



ADMINISTRATIVE REPORT

Report Date: November 6, 2017
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VanRIMS No.: 08-2000-20
Meeting Date: November 28, 2017

TO: Vancouver City Council
FROM: General Manager of Planning, Urban Design and Sustainability
SUBJECT: Amendments to Business Improvement Area (BIA) Approvals Policy and Model Grant Allocation By-law

RECOMMENDATION

- A. THAT Council adopt a new policy with respect to approval of BIA Council Initiatives generally in accordance with Appendix A.
- B. THAT the Model BIA Grant Allocation By-law be amended to:
- reduce the required notification period for change or cancellation of BIA commercial general liability insurance;
 - permit means other than mail for BIA society general meeting notifications to affected property owners; and
 - adjust the quorum requirements for BIA society general meetings.

generally as set out in Appendix B, paragraph B.

REPORT SUMMARY

A. Council Policy: Objections Required to Defeat a BIA Council Initiative

Vancouver Charter s.506 sets out the level of objections required to defeat a BIA Council Initiative, but Council policy adopted in 1992 and 1997 sets a lower threshold recognizing that under a Council Initiative, individuals opposed to a BIA must actively object to a BIA application. The purpose of this Recommendation A is to adopt a new policy for the approval of BIA Council Initiatives, aligning with thresholds in the Charter.

B. Model BIA Grant Allocation By-law Amendments re Insurance, Society General Meeting Notifications, and Quorum Requirements

The Model BIA Grant Allocation By-law, adopted by Council in 2015, sets out the terms and conditions under which the BIA societies receive their annual recoverable grants,

and serves as the template for the unique Grant Allocation by-laws enacted for each BIA at the time of formation and renewal.

The purpose of Recommendation B is to approve amendments to the Model By-law to:

- reduce the required notification period for material change or cancellation of BIA commercial general liability insurance from 60 days to 30 days in line with Film and Special Events (FASE) requirements for event organizers and previous BIA Program practice;
- permit means other than postal mail for BIA society general meeting notifications to affected property owners; and
- to amend the standard for quorum at BIA society general meetings to stipulate that, among the minimum 15 members present in person or by proxy, no fewer than eight members must be present in person.

COUNCIL AUTHORITY/PREVIOUS DECISIONS

Vancouver Charter section 506 sets out the threshold for Council approval of a Council Initiative as follows:

Council may, in its discretion, [approve a BIA Council Initiative] ... if, after notice of the Council's intention to undertake the project has been mailed to the assessed owners of the parcels liable to be specially assessed a sufficient number of notices of objection to the project has not been filed with the City Clerk during the period of one month after the mailing of such notice ... A sufficient number of notices of objection to a project shall be deemed to be filed if at least more than one-half in number of the then assessed owners, representing at least more than one-half of the value according to the last real-property assessment roll, of the parcels liable to be specially assessed have, in writing, given notice to the City Clerk within the time above prescribed that they object to the project.

Council policy for the renewal of a BIA was approved on July 30, 1992, and for the establishment and expansion of a BIA on October 14, 1997, as follows:

A BIA is established, renewed, and/or expanded by Council Initiative process; under a Council Initiative, affected property owners and commercial tenants receive a notification that sets out a description of the Initiative, the designated area, and the estimated annual charge and rate. The notification includes instructions for filing objections to the Initiative, which are reported to Council after they are received and tabulated. Council also hears delegations as to whether or not the Initiative should proceed. The Initiative generally will not be approved if one third or more of the owners, representing one third of the assessed property value, or one third of the tenants, counted separately, submit objections.

Vancouver Charter section 457(1) provides that:

Where Council has, by by-law, established a business improvement area it may, by one or more by-laws,

- (a) name the applicant to whom the money will be granted, and*
- (b) require that the money granted shall be expended only*

*(i) by the applicant to whom the money is granted, and
(ii) in accordance with the conditions and limitations set out in the by-law
and for a business promotion scheme set out in the by-law.*

Each BIA Grant Allocation By-law sets out, for the respective BIA managing societies, the terms and conditions of the 'recoverable grant' paid to each society. The grant, which is recovered through a BIA special assessment, provides the bulk of the operational funding for each of the BIAs.

In March 2015, after consultation with the BIAs, Council adopted revised terms and conditions in the form of a 'Model BIA Grant Allocation By-law' ('Model By-law') to be used going forward for all new BIAs, and for BIAs that are renewing for a further term.

CITY MANAGER'S/GENERAL MANAGER'S COMMENTS

The City Manager and the General Manager of Planning, Urban Design and Sustainability recommend APPROVAL of the foregoing.

REPORT

Background/Context

A. Council Policy: Objections Required to Defeat a Council Initiative

Section 506 of the *Vancouver Charter* provides that Council, in its discretion, may approve Local Improvement projects, of which BIAs are a subset. Section 506 provides for the establishment of BIAs either by 'Petition of Owners' (s.506(1)) or 'on the Initiative of Council' (s.506(2)). Because Council's authority under s. 506 is discretionary, Council may exercise its statutory discretion to not approve a BIA, even if all the other criteria under s. 506 are met. Accordingly, Council may adopt policy to guide the exercise of its discretion under this section.

A Petition under s. 506(1) may be approved if at least two-thirds in number of the assessed owners representing at least one-half the value according to the last real-property assessment roll of the parcels liable to be specially assessed, have signed the petition.

A BIA Council Initiative under s. 506(2) may be approved if not more than one-half of the assessed property owners, representing not more than one-half of the assessed property value, object in writing to a BIA proposal.

Prior to 1992, all BIA applications proceeded by way of Petition. In 1992 (for renewals) and 1997 (for all other BIA applications), Council approved recommendations to proceed by way of Initiative rather than Petition, but adopted a policy of generally not approving a BIA proposal if more than one-third of the assessed owners, representing more than one-third of the assessed value, submit objections. Council's policy to stipulate fewer objections than stipulated in s. 506(2) as a basis for rejecting a BIA Council Initiative recognizes that, under a BIA Council Initiative, persons wishing to object to a BIA proposal are required to respond to a notification; in larger BIA areas it may be difficult for opponents to organize sufficient objections to defeat the Initiative.

As the Charter is silent with respect to businesses, Council policy has been a) to notify businesses in addition to the property owners, and b) generally to not approve a BIA proposal if more than one-third of the businesses, counted separately from the owners, object. This policy recognizes that business tenants have a financial interest in the outcome of a BIA Initiative because, under most leases, the property owner adds the cost of a BIA special assessment to the tenant’s rent.

Table 1 compares the Charter requirements with the 1992 / 1997 Council policy.

TABLE 1

	Vancouver Charter s. 506(2)	Council Policy BIA Renewals (1992) All Other BIA Initiatives (1997)
Who Must Be Notified	Property owners only	Property owners AND businesses
# Objections Sufficient to Defeat Initiative	> ½ of assessed owners, representing > ½ of assessed property value	> 1/3 of assessed owners, representing > 1/3 of assessed property value AND, counted separately, > 1/3 of businesses

The Vancouver BIA Partnership (the ‘Partnership’) is an umbrella association representing Vancouver’s 22 BIAs. Earlier this year, the Partnership requested the City to review its policy in relation to Council approval of BIA Council Initiatives - specifically the number of objections required to defeat an Initiative. The Partnership requests the City consider applying the ‘more than one-half’ threshold stipulated by the Charter, rather than the ‘more than one-third’ threshold provided in Council’s existing policy. The Partnership requests that business tenants continue to be notified as per the existing policy, and that their objections continue to be counted separately from property owners, but that the ‘more than one-half’ threshold proposed for property-owner objections also be applied to business tenant objections.

B. Model BIA Grant Allocation By-law: Amendments re Insurance, BIA Society General Meeting Notifications, and Quorum Requirements

Two years have elapsed since 2015 when Council adopted the Model BIA Grant Allocation By-law. In that time, the City and BIAs have noted minor issues with a few of the Model By-law sections related to 1) BIA insurance requirements, 2) society general meeting notifications, and 3) quorum at society general meetings. This report on proposed revisions to Council’s renewal policy provides an opportunity to also put forward the needed Model By-law amendments. The Vancouver BIA Partnership supports the proposed policy and By-law revisions.

1. Model By-law Section 4(l)

Model By-law section 4(l) provides that each BIA managing society must maintain commercial general liability insurance, and sets out specific insurance requirements in sub-sections. The purpose of the insurance requirement is to protect the City from potential liability incurred as a result of BIA society operations. Subsection 4(l)(v) stipulates that each policy must include an endorsement stating that the Director of Finance will be given 60 days’ notice of any material change to or cancellation of the policy. The purpose of this section is to provide the City with sufficient advance notice to respond prior to any changes taking effect.

Prior to adoption of the Model By-law, the City's notice requirement for changes to BIA commercial general liability insurance was 30 days, which is the same notice period specified in the City's standard Special Events Insurance Certificate form issued by FASE to groups wishing to hold events on City streets.

Although a number of the BIA insurance companies have agreed to amend their endorsement to provide 60 days' notice of change to BIA commercial general liability insurance, some of the insurers are not willing to make the change on the basis that it may be difficult to provide 60 days, especially where a component of the liability coverage is for BIA special events. Where the risk of an event scheduled less than 60 days ahead requires a change to the coverage, insurers are concerned that they and/or the BIA society would be non-compliant with the By-law.

Currently, many of the BIAs duplicate effort by submitting both the standard insurance certificate (with 30-days' notice clause) to FASE, and the insurer's own certificate of commercial general liability insurance to the BIA Program Coordinator.

2. Model By-law Section 4(p)

Model By-law section 4(p)(i) stipulates the notification requirements for BIA society general meetings (including annual general meetings (AGMs)). Under that section, BIA managing societies are required to notify all eligible property owners by mail as follows:

(p) notice of a general meeting:

(i) must be given to owners to their address as ascertained from the most recent assessment roll for the City of Vancouver,

Section 4 (p)(ii) permits business tenants (but not property owners) to be notified by means other than mail, including e-mail and fax:

(ii) [notice] may be given to tenants or the Director by hand delivery to their business address, or by mail, e-mail or facsimile or similar means

Section 4 (p) (iii) requires that property owners and business tenants must be notified directly:

(iii) [notice] must not be given solely by means of publication in a newspaper or on a website;

BIA property owners and businesses are all eligible to become registered voting members of their respective BIA managing societies, but must still apply annually for society membership status. The purpose of section 4(p) is to ensure:

- that all affected BIA property owners and business tenants - not just registered society members - are notified of BIA society general meetings; and
- that the means of notification is reasonably sufficient to allow them to be aware of the notification and to take steps to be able to attend as registered members if they so desire.

3. Model By-law Section 4(q)

Model By-law section 4(q) stipulates that the quorum at a general meeting must be a minimum of 15 persons present in person or by proxy, except that each proxy holder present must hold no more than one proxy vote.

The purpose of this section is not to require amendments to BIA society by-laws, but rather to set a minimum standard of member attendance at society general meetings as a basis for resolutions on which the City relies, such as the approval of annual budgets, adoption of financial statements, and approvals related to BIA renewal.

The requirement that each proxy holder present must hold no more than one proxy vote was intended to ensure that, among the minimum 15 members present in person or by proxy, at least eight of those members were physically present. The proposed amendments to section 4(q) would achieve that intention.

Strategic Analysis

A. Council Policy: Objections Required to Defeat a Council Initiative

BIA Renewals

On March 3, 2015, Council approved a request to the Province of British Columbia to amend the BIA provisions in the Charter. If enacted by the Province, the amendments would have made BIA designation by-laws ongoing rather than time-limited, effectively eliminating the requirement for BIA renewals. Renewals would have been replaced by provisions to terminate a BIA as a result of a successful dissolution petition, similar to most other jurisdictions in Canada. The proposed threshold for a successful dissolution petition was 50% of property owners or 50% of business tenants supporting dissolution, counted separately. Although the Province did not accede to the proposed Charter amendments, the Vancouver BIA Partnership has suggested that Council's approval of a 50% threshold in the context of BIA dissolution is, in effect, endorsement of a 50% threshold for objections against BIA renewal.

In the case of both dissolutions and renewals, the final Council decision is based on written responses to a formal City notification. In the case of the proposed dissolution notifications, the response would be essentially 'I don't want the BIA to continue'. In the case of the existing renewal notifications, the response is essentially 'I don't want the BIA to continue for another term'. As the notification process and response would essentially be the same for dissolutions and renewals, there would seem to be no justification for different thresholds. If Council feels that the 50% threshold proposed in 2015 is appropriate for BIA dissolutions, then the same threshold would be appropriate for BIA renewals going forward.

In 1992, when Council adopted its existing policy to receive BIA renewal applications by way of Initiative, the City had only three years' experience with BIAs, the first BIAs having been approved in 1989. The idea of assessing a property tax levy to generate funds for commercial revitalization was relatively new and untested; therefore Council of the day wished to provide the fullest opportunity for BIA stakeholders to decide not to renew a BIA if it was not seen as providing a benefit commensurate with the cost. Around the same time, there were general public concerns about commercial

enterprises billing customers for additional services unless a negative response was received (so-called 'negative billing' which may have influenced Council of the day).

All 22 existing BIAs have successfully been renewed at least once, with the older BIAs having renewed as many as six times. The BIAs all have established track records with demonstrable benefits. Increasingly, property owners are purchasing properties in an area that has a BIA already established, with full knowledge of all the property taxes, including BIA assessments. Accordingly, new business owners negotiate leases on the basis that there is a BIA in place, and leases are negotiated on the basis that property taxes, including BIA charges, will be costed to the tenant.

BIAs are most effective when they can plan forward without undue concern for whether or not the BIA can survive the next renewal application, and the BIAs have questioned why the existing Council policy calls for BIA renewals to fail if as few as one third of the property owners or one-third of the businesses object.

BIA Establishment and Expansion

Under the Vancouver Charter, the 'one-half' threshold for objections required to defeat a Council Initiative is the same for any Initiative, whether renewal, establishment or expansion. This is also the case for Council Initiatives under the Community Charter, applicable to BIAs throughout the province. Going forward it would seem preferable to have one single standard for all BIA initiatives, rather than the potential complexity and confusion of having multiple standards for different types of Council Initiative. For example, the Cambie Village BIA is currently applying for two Initiatives concurrently a) renewal and b) expansion. It could potentially be confusing to apply the proposed 'one-half' threshold to defeat the renewal initiative, but to apply the current 'one-third' threshold to defeat the expansion. Moreover, there would seem to be no compelling rationale for applying a different standard for renewals as opposed to other BIA Council Initiatives.

The BIAs support retention of those provisions of Council's existing policy that:

- require notification of business tenants in addition to property owners
- count business objections separately from property owners, and
- apply the same threshold for business objections, as for property-owner objections, to defeat a Council Initiative (would now be 'one-half' under the new policy).

It is recommended that Council's policy be revised, as set out in Appendix A to adopt a threshold of 'more than one-half' as the standard for the number or assessed value of property owner objections, and as the standard for the number of business tenant objections (counted separately), sufficient to defeat a BIA Council Initiative.

Council's current policy that business tenants must be notified of BIA Council Initiatives would continue to apply.

B. Model BIA Grant Allocation By-law Amendments re Insurance, Society General Meeting Notifications, and Quorum Requirements

Section 4(l)

As some BIA society insurers have declined to increase their notice provisions from 30 days to 60 days, a number of BIAs are in a position of non-compliance unless they can

find a new insurer who is willing to provide coverage with a 60 day notice endorsement. Alternatively, the City could consider changing its notice requirement back to 30 days, as that would generally provide sufficient notice for the City to respond to proposed changes prior to their taking effect.

If the notice period required by the BIA Program for commercial general liability insurance confirmations is amended to match the 30 days required for special events, the BIA Program and FASE confirmations could all be submitted on a single standard certificate, thereby eliminating the present inconsistency and duplication of confirmations between BIA and FASE. In addition, all confirmations received by the BIA Program would be standardized on a single City-approved certificate rather than the current practice of receiving various wordings from the individual insurers that might not adequately cover the City's risk.

Accordingly, it is recommended that the Model By-law s. 4(l)(v) be amended to reduce the minimum notification period for material change or cancellation of coverage from 60 days to 30 days.

Section 4(p)

Earlier this year, the Partnership requested the City to review the wording of s. 4(p) of the Model By-law to broaden the permitted options for delivery of society general meeting notifications to BIA property owners. Specifically, the Partnership requests that the wording of s. 4(p) be amended to permit the options for property owner notifications to be the same as the options for notifications to business tenants, which include fax and e-mail (s. 4(p)(ii)). The existing by-law only permits property owner notifications to be sent by mail to their current tax roll address (s. 4(p)(i)).

BC Assessment Authority only provides municipalities with property-owner mailing addresses as part of the tax roll data. In turn, the City provides each BIA with that mailing data for the purpose of notifying owners within their area. In many cases that may be the only owner contact information a BIA possesses. The existing Model by-law requirement recognizes that BIA managing-society general meetings relate directly or indirectly to a BIA special assessment collected by the City as part of the annual property taxation, and therefore has required that BIA general meeting notifications should be mailed to the same address.

However, as electronic means are becoming the norm for business communications, the request to broaden the permitted means of notification seems reasonable and timely. The use of electronic means will reduce the time and cost of BIA managing society mailings, as well as reduce the amount of paper consumed which, in the case of the Downtown Vancouver BIA for example, involves approximately 3,000 multiple-page mailings annually. Accordingly, it is recommended that Model By-law s. 4(p)(ii) be amended to apply equally to property owners, and that s. 4(p)(i) be amended to clarify that the requirement to send a notification to a property owner's tax roll address only apply if a notification is mailed, as follows:

- (p) *notice of a general meeting:*
 - (i) *if sent to owners by mail, must be sent to their address as ascertained from the most recent assessment roll for the City of Vancouver,*
 - (ii) *may be given to owners, tenants or the Director by hand delivery to their business address, or by mail, e mail or facsimile or similar means*

Section 4(q)

The current wording of Section 4(q) stipulating that 'each proxy holder present must hold no more than one proxy vote' overstates the intention of the By-law, and in practice is difficult to achieve. If the intention of the by-law is to ensure that, among the 15 members present in person or by proxy, the majority of those (eight members) should be physically present, then the wording of the by-law should state that explicitly. Accordingly, it is recommended that s. 4(q) of the Model By-law be amended to replace the wording 'each proxy holder present must hold no more than one proxy vote' with the wording 'no fewer than eight members be present in person'.

A comparison of the existing and proposed sections 4(l, p & q)) of the Model By-law is set out in Appendix B.

Implications/Related Issues/Risk

Financial

There are no financial implications.

Legal

There are no legal implications

CONCLUSION

A. Council Policy: Objections Required to Defeat a Council Initiative - BIA Renewals

Council policy currently sets a lower threshold than the Vancouver Charter for numbers of property owner objections required to defeat a BIA Council Initiative. Under the Charter, an Initiative is defeated if objections are received from more than one-half of the owners representing one-half of the assessed value. Under the current policy, Council will consider rejecting a Council Initiative if more than one-third of the owners, representing one-third of the assessed value, object. Council also notifies affected business tenants, and more than one-third of the tenants, counted separately, is sufficient to defeat an Initiative.

It is recommended that Council adopt a revised policy for the approval of BIA Council Initiatives, as set out in Appendix A to:

- adopt a threshold of 'one-half' as the standard for the number or assessed value of property owner objections sufficient to defeat a BIA Council Initiative; and
- provide that business tenants continue to be notified of BIA Council Initiatives, and that objections representing more than one-half of the businesses (counted separately) are sufficient to defeat a BIA Council Initiative.

B. Model BIA Grant Allocation By-law Amendments re Insurance, Society General Meeting Notifications, and Quorum Requirements

Council adopted the Model BIA Grant Allocation By-law in 2015. Since then, minor issues have been noted with regard to BIA insurance requirements, society general

meeting notifications, and quorum at society general meetings. This report recommends that the By-law be amended, as set out in Appendix B, to:

- reduce the notification period for material change or cancellation of BIA society commercial general liability insurance from 60 days to 30 days;
- permit means other than mail for BIA society general meeting notifications to property owners; and
- to continue to recognize that quorum of 15 at BIA society general meetings may be achieved by a combination of members present in person or by proxy, but amend the minimum standard to stipulate that the quorum be based on no fewer than eight members present in person.

The Vancouver BIA Partnership supports the proposed policy and by-law amendments.

* * * * *

Amended Policy for Approval of Business Improvement Area (BIA) Council Initiatives

1. BIA designation, re-designation (renewal) and expansion will continue to proceed by way of Council Initiative under Section 506 of the *Vancouver Charter*¹
2. In addition to notification of assessed property owners, the City will notify all business tenants occupying parcels liable to be specially assessed²
3. A BIA Council Initiative will not succeed if at least more than one-half in number of the then assessed owners, representing at least more than one-half of the value according to the last real property assessment roll, of the parcels liable to be specially assessed have, in writing, given notice to the City Clerk during the period of one month after the mailing of the notification, that they object to the BIA Initiative³
4. A BIA Council Initiative will not succeed if, counted separately from the assessed owners, at least more than one-half of the business tenants occupying parcels liable to be specially assessed have, in writing, given notice to the City Clerk during the period of one month after the mailing of the notification, that they object to the BIA Initiative⁴

¹ No change from existing policy, adopted July 30, 1992

² No change from existing policy

³ Changes existing policy, which sets the threshold for property-owner objections at one-third, to align with the Vancouver Charter, which sets the threshold for property-owner objections at one-half

⁴ Changes existing policy, which sets the threshold for business-tenant objections at one-third, to align with the proposed threshold for property-owner objections (one-half)

Model BIA Grant Allocation By-law
Section 4(l, p & q) Comparing Existing and Amended Text

A. Existing Model By-law:

- (l) the Association must carry commercial general liability insurance:
 - (i) in the amount of at least \$5,000,000.00,
 - (ii) with a maximum deductible of \$5000.00,
 - (iii) naming the city as an additional named insured,
 - (iv) containing a cross coverage provision, and
 - (v) including an endorsement stating that the Director will be given 60 days' notice of any material change to or cancellation of the policy;

- (p) notice of a general meeting:
 - (i) must be given to owners to their address as ascertained from the most recent assessment roll for the City of Vancouver,
 - (ii) may be given to tenants or the Director by hand delivery to their business address, or by mail, e-mail or facsimile or similar means, and
 - (iii) must not be given solely by means of publication in a newspaper or on a website;

- (q) the quorum at a general meeting must be a minimum of 15 persons present in person or by proxy, except that each proxy holder present must hold no more than one proxy vote.

B. Model By-law as amended:

- (l) the Association must carry commercial general liability insurance:
 - (i) in the amount of at least \$5,000,000.00,
 - (ii) with a maximum deductible of \$5000.00,
 - (iii) naming the city as an additional named insured,
 - (iv) containing a cross coverage provision, and
 - (v) including an endorsement stating that the Director will be given 30 days' notice of any material change to or cancellation of the policy;

- (p) notice of a general meeting:
 - (i) if sent to owners by mail, must be sent to their address as ascertained from the most recent assessment roll for the City of Vancouver,
 - (ii) may be given to owners, tenants or the Director by hand delivery to their business address, or by mail, e-mail or facsimile or similar means, and
 - (iii) must not be given solely by means of publication in a newspaper or on a website;

- (q) The quorum at a general meeting must be 15 members present in person or by proxy, provided that no fewer than eight members be present in person.