It would be extremely detrimental to Gateway if we were to lose this funding.

I am writing to request that the City consider appointing three people to the Gateway board on an ongoing basis instead of exercising the entitlement to appoint five. To facilitate this change, Gateway will need to propose a change to our bylaws at our November 2021 AGM, so we request that this change come into effect as of December 31, 2021, when two current appointees' terms end.

Thank you for your consideration.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Diane Purvey', written over a white rectangular area.

Diane Purvey
Chair

cc Camilla Tibbs, Executive Director

Richmond Gateway Theatre Society Relevant Operating Agreement Terms

5.2(b) Society Activities. Each year during the Term, the Society shall submit to the City the following information with respect to the Society's operation:

- (i) an annual report reviewing the Society's activities for the previous year including audited Financial Statements and a statement as to how the previous year's programs have fulfilled the Society's Mission and Core Values;
- (ii) a statement of the previous year's use of the facilities by user groups, including those under the Rental Subsidy Program, which statement shall allow the City to monitor the Rental Subsidy Program; and
- (iii) a statement of the anticipated programming budget for the next program year.

(c) Strategic and Business Plans. Each year during the Term, the Society shall submit to the City the Society's strategic plans as available.

(d) Audited Financial Statements. The Society shall have prepared at its expense audited Financial Statements of all its activities for each year of the Term (or such lesser period of time as may be appropriate depending on the timing of the Society's Annual General Meeting) and present them to a regular meeting of the Council of the City within three (3) months of the Society's Annual General Meeting. The Society's auditors are appointed by the members of the Society and report directly to the Society.

(f) City Employee Appointed as Ex-officio member of Society Finance Committee. The City shall have the option of appointing a City employee to be an ex-officio member of the Society's Finance Committee. Such person appointed to this position shall not have voting rights on the Committee but shall be entitled to share with the City all information that the person acquires while on the Committee.

(i) Significant Financial Review. The City reserves the right to conduct a financial review of the Society's operation of the Theatre and the Society's compliance with the terms and conditions of this Agreement relating to such review. Upon delivering 10 days prior written notice to the Society of the City's exercise of its right to require this review, the Society shall provide all documentation requested by the City within two weeks or such other period of time as the City may request, in its sole discretion. The Society shall fully cooperate in such review and shall provide all documentation and information requested by the City at any time throughout the review. Such review shall be undertaken at the City's cost. If based on the results of the review, the City identifies moderate to significant risks to the operation or reputation of the City or the Society, the City may recommend changes. The City shall inform the Society of such changes and the Society shall incorporate such changes to the extent that it is feasible to adopt them or take alternative measures to mitigate the identified risks to an acceptable level.

(j) Operational Review. The City reserves the right to conduct an operational review of the Society's operation of the Theatre and the Society's compliance with the terms and conditions of this Agreement relating to such review. Such review shall include, without limiting the generality of the foregoing, a review of financial, operating and performance indicators, including but not limited to: cost structure, such as levels of administrative, staffing, program

costs and discretionary spending; achievement of earned revenue targets; performance of investments; staff levels; and benchmarking against best practices of similar organizations. The Society shall fully cooperate in such review and shall provide all documentation and information requested by the City, in the City's sole discretion. Such review shall be undertaken no more than annually and shall be at the City's cost. If based on the results of the review, the City identifies moderate to significant risks to the operation or reputation of the City or the Society, the City may recommend changes. The City shall inform the Society of such changes and the Society shall incorporate such changes to the extent that it is feasible to adopt them or take alternative measures to mitigate the identified risks to an acceptable level.

(b) Termination by City. This Agreement may be terminated by the City on 60 days' prior written notice to the Society if any one of the following events occurs:

- (i) the Society is in breach of this Agreement and remains in breach after receipt of 60 days' written notice of that breach by the City; or
- (ii) the Society changes its constitution or bylaws after the date of this Agreement without prior written notice to the City of such change(s) and such change(s) are regarded as being unacceptable by the City; or
- (iii) the Society becomes bankrupt or insolvent or takes any proceedings under the Bankruptcy and Insolvency Act, R.S.C., 1985, c.B-3, as amended or replaced from time to time, or commences any proceeding for winding up; or
- (iv) if the Society has failed in the City's opinion, in its sole discretion, to adequately comply with its obligations contained in subsections 5(h) and/or 5(i) of this Agreement within 30 days (or such other period of time as the City may determine in its sole discretion) from the date that the City has provided the Society with a list of the City's recommended changes.