

City of Toronto Municipal Code Chapter 19, Business Improvement Areas - Proposed Amendments

Date:	October 20, 2009
To:	Economic Development Committee
From:	General Manager - Economic Development, Culture and Tourism
Wards:	All
Reference Number:	P:/2009/Cluster A/EDCT/ECON DEV/November/ed0911-037

SUMMARY

The purpose of this report is to recommend amendments to the Toronto Municipal Code, Chapter 19 – Business Improvement Areas, with respect to the purposes of Business Improvement Area (BIA) Boards of Management, Council appointments to BIA Boards, proxy voting and a clarification respecting minor BIA boundary expansion consents. The City's Legal Services Division and the Toronto Association of Business Improvement Areas have no objections to the proposed amendments.

RECOMMENDATIONS

The General Manager, Economic Development, Culture and Tourism, recommends that:

1. Council approve the amendments to Municipal Code Chapter 19, Business Improvement Areas, in relation to purposes of BIA Boards, Council appointments to BIA Boards, proxy voting and minor boundary expansion consents, as described in this report; and
2. Council direct the City Solicitor to amend Municipal Code Chapter 19 in accordance with Attachment 1 to this report, subject to any necessary minor substantive or stylistic refinements as may be identified by the General Manager and the City Solicitor.

Financial Impact

There are no financial implications resulting from the adoption of this report.

The Deputy City Manager and Chief Financial Officer has reviewed this report and agrees with the financial impact information.

ISSUE BACKGROUND

At its meeting on June 11, 2007, Council adopted a new City of Toronto Municipal Code, Chapter 19 – “Business Improvement Areas.” The Chapter, made necessary by the enactment of the City of Toronto Act, 2006, contains many of the BIA-related provisions of the Municipal Act, 2001, as well as new provisions relating to financial management, the activities that BIAs are allowed to undertake, and clarifications and refinements with respect to procedures for establishing and amending the boundaries of BIAs.

Having been in effect for two years, staff conducted a review of Chapter 19 to gauge its performance and identify amendments necessary to improve its effectiveness and clarity. Generally, the Chapter has performed very well, providing a comprehensive and user-friendly framework for the operation of the City’s BIAs.

However, several amendments are proposed, addressing issues pertaining to the purpose of BIA boards, Council appointments to boards, proxy voting and minor BIA boundary expansion consents.

COMMENTS

With respect to their purpose, Chapter 19 currently allows BIA boards to, for example, oversee the improvement, beautification and maintenance of municipally-owned lands, buildings and structures, promote the area as a business, shopping or tourism district, offer graffiti removal services and advocate on behalf of the interests of business improvement areas.

BIAs have participated for several years in the City’s Mural Program, undertaking, either on their own or as part of a broader community improvement initiative, the painting or installation of murals on privately-owned buildings with the help of a grant from the City. Chapter 19 of the Municipal Code does not include a provision which clearly mandates BIA boards to engage in such an initiative on private property.

The City’s Mural Program offers grants of up to \$5,000.00 to groups in commercial and employment districts for mural projects that demonstrate strong local involvement, community partnerships, and commitment to promoting economic development initiatives to install murals on private property. The program does not provide funding

for murals with commercial content, maintenance of completed murals, insurance costs, permit fees, or costs related to securing the mural site.

The murals within BIAs, situated on visibly prominent walls, often promote the brand or theme of the BIA, depict a historic image or scene, help create an attractive streetscape, are effective deterrents to graffiti, and provide social benefits to the broader community, often through youth involvement and enhanced community pride. In accordance with the Program criteria, murals cannot contain any form of commercial content or advertisement. Further information about the program can be found at http://www.toronto.ca/business/mural_application.htm#1

Staff believe that BIA murals are an effective form of commercial area branding, and community enhancement and engagement, and therefore recommend that Section 19-3, Purpose of a Business Improvement Area Board, be amended by adding a new Section E which reads “To undertake or assist with the painting or installation of wall murals on private property subject to an agreement with the property owner and provided the mural advances the image or brand of the BIA and contains no commercial content.”

It is also recommended that Clause F of Section 19-19, Limitations, of the Municipal Code Chapter 19, be amended to read “Make or fund improvements to private property, with the exception of graffiti and poster removal initiatives under 19-3D and the painting or installation of wall murals under 19-3E.”

Section 19-15 of the Municipal Code Chapter 19, Changes to boundary, sets out the notification and consent requirements for “minor” BIA boundary expansions; those which represent an assessment value of less than 5 percent of the existing assessment value of properties within the existing BIA. Subsection C of this Section requires that written consent from “all property owners and business tenants” within the expansion area be received in order to proceed with a minor boundary expansion. To further clarify this requirement, staff propose this subsection be amended to read “all commercial and industrial property owners and business tenants” so that there is no confusion as to whether residential property owners are required to provide consent.

The *Municipal Act, 2001* established that a BIA board shall be composed of one or more directors appointed directly by the municipality, and the remaining directors selected by a vote of the membership and subsequently appointed by the municipality. The Municipal Act provision did not limit Council’s direct appointments to members of City Council only.

The City is now subject to the *City of Toronto Act, 2006*, which is silent on the issue of how BIAs are to be established and its board members are to be appointed. The establishment of BIAs in the City of Toronto is now governed by Municipal Code Chapter 19, which, when originally drafted, limited direct Council appointments specifically to members of Council. Staff believe that Council should regain the authority to make direct appointment to boards that are not necessarily members of Council.

This provision in no way is meant to alter the long-held practice of Council, which is to appoint a local Councillor(s) to the board and reserve the remaining appointments to those selected by the membership at large. Although likely to be rarely used, the provision will afford Council a measure of flexibility to make appointments based upon the specific needs of a Board. For example, Council could appoint someone well versed in the operations of BIAs to a board that has little such experience, or someone that could help facilitate around issues a board may experience difficulty resolving.

It is therefore recommended that Clause C (1) of Section 19-20, Appointment of directors, of the Municipal Code Chapter 19, be amended to read “One or more directors appointed directly by Council”. In addition, it is recommended that Clause C (2) of section 19-20 be amended to make it clear that while the remaining directors are selected by the BIA membership, they are still appointed by Council. Accordingly, Clause C (2) should be amended to read “The remaining directors selected by a vote of the membership of the business improvement area and appointed by Council.”

Further, to more accurately reflect Council’s authority to appoint, it is recommended that Section 19-23, Refusal to appoint, be amended to add the phrase “appoint another person, so that the Section reads “Council, or community council under delegated authority, may refuse to appoint a person selected by the members of a business improvement area, in which case Council, or community council as the case may be, may leave the position vacant, appoint another person or direct that a meeting of the members of the business improvement area or the Board be held to elect or select another candidate for Council’s or community council’s consideration.”

Municipal Code Chapter 19 contains provisions which allow a member of the BIA to nominate in writing one individual to vote on behalf of the member at a general membership meeting, provided the person nominated is not also a member of the business improvement area. These provisions were included in the Code as a means of providing a voice to BIA member business and property owners who cannot attend a general meeting, and to larger corporate entities, a financial institution for example, to assign a staff representative to represent and vote on behalf of the corporation.

Staff also intended the provisions to ensure that no one (a BIA member or nominee) at any general meeting would have more than one vote on a motion, hence the requirement that the person nominated to vote on behalf of a member not also be a member of the BIA. However, by not specifically limiting the number of members a nominee represents at a general meeting, the provision does not entirely achieve this objective.

Therefore, it is recommended that Clause G of Section 19-21, Election of nominees; voter eligibility, of the Municipal Code Chapter 19, be amended to read “A member of a business improvement area may nominate in writing one individual to vote on behalf of the member, provided the individual nominated has not also been nominated by another member of the business improvement area.” This amendment will ensure the “one person, one vote” standard applies at all BIA general meetings.

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SIGNATURE

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ATTACHMENTS

Attachment 1 – Proposed Amendments to Municipal Code Chapter 19, Business Improvement Areas

ATTACHMENT 1

PROPOSED AMENDMENTS TO MUNICIPAL CODE CHAPTER 19, BUSINESS IMPROVEMENT AREAS

1. Amend § 19-3, Purpose of a Business Improvement Area Board, by adding a new Section E:

“E. “To undertake or assist with the painting or installation of wall murals on private property subject to an agreement with the property owner and provided the mural is in a prominent location, advances the image or brand of the business improvement area and contains no commercial content;”.
2. Amend § 19-15C to add “commercial and industrial” so it reads “Council must receive a written request for a boundary expansion from the business improvement area Board and written consent from all **commercial and industrial** property owners and business tenants within the expansion area described in Subsection B.”
3. Amend § 19-19F, Limitations, to add “and the painting or installation of wall murals under 19-3E” so it reads “Make or fund improvements to private property, with the exception of graffiti and poster removal initiatives under 19-3D **and the painting or installation of wall murals under 19-3E**”.
4. Amend § 19-20C(1), Appointment of directors to delete “One or more members of City Council” and replace it with “One or more directors appointed directly by Council.”
5. Amend § 19-20C(2) to add “and appointed by Council” so it reads “The remaining directors selected by a vote of the membership of the business improvement area **and appointed by Council**”.
6. Amend § 19-21G, Election of nominees; voter eligibility, to add “provided the individual nominated has not also been nominated by another member of the business improvement area” so it reads “A member of a business improvement area may nominate in writing one individual to vote on behalf of the member, **provided the individual nominated has not also been nominated by another member of the business improvement area.**”
7. Amend § 19-23, Refusal to appoint, to add “appoint another person” so it reads “Council, or community council under delegated authority, may refuse to appoint a person selected by the members of a business improvement area, in which case Council, or community council as the case may be, may leave the position vacant, **appoint another person** or direct that a meeting of the members of the business improvement area or the Board be held to elect or select another candidate for Council’s or community council’s consideration.”