



STAFF REPORT ACTION REQUIRED

Results of Amended Polling Process for New and Expanding Business Improvement Areas; and Amendments to City of Toronto Municipal Code Chapter 19, including Use of Resources during an Election

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| Date: | October 17, 2013 |
| To: | Economic Development Committee |
| From: | General Manager, Economic Development and Culture |
| Wards: | All |
| Reference Number: | |

SUMMARY

The purpose of this report is to inform City Council of the results of the amended polling process for new and expanding Business Improvement Areas (BIAs), as requested by Council in 2011. In accordance with the direction of City Council, adopted at its meeting on February 20th and 21st, 2013, the report also proposes an amendment to Municipal Code Chapter 19, Business Improvement Areas, respecting the City's policies regarding the use of resources during an election. Several additional amendments to the Chapter, many technical in nature, are also recommended.

RECOMMENDATIONS

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

1. City Council approve the amendments to the Municipal Code Chapter 19, Business Improvement Areas in relation to the use of resources during an election, definitions, annual general and general meetings, boards of management, establishing/expanding a BIA, meeting on holidays, annual budget and financial procedures; and
2. City Council direct the City Solicitor to introduce the necessary bill in Council to amend Municipal Code Chapter 19 substantially as set out in with Attachment 1 to this report and subject to any necessary minor substantive or stylistic refinements as may be identified by the General Manager of Economic Development and Culture and the City Solicitor.

Financial Impact

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

DECISION HISTORY

At its meeting on July 12, 13 and 14, 2011, Council adopted amendments to Municipal Code Chapter 19, Business Improvement Areas, in relation to, amongst other matters, the BIA start-up and expansion process, notification and polling to prospective members, eligibility and appointment of board of directors, board procedures, and voting at general meetings. Further to adopting the amendments, Council directed the General Manager of Economic Development and Culture to monitor the results of the amended polling process for new and expanding BIAs and report back to the Economic Development Committee in two years.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2011.ED5.5>

<http://www.toronto.ca/legdocs/mmis/2011/cc/bgrd/backgroundfile-39515.pdf>

At its meeting on February 20 and 21, 2013, Council made a decision requiring, or requesting as legally appropriate, all City agencies and corporations to: review the City's Policy on the Use of City Resources during an Election; adopt policies appropriate to their organization that reflect the purpose and principles of the City's Policy; and submit their policies to the City Manager no later than September 20th, 2013.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.EX28.1>

ISSUE BACKGROUND

In 2007, Council adopted the City of Toronto Municipal Code Chapter 19, Business Improvement Areas (Chapter 19), which governs the City's BIAs and the way they operate, including provisions pertaining to financial management, the establishment of new BIAs, activities BIAs are permitted to undertake, and the appointment of board directors. In 2009, BIA Office staff conducted a review of Chapter 19 to gauge its performance and identified amendments to improve its effectiveness and clarity, which were adopted by Council in 2010.

Further amendments to Chapter 19 were approved by Council in 2011, some of which related to Council April 2011 decisions in Items EX4.6 *Managing through Agencies and Corporations*, and EX4.7 *Amendments to Public Appointments Policy*. The amendments also established new processes and polling requirements for starting, expanding, altering the boundaries of, and repealing BIAs that are more democratic, transparent, and will better facilitate the participation of business tenants. In adopting these amendments, Council directed the General Manager of Economic Development and Culture to monitor the results of the amended polling process for new and expanding BIAs and report back to the Economic Development Committee in two years.

The proposed amendments to Chapter 19 (see bolded sections of Attachment 1) have been developed in consultation with the City Manager's Office, Legal Services Division, City Clerk's and the Toronto Association of Business Improvement Areas (TABIA). The amendments were presented at the September 17, 2013, meeting of the TABIA-City of Toronto Interdepartmental meeting. TABIA has no objection to the proposed amendments.

Results of Amended Polling Process for New and Expanding BIA's; and Amendments to City of Toronto Municipal Code Chapter 19, including Use of Resources during an Election

COMMENTS

1.0 Results of Amended Polling Process

The amended polling process for proposed new and expanding BIAs adopted by Council in 2011 replaced a long-standing process that was frequently criticized as unfair, undemocratic and lacking transparency. First applied in the City through the requirements of the *Municipal Act*, and then through the first iterations of Chapter 19, the former polling process failed to adequately facilitate the participation of business owners, which were dependent upon their landlords to submit to the City a list of business tenants in order for such tenants to be eligible to participate in the polling. Very often, property owners failed to submit these lists, thereby shutting business tenants out of the process.

The former process gauged support for a new or expanded BIA through negative polling whereby if a minimum of one-third of those receiving the polling notice objected to the proposed new or expanded BIA, and if those objectors represented at least one-third of the levied commercial property taxes in the area, Council could not adopt the by-law creating or expanding the BIA. The process, unlike other City polls, failed to set a minimum response rate to validate a poll, so theoretically, the City could receive no responses and still move forward to create or expand a BIA. The process assumed that those potential business and property owners that didn't submit an objection were in favour of the proposed new or expanded BIA.

The amended process approved by Council in 2011 represents a significant improvement over the former process in terms of encouraging greater participation by potential BIA members, fairness, transparency and democratic values. Rather than negative polling, the new process has introduced a ballot system, whereby both those potential BIA member business and property owners who object to, and those who support, the proposed new or expanded BIA have the opportunity to cast a ballot accordingly. If fifty percent or more of the accepted ballots received by the City Clerk do not support the establishment or expansion of a BIA, then Council shall not pass the enacting by-law. The ballot results also provide Council and staff with a much better understanding of the strength of support for the proposed BIA or BIA expansion.

In order to ensure sufficient responses on which Council can make a decision, the new process establishes a minimum response rate whereby the number of accepted ballots received by the City Clerk must exceed a figure equal to thirty percent of the number of notices mailed to property owners or 100 accepted ballots, whichever figure is less.

In order to ensure business tenants have greater opportunity to participate in the polling process, the City Clerk sends a notice of Council's intention to create a new or expand an existing BIA to commercial and industrial property owners, who are still instructed to forward the notice to all business tenants. The BIA steering committee is now required to deliver the notice to all business tenants within the area of the proposed new BIA or expansion as well, thereby increasing the likelihood of business tenants receiving the notice. Most importantly, the notice will include instructions on how to obtain a copy of the ballot, either through contacting the City Clerk, or printing the ballot from the City's website.

By establishing a ballot approach and a minimum response rate, the new process puts greater emphasis on the BIA steering committee to engage potential BIA members during the public consultation process, make a case for how a BIA could benefit their area, and encourage them to cast a ballot.

To date, the amended process has been employed in six areas of the City seeking to establish a new BIA: The Queensway, Leslieville, Wilson Heights, Dufferin-Finch, Wilson-Keele and College Street. The process has worked exceedingly well, especially considering the broad range of land uses (retail, office commercial, industrial), business size and built form represented by these areas. Table 1 below identifies the results of the poll for each proposed BIA.

| Name of Proposed BIA | Total Active Ballots Mailed | # of Returned Ballots needed to meet req'd response rate | Number of ballots received by City Clerk | Ballots in favour of proposed BIA | Ballots opposed to proposed BIA | Spoiled Ballots | BIA Approved? |
|----------------------|-----------------------------|--|--|-----------------------------------|---------------------------------|-----------------|---------------------------------|
| Queensway | 242 | 73 | 175 | 113 | 23 | 39 | Yes |
| Leslieville | 279 | 84 | 122 | 94 | 28 | 0 | Yes |
| Wilson Heights | 95 | 29 | 23 | 18 | 3 | 2 | No - Insufficient response rate |
| Dufferin-Finch | 1237 | 100 | 288 | 194 | 83 | 11 | Yes |
| Wilson-Keele | 292 | 88 | 158 | 143 | 13 | 2 | Yes |
| College-Dufferin | 91 | 28 | 53 | 51 | 2 | 0 | Yes |

Staff are very confident the new process has significantly improved participation in the polling process. Only the proposed Wilson Heights BIA failed to meet the required response rate, and as a result, the BIA could not be established.

2.0 Use of Resources during an Election

At its meeting on February 20 and 21, 2013, Council made a decision requiring, or requesting as legally appropriate, all City agencies and corporations to: review the City's Policy on the Use of City Resources during an Election; adopt policies appropriate to their organization that reflect the purpose and principles of the City's Policy; and submit their policies to the City Manager no later than September 20th, 2013.

Currently, Chapter 19 contains a clause which establishes that a BIA Board of Management shall not "offer or provide support to political candidates or political parties," or "advertise or pay for advertisements in any political publication."

Through discussions with the City Manager's Office, it was determined that it is not a realistic expectation for seventy-seven BIAs to develop and adopt policies which reflect those of the City. Rather, it was decided that the best course of action was to include reference to this policy within Subsection 15K of Chapter 19 which lists the applicable laws to which BIA boards and board members must adhere. The current list includes, for example, the Municipal Conflict of Interest Act and the City's Code of Conduct for Members of Local Boards. As per Council's direction, the BIA Office will provide and review the Policy on the Use of City Resources during an Election with each BIA board of management in a timely fashion.

In addition, the City's Public Appointments Policy has been added to the list of applicable laws in Subsection 15K. This Policy requires that BIA board members who run for elected office, or seek an appointment to City Council to fill a vacancy on Council, shall take a leave of absence from the board. The leave is required to begin as of the day the member is nominated for election or applies for appointment to City Council. At its meeting on July, 12, 13 and 14, 2011, Council exempted BIA boards of management from Section 2.1 of the Public Appointments Policy which requires directors to be residents of the City of Toronto.

3.0 Municipal Code Chapter 19 – Proposed Amendments

Definition: Designate

Currently, the term "designate" is defined in Chapter 19 as "a person, who is not a member of the business improvement area, who has been appointed by a member of the business improvement area to represent the interests of the member at an annual general meeting or general meeting of the business improvement area." However, the term designate is also used in the Chapter with respect to senior City staff, for example, "the City's General Manager of the Economic Development and Culture Division or his or her designate or successor."

To remedy the situation, a new term, "member designate" is proposed to replace the term "designate," and will be defined using the same language. The term "designate" will be deleted.

Definition: Quorum

At present, the term "quorum," as defined, refers to "the number of board members to be present at a board meeting to legally conduct business at the meeting and the number of business improvement area members to be present at an annual general meeting or general meeting to legally conduct business at the meeting.

Since a BIA annual general meeting or general meeting is, in effect, a meeting of the board of management to which all BIA members are invited, the definition of "quorum" is proposed to be amended to require a quorum of board members (as opposed to BIA members) to be present at an annual general meeting or general meeting in order to legally conduct business.

Section 19-23. Quorum – Annual General Meeting and General Meetings

Subsection 19-23 of Chapter 19, currently requires quorum for annual general meetings and general meetings to be equal to the quorum for the BIA's board of management, implying the quorum figure can be reached through the attendance of BIA members as opposed to members of the board. In order to be consistent with the proposed new definition of "quorum," this section is proposed to be amended to require that "no business be transacted at an annual general meeting or general meeting unless quorum of the board is present."

Formal Public Consultation Meetings

As part of the process to establish or expand a BIA, a formal public consultation meeting is called and hosted by the City's BIA Office. At this meeting, a secret ballot vote is held to determine whether the potential BIA members in attendance wish to proceed to the formal notification and polling process conducted by the City Clerk. At present, if the result of the above-noted ballot vote is negative towards proceeding to the formal poll, there are no restrictions on when a subsequent formal public consultation meeting can be held to reconsider a new or expanded BIA in the area.

Staff are concerned that the lack of direction provided by Chapter 19 may result in multiple formal consultations being held in an area over an unreasonably brief time frame. Staff are of the opinion that there should be a designated waiting period during which a subsequent meeting shall not be held. This will allow the community a chance to revisit the issue after the passing of a reasonable amount of time, should it choose to do so

Therefore, staff recommend that Section 19-4 of Chapter 19 be amended to add a clause requiring that, should the potential business improvement area members decide to not proceed with the notification process, another formal public consultation meeting relating to any part of the same area shall not be held for at least one year from the date of the formal public consultation meeting at which the decision was made.

Meetings on Holidays

Remembrance Day and Family Day are proposed to be added to the definition of "holiday" to complete the list of holidays included in the definition to include all those designated by Council. Further, in order to help ensure maximum opportunity is afforded to board and BIA members to attend meetings, it is proposed that subsection 19-14 of Chapter 19 be amended to prohibit BIA boards of management from holding board meetings, annual general meetings and general meetings on the holidays listed within the definition.

Minor Boundary Expansions

In order to facilitate minor BIA expansions, Section 19-7 contains a provision allowing the City to expand a BIA without providing notice of the enabling by-law if the expansion represents an increase in total commercial and industrial property assessment value of less than five percent of the existing assessment value of properties within the existing BIA, and if written consent is received from all commercial and industrial property owners and business tenants within the expansion area.

This provision has been used effectively on several occasions, typically to add one property to a BIA. However, recently staff have received proposals for BIA expansions that satisfy the intent of the minor boundary expansion regulations, and have the support of all property owners and business tenants in the expansion area, but exceed the five percent maximum assessment value as noted above.

To address this issue, staff propose that Section 19-7 of Chapter 19 be amended to raise the maximum assessment value percentage increase to ten percent of the existing total assessment. Staff are confident the increase is adequate to address minor expansions moving forward and that the amendment will not alter the original intent of the minor expansion provisions. All other provisions of this section, including the requirement for written consent from all property owners and business tenants within the expansion area, will continue to apply to ensure that one hundred percent support from those impacted is obtained.

Board of Management Limitations

Currently, Section 19-15 of Chapter 19 prohibits a board of management from passing a resolution or taking a position contrary to a decision of Council related to an Ontario Municipal Board hearing, hearing of the Alcohol and Gaming Commission of Ontario or other similar tribunal. However, staff, upon further consideration, recommend that as city boards, BIA boards of management should be prohibited from passing a resolution or taking a position contrary to any Council policy or decision. Staff believe that such an amendment is necessary in order to fully respect the legal relationship between Council and BIA boards of management (city boards are agents of the City), which Council establishes to fulfill certain roles on its behalf.

Such an amendment does not preclude boards of management from participating in the decision-making process that leads to a Council policy or decision, including making deputations at Council committees, participating in community meetings and engaging Councillors directly.

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Board of Management Sub-Committees

The creation of sub-committees within a board of management is commonplace as a means of dividing tasks among board members in order to efficiently manage and implement the BIA's annual program. Sub-committees are often formed around activities such as event planning, streetscape design, finance and board administration. The sub-committees may include non-members of the board, and on occasion, even non-members of the BIA, in particular when such non-members provide skills and knowledge useful to the task of the sub-committee.

The City's BIA Office supports and encourages the establishment of such sub-committees where appropriate, but have suggested for many years that the sub-committee be chaired by a member of the board of management so that the chair is in the best position to ensure the sub-committee carries out the direction of the board and is accountable to the board. Staff propose an amendment to Section 19-15 of Chapter 19 to provide boards of management the authority to establish task, issue or function-related sub-committees of the board, and that the sub-committees may include non-members of the business improvement area provided the sub-committee is chaired by a board member.

Board Nominees

Section 19-17 permits a member of a business improvement area to appoint in writing one representative to stand for nomination to the board on behalf of the member. This provision is often used by BIA member businesses such as banks or retail chain stores to nominate a branch or store manager to represent the business on the board. Chapter 19 also permits a maximum of one board nomination per assessed property and one board nomination per business.

Taken together, these provisions are somewhat inconsistent. The intent behind allowing a member to appoint in writing a representative to stand for board nomination is that the member can appoint only one representative, whereas allowing one board nomination per assessed property and one board nomination per business suggests that BIA members that own multiple properties or businesses could be afforded multiple appointments.

To remedy the situation, staff propose to amend Section 19-17 to eliminate the "one board nomination per assessed property and one board nomination per business" provision and amend the remaining provision so that it allows a BIA member to appoint in writing one representative to stand for nomination regardless of the number of properties or businesses the member owns.

Annual Budget

Currently, Section 19-29 of Chapter 19 requires a board of management to prepare a proposed annual budget for each fiscal year by a date and in a form required by the City's Chief Financial Officer, hold an annual general meeting to obtain membership adoption of the budget, and then submit the adopted budget to the Chief Financial Officer for Council consideration. However, Chapter 19 fails to provide direction for newly-established BIAs, whose first budgets are prepared not by a board of management, because a board hasn't yet been approved by Council, but by the steering committee established to undertake the required consultation process for new

BIAs. The first act of a steering committee once a new BIA is approved by Council is to organize the BIA's first annual general meeting at which a board of management is selected and the BIA's first annual budget adopted.

Staff recommend a series of amendments to Section 19-29 which authorize, in the case of newly-established BIAs, the steering committee to fulfill the role of a board of management regarding the BIA's first budget, and to provide for submission of a budget, adopted at an annual general meeting at which the first board of the BIA has also been selected, to Council by a steering committee.

Financial Procedures

In order to improve financial management procedures, staff propose adding a clause to Section 19-30 requiring that all cheques issued by the board shall be signed by two board members. Although this is common practice within all BIA boards, staff consider the practice important enough to entrench within Chapter 19.

CONCLUSION

The amended polling process for proposed new and expanding BIAs adopted by Council in 2011 replaced a long-standing process that was frequently criticized as unfair, undemocratic and lacking transparency. The amended process has addressed these issues and has significantly improved participation in the polling process. This report proposes an amendment to Municipal Code Chapter 19, Business Improvement Areas, respecting the City's policies regarding the use of resources during an election, and several additional amendments, many technical in nature, are also recommended.

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SIGNATURE

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ATTACHMENTS

Attachment No. 1 – Amended Municipal Code Chapter 19 Amendments