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June 9, 2022

Downtown Saskatoon

Attention: Brent Penner, Executive Director

Via Email

Re: *The Business Improvement Districts Bylaw, 2022*

Thank you for your letter on the proposed *Business Improvement Districts Bylaw, 2022* ("Bylaw") to the Governance and Priorities Committee ("GPC") dated May 11, 2022 ("letter"). The contents of your letter were considered when GPC debated the proposed Bylaw at its May 16, 2022 meeting and several resolutions were made, namely:

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(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 ("BID") have been addressed;
4. That the Administration report back to the July GPC 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.

As a result of those resolutions, we are writing you today to address the issues raised in your letter, provide information and to request your input on possible changes to the proposed Bylaw. Attached to this letter is the comparative document directed by GPC for your review; it has been drafted as a side-by-side comparison of the May 16, 2022 version of the draft Bylaw to the already existing BID bylaws.

What follows is a discussion of each of the issues raised in your letter. We have attempted to group them into those for which we intend to recommend your requested changes, those for which we currently recommend the Bylaw remain as drafted, and those for which we request your further input.

Recommend Change

Board Member Responsibilities, clause 11(3)(d) – We will recommend that this clause be amended in the next draft of the Bylaw 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.” We understand that this will address your concern with the clause.

Role of the Chair and Vice-Chair, clause 14(1)(b) – You requested in your letter that the chair be permitted to delegate some of their responsibilities to a district staff person or any member of the board. To clarify that this is permitted, but that the chair must ensure that the delegated responsibilities are performed, we will recommend the addition of subsection 14(3) to the next draft of the Bylaw: “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.”

Annual General Meeting, section 19 – At its May 16, 2022 meeting, GPC resolved “That Section 19 regarding Annual General Meetings be supported for inclusion in the future bylaw.”

In your letter, you raised a concern with the requirement for a BID to hold an Annual General Meeting (“AGM”) within the four month period following its most recent fiscal year end and requested that the four months be changed to six. We will recommend that in the next draft of the Bylaw, subsection 19(1) reflect a six month period in which a BID must hold an AGM. We understand that this addresses your concern with the timing of the AGM.

In response to the other questions posed in your letter related to section 19:

1. The member businesses must be notified of and can attend and vote at the AGMs. However, other people are not prohibited from attending an AGM for information – they simply cannot vote. A discussion of member businesses and who is meant to pay the levy is found below.
2. If the board wishes to allow voting by proxy at its general meetings (including the AGM) it may include the required steps to do so in its meeting procedures. We suggest referring to Division XII of *The Non-profit Corporations Act, 1995* for an example of proxy procedure. However, we do not recommend that BIDs allow voting by proxy; it can be an onerous process to track and record properly. Further, because quorum for a general meeting is set as quorum of the board, proxies are not necessary to achieve quorum.

3. It is open to the BIDs to ask member businesses to advise in advance that they will be attending the AGM for planning purposes. However, it would not be appropriate to exclude a member business from the AGM if they failed to RSVP. There is no obligation to prohibit individuals who do not represent a member business from attending the AGM; however, they cannot be permitted to vote.

Having reviewed the matter with Administration, the City can provide each BID with a list of all the business owners within their district, pulled from the business licence registry. This information includes the business name, address, phone number and email, as well as the business owner's name. This should provide sufficient information for the BID to provide notice of any meetings by email, if desired but not required by the Bylaw, and to have a list of members to confirm membership at an AGM.

4. This question is addressed in the discussion under General Meetings, below.

Authority of City Manager, section 20 – At its May 16, 2022 meeting, GPC resolved “That section 20 relating to the City Manager be removed,” however this remains to be finally decided by City Council. We will recommend in our report back to GPC that it be removed, as recommended by GPC.

Insurance, section 28 – Your letter included a number of questions related to the insurance mentioned in this section. In reviewing the section and your questions, we will recommend that this section not be included in the next draft of the Bylaw. While at least two other cities have insurance sections in their BID bylaws, they are not similar to what was proposed. Insurance is best dealt with outside of the Bylaw. It is not really a governance issue but instead more of an operational issue. A response to your insurance questions is being prepared and will be sent separately. We are working on a comprehensive package that outlines the insurance currently obtained for the BIDs by the City. One alternative might be to have a separate Memorandum of Understanding with each of the BIDs about insurance. The insurance needs of each BID may change with time and with changes to the insurance market in general each BID might want to retain some flexibility regarding insurance.

Recommend Status Quo

Purpose of Districts, clause 5(a) – Your letter suggested that BIDs have not historically maintained buildings and so the reference to maintaining buildings should be replaced in clause 5 with a reference to public spaces. We will recommend that this clause remain worded as is – the purpose does not require that a BID maintain publicly owned buildings but rather leaves that opportunity open should it come up in the future.

Further, public spaces are already considered in the clause under “lands...and structures” and so do not need to be added.

BID Membership & Levy, clause 2(c), subclause 8(1)(b)(i), section 24 – Several of the concerns noted in your letter centered on the question of who pays the BID levy and who, therefore, is a member business of the BID. As you can see in the attached comparative document, the section respecting who pays the levy has not changed from all of 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. Subsection 24(5) makes it clear that 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 the concerns raised in your letter, that many landlord property owners are not passing the BID levy amount 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, as set out in section 5 of the proposed Bylaw, 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 currently recommend that the definition of “member business” in clause 2(c) and the qualification to be a board member in subclause 8(1)(b)(i) remain as in the draft of the proposed Bylaw that was debated at the May 16, 2022 meeting of the GPC. We also recommend that the description of the levy in section 24 be tweaked to more clearly express that the levy is to be paid by the tenant to the landlord and the landlord to the City.

Options Provided

Board Member Responsibilities, subsection 11(4) – You raised a concern in your letter with the ability of a board member who is a member of Council to report on information reasonably considered to be confidential by the board to GPC and Council. You suggested that such reporting should only occur with the approval of the board. 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.

As you can see, subsection 11(4) of the Bylaw mirrors section 19 of *The Code of Ethical Conduct for Members of City Council Bylaw, 2019*. As such, members of Council who are members of a BID board will have the ability to report to GPC and Council regardless of whether subsection 11(4) is included in the Bylaw. We suggested including this in the Bylaw so that it is clear to all parties that such reporting may occur. This approach aligns with Council's approach to members of Council who are members of controlled corporation boards.

We intend to present the following options in our report back to GPC:

1. Remove subsection 11(4). This will remove the confidential reporting information from the Bylaw but will not result in any change to a Council member's ability to report.
2. Amend clause 11(4)(b) as requested in your letter to read: "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." This amendment would be confusing and misleading because the member of Council would still be entitled to report following *The Code of Ethical Conduct for Members of City Council Bylaw, 2019*, which contradicts with the proposed wording. The proposed wording is also out of step with Council's approach to the controlled corporations and other boards.
3. Maintain subsection 11(4) as currently drafted.

We invite your feedback on these proposed options. In the interest of consistency, we expect to recommend option 3 in our report back to GPC as it aligns with both *The Code of Ethical Conduct for Members of City Council Bylaw, 2019* and Council's approach to other boards and the controlled corporations.

General Meeting, subsection 18(2) – Your letter suggests that the notice period to members of the date of a general meeting be reduced from 15 days to seven days. However, you also requested that the notice period be changed to 21 days for AGMs. 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 intend to present the following options to GPC:

1. Leave the notice in subsection 18(2) as at least 15 days. This is the amount of notice that most BIDs already require in their meeting procedures for an AGM and so the meeting procedures will 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 (i.e., 21 days), they may do so – the 15 days is a minimum.
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. Because it is a minimum amount of notice, BIDs can choose to give more notice (i.e., 21 days) for an AGM. This would require a change to the meeting procedures.
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 would require a change to the meeting procedures.

We welcome your feedback on these proposed options. In our report back to GPC, we are intending to recommend option 1; as seven days is not a lot of notice for member businesses to arrange to attend a meeting, and 15 days is consistent with *The Non-Profit Corporations Act, 1995*.

Expenditures by Board, subsection 25(3) – As you will note in the attached comparative document, this subsection appears in all of the already existing 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 BID in 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 (see e.g., Edmonton City Procedure Budget, Financial Procedures and City Assistance for Business Revitalization Zones, s. 3.05; The London Downtown Business Association Improvement Area By-law, s. 6.2; Winnipeg Business Improvement Zone Procedures By-law, s. 20(3)).

Noting the concerns raised in your letter, we intend to present the following options in our report back to GPC:

1. Maintain the status quo, i.e., a board shall not incur indebtedness extending beyond the current year. As this is what is currently required by each existing BID Bylaw, this should be how the BIDs are currently operating. Any BID that has indebtedness extending beyond the current year is in breach of its existing bylaw.

2. Extend the length of time within which indebtedness may be incurred to a set number of years. We will likely suggest five years for this option, as that appears to be a reasonable length of time to allow for an office lease.
3. Keep the limitation on indebtedness to the current year but allow for exceptions on application to and approval by the Standing Policy Committee on Finance.

We would appreciate your feedback on how best to accommodate your concerns on this issue. We intend to recommend option 3 as the one that will best protect the BID, its members, and the City but allows flexibility for the few occasions when indebtedness beyond a year is necessary.

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 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.

Your letter questioned why, upon dissolution, the BID’s assets would go to the City instead of to the BID membership. 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”.

We intend to present the following options in our report back to GPC:

1. Maintain subsection 33(3) as currently drafted. This is the most functional option, administratively; the other options involve amending bylaws, establishing funds, and then moving and tracking any surplus once it has been calculated. Any surplus after the BIDs liabilities have been addressed would go into the City’s general revenues and be used to benefit the City as a whole. This is the fairest option, as the City runs the risk of not having sufficient assets to cover liabilities when a BID is disestablished; it is only fair that the risk is balanced by the possibility of benefitting from a surplus of assets.
2. Amend subsection 33(3) to provide that any surplus after liabilities have been paid be added to the Streetscape Reserve to be used to the benefit of the continuing BIDs. This would not benefit the businesses in the disestablished

BID, but the funds would be used to improve other Saskatoon BIDs for the benefit of the residents of Saskatoon. This option would require an amendment to *The Capital Reserve Bylaw*.

3. Amend subsection 33(3) to return any surplus to the members of the BID at the time of its disestablishment on a pro-rated basis. Calculating the pro-rated amount to be paid to each member business would be cumbersome and extremely time consuming for the City's Administration. Further, such a process is unlikely to be fair to member businesses, although we understand that that is the intent of this suggestion. For example, a member business that has been paying the BID levy for decades may shut down just before the BID is disestablished. That business would not receive any pro-rated amount. However, a new business that has taken over the location and may not yet have paid any BID levy (depending on how the property owner collects the levy from them) would receive the pro-rated amount for that location. There would be no reasonable way to track or manage these situations.

We welcome your comments on these options. We intend to recommend option 1 to GPC in our report back. It is the most straight-forward and, in our view, the fairest option to deal with the assets and liabilities of disestablished BIDs.

We invite your feedback on the items above. We have been directed to report back to the July 2022 GPC meeting. Thus, for your feedback to be included in the report, it would have to be received **no later than July 4, 2022**. If you prefer to meet to discuss your feedback, please let us know and we will be happy to accommodate you. Thank you for participating in the development of this Bylaw.

Yours truly,

Leadership Team Governance Subcommittee

RJM:rjm
Enclosure

cc. DeeAnn Mercier, Broadway BID
Randy Pshebylo, Riversdale BID
Dan Matthews, 33rd Street BID
Lloyd Moker, Sutherland BID