



ADMINISTRATIVE REPORT

Report Date: February 10, 2015
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VanRIMS No.: 08-2000-20
Meeting Date: March 3, 2015

TO: Vancouver City Council
FROM: General Manager of Planning and Development Services
SUBJECT: Request to the Province for Amendments to the Business Improvement Area Provisions of the Vancouver Charter

RECOMMENDATION

THAT Council request the Province of British Columbia to consider possible amendments to the Vancouver Charter to eliminate Business Improvement Area termination dates, provide means for dissolution, and to effect other changes outlined in this report;

FURTHER THAT Council instruct the Director of Legal Services, in consultation with the General Manager of Planning and Development, to submit the request for Vancouver Charter amendments to the Province.

REPORT SUMMARY

This report recommends that Council approve a request to the Province of British Columbia for amendments to the Vancouver Charter related to Business Improvement Areas ("BIAs"). Over time, the City's Business Improvement Area (BIA) Program has altered its goals and operational requirements. This report is intended to provide a basis to petition the Province for Vancouver Charter amendments to eliminate termination dates, to add provisions for dissolution similar to other jurisdictions, and to revise other BIA-related provisions.

COUNCIL AUTHORITY/PREVIOUS DECISIONS

The Vancouver Charter establishes a process whereby Council may provide for the establishment, renewal and funding of BIAs, and must enact certain by-laws to support that process. Under the Charter, a BIA must be designated by by-law. The designation by-law sets out the BIA boundary, the by-law commencement and termination dates, and the maximum amount of money that may be granted to an applicant for a business promotion scheme, the

grant to be recovered from a tax levy on class 5 (light industrial) and class 6 (commercial) properties within the defined BIA area.

As required by the Charter, Council must also enact a by-law that authorizes payment of the grant to a specified applicant BIA society, and sets out the terms and conditions of the grant. This BIA grant allocation by-law has the same commencement and termination dates as the corresponding BIA designation by-law.

CITY MANAGER'S/GENERAL MANAGER'S COMMENTS

The City Manager and the General Manager of Planning and Development recommend APPROVAL of the foregoing.

REPORT

Background/Context

With a few exceptions¹, the Vancouver Charter's BIA-enabling provisions have not been reviewed since enactment in 1988. At that time, BC was one of the last Canadian provinces to enact BIA legislation, but little was known about BIAs other than information provided by other jurisdictions. After twenty-five years, Vancouver's BIA network has expanded from 2 BIAs to 22 BIAs with an average lifespan of 14 years and a total annual levy of close to \$10.5 million. Since inception, BIAs have gained considerable experience and capacity, have developed knowledgeable boards and professional staff, and have accrued considerable financial, management and governance expertise.

The current BIA scheme is contained in a number of Vancouver Charter provisions that are in need of updating to reflect present day practices.

- Section 456 contemplates grants to an applicant for a 'business promotion scheme' as defined in section 455.
- Section 456 authorizes Council to 'grant' funds to an applicant BIA association that are to be recovered by way of a special property tax levy on commercial properties within a specified Business Improvement Area (BIA) designated by by-law.
- Section 462 provides that a by-law designating a BIA ceases to have effect on the earlier of a) 20 years from the date the by-law comes into force or b) a date specified in the by-law. In other words, the by-law establishing a BIA must have a termination date that is not more than 20 years from commencement of the by-law. BIAs refer to s. 462 as the 'sunset clause'.
- When a BIA designation by-law expires, funding to the BIA society ceases unless the BIA is re-designated by enactment of a new BIA designation by-law - a process commonly known as 'BIA renewal'.

¹ In 1998, the Charter was amended to permit BIA terms of up to 20 years; and, In 1994 and 2003, the definition of 'business promotion scheme' was expanded to include conservation of heritage property (s.455 (b.1)) and removal of graffiti from buildings or structures (s. 455(b.01)).

Revisions to Charter terminology and definitions are also contemplated to better reflect BIA evolution and capacity. Due to the current definition of a business promotion scheme in section 455(see on p. 6 of this report) there is a restriction on the expenditure of grant money. As BIA capacity has increased, the scope of BIA programs and activities has also broadened, particularly in response to the range of issues that can potentially impact business vitality. BIA activities now go well beyond the definition of 'business promotion' (e.g. advertising, marketing, and special events) to areas such as planning and urban design, safety and security, housing and social issues, taxation and transportation policy, and the physical maintenance of business districts. To address uncertainty as to whether current BIA operations are permitted under the Charter, the City and BIAs recognise that an update to expand the definition in section 455 to reflect current operations would be timely.

Section 456 refers to the funding to BIAs as a "grant", a term that is confusing as might imply that the money is not recovered, when in fact it is fully recovered by way of a special property tax levy. BIAs have identified this as another area where the legislation might be improved with new language.

An outcome of consultation with BIAs in fall 2014 was a request that the City consider supporting a request to the Province that all of the above-noted sections be revised.

Strategic Analysis

Proposed Charter amendments that are considered and discussed in this report include:

- Changing the term 'grant' (s. 456) to some other term that better describes the nature of BIA funding as recovered through commercial property taxes;
- Changing the term 'business promotion scheme' (s.455) to a broader term that better describes the role and purpose of BIAs as they have evolved;
- Amending the purposes defined under 'business promotion scheme' (s.455) to better reflect and enable the present day scope of BIA activities, and to eliminate uncertainty as to whether certain uses of grant money are acceptable BIA expenditures;
- Drafting new or clarified provisions for BIA by-law amendments; the Charter currently permits only limited types of amendment during the term of a BIA by-law. For example, the Charter requires that a BIA designation by-law must stipulate the maximum amount of money to be granted. Although the Charter allows by-law amendments for mid-term expansion of BIA boundaries and merger of BIA areas, it does not provide for an amendment to increase the maximum grant to cover the additional cost of servicing a larger BIA area;
- Re-drafting the Charter to authorize combining the Designation and Granting by-laws in one by-law; and
- Removal of BIA renewal requirements.

As the foregoing would require Charter amendments, the City must formally request the Province to consider the matter. The recommendations in this report include instructions to make that request.

A. BIA BY-LAW TERMINATION DATE ('RENEWAL' REQUIREMENT)

BIA Renewal (Terminating BIAs)

British Columbia is the only Canadian jurisdiction that requires BIA by-law termination dates. In that respect, the Community Charter (includes BIA provisions applicable to other BC municipalities) and the Vancouver Charter, are the same. Enabling legislation elsewhere in Canada provides for BIAs which continue indefinitely unless dissolved, generally through member-initiated processes.

BIAs are created by way of a 'designation' by-law enacted after Council approves a BIA under Charter section 456(1) and (3), and section 506(2)². A designation by-law has a 'term' defined by its commencement and termination dates. Beyond the termination-date, Council has no further authority to fund a BIA, unless a new by-law is enacted for a further term through a BIA 'renewal' process similar to the initial BIA formation process. The renewal cycle continues from term to term, with the oldest Vancouver BIAs now being in their fifth and sixth terms. To date, BIA property owners and business tenants have never objected to BIA renewal Council initiatives in sufficient numbers to defeat any proposed renewal.

While the existing BIA renewal requirement has many strengths, including heightened accountability and member engagement, it also has disadvantages, including:

- Most BIAs are on 5- or 7-year renewal terms and therefore, unlike their counterparts in other provinces, face a regular possibility of termination;
- The renewal process to some extent duplicates annual and on-going membership outreach in the form of member surveys, strategic planning, and the annual budget-development process culminating in BIA AGMs; and
- Factors beyond a BIA's control, such as changes in economic conditions, can affect renewal support and opposition.

If the existing renewal requirement were to be eliminated, it may be advisable to consider a requirement that BIAs undertake a more comprehensive periodic consultation with their members than that presently undertaken as part of annual budget approvals at BIA Annual General Meetings. An example of comprehensive consultation might be strategic planning conducted at 5-year intervals. Requirements could be written into the Charter, or the Charter could enable Council to enact by-laws to that effect.

Overview of dissolution procedures - other Canadian Jurisdictions

Rather than limiting BIAs to specified terms, BIA enabling legislation in most other provinces provides for enactment of BIA designation by-laws without required termination dates. In most of the jurisdictions reviewed below, the legislation sets out procedures for BIA dissolution, or enables municipalities to do so. In this model, a BIA continues to exist until a

² Under the Council initiative process (s. 506(2)) an initiative succeeds if one-half or fewer of the assessed property owners representing one-half or less of the assessed property value object in writing. Council's policy is to consider rejection of a Council initiative if objections are received from one-third of the property-owners, representing one-third of the assessed value OR one-third of business tenants counted separately.

specified proportion of affected property owners and/or businesses apply to terminate it.³ A comparative overview of six Canadian jurisdictions is provided in Table 1.

A system of on-going BIAs along with dissolution procedures has the following general features:

- The prospect of dissolution is not faced regularly (as it is with BIA renewals) but could happen at any time within limits set in the legislation;
- Rather than being triggered by a regular termination date, challenges to the continued existence of a BIA are triggered by BIA members actively opposing the BIA;
- The dissolution procedure is managed by the municipality; most jurisdictions do not rely solely on internal society processes such as society dissolution; and
- Member outreach and consensus-building is an on-going, BIA-driven process rather than a predetermined cycle based on by-law termination dates.

In Ontario and Alberta, an application to dissolve is generally a two-step procedure commencing with a member-initiated petition that must reach a certain threshold to be considered. A successful petition triggers a municipally initiated process requiring a higher threshold to determine the final outcome. An advantage of the two-step process is the filtering out of dissolution proposals that have little support, prior to invoking a formal dissolution procedure.

BIA Input on Dissolution

The City has received correspondence from the Vancouver BIA Partnership, representing the City's 22 BIAs. The Partnership reports that, at its meeting on February 4, 2015, all BIAs present agreed to put forward the following two-step BIA dissolution process for consideration as an alternative to time-limited BIA by-laws necessitating renewal:

Step 1. A formal petition containing the signatures of 25% or more of the tenants in a BIA OR 25% or more of property owners representing 25% or more of the total BIA assessed value in a BIA. If this threshold is met, then;

Step 2. The City mails a letter to all tenants and property owners similar to the renewal process. If 50% or more of the tenants OR 50% or more of the property owners representing 50% or more of the assessed value support the dissolution, then Council may vote to dissolve the BIA.

The specific dissolution process put forward by the Vancouver BIA Partnership is consistent with the procedure discussed above, and the actual percentages reflect those in Alberta's municipal legislation and could be forwarded to the Province for consideration. As discussed above, a two-step process would be useful to filter dissolution proposals that have little support, prior to invoking a formal dissolution process.

Table 1 below provides a general overview of BIA dissolution procedures in six Canadian jurisdictions.

³ In addition to member-initiated dissolution, the legislation or municipal policies generally also provide for Council-initiated and/or BIA society-initiated dissolution under specified circumstances.

TABLE 1 BIA DISSOLUTION PROCEDURES - COMPARATIVE OVERVIEW

Enabling Legislation / Municipal Instrument	Dissolution Procedure
City of Toronto Act (Province of Ontario) / <i>Toronto Municipal Code</i>	<u>Act</u> : enables <u>Municipal Code</u> : 2 steps 1) 50%+1 of business class property owners 2) 40% +1 of ballots rec'd. (owners and businesses)
Ontario Municipal Act (all municipalities Except Toronto)	<u>Act</u> : proscribes: 2 steps 1) 1/3 business class property assessments 2) 50% business class owners and businesses, representing 50% of business class assessments <u>City of Ottawa</u> : has no additional by-laws or policies governing dissolution
Alberta Municipal Government Act BRZ Regulation / <i>City of Edmonton Policy - BRZ Establishment and Operation</i>	<u>Act</u> : proscribes: 2 steps 1) 25% of businesses 2) 50% +1 of businesses <u>Edmonton Policy</u> : detailed procedures, as enabled
The Cities Act (Province of Saskatchewan)	<u>Act</u> : enables <u>City of Saskatoon</u> : has not adopted a dissolution process
City of Winnipeg Charter (Province of Manitoba) / <i>Winnipeg BRZ Procedures By-law</i>	<u>Charter</u> : enables <u>Winnipeg By-law</u> : 1 step - >50% of businesses representing > 50% of business class assessments.
Halifax Regional Municipality (HRM) Charter (Province of Nova Scotia) / <i>Halifax Regional Municipality By-law, and BID Service Agreements</i>	<u>Charter</u> : enables <u>HRM BID Service Agreements</u> : 50% of combined property owners and businesses

B. DEFINITIONS AND TERMINOLGY

It is also recommended that in addition to the proposed review outlined in Section A, a review of the following Charter terms and definitions relating to BIAs be undertaken:

'Grant'

Charter s. 456(1) provides that Council may, by majority vote, grant money to an applicant that has as one of its aims, functions or purposes the planning and implementation of a business promotion scheme. Section 456(1)(c) requires that all of the money granted to the applicant be recovered from owners of land or improvements, or both, who would be subject to a tax rate levied on land or improvements, or both, that fall or would fall within BC Assessment Authority Class 5 or 6.

Because the BIA grant is 'recovered' by way of a tax on property owners in a BIA, it is different from other City grants, which are funded from general revenue and are not recovered. The difference between the two types of grant is not well understood outside BIA circles. Members of the public often assume that BIA grants are funded by taxpayers through general revenue similar to other grants. In the past, Council has also expressed concern and confusion regarding the terminology. Confusion could be reduced by an amendment to the Charter to replace the term 'grant' with some other more accurate term such as 'disbursement' or 'transfer'.

'Business Promotion Scheme'

As noted above, Council may grant money to an applicant for 'the planning and implementation of a business promotion scheme'. Charter s.455 defines 'business promotion scheme' as:

- a) carrying out studies or making reports respecting one or more business areas,
- (b) the improvement, beautification or maintenance of streets, sidewalks or city owned land, buildings or structures in one or more business improvement areas,
- (b.01) the removal of graffiti from buildings or structures in one or more business improvement areas,
- (b.1) the conservation of heritage property in one or more business improvement areas, and
- (c) the encouragement of business in one or more business improvement areas.

The term 'business promotion scheme' fails to capture the current scope of BIA activities and programs. In the 25 years since the Charter was amended to introduce BIA enabling provisions, BIAs have evolved in response to the nature of responses required to maintain and improve business conditions in their respective areas. These responses include safety and security programs, initiatives around homelessness, sex trade, and street issues, advocacy on transportation and property taxation, market research, and retail retention and recruitment. Although the City has in the past interpreted 'business promotion scheme' broadly, this may be a good time to consider its replacing this term with a different, broader term such as 'business improvement program'.

As well, the s. 455 definition of business promotion scheme (subsections (a) - (c) above) could be amended to more fully describe and enable the current range of BIA activities, or generalized to permit any activity reasonably connected with 'business improvement'.

A key issue with the current definition is sub-section (b), which implicitly excludes the use of grant money on private property by specifying 'streets, sidewalks or city-owned land, buildings or structures'. The definition has been amended twice to add 'conservation of heritage property' (b.1) and 'removal of graffiti' (b.01) to provide explicit exceptions to the prohibition on improvements to non-City property. However, a number of key activities that are of benefit to BIAs, such as exterior power washing of building walls and awnings, murals on buildings, and façade improvement grants by BIAs to their members are likely not permitted under the current wording. As activities such as these are designed to improve the overall appearance of the commercial area rather than simply benefit a private owner, amendments to the definition would reduce uncertainty as to whether such programs are a permitted use of grant money.

C. MISCELLANEOUS

Requirement for Multiple by-laws

Sections 457(1)(a, b) provide that 'where Council has, by by-law, established a business improvement area it may, by one or more by-laws, name the applicant to whom the money is granted [and] require that the money granted shall be expended only by the applicant in accordance with the conditions and limitations set out in the by-law'. Section 457 requires a two-step process: first, enactment of a by-law to establish a BIA, and then enactment of a second by-law to name the grant recipient and set terms and conditions of the grant.

Pursuant to Section 457, Council enacts two by-laws for each of 22 BIAs (Designation and Grant Allocation), a total of 44 by-laws. Under the Community Charter, provisions for designation and granting are contained in one by-law. Adopting similar provisions in the Vancouver Charter would reduce by half the number of by-laws required.

Enforceable Guidelines or Regulations

Vancouver Charter Section 457 requires that terms and conditions of the BIA grant be established by by-law. The BIA Grant Allocation By-law could be significantly simplified if detailed provisions could be written into guidelines administered by a designated City official. This would require a Charter amendment to delegate to a City official the authority to impose conditions.

Repeal and Amendment

Vancouver Charter Section 462 provides that 'a by-law designating a business improvement area ceases to have effect on the earlier of 20 years from the date the by-law comes into force or a date specified in the by-law'; therefore, a BIA by-law may expire but may not otherwise be repealed before its expiry date. If the Charter is amended to provide for continuing BIA by-laws, corresponding provisions for repeal (in addition to provisions for dissolution discussed in this report) may be required.

Further, Section 458 provides the only method of amending a BIA by-law: 'Council may, by by-law, alter the boundaries of a business improvement area or merge 2 or more areas in the same manner as set out [for BIA establishment]'. But there is currently no provision to increase the maximum grant in an existing by-law to cover the cost of servicing a larger area. As the Charter is silent about any other type of BIA by-law amendments during the term of a by-law, the only opportunity for other changes is at the time of renewal, when a new by-law is enacted for a successive term. Finally, if the Charter is amended to provide for non-terminating BIA by-laws, there would never be an opportunity to make other amendments unless explicitly provided in the Charter.

Transition

If the Charter is amended to provide for continuing BIA by-laws, provisions for transition for existing BIAs, and processes for approval, will be required.

Implications/Related Issues/Risk (if applicable)

Financial

There are no financial implications.

Legal

There are no legal implications.

CONCLUSION

The Vancouver Charter's BIA enabling provisions have not been substantially reviewed since initial enactment in 1988. Since that time, the social and economic conditions in which BIAs operate has changed, and BIAs' goals and activities have evolved in response. The scope of BIA activities is currently circumscribed by the type of expenditures permitted under the Charter's definition of 'business promotion scheme', creating uncertainty as to whether some activities are authorized.

British Columbia is the only province in Canada to have BIA enabling legislation requiring termination dates for BIA designation by-laws. The Vancouver Charter includes this feature, commonly known as the 'renewal' requirement. Other provinces provide for BIAs of indefinite duration, with provisions for dissolution if the BIA is no longer desired, thereby allowing for greater certainty and forward planning.

This report recommends that Council endorse a request to the Province for the proposed Charter amendments to address the current scope of BIA programs, review the requirement for BIA renewals, clarify and update BIA terminology, and address related matters.

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