

CITY OF SASKATOON

Office of the City Solicitor

To: DeeAnn Mercier, Broadway BID
Brent Penner, Downtown BID
Randy Pshebylo, Riversdale BID
Dan Matthews, 33rd Street BID
Lloyd Moker, Sutherland BID

Date: June 23, 2021
Phone: 975-3270
Our File: 171.0056

From: Leadership Team Governance Subcommittee
City of Saskatoon

Re: Proposed Contents of Consolidated Business Improvement District (BID) Bylaw

You will recall that City Council considered two reports regarding BID governance at its meeting on December 16, 2019:

1. Governance Review – Business Improvements Districts – Governance Structure tabled on October 21, 2019 for debate on December 16, 2019; and
2. Supplemental Report – Governance Review – Business Improvement Districts – Governance Structure – Engagement Results.

In advance of the December 16, 2019 meeting, City Administration met with representatives of each of the BIDs on March 7, 2019. Present were:

- DeeAnn Mercier, Broadway BID
- Sheldon Wasylenko, Sutherland BID
- Brent Penner, Downtown BID
- Randy Pshebylo, Riversdale BID
- Maya Scott, 33rd Street BID
- Christine Bogad, City Solicitor's Office
- Shellie Bryant, City Clerk's Office
- Jennifer Brooks, City Clerk's Office
- Candice Leuschen, City Solicitor's Office

Written comments on the report tabled on October 21, 2019 were invited from the BIDs in advance of consideration of the report on December 16, 2019. City Administration also met with representatives of the Broadway BID on November 18, 2019. A summary of the engagement was shared in the Supplementary Report.

At its December 16, 2019 meeting, City Council resolved that:

Memorandum

the Leadership Team Governance Subcommittee proceed with developing a consolidated BID governance approach (Option 1) as outlined in its report dated October 21, 2019; and report further on next steps and other details as required for implementation of the consolidated BID governance approach.

In accordance with City Council's instructions, City Administration has been working on a draft comprehensive BID Bylaw. Following is the proposal for the new consolidated BID Bylaw based on your earlier feedback, jurisdictional research, and the direction of Council. The Leadership Team Governance Subcommittee requests your feedback on the specifics proposed for the Bylaw before bringing the Bylaw to Council this fall. Please share this information with your Boards, conduct a review and provide your written feedback no later than August 31, 2021 to Candice Leuschen [REDACTED]. If you would like to meet to discuss, please advise and arrangements can be made.

PART I - Short Title, Interpretation and Purpose

- The definitions will be effectively the same as in the existing bylaws.
- Based on section 25 of *The Cities Act*, the purpose of the Bylaw will include:
 - establishing districts and designating the area for each district;
 - establishing a board for each district;
 - describing the purposes of districts;
 - describing the powers and obligations of boards; and
 - identifying procedures for the establishment and disestablishment of districts and the alteration of district boundaries.

PART II - Business Improvement Districts

- The districts will be designated using the same schedules (maps) as in the existing bylaws.
- What was previously listed as the "Powers of the Board" will become the "Purpose of the Districts" and will be the same as in the existing bylaws, including the purpose to "contribute monies to the City for the purposes of a revitalization project within the district", which currently only appears in the 33rd Street BID Bylaw.

PART III - Boards of Management

- The existing boards will be continued.
- A board will have the same powers as in the existing bylaws, including for all the power to "contribute monies to the City for the purposes of a revitalization project within the district".

Composition of Boards

- The boards will be composed as follows:
 - at least one member of Council;
 - 5 to 10 other residents of the City who:
 - operate a business in the district;
 - are nominees of a corporation that operates a business in the district; or
 - are nominees of a non-profit corporation that has an office in the district.
- Each district will recruit members for the boards in accordance with the eligibility requirements above. In the year of a general election, once each district has concluded its recruitment process and after its annual general meeting but before the general election, the district will provide a submission to City Council through the City Clerk's Office advising of its proposed appointments and the reasoning for each proposed appointment. The City Clerk will place the submission on the agenda for the first Governance and Priorities Committee (GPC) meeting following the general election. GPC will make recommendations to City Council respecting whether to formalize the appointments, at Council's discretion.
- Appointments will be proposed and made with a view to encourage equity, diversity and inclusion and promote an inclusive environment where citizens are empowered to bring forward ideas to create a vibrant and prosperous community.
- Unless they are sooner removed or vacate the position, a board member holds office until a successor is appointed after the first regular business meeting of Council following the next general election after the board member is appointed.
 - Written notice of a member vacating or resigning from a position shall be provided to the Chair, and in their absence, the Vice-Chair.
- Board members will be eligible for reappointment with no term limits, unless otherwise determined by the Board.

Commented [MR1]: The existing bylaws all refer to "at least" one member of Council. Our understanding is that each BID has only one member of Council. Leaving it as "at least" one member of Council allows for flexibility where more than one member may be desirable.

Commented [MR2]: This was previously "elector", which required that the individual:
1. be 18 or older;
2. be a Canadian citizen;
3. has resided in Saskatchewan for 6 consecutive months before appointment; and
4. has resided, or has owned assessable land, in Saskatoon for 3 consecutive months before appointment.
"Resident" would require only that they reside within Saskatoon during the appointment.

Commented [MR3]: What recruitment does each BID undertake? What factors are considered in recommending appointments?

Commented [MR4]: This would mean that, unless the Board specified a maximum number of terms to be served by a member, a member could serve indefinitely.

Board Vacancies & Removals

- If:
 - during the term of office, the status of a board member changes so that they no longer qualify; or
 - a board member fails to attend three consecutive board meetings; the board shall advise the City Clerk and provide a recommendation as to whether the board member should continue to serve on the board. The City Clerk will place the submission on the agenda for the next Governance and Priorities Committee meeting. GPC will make recommendations to City Council respecting whether to accept the recommendation or take other action.

- If a board resolves to seek the removal of a board member from the board or the appointment of a replacement or additional board member to the board within the minimum and maximum numbers prescribed, it will give the City Clerk a completed request for board appointment nomination or removal form and attach signed minutes of the meeting at which the vote was held on this matter, and the City Clerk will report to GPC. GPC will make recommendations to City Council.
- In the case of the removal of a board member, notice must be provided by the board to the board member at least five business days in advance of the board meeting at which the matter will be considered and the board member will be entitled to speak to the board on the matter.
- Council may, at its discretion, remove a board member and replace them.
 - A Code of Conduct will be attached to the Bylaw as a schedule and breach of that Code could be reason for removal.

Commented [MR5]: If the membership has concerns with the composition of the board, they would first advise the board. If the board chose not to address the membership's concerns, the membership could then write to GPC with its concerns.

Board Member Responsibilities

- The board and board members would be required to operate in compliance with all applicable City and provincial enactments, including *The Cities Act*, *The Local Authority Freedom of Information and Protection of Privacy Act*, *The Legislation Act*, conflict of interest policy and Code of Conduct.
- Every board member will be required to:
 - exercise the powers and discharge the duties of the office honestly, in good faith and in the best interests of the district;
 - exercise the degree of care, diligence and skill that a reasonable and prudent person would exercise in comparable circumstances; and
 - comply with the decisions of the board.
- A Council member who is appointed to the board may report all information from the board to GPC and Council. If there is information reasonably considered confidential by the board, the information will be reported in camera to GPC and Council.
- A board shall, as soon as possible after its members are appointed:
 - elect a Chair and Vice-Chair to manage and conduct its affairs; and
 - appoint a Secretary-Treasurer and such other officers as it may deem necessary to properly conduct its business.
- The Chair will:
 - Call and chair meetings of the board and membership.
 - Speak on behalf of the board and district to the media and at Council or a Standing Policy Committee meeting, as required.
 - Arrange for orientation and training of members.
 - Ensure that the board notifies the City Clerk's Office as required of a member's midterm vacancy, resignation or continued absence (three or more consecutive absences) from meetings.
 - Diligently fulfil responsibilities under the Code of Conduct.

- Perform any other duties as directed by Council.
- The Vice-Chair will assume the responsibilities of the Chair in the Chair's absence.
- Role of all members:
 - Upon accepting an appointment, members agree to abide by the requirements imposed by the Bylaw and the board's policies.
 - Members are responsible for advising the Chair, Vice-Chair or Secretary of the board if they are unable to attend a meeting.
 - Members are responsible for adhering to all provisions and for diligently fulfilling their responsibilities under the Code of Conduct.
- Council may impose sanctions upon a member who has been found, following an investigation, to have breached the provisions set out in the Code of Conduct.
 - The rules of procedural fairness will be followed throughout any investigation, sanction or removal of a member.

Board Remuneration

- The position of a board member is voluntary and no remuneration will be paid for services as a board member.
- Board members shall be reimbursed for expenses necessarily incurred in the performance of duties as a board member, in accordance with the policy established by the board.

Board Committees & District Office

- A board may establish standing committees or ad hoc committees and determine the composition of each committee.
- Each committee shall be advisory in nature and decisions of the committee shall be subject to approval by the board.
- A committee may consist of board members and other individuals appointed by the board.
- A committee must be chaired by a board member.
- Committees may deal only with the matters or questions referred to them by the board and may only take actions authorized by the board.
- A board shall appoint a board member or district staff person to be the designated contact for the district and shall provide a dedicated district phone number or e-mail address for this person to the district office.
- The City may post the designated contact's contact information on its website and include it in public information materials.

PART IV - Meetings

- Subject to the following, a board shall establish and publish its own meeting procedures. The procedures must be reviewed and approved by SPC Finance before being published or adopted.

Board Meetings

- A board shall hold at least four regular board meetings each calendar year.
- Special board meetings may be convened by any board member if, at least 24 hours prior to the meeting, all board members have been notified of the date, time and place of the meeting and the matters on the agenda for the meeting, unless all board members attend the meeting and unanimously consent to holding the meeting.
- At regular board meetings, board members may consider or transact any business that is within the authority of the board.
- At a special board meeting, only those matters specifically identified by the convenor as being on the agenda for the meeting may be discussed and voted on.
- The chair and all board members present may vote on every question before the board, and in the event of a tie vote, the question is deemed to have been decided in the negative.
- A simple majority of board members constitutes a quorum.
- The Secretary-Treasurer of the board is responsible for ensuring that minutes are kept of all meetings of the board and committees established by the board.
- A board may by resolution adopt a policy that provides that, where a board member cannot attend a meeting in person for reasons set out in the resolution, the board member:
 - may participate in the meeting by electronic or other communication devices that enable them to hear and speak to the board members who are present; and
 - shall be considered to be in attendance at the meeting for the purposes of establishing a quorum, for voting and for other purposes.
- A board may make resolutions in writing in lieu of a meeting. The resolution must be unanimous and signed by all the directors entitled to vote on that resolution at a meeting of directors. Voting by proxy is not permitted.

Commented [MR6]: This would be a change for the Broadway BID, as its governance procedures currently indicate that in the event of a tie the Chair may have an additional vote to tie-break.

General Meetings

- The board may call general meetings of the district to discuss issues and make decisions on any matter within the board's authority.
- At least 15 days prior to a general meeting, the board must provide notice to every member business of the date, time, location and agenda of the general meeting.
- Notice of a general meeting may be hand delivered or sent by ordinary mail to the street address of each member business.
- A board may appoint a chair and a recording secretary for a general meeting, who need not be a proprietor, director or employee of a member business.

Commented [MR7]: How do the BIDS currently communicate with their membership?

- The chair of a general meeting may take such actions as are necessary to ensure the orderly conduct of the meeting and to ensure that the agenda of the meeting is followed and the purposes of the meeting are achieved.
- No business shall be transacted at a general meeting unless a quorum of the board is present.

Annual General Meeting

- Within the four month period following its most recent fiscal year end, the board must conduct a general meeting that it has designated as the annual general meeting.
- Notice of the annual general meeting must include, in addition to that mentioned above, estimated expenditures for the current year, and proposed revenues and expenditures for the following year.
- A board's complete audited financial statements, with balance sheet and revenue and expenditure statements, must be made available during the annual general meeting notice period and at the annual general meeting.

Authority of the City Manager

- The City Manager has the authority to attend and address board meetings, committee meetings, general meetings and annual general meetings, including in-camera sessions.

PART V - Records, Reporting and Finances

Records

- A board must keep proper minutes and records of every meeting of the board and make the minutes and records available upon request to:
 - all residents who:
 - operate a business in the district;
 - are nominees of a corporation that operates a business in the district; or
 - are nominees of a non-profit corporation that has an office in the district;
 - all board members;
 - the City Clerk; and
 - the City Manager.
- A board will:
 - adopt and maintain banking arrangements and accounting practices that are acceptable to the City; and
 - keep such books of account and submit such records to the City as the City may require.

Estimates

- A board shall submit to Council for its approval the revenue and expenditure estimates of the board for the current year, at the time and in the form requested by Council.
- A board shall set out in the estimates:
 - the amounts to be contributed to the board by Council from general monies collected by the City;
 - any amounts contributed to the board by Council from money collected as payments in lieu of the provision of off-street parking facilities as required by *The Planning and Development Act, 2007*;
 - the amounts of any grants to be received by the board from sources other than the City; and
 - the amounts to be received by the board from the disposal or conveyance of land and buildings.

Levy

- A levy is authorized to be paid by the operators of businesses in a district that Council considers sufficient to raise the amount required for the purposes of the proposed expenditures included in the approved estimates of the board, less any revenues to be received by the board.
- The levy is to be based on the assessment of all land and improvements used or intended to be used for business purposes in a district.
- The levy is to be a uniform rate.
- The levy imposed shall be apportioned among tenants based on rent or area, but not both, if:
 - a levy is imposed and a portion of the land, improvements or both is not used for business purposes;
 - a levy payable is payable by a tenant; and
 - a business operated by a landlord occupies premises on the land or improvements or both.
- When any levy payable is payable by a tenant, the landlord is deemed to be the City's agent for the collection of the amount and shall promptly pay over to the City all amounts collected.

Miscellaneous

- A board shall expend only those monies included in the estimates approved by Council and no board member shall authorize the expenditure of funds not previously approved by Council.
- The board shall only expend amounts contributed to the board by Council from money collected as payments in lieu of the provision of off-street parking facilities as required by *The Planning and Development Act, 2007* on the acquisition,

construction, operation or maintenance of parking facilities on land that does not form part of a street.

- A board shall not incur indebtedness extending beyond the current year.
- A board shall appoint an auditor on an annual basis and all books, documents, records of transactions, minutes and accounts of the board shall, at all times, be available for the auditor's inspection.
- The fiscal year of a board shall be the calendar year.
- On or before April 30 of each year, a board shall submit its annual report for the preceding year to Council with a balance sheet and revenue and expenditure statements in a standardized form, together with a complete audited and certified financial statement.
- A board may, at its discretion, submit a review engagement if its annual revenue for the preceding year was less than \$250,000.00.
- The City shall provide commercial general liability insurance against third party liability and third party property damage in respect of the activities of a board.
- No land acquired by a board and used for parking shall be sold, leased or disposed of unless the board uses the proceeds to acquire land which provides an equal amount of parking.

PART IV - Altering Boundaries and Establishing and Disestablishing Districts

Establishing a District

- Council may establish a new district by bylaw if:
 - in the opinion of Council, the establishment would have a beneficial effect on the businesses within the area described by the proposed boundaries;
 - a petition requesting the establishment of the district signed by more than 50% of the proprietors of businesses in the area proposed to be in the district, representing more than 50% of the total taxable business assessment in that area, has been filed with the City Clerk or Council directs that notice be sent as below;
 - notice has been sent by ordinary mail by the City Clerk to all proprietors of businesses in the area proposed to be in the district, notifying them that written objections to the establishment of the district may be filed with the City Clerk within 30 days and advising them that, unless sufficient objections to the establishment of the district are made by a date specified within the notice, Council may by bylaw establish the district; and
 - no more than one-third of the proprietors of businesses in the area proposed to be in the district representing no more than one-third of the total taxable business assessment of the proposed area of the district have objected in writing to the establishment of the district prior to the date set by the City Clerk.

Altering Boundaries

- Council may alter the boundaries of a district by bylaw when an area is proposed to be added to an existing district if:
 - in the opinion of Council, the alteration would have a beneficial effect on the businesses within the area described by the new boundaries;
 - a petition requesting the addition of the area to the district signed by more than 50% of the proprietors of businesses in the area proposed to be added to the district, representing more than 50% of the total taxable business assessment in that area has been filed with the City Clerk or Council directs that notice be sent as below;
 - notice has been sent by ordinary mail by the City Clerk to all proprietors of businesses in the area proposed to be added to the district, notifying them that written objections to the addition of the area to the district may be filed with the City Clerk within 30 days and advising them that, unless sufficient objections to the addition of the area to the district are made by a date specified within the notice, Council may by bylaw allow the area to be added to the district; and
 - no more than one-third of the proprietors of businesses in the area proposed to be added to the district representing no more than one-third of the total taxable business assessment of the proposed area of the district have objected in writing to the addition of the area to the district prior to the date set by the City Clerk.
- Council may alter the boundaries of a district by bylaw when an area is proposed to be withdrawn from an existing district if:
 - in the opinion of Council, the alteration would have a beneficial effect on the businesses within the area described by the new boundaries;
 - a petition requesting the withdrawal of the area from the district signed by more than 50% of the proprietors of businesses in the area proposed to be withdrawn from the district, representing more than 50% of the total taxable business assessment in that area has been filed with the City Clerk or Council directs that notice be sent as below;
 - notice has been sent by ordinary mail by the City Clerk to all proprietors of businesses in the area proposed to be withdrawn from the district, notifying them that written objections to the withdrawal of the area from the district may be filed with the City Clerk within 30 days and advising them that, unless sufficient objections to the withdrawal of the area from the district are made by a date specified within the notice, Council may by bylaw allow the area to be withdrawn from the district; and
 - no more than one-third of the proprietors of businesses in the area proposed to be withdrawn from the district representing no more than one-third of the total taxable business assessment of the proposed area of the district have objected in writing to the withdrawal of the area from the district prior to the date set by the City Clerk.

- If Council alters the boundaries of a district, the board for that district is continued as the board for the altered district.

Disestablishment

- Council may disestablish a district by bylaw if:
 - a petition requesting the disestablishment of a district signed by more than 50% of the proprietors of member businesses representing more than 50% of the total taxable business assessment in the district has been filed with the City Clerk;
 - Council has declined to approve the revenue and expenditure estimates of a board for the current year;
 - a board has failed to submit revenue and expenditure estimates to Council for approval in two consecutive years;
 - a board has failed to comply with its responsibilities;
 - the district has otherwise failed to comply with the Bylaw; or
 - Council has concluded for any reason that it is in the interests of the City to disestablish the district.
- A district shall be disestablished on December 31 of the year in which the disestablishment bylaw is passed and the disestablishment bylaw must be passed no later than June 30 of that year.
- Upon the disestablishment of a district, the board is dissolved and the assets and liabilities of the board become the assets and liabilities of the City.

RJM:rjm