



REPORT FOR ACTION

Amendments to Toronto Municipal Code, Chapter 19, Business Improvement Areas

Date: Tuesday April 25, 2017

To: Economic Development Committee

From: General Manager, Economic Development and Culture

Wards: All

SUMMARY

The purpose of this report is to recommend substantive, minor and technical amendments to the City of Toronto Municipal Code Chapter 19, Business Improvement Areas (the "Chapter") pertaining to, among other matters, clarity respecting Business Improvement Area (BIA) membership; voter eligibility and non-member (designate) voting at annual general meetings; the authority of City staff to attend and address BIA meetings; financial procedures; minor adjustments to BIA boundaries; board of management procedures and practices; removal of directors for attendance reasons; filling board vacancies mid-term; and definitions. The proposed amendments are identified in Attachment No. 1 (see crossed-out and bolded text).

The Chapter is subject to a staff review approximately every two years so that it can best assist the City's BIAs to operate in a transparent, effective and efficient manner. Those proposed amendments which are substantive, as opposed to those which are minor or technical in nature, are explained below.

RECOMMENDATIONS

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

1. City Council approve the amendments to Municipal Code Chapter 19, Business Improvement Areas, in relation to, among other matters, clarity respecting Business Improvement Area (BIA) membership; voter eligibility and non-member (designate) voting at annual general meetings; the authority of City staff to attend and address BIA meetings; financial procedures; minor adjustments to BIA boundaries; board of management procedures and practices; removal of directors for attendance reasons; filling board vacancies mid-term; and definitions, substantially as set out in Attachment No. 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.

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

DECISION HISTORY

At its meeting on December 16, 17 and 18, 2013, Council adopted amendments to Municipal Code Chapter 19, Business Improvement Areas, in relation to, amongst other matters, the use of BIA resources during an election, definitions, board and annual general meeting quorum, minor boundary expansions and financial procedures.
<http://www.toronto.ca/legdocs/mmis/2013/ed/bgrd/backgroundfile-63644.pdf>

COMMENTS

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 and again in 2013, relating to, for example, processes and polling requirements for starting, expanding and altering the boundaries of BIAs, definitions, quorum, financial procedures and board of management limitations.

A. Proposed Amendments

An amendment to the Chapter is proposed to add a definition of "director," meaning an individual appointed by the City as a director of a BIA board of management. The term is used frequently throughout the Chapter and therefore a definition is warranted. This report will also employ the term "director" to denote a member of a BIA board of management.

BIA Membership and Voter Eligibility

Likely the most critical of the proposed Chapter amendments are those pertaining to BIA membership and voter eligibility. Currently, the definition of a "business improvement member" is long, complex and difficult to explain, especially in a public setting such as a BIA annual general meeting. An amended definition is proposed which more simply defines BIA members as "all persons who own rateable property in a business property class and all persons who are non-residential tenants of rateable property in a business property class in a Business Improvement Area."

In support of this definition is a proposed definition of "person," which includes a corporation and the heirs, executors, administrators or other legal representatives of a person to whom the context can apply according to law. This definition is consistent with the definition of "person" in Municipal Code Chapter 1, General Provisions.

The principle objective of these proposed amendments is to provide clarity regarding who is considered a member of the BIA and who, ultimately, can vote at BIA general meetings and annual general meetings. To that end, an amendment is proposed to add a "Schedule C - Eligibility to Vote-General Meetings and Annual General Meetings" to the Chapter. The schedule introduces a user-friendly table which sets out voter eligibility based upon common property and business ownership scenarios (e.g. sole owners; co-owners/partnerships; corporate owners) and clearly establishes that "no person or corporation may have more than one vote, regardless of the number of properties or businesses they own or co-own," a one-member-one-vote principle that has been the standard for BIAs for many years.

Another objective is to curtail the practice of allowing designates to vote on behalf of BIA members. Currently, a BIA member, through the completion of a form provided by the City, may nominate a designate to vote on his or her behalf at a general meeting or annual general meeting. The intent was to allow, for example, an elderly business or property owner to nominate a family member or store manager to attend an annual general meeting and vote on his or her behalf, or for a large corporation to designate and send a staff member to the meeting on its behalf. In other words, a designate with a demonstrable business or personal relationship to the BIA member.

Although this provision was most often used as intended, there have been incidents whereby members of BIAs have engaged in a broader "collection" of designate forms in an attempt to create voting blocks of designates capable of winning votes at annual general meetings. Often times the BIA member had no connection to or knowledge of the designate to which the member's vote had been assigned. Such incidences are neither fair to BIA members nor do they reflect well on the transparency and legitimacy of BIA general meetings and annual general meetings.

However, the proposed amendments, in particular the definition of "person," will continue to allow corporate or individual BIA members to send a designate to general meetings, but there will be language included in the notices for all such meetings which sets out a much more rigorous approach to the identification of designates and their business or personal connection to the BIA member they will represent.

As a result of the amendments noted above, the definition of "Member Designate" and several related clauses within Section 19-17 of the Chapter are proposed to be deleted. In addition, several technical amendments necessary to accommodate the definition of "person" noted above are also proposed to sections of the Chapter pertaining to the establishment, expansion, repeal and minor boundary amendments of BIAs and voter eligibility.

City Staff at BIA Meetings

Economic Development and Culture Division staff have been faced recently with incidents whereby their authority to attend and address meetings of the BIA has been challenged. BIA boards of management are local City boards established and appointed by Council and the engagement of City staff with boards is critical to help ensure that they conduct the affairs of the BIA in compliance with the Chapter and other applicable policies and practices.

Therefore, in order to avoid any future uncertainty, an amendment is proposed authorizing the General Manager of Economic Development and Culture (a defined term which includes the General Manager's designate or successor) to attend and address BIA board meetings, general meetings and annual general meetings, including in-camera sessions.

Board Composition

The Chapter sets out that BIA boards shall be composed of one or more directors appointed by Council or Community Council under delegated authority, and BIA members selected by a vote of the membership and appointed by Council or Community Council. This provision fails to recognize that a BIA member may appoint a representative to stand for nomination to a board on behalf of the member. This provision is often used by large corporations to nominate a staff member as their representative on a board. An amendment to the Chapter is proposed to include representatives as being eligible to be selected by a vote of the membership. A further amendment is proposed to clarify that a BIA member may appoint in writing only one representative to stand for nomination to the board.

Board Quorum

Amendments are proposed with respect to board quorum in order to allow the quorum figure to adjust as board sizes change over the term of the board without the need for the City Clerk to bring a by-law forward to community council for adoption each time a board quorum changes.

The amendments set out that quorum shall be half the number of directors minus one, as is currently permitted by the Chapter and in effect with the vast majority of boards, unless Council or community council under delegated authority approves an alternate quorum figure. As is currently the case, members of Council appointed to the board and vacant board positions shall be excluded from the calculation to determine quorum. In effect, as members leave or join during the term of the board, vacant board positions

are either created or filled and the quorum figure adjusts accordingly to one half minus one. A further proposed amendment establishes that quorum shall be no less than three, unless otherwise determined by Council or community council under delegated authority.

As City staff report to Council or community council on existing members leaving or new nominees joining boards, the adjusted quorum figure will be included in the report but an amendment to the Chapter will not be necessary. This represents a much more efficient approach to addressing changes in quorum. As a result of these amendments, Schedule A of the Chapter will be amended to delete the column entitled "Members Required for Quorum."

In addition, the Chapter currently establishes that no business shall be conducted at a meeting of the board unless quorum is present. To add further clarity, an amendment is proposed to add that quorum must be physically present in the meeting room. Board members may participate in a meeting electronically (e.g. Skype) or by phone, but they do not count towards achieving quorum.

Councillors and Member Representatives at General and Annual General Meetings

An amendment is proposed to add clarity respecting the role of Councillors and BIA member representatives at general meetings and annual general meetings of the BIA. Although Councillors and BIA member representatives who are directors of a board may make motions and vote at board meetings, the proposed amendment sets out that neither Councillors nor representatives may vote or make motions at general meetings or annual general meetings. This distinction is made in order to recognize the special nature of general meetings and annual general meetings as meetings of the membership of the BIA. The only exception would be those Councillors who are appointed to the board in their capacity as Councillors, but are also members of the BIA (e.g. commercial property owners) as defined in the Chapter.

Formal Public Consultation Meetings

Part of the process for establishing new BIAs, or expanding existing BIAs, is the holding of a formal public consultation meeting. An amendment is proposed to the provisions regarding the notification of these meetings to clarify that, in the case of a proposed BIA expansion, notice is sent to only those commercial property owners and business owners within the proposed expansion area, not to those within the existing BIA. The membership of the existing BIA have input into the consultation process by way of a general meeting or annual general meeting at which a resolution supporting the proposed expansion is considered.

The process to establish or expand a BIA includes a required formal public consultation meeting at which a secret ballot is held to determine interest in proceeding to the City Clerk's polling process. Currently, if the secret ballot to proceed fails, the Chapter prohibits another formal consultation meeting from being held for any portion of the proposed new or expanded BIA for a period of one year. In contrast, the provisions respecting the City Clerk's poll to establish or expand a BIA prohibit re-polling an area after a failed poll result for a period of two years. In order to be consistent, an

amendment is proposed to extend the formal public consultation meeting prohibition period to two years. Staff believe the two year period will provide a more sufficient "cooling down" period for the potential BIA membership and help avoid undesirable tensions within the local business community.

Audited Financial Statements

Currently, boards are required to make available the previous year's audited financial statement at the BIA's annual general meeting. To improve financial transparency, an amendment is proposed to require boards to make the audited financial statement available not only at the annual general meeting, but within the annual general meeting notice period (a minimum of 15 business days).

In addition, an amendment is proposed to clarify the existing provision requiring that an auditor be appointed each year at the annual general meeting to prepare "the audited financial statement for the following year." The word "following" is incorrect and is proposed to be replaced with the word "current."

Minor BIA Boundary Amendments

The current section of the Chapter entitled "Minor boundary expansions" is proposed to be retitled "Minor boundary amendments" and expanded to allow for the limited transfer of lands between abutting BIAs, subject to approval by both boards and all commercial property owners and business tenants within the lands to be transferred. Such transfers might be desirable in order to, for example, address changes in land use or to achieve more impactful streetscape improvements. In keeping with the provisions regarding minor expansions of BIA boundaries, the commercially-assessed value of the lands transferred must represent less than ten percent of the total commercial assessment of the BIA.

Board Procedures and Practices

Several amendments to the Chapter have been proposed regarding board procedures and practices. A provision is proposed to be added requiring boards to notify the City's BIA Office and Councillors appointed to the board of all board meetings five business days in advance of the meeting, and provide the meeting agenda, previous meeting minutes and financial statement along with the meeting notification. The objective of the amendment is to ensure that Councillors and staff receive timely notice of meetings and relevant meeting materials.

In order to improve public accessibility to BIAs, an amendment to the Chapter is proposed that requires boards to appoint a board member or BIA staff member to be the designated contact for the BIA and provide contact information for that designated person to the City's BIA Office for posting on the City's website and inclusion in public information materials where appropriate. Further, in order to better respect the decisions of the board and promote consistency, a provision is proposed to require that every director comply with the decisions of the board.

The Chapter's Schedule B - Business Improvement Area Board of Management Procedures, is also proposed to be amended in order to improve board procedures and practices. The role of the Chair will also be expanded to ensure that, when a change in Secretary occurs, that all administrative records are transferred to the in-coming Secretary.

The duties of the board secretary are proposed to be expanded to ensure that an accurate record of business improvement area administrative and operational assets (e.g. computers, copiers, furniture, maintenance, equipment) is kept. In addition, an amendment is proposed requiring the existing board secretary to ensure that all administrative records are transferred to an incoming secretary when such a change occurs.

Removal of Board Members and Board Vacancies

In order to help improve their effectiveness and accountability, an amendment is proposed to authorize BIA boards to consider a motion recommending that City Council remove a board member that fails to attend three consecutive board meetings without authority from the board. In addition, in the case of the removal of a member, an amendment is proposed requiring BIA boards to provide notice to the member at least five business days in advance of the board meeting at which the matter will be considered.

Further, the Chapter establishes that directors are appointed at the pleasure of Council or Community Council under delegated authority, and that Council or Community Council retains the right to replace any appointed director at any time for any reason. Staff propose to amend this provision to allow Council or Community Council to make a replaced director ineligible to serve on any BIA board for a period of up to four years.

In addition, an amendment is proposed to provide BIA boards with more flexibility regarding the filling of board vacancies when they occur. Currently, the Chapter directs that boards "shall" select a person for Council or Community Council's consideration to serve the remaining portion of the term, whereas the amendment provides that boards "may" select a BIA member or representative for consideration.

Financial Procedures

Several amendments are proposed with respect to BIA financial procedures. For the most part, the amendments reflect current board practices, but they are practices that should be entrenched in the Chapter regardless. First, as currently required, boards are to adopt and maintain only banking arrangements and sound business practices that are satisfactory to the Chief Financial Officer, and shall keep financial records and submit statements from time to time as the Chief Financial Officer may require, but these statements must now be prepared in accordance with Canadian generally accepted accounting principles established by the Public Sector Accounting Board,.

A new provision is proposed requiring boards to establish at least one bank account specific to the business improvement area and appoint at least two directors with signing authority to the account. Similarly, all cheques issued by the board must be

signed by two directors with signing authority, as opposed to the existing provision which requires signature by two directors with no mention of signing authority.

Change in Director Status

Currently, the Chapter requires boards to adopt a motion to remove a director whose status has changed so that the director is no longer a member of the BIA. To provide boards with more flexibility to retain a director whose status has changed, an amendment is proposed to empower the board to either remove the director or allow the director to serve the remainder of the term as a representative of a BIA member.

Post City Election Budget

BIA boards of management are elected on the same four-year schedule as City Council. At election-year annual general meetings, BIA memberships nominate new BIA boards of management as well as adopt BIA budgets for the following year. Subsequently, the nominated boards are considered for appointment by community council under delegated authority and the budgets considered by Council. In effect, election-year annual general meetings result in the consideration of a proposed budget prepared by an out-going board for implementation, if approved, by an incoming, new board.

The Chapter currently contains a provision which allows the incoming board to submit a letter to the General Manager of Economic Development and Culture requesting that final budget approval be withheld pending further consideration by the board and business improvement membership. However, staff have reconsidered this provision and suggest that it represents the overriding of the will of the membership by the incoming board and is therefore inappropriate, potentially destabilizing for the BIA and should be deleted.

Ontario Municipal Board

The Chapter prohibits BIA boards from participating in Ontario Municipal Board hearings unless the board has conducted a general meeting of the membership to obtain approval to participate in a specific hearing. The Chapter does not address the scenario under which a board is served a summons to appear as a witness at an OMB hearing. Under such a circumstance, the board is required by law to appear. Therefore, an amendment is proposed to exempt the board from getting approval from the membership when required to appear as a witness.

Political Publications

BIA boards of management are prohibited from offering or providing support to political candidates or political parties. To strengthen this provision, the phrase "in any form" is proposed to be added in order to read "offer or provide support in any form to political candidates or political parties. In addition, boards are prohibited from advertising or paying for advertisements in any political publication. However, the definition of "political publication" clarifies that "political publications" do not include any "weekly, monthly or community newspaper that is not published by or on behalf of a political group or party, but which may publish a political advertisement or political opinion." An

amendment is proposed to update "political publication" to add the word "daily" ahead of the word "weekly" in order to capture daily newspapers and publications.

Translations

The Chapter currently allows Councillors to request that the City Clerk's notification and ballot respecting new, expanding or repealed BIAs, as well as notification and ballots respecting proposed minimum and maximum charges, be translated into two languages other than English if the language is spoken by at least three percent of the ward's population according to the most recent Statistics Canada Census. An amendment is proposed to eliminate the reference to the ward's population since the recipients of BIA related notices are commercial property and business owners, who's cultural and language backgrounds often do not reflect those of the ward's population. The effect of the amendment is to allow Councillors to request translation into languages that correspond to the characteristics of the local business and commercial property owners, thereby improving the effectiveness of this provision.

Other Definitions

The definition of "Annual General Meeting" is proposed to be amended to make clear that an annual general meeting is, in fact, a meeting of the board of management to which all BIA members receive an invitation. The definition is amended further by including as one of the purposes of an annual general meeting the appointment of an auditor to prepare an audited financial statement for the current year.

"Application for Board Nomination" is currently a defined term in the Chapter reflecting the form provided by the BIA Office to boards for completion when a person is nominated for a position on the board. However, the same form is also used when a board removes an existing director. Therefore, staff propose to rename the form to "Request for Board Appointment Nomination or Removal" and amend the definition to better describe the dual-use of this form. Amendments are also proposed to relevant sections of the Chapter to require the completion and submission of the request form.

A definition of "business days," meaning Monday to Friday, but excluding holidays, is also proposed to be added. Many of the processes and notice requirements associated with the establishment and administration of BIAs refer to a specific number of business days by which a task is to be completed or undertaken. The definition of "business days" provides clarity for BIAs in satisfying these requirements.

B. Consultation

The proposed amendments to the Chapter have been developed in consultation with the City Manager's Office, Legal Services Division and City Clerk's. The Toronto Association of Business Improvement Areas (TABIA) was consulted by way of a meeting with the Executive Director, a meeting with a committee of BIA representatives struck specifically for the consultation, and a meeting of the TABIA-Interdepartmental Committee, and is generally supportive of the proposed amendments.

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SIGNATURE

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ATTACHMENTS

Attachment No. 1 - Proposed Amendments to Toronto Municipal Code Chapter 19