

PROCEDURE BY-LAW

ARTICLE 1

Interpretation

In this By-law, unless the context requires otherwise:

“City” means the City of Hamilton;

“corporation” means a body recognized as a separate legal entity in the Province of Ontario in accordance with federal or provincial legislation (for example, a business corporation incorporated under the *Business Corporations Act*, R.S.O. 1990, c. B. 16 or a non-profit corporation incorporated under the *Corporations Act*, R.S.O., 1990, c. C. 38) and “corporate” has a corresponding meaning;

“Director” means an individual:

- a) selected by a vote of the members of the Business Improvement Area and then appointed by City Council to the Board of Management; or
- b) an individual, including but not limited to a member of Council, appointed directly by City Council to the Board of Management; and

“Member” means a person, including but not limited to a corporation, assessed, on the last returned assessment roll, with respect to rateable property in the Business Improvement Area that is in a prescribed business property class and tenants of such property.

Scope

The Municipal Act, 2001, specifically sections 204-215, is the Act under which business property owners petition City Council to enact by-laws for an improvement area, designating its geographical boundaries and establishing a Board of Management. The Board of Management is entrusted, subject to such limitations as the by-law provides, with the administration of the organization known as the Business Improvement Area (the “B.I.A.”). The Board of Management is a corporation and a local board of the City of Hamilton for all purposes. Attached to this document are copies of sections 204-215 of the Municipal Act, 2001, By-law No. XX-XXX designating the geographical boundaries and By-law No. XX-XXX establishing the Board of Management.

Purpose and Objectives

The objective of the B.I.A. shall be to oversee the improvement, beautification and maintenance of municipally-owned land, buildings and structures in the area beyond that provided at the expense of the municipality generally; and to promote the area as a business or shopping area.

ARTICLE 2

General

Section 1 In all instances, the B.I.A. shall operate in conformity with the provisions of the Municipal Act, 2001 and City by-laws.

Section 2 General guidelines, rules and regulations above and beyond those provided under the Municipal Act, 2001 may be set for the B.I.A., but such guidelines, rules or regulations shall never conflict with or frustrate the Act. This By-law is passed pursuant to subsection 3(a) of City of Hamilton By-law No. XX-XXX which establishes the B.I.A. Board of Management and is intended to provide such further rules of procedure as are not specified in the Municipal Act, 2001 or City by-laws in order that the functions of the B.I.A. may be performed in as fair and democratic a manner as possible.

ARTICLE 3

Eligibility for Membership

Every person who is assessed with respect to property in a prescribed business property class within an area designated as a business improvement area, and tenants of such property, is a Member of the B.I.A. Each Member is entitled to one vote regardless of the number of properties that the Member may own or lease.

ARTICLE 4

Board of Management

Section 1 All Directors of the Board of Management are appointed by City Council.

- a) The Board of Management shall consist of ten (10) Directors [a minimum of 3 directors and a maximum of 20 Directors], selected by a vote of the Members of the BIA and then appointed as Directors by City Council. In addition, the Board of Management shall consist of the Councillor(s) of the Ward(s) in which the BIA is located, directly appointed as Directors by the City.
- b) A quorum for conducting any meeting of the Board of Management shall consist of a majority of Directors not directly appointed by the City. However, after missing three (3) consecutive meetings, a member's position on the Board of Management would be suspended from what is required to constitute a quorum until the board can address the issue
- c) The Board of Management shall have the following Officers: Chair, Vice-Chair, Secretary, Treasurer, provided that the Secretary and the Treasurer may be the same Director. At the first meeting of the Board of Management, the Board shall, amongst themselves, elect the Officers.

Section 2 Vacancies

The seat of a Director of the Board becomes vacant when:

- a) A Director is absent from Board of Management meetings for three (3) consecutive regular meetings without reasonable cause. Upon a Director failing to attend two (2) consecutive regular meetings without reasonable cause, the Board of Management shall send by prepaid mail, a notice to the Director advising that upon a third (3rd) failure to attend, the Board of Management shall recommend to the City that such Director be removed from the Board of Management.
- b) Leave of Absence: Any Director wishing a leave of absence from the Board of Management must give notice in writing stating the date he/she intends to

resume board duties. During this leave of absence, the position shall be assumed vacant for purposes of quorum. Resumption of duties must be anticipated within one year; otherwise a notice of resignation shall be given.

- c) A Director resigns in writing to the Board of Management with a copy of the letter copied to the Co-ordinator of Business Improvement Areas, Downtown Renewal Division, Planning and Economic Development Department.

Section 3 Appointment to the Board

In the event of a vacancy occurring on the Board of Management:

- a) The remaining Directors may nominate for the City's consideration and appointment an individual for Directorship to fill the vacancy for the remaining portion of the term of office.
- b) In the event that the remaining Directors no longer constitute a quorum, a meeting of the Members shall be called by the remaining Directors for the purpose of nominating an individual for Directorship for consideration and appointment by the City.
- c) The Board of Management shall notify the Co-ordinator of Business Improvement Areas, Downtown Renewal Division, Planning and Economic Development Department, as soon as any vacancy occurs and shall further notify him or her if and when a nomination is made by the remaining Directors or the Members for appointment to the Board of Management by the City.

Section 4 Term of Office

The Directors' term of office is the same term as the City Council but continues until their successors are appointed.

Section 5 Remuneration

- a) The Directors shall receive no remuneration, either directly or indirectly, for services rendered as a Director, but may be reimbursed for out-of-pocket expenses incurred by them as a result of representing the B.I.A. at non-B.I.A. meetings, upon approval of the Board of Management.
- b) The above requirement does not pertain to the contracting of services with a Director's business, by the Board of Management, in order for the Board to have the preference of purchasing its services from Members, provided business is shared fairly.
- c) A Director who is in any way directly or indirectly interested in a contract or proposed contract with the B.I.A. shall disclose his or her interest to the Board. Unless otherwise provided by law, no such Director shall vote on any resolution to approve any such contract.

Section 6 Responsibilities of the Board of Management

The Board of Management shall:

- a) Notify the Co-ordinator of Business Improvement Areas, Downtown Renewal Division, Planning and Economic Development Department of those nominees for Directorship to the Board of Management proposed for appointment by the Members.
- b) Manage and supervise the affairs of the B.I.A.
- c) Maintain liaison with the City through the Co-ordinator of Business Improvement Areas, Downtown Renewal Division, Planning and Economic Development Department.
- d) On or before the twenty-eighth day of February in each year, submit its annual report for the preceding fiscal year to the City, including a complete financial statement of its affairs with balance sheet and revenue and expenditure statement, for auditing. And, on or before the thirtieth day of September in each year, after it has been audited, submit the annual report to City Council. This section is subject to requirements as set by the City from time to time, and shall mandate compliance with any notices from the City that require submitting the books and records of the B.I.A. to an auditor of their choosing and such deadlines as the City may require.
- e) On or before the thirty-first day of March in each year, submit its proposed budget for the fiscal year to the City after holding at least one meeting of the Members to discuss the proposed budget.
- f) Authorize all expenditures in accordance with the budget established for the current fiscal year as approved by City Council.
- g) Report to the B.I.A.'s Members on its actions affecting the administration, activities and policies of the B.I.A. at all Members' meetings.
- h) Designate a financial institution for the deposit of funds on behalf of the B.I.A.
- i) Determine the time and place of all B.I.A. meetings (except for committees), have authority to call any special meetings it deems necessary and provide notice to the public of all BIA meetings (including for committees).
- j) Notify the Co-ordinator of Business Improvement Areas, Downtown Renewal Division, Planning and Economic Development Department of all B.I.A. meetings. A representative of the City's staff shall be entitled to attend all meetings of the Board of Management, Committee meetings and all Members' meetings, called for the purpose of carrying on the business of the B.I.A.
- k) In the event that both the Chair and the Vice-Chair are unable to attend a B.I.A. scheduled meeting, a presiding Officer shall be selected from that meeting only by those Directors present, providing that there is a quorum of the Board of Management.
- l) Adopt policies as required under the *Municipal Act, 2001*.

Section 7 Directors' and Officers' Duties

No officer of the Board of Management shall hold his/her office for more than two consecutive terms.

The duties of the Directors and Officers of the Board of Management are as follows:

- a) Chair
 - i) Shall be the Chief Executive Officer of the B.I.A. and the only spokesperson authorized to speak publicly for the B.I.A. unless another Director is expressly delegated with this responsibility with Board of Management approval.
 - ii) Shall preside over all meetings of the Board of Management and those of the Members, unless otherwise delegated.
 - iii) Shall be an ex-officio member of all committees.
 - iv) Shall be one of no fewer than two signing Officers for the B.I.A. contracts.
 - v) May be called upon to sign cheques.
- b) Vice-Chair
 - i) Shall exercise the duties of the Chair in the Chair's absence.
 - ii) May be called upon to sign cheques.
- c) Secretary
 - i) Shall record the minutes of all proceedings, give all notices required to be given to Members, be custodian of all books, records, correspondence, contracts and other documents belonging to the Board of Management of the B.I.A. unless otherwise delegated subject to any requirements imposed by law.
 - ii) May be called upon to sign cheques.
- d) Treasurer
 - i) Shall receive and account for all monies of the B.I.A., keep on deposit at the B.I.A.'s bank all monies received, keep full and accurate accounts of receipts and disbursements; disburse all funds by cheque unless otherwise directed by the Board of Management.
 - ii) Shall submit an up-to-date statement of receipts and disbursements at each regularly scheduled Board of Management meeting. Upon approval by the Board of Management the statement will be attached to the minutes of the meeting at which they were approved.
 - iii) Shall provide to the Board of Management an annual financial report.
 - iv) May be called upon to sign cheques.

- e) Directors of the Board of Management
 - i) May be asked to serve on a committee.
 - ii) Shall ensure that any committee, on which he or she is a member, acts within its mandate.
 - iii) Shall report to the Board of Management on the activities of the committees that he or she chairs.
 - iv) In the event that the chair of a committee is not a Director, and the chair of the committee does not wish to present the committee report himself or herself, a Director representing the committee shall be the committee spokesperson at the Board of Management meeting.
 - v) May be called upon to sign cheques.

Section 8 Executive Committee

The Executive Committee, comprising the Chair, Vice-Chair, Secretary and Treasurer, shall have the authority to act for the Board of Management in the intervals between Board of Management meetings on such matters as may be necessary to conduct the business of the B.I.A. provided that:

- a) The Executive Committee may proceed on the basis of the majority of votes from the Board of Management obtained by a phone poll, provided that the Chair shall report on the Executive Committee's activities at the next full Board of Management meeting.
- b) A meeting of the Executive Committee shall be called by the Chair and a minimum of three members of the Executive Committee are required to be present for quorum.
- c) Minutes shall be taken at a meeting of the Executive Committee and attached to the minutes of the following Board of Management meeting.

ARTICLE 5

Committees of the Board of Management

Section 1 Formation

- a) All committees are established by the Board of Management and report only to the Board of Management.
- b) All committees shall comprise no fewer than three (3) members. At least one shall be a Director of the Board of Management, other than the Chair, and at least two may be Members of the B.I.A. The chair of a committee shall be elected by the members of the committee from within their ranks.
- c) The chair of a committee may be a Director. The Chair of the Board of Management shall not chair any committees.

Section 2 Functions

- a) All committees are responsible for investigating, preparing plans, and recommending actions to the Board of Management within their mandate.
- b) Committees shall not have the authority to enter into a contract on behalf of the B.I.A. or commit the B.I.A. to any financial obligation or liability.
- c) Each committee shall report (preferably in writing) its activities to the Board of Management at each regularly scheduled Board of Management meeting, either by the chair of the committee or by a Director representing the committee. Any written report is to be attached to the minutes of the Board of Management meeting at which it was presented.

ARTICLE 6

Meetings of Members

Section 1 General Meetings

- a) There shall be at least one (1) general meeting in each calendar year.
- b) Notice of all general Members' meetings shall be hand-delivered or sent by prepaid mail to each Member no less than fifteen (15) days prior to the meeting. The notice to be mailed to the address last provided by the Member to the Secretary or, where no address is provided, to the property address of the owner(s) indicated on the last municipal assessment roll.
- c) Notice of the meeting shall include the formal agenda. New business may be received from the floor after the formal agenda has been completed.
- d) All general Members' meetings properly called shall be held on the date and time for which they are called.
- e) Quorum of a General Meeting consists of the majority of those Members present at the meeting duly called.
- f) No error or accidental omission in giving notice of any meeting of Members shall invalidate such meeting or make void any proceedings taken at such meeting.
- g) No error or omission in giving notice of any annual or special meeting or any adjourned meeting of the Members of the B.I.A. shall invalidate any resolution passed or any proceedings taken at any meetings of Members.
- h) No omission to give any notice to any Member, Director or Officer, or the non-receipt of any notice by any Member, Director or Officer, nor error in any notice not affecting the substance thereof shall invalidate any action taken at any meeting held pursuant to such notice or otherwise founded thereon.

Section 2 Special Meetings of the Members

- a) The Board of Management has authority to call any special Members' meeting it deems necessary.

- b) Upon written petition by the lesser of 20% or twenty-five (25) Members of the B.I.A. stating a cause or concern, which shall be considered as the agenda of the meeting, the Board of Management shall call a special meeting to deal with the cause or concern in question within thirty (30) days of receipt of the petition by the Secretary of the Board of Management.

ARTICLE 7

Meetings of the Board of Management and its Committees

Section 1 Board of Management Meetings

- a) The Board of Management shall regularly meet to conduct the business of the Board, no less than fourteen (14) times per year, as established by the Board of Management. The Secretary shall notify all Directors of the date and time of each meeting at least seven (7) days in advance. Notwithstanding the foregoing, in the event of a special meeting of the Directors, the Secretary shall provide such notice as is reasonable in the circumstances.
- b) At regularly scheduled Board of Management meetings, any Member may attend, ask to be recognized by the Board of Management's Chair and speak on any items on the agenda or request new business to be placed on a future agenda. However, they shall not vote on any items on the agenda.
- c) Upon written petition of any four (4) Directors, stating a cause or concern, which shall be considered as the agenda of the meeting, the Chair shall call a Board of Management meeting, to deal with the cause or concern in question within fifteen (15) days of reception of the petition by the Secretary of the Board of Management.
- d) The Board of Management may limit the time for deputations or presentations prior to the commencement of any meeting.
- e) No error or accidental omission in giving notice of any meeting of Directors shall invalidate such meeting or make void any proceedings taken at such meeting.
- f) No omission to give any notice to any Member, Director or Officer, nor error in any notice not affecting the substance thereof shall invalidate any action taken at any meeting held pursuant to such notice or otherwise founded thereon.
- g) If all Directors of the Board of Management consent, a meeting of Directors may be held by means of such telephone, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other simultaneously and instantaneously and a Director participating in such a meeting by such means is deemed to be present at the meeting.
- h) A resolution in writing, signed by all the Directors entitled to vote on that resolution at a meeting of Directors or committee of Directors, is as valid as if it has been passed at a meeting of Directors or committee of Directors. A copy of every such resolution shall be kept with the minutes of the proceedings of the Directors or committee of Directors.

Section 2 Committee Meetings

- a) A committee shall meet as often as its members deem necessary to perform the committee's mandate.
- b) A committee shall establish a time and place suitable to the majority of its members for the holding of its regular meetings.
- c) A committee shall keep accurate records of its activities, including minutes, attendance list and agendas, or may report orally to the Board of Management on these matters to be recorded by the Secretary in the minutes. These documents to be attached to the minutes of the Board of Management meeting at which they are presented.

ARTICLE 8

Annual Budget

Section 1 An annual budget prepared by the Board of Management shall be presented at a Members' meeting called for this purpose for review and input from the Members.

Section 2 A copy of the proposed budget must be included with notice of a budget meeting if available and if not shall be available at the Members' meeting.

Section 3 After adoption of the annual budget by the Board of Management, the proposed budget shall be submitted to the City for approval.

Section 4 The allocation of funds may be made by the Board of Management in accordance with the budget upon approval by the City.

ARTICLE 9

General Expenditures

Section 1 All monies spent from the B.I.A. account, shall be within the budgeted provisions and spent only for the benefit of the B.I.A. Members' businesses. Nothing precludes a Member from donating their own funds to increase the value of improvements carried out in the vicinity of their business provided the proposed donation is included in the budget or revised budget for the project approved by Council.

ARTICLE 10

Rules of Order

Section 1 In the absence of rules in this By-law, the proceedings of the B.I.A. shall be in accordance with the Municipal Act, 2001 and shall be conducted as set out in Bourinot's Rules of Order.

ARTICLE 11

Banking

Section 1 The designation of a financial institution for the deposit of funds on behalf of the B.I.A., is the responsibility of the Board of Management.

Section 2 The disbursement of funds shall be by cheque unless otherwise provided by the Board of Management.

Section 3 All cheques shall bear two (2) signatures, one (1) of which shall be that of the Treasurer or the Chair.

ARTICLE 12

Contracts

Section 1 All B.I.A. contracts are the responsibility of the Board of Management.

Section 2 To enter into a contract, a resolution thereof approved by the Board of Management shall be required to be entered in the minutes of a Board of Management meeting and a copy of the contract is to be attached to the minutes of that meeting.

Section 3 Once approved, a contract shall bear two (2) B.I.A. official signatures, one (1) of which shall be the Chair of the Board of Management and one (1) of either the Vice-Chair, the Secretary or the Treasurer of the Board of Management.

ARTICLE 13

Proxy Voting

Section 1 There shall be no proxy voting of any kind at meetings of the Board of Management or any committees established by the Board of Management.

Section 2 There shall be no proxy voting of any kind at Members' meetings, including voting at the Annual General Meeting in a City Council's election year for the purpose of providing the City with the opinion of the B.I.A. on Council's appointment of Directors to the Board Management, except a corporate Member may nominate, in writing by letter delivered to the Secretary of the Board of Management at least fifteen (15) days before the date set for a vote, one individual to vote on its behalf. Such a nomination shall be effective on the date it is received and shall continue to be effective until it is replaced or revoked by a further letter received by the Secretary of the Board of Management.

ARTICLE 14

Elections

Section 1 The Board of Management shall conduct elections for Directors on the Board of Management as part of the Annual General Meeting in a City Council election year for the purpose of providing City Council with the opinion of the B.I.A. on Council's appointment of Directors to the Board of Management.

Section 2 The Board of Management shall appoint a "nominating committee" forty-five (45) days before the date set for the elections of the Board of Management.

Section 3 The nominating committee shall submit to the Board of Management a list of at least ten (10) candidates thirty-five (35) days before the date set for the elections of the Board of Management.

- Section 4** The Board of Management shall distribute to all Members twenty-one (21) days before the date set for the elections, a list of candidates submitted by the nominating committee.
- Section 5** Any three (3) Members or more may nominate a candidate or candidates in writing to the Secretary of the Board of Management. Any nomination shall be delivered to the Secretary at least fourteen (14) days prior to the date of the election to be included in the list of nominations. Notwithstanding the foregoing, nominations can be made at the commencement of the meeting set for the elections from the floor.
- Section 6** All nominations shall bear:
- a) The name and address of the individual nominated.
 - b) The signature of the nominee.
- Section 7** The Board of Management shall distribute to all Members at least ten (10) days before the date set for the elections:
- a) The date of the General Meeting at which the elections will be held.
 - b) The list of all nominations received by the Secretary from the Board of Management and Members at least fourteen days prior to the date set for the election.
 - c) A copy of this By-law.
- Section 8** Voting shall follow the following procedure:
- a) Voting shall take place at a place and time designated by the Board of Management.
 - b) Each Member may cast one (1) vote.
 - c) After the poll closes the sealed ballots are to be delivered to three (3) scrutineers appointed by the Board of Management.
 - d) A candidate has the right to appoint a representative to be present during the counting of the ballots.
 - e) The scrutineers shall count all ballots on election day and post the results at a place designated by the Board of Management.
 - f) If two or more candidates who cannot both or all be elected have received the same number of votes, one scrutineer shall choose, in the presence of the other two scrutineers, the successful candidate or candidates by lot.
 - g) All ballots shall be kept securely for thirty (30) days following the election. If no challenges are registered with the Secretary of the Board of Management the ballots shall be destroyed with approval of the Board of Management.
- Section 9** a) The list of elected nominees for the Board of Management chosen at the Annual General Meeting shall be forwarded to the City for consideration in appointing the new Directors of the Board of Management.

- b) The newly appointed Board of Management shall assume their responsibilities in accordance with their appointment by City Council. The previous Board of Management continues in office until the new Board of Management takes office following City appointment.

ARTICLE 15

Voting at Meetings

- Section 1** At each Members' meeting a Member may cast one (1) vote on each motion.
- Section 2** The Chair of the Board or of a Committee has the right to vote at all meetings of the Board or Committee of which he or she is the Chair.

ARTICLE 16

Amendments

- Section 1** The number of Directors under Article 2, Subsection 1a), the number of Board of Management meetings and the number of days notice of such meetings under Article 7, subsection 1a), and the number of candidates under Article 14, Section 3 may be amended by a majority vote at a meeting of the Board of Management. Any other amendments to this By-law require an amendment to City of Hamilton By-law No. XX-XXX which establishes the B.I.A. Board of Management.
- Section 2** The amendment shall be effective only after it has been circulated to the Members along with notice that the amendment shall take effect if no objection is received from a Member by the Secretary within ten (10) days of the notice being given.
- Section 3** If an objection is received, the amendment must be confirmed by majority vote at a General Meeting of the B.I.A.

PASSED by the Directors this 18th day of December, 2007.

Phyllis Kraemer, Chair

Kevin Small, Secretary-Treasurer