

## The Business Improvement Districts Bylaw, 2022

### ISSUE

City Council has instructed the Leadership Team Governance Subcommittee (“LTGS”) to develop a consolidated Business Improvement District (BID) governance approach which requires a new consolidated bylaw. What should the Bylaw provide?

### BACKGROUND

#### 2.1 History

At its [December 16, 2019 Regular Business Meeting](#), City Council considered a report from the Leadership Team Governance Subcommittee (LTGS) and resolved:

1. That 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
2. That the Leadership Team Governance Subcommittee report further on next steps and other details as required for implementation of the consolidated BID governance approach.

At its [May 16, 2022](#) meeting, the Governance and Priorities Committee (GPC) considered a report from the LTGS and resolved:

1. That the Administration prepare a comparative document/chart of bylaw changes proposed;
2. That section 20 relating to the City Manager be removed;
3. That regarding Section 33(1)(3), Council define how a surplus could be addressed, as a potential benefit to the area, after liabilities of the dissolution of a Business Improvement District have been addressed;
4. That the Administration report back to the July Governance and Priorities Committee meeting;
5. That Section 19 regarding Annual General Meetings be supported for inclusion in the future bylaw; and

6. That Section 8(1)(b)(iii) regarding non-profit eligibility for board appointment be supported for inclusion in the future bylaw.

## 2.2 Current Status

The LTGS prepared a side-by-side comparison chart comparing the current Bylaws with the provisions in the proposed Bylaw presented to GPC on May 16, 2022, which is included with this report as Appendix 1. A copy of this comparison chart was shared with the BIDs on June 9, 2022.

## 2.3 Public Engagement

There has been extensive engagement with the BIDs throughout this governance review. Included with this report at Appendix 2 is an up-to-date summary of the engagement undertaken.

At the May 16, 2022 meeting of GPC, a letter from the Executive Director of the Downtown BID dated May 11, 2022 was considered. A copy of this letter is included as Appendix 2(a). The Executive Director of the Riversdale BID spoke at the meeting, providing feedback on the draft Bylaw as well. The LTGS was asked to report to the July meeting of GPC on issues identified in the letter and presentation, with GPC providing direction on a number of provisions of the proposed Bylaw at that meeting. A response in writing was provided to the BIDs on June 9, 2022 and again on June 30, 2022, which are included as Appendices 2(b) and 2(c), respectively. In addition, the City Solicitor and City Clerk met with the Downtown BID's Executive Director on June 28, 2022. Comments have also been received from the Broadway BID and incorporated into this report. The City Solicitor and the City Clerk met with the Riversdale BID's Executive Director on July 5, 2022 and received a letter from the Riversdale BID dated July 5, 2022, a copy of which is attached as Appendix 2(d). Their comments have also been incorporated into this report.

## 2.4 City of Saskatoon's Current Approach

The City's current approach was outlined in previous reporting as outlined above.

## 2.5 Approaches in Other Jurisdictions

The approaches taken in other jurisdictions was included in the December 16, 2019 report noted above.

## OPTIONS

GPC considered a draft of *The Business Improvement Districts Bylaw, 2022* at the May 16, 2022 meeting of GPC. All comments in this report are based on that draft and there are multiple references back to sections in the draft Bylaw. We have attached the Bylaw as Appendix 3 to this report for the easy reference of the Committee.

We have grouped our responses in this report into categories; recommended changes to address concerns, no recommended changes - status quo from previous report, and options provided for the consideration of GPC on some issues of concern identified by the BIDs.

## **1. Recommended Changes to Bylaw in Response to May 11, 2022 Letter**

Several issues were raised in the letter of May 11, 2022 which the LTGS proposes can be easily resolved by some amendments to the proposed Bylaw. This section outlines the amendments proposed to address concerns raised in the letter:

### ***Board Member Responsibilities, Clause 11(3)(d)***

It is proposed that this clause of the Bylaw be amended to read “advise an officer of the board or designated district staff person if they are unable to attend a board meeting or general meeting.” It is our understanding that this will address the concern raised.

### ***Role of the Chair and Vice-Chair, Clause 14(1)(b)***

It is proposed that subsection 14(3) be added to the Bylaw which will provide that “The chair may delegate any of the actions mentioned in clauses (1)(b) through (e) to a board member or district staff person, as appropriate, but remains responsible to ensure that any delegated actions are taken.” It is our understanding that this will address the concern raised.

### ***Annual General Meeting, Section 19***

It is proposed that the requirement for a BID to hold an Annual General Meeting (AGM) within the four month period following its most recent fiscal year be amended to allow for an AGM within a six month period. It is our understanding that this will address the concern raised.

### ***Authority of City Manager, Section 20***

The LTGS proposed a section in the Bylaw that would specifically state that the City Manager has the authority to attend and address board meetings, committee meetings and AGMs, including in camera sessions. The section was intended to simply make it clear that the City Manager had that option in the event it was required for him to attend a meeting. The section was not proposed in response to any specific event. It is proposed that this section be deleted from the proposed Bylaw. The issue was considered by GPC and the Committee resolved that the section be removed.

### ***Insurance, Section 28***

It is proposed that this section be removed from the proposed Bylaw. Insurance is an operational rather than a governance issue. The insurance market is changing, and the BIDs may want more flexibility in this area. The City Solicitor's Office has committed to working through any insurance issues with the BIDs and resolving these issues outside of the Bylaw. We will be providing a comprehensive package of the current insurance program provided by the City to each of the BIDs by the end of July for discussion with each of the BIDs.

### ***Provision of Annual Report***

Currently, all BIDs are required to provide an annual report annually to Council by April 30th of each year. That requirement has been reflected in the new Bylaw. There has been a request to change the Bylaw to provide for an annual report on or before June 30 of each year. In part, the change has been requested to allow for approval of financial statements at an AGM of the BID before submission of the annual report to Council. It is proposed that we make this change in the Bylaw.

## **2. Recommend Status Quo**

Several issues were raised in the letter of May 11, 2022 for which the LTGS is not recommending any substantive change to the proposed Bylaw and is instead recommending that the status quo be maintained:

### ***Purpose of Districts, Clause 5(a)***

This section has not been changed from the wording that is currently in each of the BID Bylaws. BIDs have not historically maintained buildings and so it was suggested by the BIDs that the reference to maintain buildings should be replaced with a reference to public spaces. A change is not being recommended because the purpose section does not require that a BID maintain publicly owned buildings but rather leaves that opportunity should it come up in the future. Again, it is not changing wording from that which is currently in each of the BID Bylaws. Further, public spaces are already included in the wording by reference to publicly owned lands and structures.

### ***BID Membership & Levy, Clause 2(c), Section 24***

As you can see in the attached comparative document (Appendix 1), the section regarding who pays the levy has not changed from that in the existing BID Bylaws. The levy is to be paid "by the operators of businesses in a district" and is based on the assessment of land used for business purposes in that district. If a tenant is operating the business on the land, they are responsible to pay the levy and the landlord is responsible to collect it from the tenant and remit it to the City.

It appears from concerns raised in the letter of May 11, 2022, that many landlord property owners are not passing the BID levy on to their member business tenants. This is a choice made by the landlord but does not affect who is a member business of the BID. The purpose of the BIDs is to improve and maintain the district to promote it as a business and shopping area. This is intended to benefit the business operators in the district; it may indirectly benefit the landlord property owners, but the businesses are the focus of the BIDs.

As a result, we recommend that the definition of “member business” in clause 2(c) remain as in the draft of the proposed Bylaw that was considered at the May 16, 2022 meeting of GPC. It is proposed that the description of the levy in section 24 be amended to more clearly express that the levy is to be paid by the tenant to the landlord and the landlord to the City.

To assist each BID in the compilation of membership lists, the City already provides some of the BIDs with a list of business licenses issued in their district. The City will extend that service to all of the BIDs and the spreadsheet will be enhanced to include a phone number, email, mailing address and a contact name (if available) going forward.

### **3. Options Provided**

Several issues have been raised by the BIDs for which there is more than one possible approach. This section provides options for the consideration of GPC along with a recommendation for each issue.

#### **A. *Board Member Responsibilities, Subsection 11(4) – City Council Appointments***

It is currently proposed that the Bylaw provide that members of Council appointed as board members on the BIDs can report on information provided to GPC and City Council.

Section 19 of *The Code of Ethical Conduct for Members of City Council Bylaw, 2019* provides:

19. (1) A member who is appointed to the board of another organization, including a controlled corporation and a business improvement district, in their role as a member may report all information from that board to the Governance and Priorities Committee and Council.
- (2) If the information mentioned in subsection (1) is reasonably considered confidential by the board, the information shall be reported in camera to the Governance and Priorities Committee and Council.

The section currently proposed in the Bylaw mirrors the above section. As such, members of Council who are members of a BID board will have the ability to report to GPC and City Council regardless of whether a specific section is included in the Bylaw.

**Option 1: Remove Subsection 11(4)(b) – No Reference in Bylaw to Reporting by Members of Council**

This option would remove the section in the proposed Bylaw that provides for the ability of a member of Council to report information from the board to GPC and City Council. The section in *The Code of Ethical Conduct for Members of City Council Bylaw, 2019* would remain.

Advantages:

- Would remove concern of the BIDs from the Bylaw.

Disadvantages:

- Provision would still exist but simply not be transparent in the BID Bylaw.
- Would not provide a “one stop” solution for BID provisions.
- May cause confusion.

**Option 2: Amend Bylaw to Require Approval of Board Before a Member of Council Can Report Confidential Information**

This option would amend the proposed Bylaw to state: “A board member who is a member of Council shall not report information reasonably considered confidential by the board to the Governance and Priorities Committee and Council, in camera, without the approval of the board.” Again, the section in *The Code of Ethical Conduct for Members of City Council Bylaw, 2019* would remain.

Advantages:

- Would remove concern of the BIDs from the Bylaw.

Disadvantages:

- Would be contrary to the provisions in *The Code of Ethical Conduct for Members of City Council Bylaw, 2019*.
- Inconsistent provisions would cause confusion.
- Would not provide a “one stop” solution for BID provisions.

**Option 3: Maintain Subsection 11(4) as Currently Drafted – Members of Council Can Report Information**

This option would have the proposed Bylaw state that members of Council can report information to GPC and City Council. In other words, it would keep subsection 11(4) as drafted in the Bylaw. This provision is consistent with the section in *The Code of Ethical Conduct for Members of City Council Bylaw, 2019*.

Advantages:

- Would be consistent with the current provisions of other Bylaws.
- Would provide the BIDs with one comprehensive location for all BID rules.

- Would ensure clarity for members of Council who are sitting on the boards of the BIDs.

Disadvantages:

- Does not address the concerns of the BIDs.

We are recommending Option 3 – Maintain Subsection 11(4) as Currently Drafted – Members of Council Can Report Information. Given the provisions of *The Code of Ethical Conduct for Members of City Council Bylaw, 2019*, we feel it is important to maintain consistency between the City's various bylaws. Further, given the consolidated Bylaw approach, we feel there is merit in having all the rules in one place for the BIDs. This section is consistent with what City Council has already put in place for members of Council that sit on the boards of controlled corporations.

### **B. Annual General Meetings, Subsection 18(2)**

The requirement to have AGMs is a common governance tool to facilitate accountability and transparency. It is a requirement in most legislation providing for the incorporation of entities. It is also commonly used by other organizations to allow for an annual venue to discuss a variety of organizational topics. The LTGS has recommended the inclusion of AGMs in the consolidated BID Bylaw throughout our discussions with the BIDs. At the May 16, 2022 meeting of GPC, the Committee resolved that AGMs be supported for inclusion in the Bylaw.

The LTGS has intentionally kept the provisions regarding AGMs in the Bylaw high level. Each of the BIDs is required to adopt meeting procedures. Some of the meeting procedures adopted by the BIDs already reference AGMs. Keeping it high level in the Bylaw would allow flexibility for each BID to adopt more specific provisions in their meeting procedures. The LTGS has offered to assist with the drafting of those provisions if the BID wants assistance. We could put more comprehensive provisions in the Bylaw but that would require each BID to follow those provisions and would not provide them with individual flexibility.

Some of the items that have been suggested by the BIDs for inclusion in the meeting procedures include:

- a draft agenda for an AGM;
- a process for registration for the AGM; and
- voting procedures for the AGM.

The BIDS have suggested that the notice period to members of the date of a general meeting be reduced from 15 days to seven days. However, it was also requested that the notice period be changed to 21 days for AGMs. In the current draft of the Bylaw, the requirements for general meetings are the same for an AGM which is, itself, a general meeting. Currently, any BIDs who adopted the model meeting procedures have a 15 day notice period for their AGMs. We have provided options on this issue as outlined below.

**Option 1: Maintain Subsection 18(2) as Currently Drafted – Leave the Notice as at Least 15 days**

This option would require at least 15 days notice of general meetings. The current draft of the Bylaw would remain “as is”. This is the amount of notice that most BIDs already require in their meeting procedures for an AGM and so the meeting procedures would not need to be amended for this purpose. General meetings that are not AGMs will be rare, so the BIDs will rarely be inconvenienced by the longer notice period over that which was requested for general meetings. If BIDs prefer to give more notice for AGMs, they may do so – the 15 days is a minimum.

Advantages:

- Consistent with current meeting procedures.
- Consistent with legislative requirements for other entities.
- Consistent rules for all general meetings of the BIDs.

Disadvantages:

- Does not make the change requested.

**Option 2: Change the Notice in Subsection 18(2) to at Least Seven Days**

This is what has been requested for general meetings that are not AGMs. Again, it is a minimum amount of notice so BIDs could choose to provide more notice. This change would require a change to the meeting procedures of the BIDs. This provision would apply equally to AGMs which are general meetings under the Bylaw.

Advantages:

- Makes the change requested for general meetings.

Disadvantages:

- Requires a change to the meeting procedures.
- Provides for relatively short notice of general meetings of all the members of the BID.
- Not consistent with other legislative provisions for the incorporation of entities.

**Option 3: Change the Notice in Subsection 18(2) to at Least Seven Days and Add a Subsection to Section 19 that Would Require the Notice for AGMs to be at Least 21 Days**

This is what has been requested. Again, it would be a minimum amount of notice so BIDs could choose to provide more notice. This change would require a change to the meeting procedures of the BIDs. This option would create different rules for AGMs than other general meetings of the members of the BID.

Advantages:

- Makes the change requested.



Disadvantages:

- Would create different rules for general meetings and those general meetings that are AGMs in the Bylaw.
- Requires a change to the meeting procedures.

We are recommending Option 1 – Maintain Subsection 18(2) as Currently Drafted – Leave the Notice as at Least 15 Days. As general meetings of the members of the BID will involve many people, seven days notice is not a lot of notice for member businesses to arrange to attend a meeting. A notice period of 15 days is consistent with other legislation with respect to the incorporation of entities.

**C. Eligibility for Appointment to Board, Section 8**

The current BID Bylaws allow for appointment to the board of the BID if you are an elector of the City of Saskatoon and an operator of a business in the district or the nominee of a corporation which operates a business in the district. The current draft of the new BID Bylaw reflects those provisions. However, at the request of some of the BIDs, the ability to appoint nominees of a non-profit corporation that has an office in the district was added to the proposed Bylaw. It currently provides

**Composition of Boards**

8. (1) A board is a body corporate and consists of the following individuals appointed by resolution of Council:
  - (a) at least one individual who is a member of Council; and
  - (b) no less than 5 and no more than 12 other individuals who are electors of the City; and:
    - (i) operate a business in the district;
    - (ii) are nominees of a corporation that operates a business in the district; or
    - (iii) are nominees of a non-profit corporation that has an office in the district.
- (2) Appointments to a board will encourage equity, diversity and inclusion and promote an inclusive environment.

Some of the BIDs are opposed to the addition of the reference to non-profits in the Bylaw. A review of the bylaws of other jurisdictions shows that there are a number of options for how members of the board can be appointed.

The options outlined here were not provided to the BIDs in our letters of June 9, 2022, and June 30, 2022; however, have been flagged with the BIDs for them to provide comment at the July 18, 2022 GPC meeting. We have added this section of the report in response to the various comments received from the BIDs.

**Option 1: Remove the Reference to Nominees of Non-profits from the Bylaw**

This option would simply remove the reference to “nominees of a non-profit corporation”. The language of the Bylaw would revert to what is currently in the Bylaws of each BID. To be appointed to the board you would be required to be an elector of the City and operate a business in the district or be a nominee of a corporation that operates a business in the district.

Advantages:

- Consistent with current provisions of the BID Bylaws.

Disadvantages:

- Would not provide any flexibility to BIDs to appoint other entities to the board.

**Option 2: Remove the Reference to Nominees of Non-profits from the Bylaw and Replace with the Ability to Appoint up to Two “at large” Individuals**

This option would allow for up to two appointments to the board who do not operate a business in the district. It would provide flexibility to the BIDs to determine their own business needs and make recommendations for appointments to City Council as they determine to be appropriate. Appointments to the board would still come to City Council for final approval. These “at large” appointments could be used to appoint a property owner in the district who does not operate a business, a nominee of a non-profit, or a member of the public. Limiting the number to two appointments would mean that regardless of the size of the board, it would not be a majority of the board. The Bylaw would be drafted to allow this as an option for the BID but not make it mandatory that two “at large” individuals be appointed to the board.

Advantages:

- Provides flexibility to the BIDs to make recommendations for appointments to the board.
- Allows for the appointment of individuals other than member businesses if the BID determines such an appointment is desired.

Disadvantages:

- Purpose of a BID is to promote businesses and shopping in the district; may be inconsistent with that purpose for individuals other than business operators to be appointed to the board.

**Option 3: Maintain Section 8 as Currently Drafted - Allow for the Appointment of Nominees of a Non-profit Corporation**

This option would maintain the current wording of section 8 of the draft Bylaw. Nominees of a non-profit corporation that have an office in the district would be eligible for appointment to the board. Recommendations for appointments to the board would still come to City Council. It would not be mandatory that nominees of a non-profit corporation be appointed to the board but instead it would simply be an option available to the BIDs.

Advantages:

- Complies with the request of some of the BIDs.

Disadvantages:

- Not universally supported by the BIDs.

We are recommending Option 2 - Remove the Reference to Nominees of Non-profits from the Bylaw and Replace with the Ability to Appoint up to Two “at large” Individuals. Over the years, there have been various requests from the BID boards with respect to appointments to the board. There has been a desire for more flexibility to meet a variety of needs of the BID. This option would provide the most flexibility to each BID. However, limiting it to two members of the board would ensure that a majority of the board still operates a business in the district. Given the purpose for which BIDs are created, it is consistent that a majority of the board be business operators. We believe this option would address the concerns of all the BIDs. There is a variety of approaches to BID board composition among Saskatchewan municipalities, some of which include representation by at large members as is being recommended here.

At the May 16, 2022 meeting, GPC resolved that the reference to appoint nominees of non-profit corporations be supported for inclusion in the Bylaw. This is the only recommendation in this report that does not correspond with the resolutions of GPC from May 16, 2022; however, is consistent with our interpretation of the spirit of the resolution. We have amended our approach on this issue to come up with a resolution that we think can provide the necessary flexibility to the BIDs but in a manner that is perhaps more satisfactory to all of the BIDs.

**D. Expenditures by Board, Subsection 25(3)**

Currently, the various BID Bylaws provide for limits of the board’s expenditures and indebtedness. The current draft of the new Bylaw reflects what currently exists in the BID Bylaws. It is intended to limit the liabilities incurred by the board and to protect the member businesses and the City’s investments in the case of dissolution. Clause 25(2)(f) of *The Cities Act* requires the Bylaw to address “any limitations on the powers of the board, including limitations on its power to incur debt obligations”. Other cities with BIDs similarly restrict indebtedness. However, the BIDs currently sign leases for office space and incur other liabilities for the lease of office equipment that exceed the one

year limitation in their Bylaws. Options have been provided for the consideration of City Council.

**Option 1: Maintain the Status Quo**

This option reflects the provisions of the current BID Bylaws and would not allow indebtedness extending beyond the current fiscal year.

Advantages:

- Limits the ability for the BIDs to incur debt.

Disadvantages:

- Causing situations where the BIDs may be in breach of their Bylaw provisions.
- Overly restrictive for the purpose intended.

**Option 2: Extend the Length of Time Within Which Indebtedness May Be Incurred to Five Years**

This option would allow the BIDs to incur indebtedness of no more than five years in length. It would provide more flexibility to the BIDs, but it may also create situations of more liability for each of the BIDs. There would be no exception to extend beyond the five year term.

Advantages:

- Provides more flexibility to the BIDs.

Disadvantages:

- Allows for the creation of more liability for each BID.
- Does not allow for approval of debt exceeding the five year period.

**Option 3: Allow the BIDs to Incur Indebtedness of up to Five Years for Lease of Office Space and the Lease of Office Equipment but Limit Indebtedness to the Current Year for Other Reasons but Allow for Exceptions on Application to and Approval by the Standing Policy Committee on Finance**

This option would allow each BID to sign a five year lease for office space or lease of office equipment without approval, but would require the approval of the Standing Policy Committee on Finance for incurring indebtedness beyond the current year for other purposes. For example, if the BID wanted to purchase a building and obtain a mortgage of 25 years.

The LTGS did provide a variation of this option to the BIDs in our letter of June 9, 2022 but we have adjusted the option provided based on comments received from the BIDs.

Advantages:

- Reflects the current reality that BIDs are leasing office equipment and leasing office space for terms of more than the current year.
- Provides some flexibility to the BIDs.

- Provides some limitation on the creation of liability at the BIDs.
- Allows for the approval of debt beyond the five year period.

Disadvantages:

- Would require approval before incurring liability beyond the current year in some circumstances.

We are recommending Option 3 – Allow the BIDs to Incur Indebtedness of up to Five Years for Lease of Office Space and the Lease of Office Equipment but Limit Indebtedness to the Current Year for Other Reasons but Allow for Exceptions on Application to and Approval by the Standing Policy Committee on Finance. As the City will be responsible for any liabilities of the BIDs upon dissolution, we feel this creates the right balance between allowing for the operational needs of the BIDs but preventing the creation of significant liability at the BIDs without the knowledge of the City. Delegation to the Standing Policy Committee on Finance to approve indebtedness exceptions will require an amendment to *The Procedures and Committees Bylaw, 2014*, which will be further reported on later this year.

**E. Disestablishment of a District, Subsection 33(3)**

*The Cities Act* requires that the Bylaw address “the process and consequences of disestablishment of [a BID].” Section 33 of the current draft of the Bylaw was included to address this requirement. As currently drafted, if a BID is dissolved, both the liabilities (e.g. amounts owed to employees, ongoing lease agreements, outstanding debts) and the assets (e.g. monies, capital assets) are returned to the City. The City would then use the assets to address the liabilities, presuming there were sufficient assets. If there were insufficient assets, the City would be liable to cover any deficit. If any assets remained after dealing with the liabilities, the surplus would go into the City’s general fund to benefit the residents of Saskatoon as a whole.

A review of the bylaws of other jurisdictions shows that most bylaws are as we have outlined above. All assets and liabilities are returned to the City. However, the City of Yorkton provides in their bylaw that any surplus funds will revert to the City and be utilized for revitalization initiatives in the disestablished BID district.

At its May 16, 2022 meeting, GPC resolved that “Council define how a surplus could be addressed as a potential benefit to the area, after liabilities of the dissolution of a [BID] have been addressed”. Some options are provided for the consideration of Committee. Again, we have adjusted the options provided to the BIDs in our letter of June 9, 2022 based on comments received from the BIDs.

**Option 1: Maintain Subsection 33(3) as Currently Drafted**

This option would provide as outlined above that all liabilities and assets be returned to the City.

Advantages:

- Easiest to administer; no tracking of surplus required.
- Any surplus would go into City's general revenues and be used to benefit the City as a whole.
- Balances the risk the City is taking by being responsible for all liabilities.

Disadvantages:

- Surplus may not be used to benefit the area of the former district itself.

**Option 2: Amend Subsection 33(3) to Provide that any Surplus be Used to Support an Initiative or Project in the Area of the former District as City Council May Determine Appropriate**

Initially we had proposed in our letter of June 9, 2022 that any surplus be added to the Streetscape Reserve to be used for the benefit of the continuing BIDs. Feedback received was that the funds should be used in the area where the former BID was located rather than for the BIDs in general. This option would provide flexibility to allow that to occur.

Advantages:

- Easier to administer than returning surplus to members of the BID.
- Surplus would be used for a project or amenity in the former BID area.

Disadvantages:

- Would require tracking by the City of the surplus funds and identification of their use for a specific project

**Option 3: Amend Subsection 33(3) to Return Any Surplus to the Members of the BID at the Time of Disestablishment on a Pro-rated Basis**

This option would require the City to return any surplus funds to the members of the BID at the time of disestablishment on a pro-rated basis.

Advantages:

- Surplus would be returned to members of the BID.

Disadvantages:

- Calculating the pro-rated amount to be paid to each member business would be cumbersome and time consuming for the City Administration.
- May create situations of unfairness.
  - For example, a member business that has been paying the BID levy for decades may shut down just before the BID is disestablished and not get any pro-rated amount. However, a new business that has taken over the

location and may not yet have paid any BID levy would receive the pro-rated amount.

We are recommending Option 2 – Amend Subsection 33(3) to Provide that Any Surplus be Used to Support an Initiative or Project in the Area of the Former District as City Council May Determine Appropriate. This option provides a benefit to the members of the former district by using the funds for a project in their area while not creating a cumbersome administrative process of returning funds to members of the district. It represents a fair compromise between the City’s administrative time and the use of the funds for a project in the former BID area. It would allow for the use of the surplus for a wide range of uses: a streetscape project in the former BID area, or another initiative or project of benefit to the former BID area. Decision of the use of the funds would be made by City Council so that would allow input from the public and former BID members before the decision is made on the use of the surplus funds.

**RECOMMENDATION**

That the Governance and Priorities Committee recommend to City Council that:

1. The following changes be made to the proposed consolidated Bylaw:
  - (a) That clause 11(3)(d), Board Member Responsibilities, be amended to read “advise an officer of the board or designated staff person if they are unable to attend a board meeting or general meeting”;
  - (b) That a subsection 3 be added to section 14, Role of the Chair and Vice-Chair, saying that “the chair may delegate any of the actions mentioned in clauses 1(b) through (e) to a board member or district staff person, as appropriate, but remains responsible to ensure that any delegated actions are taken;
  - (c) That section 19, Annual General Meeting, be amended so that the requirement for a BID to hold an Annual General Meeting be within a six month period following its most recent fiscal year rather than four months;
  - (d) That section 20, Authority of the City Manager, be deleted;
  - (e) That section 28, Insurance, be deleted, and that the City Solicitor’s Office shall continue to work with the BIDs regarding any insurance issues;
  - (f) That the BIDs be required to provide their annual report to Council by June 30 of each year;
  - (g) That no change be made to clause 5(a), Purpose of Districts;
  - (h) That no changes be made to clause 2(c) and section 24 regarding the levies except to clarify that the levy is to be paid by the tenant to the landlord and the landlord to the City;
  - (i) That subsection 11(4) remain as currently drafted (Option 3 – Board Member Responsibilities – City Council Appointments);

- (j) That subsection 18(2) remain as currently drafted to allow for notice of an annual general meeting or a general meeting to be at least 15 days (Option 1 – Annual General Meetings);
- (k) That section 8 be amended to allow for the appointment of two “at large” members of the board rather than non-profit corporate appointments (Option 2 – Eligibility for Appointments);
- (l) That subsection 25(3) be amended to allow for the BIDs to incur indebtedness of up to five years for the lease of office space or the lease of office equipment but limit indebtedness to the current year for other reasons but allow for exceptions on application to and approval by the Standing Policy Committee on Finance (Option 3 – Expenditures by Board);
- (m) That subsection 33(3) be amended to provide that any surplus be used to support an initiative or project in the area of the former BID (Option 2 – Disestablishment of a District); and

2. That the City Solicitor be instructed to bring forward the updated version of The Business Improvement Districts Bylaw, 2022 to City Council for its consideration.

### **RATIONALE**

The rationale for each recommendation has been provided within the Options section above.

### **FINANCIAL IMPLICATIONS**

There are no financial implications.

### **APPENDICES**

- 1. Comparison – Existing Business Improvement District Bylaws and Proposed New Consolidated Business Improvement District Bylaw
- 2. Business Improvement Districts Engagement Timeline
  - 2(a). Letter from Downtown BID dated May 11, 2022
  - 2(b). Letter from the LTGS dated June 9, 2022
  - 2(c). Letter from the LTGS dated June 30, 2022
  - 2(d). Letter from the Riversdale BID dated July 5, 2022
- 3. Proposed Business Improvement Districts Bylaw, 2022

### **Report Approval**

Written and Approved by: Cindy Yelland, City Solicitor

Reviewed by: Adam Tittlemore, City Clerk