

# Staff Report



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To	<b>Committee of the Whole</b>
Service Area	Infrastructure, Development and Enterprise Services
Date	Monday, December 6, 2021
Subject	<b>Downtown Business Improvement Area Review Process</b>

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## Recommendation

1. That the report entitled "Downtown Business Improvement Area Review Process", dated December 6, 2021, be received.
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## Executive Summary

### Purpose of Report

This report serves as response to direction from City Council on October 25, 2021:

That Economic Development and Tourism staff, in consultation with the City Solicitor, the City Clerk and City Treasurer, be directed to report back to City Council in December 2021 with a report outlining a process to review the governance, operations, mandate/terms of the Downtown Business Improvement Area.

### Business Improvement Areas

A business improvement area (BIA) is formed under [section 204 of the Municipal Act, 2001](#) (the Act) and is permitted to establish a special charge annually in the form of a property tax levy to raise the amount required for the purposes of the board of management. A board of management submits an annual report and budget, which include audited financial statements for approval in whole or in part by City Council.

Subsections 204(3) and (4) of the Act provide that the composition of a BIA is made up of the board of management and membership. The board of management is composed of one or more directors appointed directly by the municipality, and the additional directors who are selected by a vote of the membership of the improvement area and appointed by City Council. A board of management is a local board of the municipality for all purposes and as such, its procedures and conduct are guided by City policies for local boards.

Members of an improvement area consist of persons who are assessed, on the last returned assessment roll, with respect to rateable property in the area that is in a prescribed business property class and tenants of such property.

Reviewing the governance, operations and mandate of a BIA is at the discretion of City Council. There is no City policy or established procedure for by-law reviews.

However, any final recommended changes cannot be more restrictive than the provisions under the Act.

There are two avenues provided within the Act that may lead to the dissolution of a BIA. Unilateral dissolution by the municipality or at the request of the board or membership. Section 211 of the Act outlines the process by which City Council must give notice of a proposed by-law to dissolve a BIA. In all cases of dissolution, the assets and liabilities of the board of management for the BIA become the assets and liabilities of the municipality.

### **The Downtown Guelph Business Association (DGBA)**

Guelph's BIA was created in 1971 and is defined locally through the Downtown Business Improvement Area Board of Management By-law Number (2017)-20217 (Attachment-1). The BIA is operated as the Downtown Guelph Business Association (DGBA), whose total levy in 2021 was \$660,000. The objectives of the DGBA are aligned with subsection 204(1) of the Act, which are to oversee the improvement, beautification and maintenance of municipally-owned land, buildings and structures in the area, beyond what is provided at the expense of the municipality generally; and to promote the area as a business or shopping area.

### **Key Findings**

Largely, the parameters for forming and dissolving a BIA are governed by the Act and the governance, operations and mandate are further defined locally by the establishment of a municipal by-law. Should City Council decide to proceed with a fulsome review as described in the original motion, staff would recommend a third-party review and that a staff report would come to City Council in June of 2022 with recommendations.

### **Milestones and Timeline of Review:**

- Q4, 2021 – development of terms of reference that include a fulsome review, including: meeting minutes, Procedural By-law, Human Resources policy, procurement policy, constitution, and all other policies and procedures with the exception of financial review, given that financial statements are reviewed by the City Auditor.
- Q1, 2022 – develop and issue a Request for Proposals (RFP)
- Q1, 2022 – award of contract
- Q1, Q2, 2022 – consultant review and engagement
- Q2, 2022 (June) – report to City Council

### **Financial Implications**

Should City Council direct a review, it is expected that a by-law review process would be estimated to cost up to \$50,000 and be funded from the Tax Operating Contingency Reserve for Council.

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## **Report**

[Subsection 204\(1\) of the Municipal Act, 2001](#) (the Act) permits a local municipality to designate an area as a business improvement area (BIA) and establish a board of management and annually raise the amount required for the purposes of a board of management (subsection 208(1)) by levy upon rateable property in the

improvement area that is in a prescribed business property class (subsection 208(2)). A board of management is a local board of the municipality for all purposes (subsection 204(2.1)).

The City's BIA was established in 1971 and is operated as the Downtown Guelph Business Association (DGBA). The terms of the DGBA are set out in the Downtown Business Improvement Area Board of Management By-law Number (2017)-20217. The DGBA is funded by levy upon rateable property in the improvement area that is collected by the City and transferred to the DGBA. In 2021, the tax rate levied on assessment within the DGBA was 0.00329821% and equated to \$660,000.

## **Mandate**

The objectives of the City's BIA are aligned with subsection 204(1) of the Act, which permits the designation of an improvement area for the following purposes:

- To oversee the improvement, beautification and maintenance of municipally-owned land, buildings and structures in the downtown business improvement area, beyond what is provided at the expense of the municipality generally; and
- To promote the downtown business improvement area as a business or shopping area.

## **Governance and Composition**

The composition of a BIA is made up of the board of management and membership, which are defined under subsections 204(3) and (4) as follows:

### **Board of Management**

A board of management is composed of one or more directors appointed directly by the municipality and additional directors who are selected by a vote of the membership of the improvement area and appointed by the municipality.

City Council can establish the number of directors appointed and is responsible to appoint directors as presented to City Council by the DGBA members. The municipality may refuse to appoint a person selected by the members of an improvement area, in which case the municipality may leave the position vacant or direct that a meeting of the members of the improvement area be held to elect or select another candidate for the municipality's consideration.

Procedures and conduct of the BIA/DGBA board of management are governed by the following City policies:

[Advisory Committees of Council – Administration Policy](#)

[Advisory Committee of Council – Meeting Procedures](#)

[Advisory Committees of Council – Public Appointment Policy](#)

As with all local boards, business must be conducted in accordance with the City's [Code of Conduct for Members of Council and Local Boards and the Integrity Commissioner](#).

### **Membership**

Members of an improvement area consist of persons who are assessed, on the last returned assessment roll, with respect to rateable property in the area that is in a prescribed business property class and tenants of such property.

The membership requirements cannot be altered by City Council.

## **Annual Budget and Financial Monitoring**

City Council approves an annual budget as submitted by the date and in the form required by the municipality, and the municipality may approve it in whole or in part but may not add expenditures to it.

A board of management shall submit its annual report for the preceding year to City Council by the date and in the form required by the municipality and the report shall include audited financial statements.

City Council can direct staff to review and amend a special charge imposed for the purposes of a board of management.

## **By-law Review**

Reviewing the governance, operations and mandate of a BIA is at the discretion of City Council. There is no City policy or established procedure for by-law reviews. Should City Council decide to direct a review of the BIA board of management, staff advise that an objective third party is best positioned to undertake the review, given the City's long-standing history and relationship with the DGBA. Staff would prepare a staff report to accompany the review, which is proposed to come back to City Council in June of 2022 with any recommended by-law changes.

- Milestones and Timeline of Review:
- Q4, 2021 –development of terms of reference
- Q1, 2022 – develop and issue RFP
- Q1, 2022 – award of contract
- Q1, Q2, 2022 – consultant review and engagement
- Q2, 2022 (June) – report to City Council

Any final recommended changes cannot be more restrictive than the provision of the Act.

## **Dissolving Business Improvement Areas**

There are two ways provided in the Act that may lead to the dissolution of a BIA. In all cases of dissolution, the assets and liabilities of the board of management for the BIA become the assets and liabilities of the municipality.

### **Unilateral Dissolution by the Municipality**

The Act authorizes City Council to repeal a by-law establishing a business improvement area without notice and without polling the membership of the BIA. In this scenario, all that is required is the notice provisions of the City's Procedural By-law with regard to the inclusion of a motion on a City Council agenda.

### **Dissolution at the Request of the Board or Membership**

A resolution from the board of management requesting dissolution is received by City Council; or a request for dissolution signed by members of the BIA who are responsible for at-least one-third of the taxes levied for the purposes of the general local municipal levy is received by City Council.

The provision of notice by the City Clerk in the case of either of the above criteria being met, the City Clerk would circulate notices to the board of management and the membership of the BIA.

City Council must dissolve the BIA if the notice of a by-law to dissolve results in requests for the dissolution being received by the City Clerk representing:

1. 50% of the total number of persons who are assessed for rateable property in prescribed business property classes located within the BIA; and
2. 50% of the taxes levied for the purposes of the general local municipal levy on rateable property in prescribed business property classes located within the BIA.

The City Clerk is empowered to determine whether the above-noted conditions have been met and the determination by the City Clerk is final.

As a temporary alternative, City Council may also “pause” the operation of the BIA to allow for a full assessment. Pausing the BIA allows it to resume operations after the dormancy and would allow the by-law to be reactivated with greater ease.

### **Financial Implications**

Should City Council direct a review, it is expected that a by-law review process would be estimated to cost up to \$50,000 and be funded from the Tax Operating Contingency Reserve for Council.

### **Consultations**

Marty Williams, Executive Director, Downtown Guelph Business Association

Kay Matthews, Executive Director, Ontario Business Improvement Area Association

### **Strategic Plan Alignment**

The subject matter of this report aligns with the Powering our Future strategic priority – to contribute to a sustainable and creative smart local economy that is connected to regional and global markets and supports shared prosperity for everyone.

- Fostering downtown business innovation to support a thriving downtown Guelph

It also aligns with the Working together for our Future strategic priority – run an effective, fiscally responsible, and trusted local government with engaged, skilled, and collaborative employees.

- Developing strategic partnerships with stakeholders to improve service delivery

### **Attachments**

Attachment-1 Downtown Business Improvement Area By-law Number (2017)-20217

Attachment-2 [MAH Business Improvement Area Handbook](#)

### **Departmental Approval**

Tara Baker, General Manager, Finance/City Treasurer

Stephen O'Brien, General Manager, City Clerk's Office/City Clerk

Christopher C. Cooper, General Manager, Legal, Realty and Court Services/City Solicitor

## **Report Author**

John Regan EcD(f), CECD., General Manager, Economic Development and Tourism

## **This report was approved and recommended by:**

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