

# THE CORPORATION OF THE CITY OF GUELPH

## By-law Number (2017)-20217

A by-law to expand the boundaries of the downtown business improvement area and repeal by-laws (1981)-10773, (1995)-14821 and (2011)-19143.

WHEREAS Section 209 of the Municipal Act, 2001, provides that a municipal Council may alter the boundaries of an improvement area, and that the board of management for that improvement area is continued as the board of management for the altered area; and

WHEREAS, in accordance with Section 210 of the Municipal Act, 2001, fewer than one-third of the total number of persons entitled to notice of the proposed business improvement area expansion objected, and those objectors did not represent one third of the business taxes levied in either the existing improvement area or the proposed area,

### **NOW THEREFORE, THE COUNCIL OF THE CORPORATION OF THE CITY OF GUELPH ENACTS AS FOLLOWS:**

1. By-laws (1981)-10773, (1995)-14821 and (2011)-19143 are hereby repealed.
2. There is established for the area described in Schedule A to this by-law a business improvement area and a Board of Management to be known as the Downtown Guelph Business Association (The Board).

#### **3. Definitions**

- 3.1. For the purpose of this by-law,

**"Board of Management"** means the corporation established under this by-law, under the name the Downtown Guelph Business Association.

**"Downtown Business Improvement Area"** means the area as described in Section 2 of this by-law;

**"City"** means The Corporation of the City of Guelph;

**"Council"** means the Council of the City;

**"Member"** means a person who meets the criteria in subsection 6.1.

#### **4. Designation of the Downtown Business Improvement Area**

- 4.1. The area comprising those lands in the City of Guelph shown on Schedule A to this by-law continues to be designated as an improvement area known as the Downtown Business Improvement Area.

#### **5. Board of Management Established**

- 5.1. The Board of Management established under by-law (1981) – 10773, (repealed) as the Board of Management for the Downtown Business Improvement Area shall continue as described in this by-law.

## **By-law Number (2017)-20217**

Page 2

- 5.2. The Board of Management is a corporation, governed by the *Municipal Act, 2001*.
- 5.3. The Board of Management is a local board of the City for all purposes.
- 5.4. The objectives of the Board of Management are:
  - a) To oversee the improvement, beautification and maintenance of municipally-owned land, buildings and structures in the Downtown Business Improvement Area beyond that provided at the expense of the municipality generally; and
  - b) To promote the Downtown Business Improvement Area as a business or shopping area.
- 5.5. The Board of Management is not authorized to:
  - a) Acquire or hold an interest in real property, other than a leasehold interest, except with the approval of Council; or
  - b) To incur obligations or spend money except in accordance with section 9.2.
- 5.6. The head office for the Board of Management shall be located in the City of Guelph.
- 5.7. The Board of Management shall comply with the requirements of the Municipal Act and City by-laws relating to local boards, including:
  - a) Records;
  - b) Closed meetings and investigations relating thereto;
  - c) Policies relating to the sale and disposition of land, hiring of employees, procurement, manner of giving notice, manner in which it will be accountable to the public and ensuring transparency, and delegation of powers and duties; and,
  - d) Code of conduct and investigations relating thereto.

## **6. Membership**

- 6.1. The Members of the corporation are the persons who are assessed, on the last returned assessment roll, with respect to rateable property in the Downtown Business Improvement Area that is in a prescribed business property class and tenants of such property.
- 6.2. A corporation may be a Member and may nominate in writing one individual to represent and vote on behalf of the corporation.
- 6.3. A person ceases to be a Member immediately upon ceasing to meet the criteria in subsection 6.1.

**7. Directors of the Board of Management**

- 7.1. The following persons are disqualified from being a director of the Board of Management:
- a) A person who is not an individual;
  - b) A person who is under 18 years old;
  - c) A person who has been found under the *Substitute Decisions Act*, 1992 or under the *Mental Health Act* to be incapable of managing property;
  - d) A person who has been found to be incapable by any court in Canada or elsewhere; and,
  - e) A person who has the status of bankrupt.
- 7.2. The Board of Management shall consist of twelve (12) directors as follows:
- a) Four directors appointed by Council, as follows:
    - i. Two members of Council, one of which represents Ward 1 and the other representing a Ward other than Ward 1; and,
    - ii. A representative of each of the two Members of the Downtown Business Improvement Area who are the property owners assessed the highest levy on an individual rateable property in the Downtown Business Improvement Area; and,
  - b) The remaining eight directors selected by a vote of the Members and appointed by Council with a minimum of 6 of such directors to be Members or a representative of a corporate Member nominated in accordance with subsection 6.2.
- 7.3. Council may refuse to appoint a person selected under section 7.2(b), in which case Council may:
- a) Leave the position vacant; or,
  - b) Direct that a meeting of the Members be held to select another candidate for Council's consideration.
- 7.4. An individual who is appointed to hold office as a director is not a director, and is deemed not to have been appointed to hold office as a director, unless the individual consented to hold office as a director before or within 10 days after the appointment.
- 7.5. Despite subsection 7.4, if an individual appointed consents in writing after the period mentioned in that subsection, the appointment is valid.
- 7.6. Directors shall serve for a term that is the same as the term of the Council that appoints them or until their successors are appointed.
- 7.7. If the seat of a director becomes vacant for any reason, Council may appoint a person to fill the vacancy for the remainder of the vacant director's term. The Board shall make a recommendation to Council regarding the person or persons to be appointed.

## **By-law Number (2017)-20217**

### **Page 4**

- 7.8. A director may be reappointed to the Board of Management and subsection 7.4 does not apply to such a director provided there is no break in his or her term of office.
- 7.9. Council may remove a director at any time, and,
  - a) The Members may, by ordinary resolution, recommend to Council that any director or directors be removed from office; and,
  - b) The directors of the Board of Management may make a recommendation to Council that a director be removed if the director is absent from three consecutive meetings of the directors.
- 7.10. A director ceases to hold office when the director dies, resigns, is removed in accordance with subsection 7.9 or becomes disqualified under subsection 7.1.
- 7.11. Directors shall serve without remuneration.
- 7.12. A director is not required to be a Member, except as set out in 7.2(b).

## **8. Board Procedures**

- 8.1. Council may pass by-laws governing the Board of Management and the affairs of the Board of Management and the Board of Management shall comply with such by-laws, and all applicable provisions of the *Municipal Act, 2001*.
- 8.2. The directors of the Board of Management shall pass by-laws governing its proceedings, the calling and conduct of meetings, and the keeping of its minutes, records and decisions consistent with any requirements set out in a by-law of the City.
- 8.3. By-laws of the Board of Management must not conflict with City by-laws passed under section 8.1.
- 8.4. A Member entitled to vote at an annual meeting of the Members may make a proposal to make, amend or repeal a by-law of the Board of Management in accordance with the procedure in the by-laws of the Board of Management.
- 8.5. A majority of the appointed directors or four directors, whichever is greater, constitutes a quorum at any meeting of the directors.
- 8.6. Resolutions of the directors shall be passed by a simple majority.
- 8.7. The meetings of the directors and the meetings of the Members shall be open to the public.
- 8.8. The directors may close a meeting, or a part of a meeting, to the public only in accordance with section 239 of the *Municipal Act, 2001* and the City's Closed Meeting Protocol.
- 8.9. The directors shall comply with the provisions of the *Municipal Conflict of Interest Act*, R.S.O. 1990, c. M.50 as amended.
- 8.10. The directors may appoint such committees as it determines necessary to conduct the business of the Board of Management.

## By-law Number (2017)-20217

Page 5

- 8.11. Council may designate an appointed official of the City who shall have the right to attend meetings of the directors and Members of the Board of Management and its committees and to participate in their deliberations but is not entitled to vote, be the chair or vice-chair nor act as the presiding officer at a meeting.
- 8.12. The University of Guelph and the Guelph Chamber of Commerce may each designate a staff person to represent them, who shall have the right to attend meetings of the directors and Members of the Board of Management and its committees and to participate in their deliberations but is not entitled to vote, be the chair or vice-chair nor act as the presiding officer at a meeting.

### Financial

- 8.13. (1) The Board of Management shall prepare and submit to Council annually a budget of its estimated revenues and expenditures by the date and in such form and detail as required by the City Treasurer.
- (2) Prior to presentation of the budget to Council, the Board of Management shall hold a meeting of the Members for discussion of the budget.
- (3) Council may approve the budget in whole or in part but Council may not add expenditures to it.
- 8.14. The Board of Management shall not:
- a) spend any money unless it is included in the budget approved by the Council or in a reserve fund established by the Council under section 417 of the *Municipal Act, 2001*;
  - b) incur any indebtedness extending beyond the current year without the prior approval of the Council; or
  - c) borrow money.
- 8.15. The fiscal year of the Board of Management is the same as the fiscal year of the City.
- 8.16. The City auditor shall be the auditor of the Board of Management and may inspect all records of the Board.
- 8.17. The Board of Management shall prepare and submit to the City Clerk, not later than March 31<sup>st</sup> in each year, an annual report for the preceding year.
- 8.18. (1) The Board of Management shall provide the City Treasurer with such financial information as the City Treasurer may require.
- (2) The Board of Management shall keep or cause to be kept and maintained all such books of accounts and accounting records as the City Treasurer may require.
- (3) The Board of Management shall make all of its books and records available at all times to such persons as the City Treasurer or Council may require.

## **By-law Number (2017)-20217**

Page 6

- 8.19. Council may require the Board of Management to make a report on any matter relating to the carrying out of the purposes and objects of the Board of Management.
- 8.20. (1) Upon dissolution of the Board of Management, the assets and liabilities of the Board of Management become the assets and liabilities of the City.
- (2) If the liabilities assumed under section 9.8 (1) exceed the assets assumed, the City may recover the difference by imposing a charge on all rateable property in the former improvement area that is in a prescribed business property class.

### **9. Directors' Standard of Care**

- 9.1. Every director in exercising his or her powers and discharging his or her duties to the Board of Management shall,
- a) act honestly and in good faith with a view to the best interests of the corporation; and
  - b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.
- 9.2. Every director and officer shall comply with,
- a) this By-law and any other City by-laws relating to the Board of Management;
  - b) the *Municipal Act* and regulations; and,
  - c) the by-laws of the Board of Management.
- 9.3. No provision in a contract, the by-laws of the Board of Management or a resolution of the Board of Management relieves a director or officer from the duty to act in accordance with this section.

### **10. Indemnification & Insurance**

- 10.1. The Board of Management may indemnify a director or officer, a former director or officer or an individual who acts or acted at the Board of Management's request as a director or officer, or in a similar capacity, of another entity, against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, reasonably incurred by the individual in respect of any civil, criminal, administrative, investigative or other action or proceeding in which the individual is involved because of his or her association with the Board of Management.
- 10.2. The Board of Management may advance money to a director, officer or other individual referred to in subsection 10.1 for the costs, charges and expenses of an action or proceeding referred to in that subsection, but the individual shall repay the money if the individual does not fulfil the conditions set out in subsection 10.3.

**By-law Number (2017)-20217**

Page 7

10.3. The Board of Management shall not indemnify an individual under subsection 10.1 unless,

- a) the individual acted honestly and in good faith with a view to the best interests of the corporation or other entity, as the case may be; and,
- b) if the matter is a criminal or administrative proceeding that is enforced by a monetary penalty, the individual had reasonable grounds for believing that his or her conduct was lawful.

10.4. The Board of Management may purchase and maintain insurance for the benefit of a director or officer, except insurance against a liability, cost, charge or expense of the director or officer incurred as a result of his or her failure to exercise the powers and discharge the duties of his or her office honestly, in good faith and in the best interests of the Board of Management, with the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

**11. Meetings of Members**

11.1. The Board of Management shall call at least one (1) meeting of the Members in each calendar year, which meeting shall not be later than 15 months after holding the preceding annual meeting.

11.2. The Board of Management may call a special meeting of the Members at any time.

11.3. Each Member has one vote regardless of the number of properties that the Member may own or lease.

**12. General**

12.1. This by-law may be referred to as the "Downtown Business Improvement Area Board of Management By-law".

12.2. This by-law comes into force and effect on January 1, 2018.

**PASSED this TENTH day of OCTOBER, 2017.**



A handwritten signature in blue ink, appearing to read "Cam Guthrie".

**CAM GUTHRIE – MAYOR**

A handwritten signature in blue ink, appearing to read "Dylan McMahon".

**DYLAN MCMAHON  
- ACTING DEPUTY CLERK**



Schedule A



0 25 50 100 150 200 m

BIA Boundary

