



**Port Colborne Downtown BIA
Procedural, Financial, Governance and
Operating Guidelines**

Committee: Downtown Business Improvement Area

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Board Resource: Economic Development and Tourism Services Division Staff

1. Establishment

The *Municipal Act*, 2001, S.O. 2001, c.25, as amended (the "Act"), provides that a local municipality may designate an area as an improvement area and may establish a local board of management.

The City of Port Colborne Council has established such an area in the City of Port Colborne known as the Port Colborne Downtown Business Improvement Area ("DBIA") by enacting By-law No. 692/8/78, Being a By-law to Designate a Certain Area as an Improvement Area and By-law No. 5758/14/12, Being a By-law to amend By-law No.692/8/78 to expand the Downtown Business Improvement Area.

2. Boundaries

DBIA shall undertake its purposes within the boundaries established by Council in Schedule A to By-law 5758/14/12.

2.1 The Board may recommend alteration to the boundaries of the DBIA to Council, which shall consider and administer any alterations in accordance with the provisions of section 210 of the Act.

2.2 If Council alters the boundaries of the DBIA, the Board will continue as the board of management for the altered area.

3. Mandate

The DBIA shall carry out the activities set out in section 204(1) of the the Act and:

3.1 Provide supportive economic growth strategies through developing goals and objectives;

3.2 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;

- No project shall be undertaken, and no work shall be conducted on any municipally-owned land without notifying the City of Port Colborne's Clerk and obtaining approval from the Clerk of the commencement of such project or work.

3.3 Promote the area as a business or shopping area through streetscaping, marketing campaigns and improving community ambiance; and

3.4 Undertake safety and security initiatives within the business improvement area.

- undertake its activities in accordance with these governance and operating guidelines and such policies as created by the Board;
- advocate for the interests of its Members; and
- jointly align its activities from time to time as may be required with other agencies, board and corporations within Port Colborne.

4. Membership Composition

The Board shall be composed of a minimum of seven (7) to a maximum of twelve (12) Directors as follows:

4.1 One non-voting member of Council shall be appointed to fulfill the responsibility of acting as a liaison between Council and the Board; respond to Board members' questions; interpret Council's direction to the Board; and provide updates on Board activities to Council.

4.2 The remaining members shall be appointed in accordance with section 204 of the Act.

4.3 The remaining positions include but are not limited to: Chair, Vice-chair, Secretary, and Treasurer.

4.4 One non-voting member of City of Port Colborne staff shall act as a representative, resource person and a recording secretary. Additional members of staff may be called on for specific subject matter expertise or as a Board resource, and they shall serve as non-voting support.

5. Term

The term of the Directors is the same as the term of the Council in office at the time of their appointment.

5.1 Each Director shall hold office for the time of their appointment until a successor is appointed by Council, provided that the Director continues to be qualified.

5.2 Each Director is eligible for reappointment on the expiration of the term, pursuant to section 204 of the Act.

6. Membership Eligibility

6.1 Members of the DBIA shall comprise 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 any eligible tenants of such property.

6.2 In determining whether a person is a tenant or not, the City Clerk may accept a list provided under clause 210(2)(b) of the Act or a declaration of a person that the person is a tenant. The determination of the Clerk is final.

6.3 Every Member is entitled to:

- attend any annual or general meeting of the DBIA; and
- vote on each question arising at any annual or general meeting of the DBIA.

7. Nomination of Directors – Sub-Committee

7.1 During a year in which the term of the Directors is ending, the Board shall establish a nominations sub-committee and provide notice to its Members which shall include:

- the form and content in which applications will be accepted including requiring the name and signature of the nominee; and
- the date of the close of nominations.

7.2 For greater clarity, the notice provided in section 7.1 shall be made at least thirty (30) days in advance of the close of nominations.

7.3. The nominations sub-committee shall accept all eligible applications and prepare a list of submitted applications to be selected by the membership.

7.4 A Member may appoint only one representative to stand for nomination to the

Board on behalf of the Member, regardless of the number of properties or businesses that the Member owns.

7.5. Upon receiving all nominations from the nominations sub-committee, the executive director and/or a member of the nominations sub-committee shall prepare a ballot listing all candidates in alphabetical order. A ballot and instructions respecting the vote, including the date and time of the annual general meeting and where the vote will take place, shall be delivered to each Member within ten (10) days of the close of nominations.

7.6 Within three (3) business days of the annual general meeting where the vote took place, the executive director and/or at least two members of the nominations sub-committee shall open the ballot box and count all ballots cast to determine who has been selected as a Director of the Board. Each nominee has the ability to appoint one (1) scrutineer to be present during the ballot count.

7.7 The Directors selected by the membership shall be memorialized by way of a board resolution. If the number of nominees on the ballot is equal to or less than the number of Directors, the membership is permitted to select in accordance with section 6.1, the Board shall pass a resolution to memorialize the selected candidates.

8. Notice to the Clerk

The names of the nominees who have been elected shall be forwarded to the Clerk by no later than November 10 of the year of election, unless otherwise directed by the Clerk.

9. Appointment of Directors

9.1 At its inaugural meeting following the municipal election, Council shall appoint one (1) member of Council to the Board.

9.2 The Board shall present a list of elected nominees for Council approval.

9.3 Council may refuse to appoint a person selected by the Members, in which case Council may leave the position vacant or direct that a meeting of the Members be held to elect or require the Board to select another candidate for Council's consideration.

10. Removals and Vacancies

10.1 The seat of a Director of the Board become vacant when:

- A Director is absent from Board meetings for three (3) consecutive regular scheduled meetings without reasonable cause. Upon the Director failing to attend two (2) consecutive meetings without reasonable cause, the Board of Management shall send a by pre-paid mail and email, a notice to the

Director advising that upon the third (3rd) failure to attend, the Board shall recommend to the Municipality that such Director be removed from the Board of Management.

- 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 remain vacant for purposes of quorum. Resumption of duties must be anticipated within one (1) year; otherwise a notice of resignation shall be given.
- Board members may resign by resignation in writing to the Board of Management (copied to the City Clerk) that shall be effective upon any time or date requested.

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

- The remaining Directors may nominate for the Municipality's consideration and appointment an individual for Directorship to fill the vacancy for the remaining portion of the term of office.
- 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 Municipality.
- The Board of Management shall notify the City Clerk as soon as any vacancy occurs and when the remaining Directors or Members have a nomination for appointment to the Board of Management by the Municipality.

10.3. Council may remove any Director before the expiration of the term of office and fill the vacancy of a position of Director caused by any reason for the remainder of such term. The appointed person is not required to be a Member.

10.4 If during the term of office, a Director who was nominated by the membership is no longer a Member, the Board shall adopt a motion at the next scheduled meeting requesting Council to remove the Director or appoint a new Director or allow the Director to serve out the remainder of their term.

10.5 If the Board resolves to seek the removal of a Director and/or the appointment of a replacement or additional Director, it shall:

- provide notice to the Director that is the subject of the removal or appointment at least seven (7) days in advance of the board meeting at which the matter will be considered;
- hold a vote at the board meeting; and
- provide a letter to the City Clerk along with the relevant board resolution and signed minutes of the meeting at which the vote was held in order for Council to confirm, deny or alter the decision of the Board as set out in the

board resolution.

10.6 At no point shall the Board be comprised of three (3) or fewer voting Directors, and in the event such an instance occurs, the Board shall advertise for applications or appoint a person to fill the vacancy for the unexpired portion of the term.

11. Role of Directors

11.1 All Directors shall have only one (1) vote at a meeting of the Board.

11.2 Each Director shall comply with all applicable laws and City policies including but not limited to the *Municipal Act*, the *Municipal Freedom of Information and Protection of Privacy Act*, *Municipal Conflict of Interest Act* and the City's Code of Conduct for City Councillors and Members of Boards, Commissions and Committees.

11.3 The Board shall adopt policies pertaining to the sale and other disposition of land, the procurement of goods and services and the hiring of employees, as required under the Act.

11.4 A Director shall notify the recording secretary at least twenty-four (24) hours prior to the commencement of a Meeting when the Director is aware that he or she will be absent from a Meeting.

11.5 Every Director shall:

- be accountable to the general membership;
- exercise the powers and discharge the duties of the office honestly, in good faith, and in the best interests of the DBIA;
- exercise the degree of care, diligence and skill that a reasonable and prudent person would exercise in comparable circumstances; and
- comply with the decisions of the Board.

11.6 In the event that the Chair and the Vice-Chair are absent or unable to act, Directors who are present shall choose one of the Directors to chair the meeting.

12. Officers

12.1 The Board shall elect a Chair, Vice-chair, Secretary and Treasurer from its Directors and such other officers, as it may deem necessary and as are lawfully authorized, to properly conduct the business of the Board.

12.2 The Board shall appoint a Director to be the designated contact for the

DBIA and provide the City staff representative with the person's contact information including phone number and email address.

13. Role of the Chair

13.1 The Chair shall be elected by a majority of the Board.

13.2 The Chair shall preside over meetings of the Board, when present in person and able.

13.3 The Chair shall ensure that decorum is maintained at each meeting by adopting either the City's Procedural By-law or procedures adopted by the DBIA Board, subject to the approval of such procedures by the City Clerk.

13.4 The Chair shall have general supervision and lead the general management and direction, subject to the authority of the Board, of the business and affairs of the BIA.

13.6 The Chair shall be the only spokesperson authorized to speak publicly for the BIA, unless otherwise directed.

14. Role of the Vice-Chair

14.1 The Vice-Chair shall be elected by a majority of the Board.

14.2 The Vice-Chair acts in the Chair's absence and assumes the role and responsibilities of the Chair.

14.3 In the absence of both the Chair and the Vice-Chair, the remaining members of the Board shall appoint a member as acting Chair for the purposes of that meeting.

15. Role of the Executive Director

15.1 The Board may hire an executive director.

15.2 The executive director shall not be a Director or a Member of the DBIA.

15.3 The executive director shall attend all board, committee and annual or general meetings and be entitled to speak on all matters without the right to vote.

15.4 The Board shall establish the remuneration of the executive director through a resolution of the Board.

15.5 The Board shall annually carry out a formal and written evaluation of the position of the executive director which shall be made available to the City staff representative upon request.

16. Role of the Treasurer

16.1 To prepare a proposed budget for each fiscal year in the form required by the City Treasurer.

16.2 To provide to the City Treasurer such books, records and financial information as the City Treasurer or such other persons may require in the City Treasurer's sole discretion.

17. Role of the City Staff Representative

A City of Port Colborne staff representative shall be provided to the Board to act as a resource person and recording secretary between the BIA and the City.

17.1 The City staff representative shall provide updates to the Board on City initiatives or projects of municipal significance and assist with responding to DBIA requests and inquiries.

17.2 The City staff representative shall:

- provide the City Clerk with the dates of all Regular Board Meetings for each calendar year prior to the end of the previous calendar year;
- report all changes to the Board of Management to the Clerk;
- be a non-voting member;
- attend all Board Meetings to record and sign the minutes of each Meeting and by-laws of the Board of Management;
- keep all minutes and all books, papers and documents used in and pertaining to the business of the Board of Management and collect, use and disclose records only in accordance with the *Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c.M.56* in consultation with the Clerk;
- have the ability to attend and address any matter at a board meeting, committee meeting or at an annual or general meeting;
- assign an alternate to attend in their place any board meeting, committee meeting, or annual or general; and
- provide high-level administrative, procedural, and technical support to the Board.

17.3 The Board shall provide the City staff representative, upon request, with all Board policies and updates to its governance and operating guidelines and other relevant documents.

18. Regular Board Meetings

18.1 The Board shall hold a minimum of four (4) meetings in each calendar year. At the first regular meeting of the new term, a meeting schedule will be adopted by the Board.

18.2 Notice of BIA Meetings shall be given on the Municipal website in accordance with the City's procedural by-law.

18.3 Meetings will be held on a set day and time as may be determined by the Board or at the call of the Chair. The Board will establish a meeting schedule, taking into account the business needs and the schedule of Council.

18.4 Board meetings may be formally called in writing by the Chair of the Board or the Vice-Chair on the direction of two Directors.

18.5 The Chair shall preside over meetings of the Board. The Vice-Chair shall preside over meetings of the Board if the Chair is absent or unable to act. In the event that the Chair and the Vice-Chair are absent or unable to act, the Directors who are present shall choose one of the Directors to chair the meeting.

18.6 Requests to delegate regarding an item on the Board meeting agenda shall be submitted in writing to the City staff representative by 12 p.m. on the day of the meeting.

18.7 Any person, group of persons, or organization may request to speak to an item listed on the agenda provided that the subject matter of the delegation directly relates to the item on the agenda. All requests to delegate shall be made in writing to the Clerk, outlining the nature of their request, and include any additional material (i.e. PowerPoint) by the deadline stated in section 18.6.

19. Closed Meetings

19.1 All meetings of the Board shall be open to the public, except when considering items in accordance with the criteria for a closed meeting as established by section 239.

19.2 The Clerk shall advise as to whether matters may be discussed in the Closed Meeting. Written reports and presentations shall be reviewed in advance by the Clerk for the purpose of determining of whether a matter may be discussed in the Closed Meeting.

19.3 Closed Meetings shall not be recorded by any audio or video recording device.

20. Inaugural Meetings

20.1 The Inaugural Meeting shall be held within thirty (30) days from the date upon which the Directors are appointed by Council.

20.2 The Directors shall elect Officers from among themselves at the Inaugural Meeting.

20.3 The City staff representative shall call the Inaugural Meeting to order and chair the meeting until the Chair has been elected. The Chair shall then assume their duties as such.

21. Special Meetings

21.1 Subject to the notice provisions contained in section 18.2, a Special Meeting may be called as follows:

- by the Chair by providing direction to the recording secretary in writing stating the date, time and purpose for the Meeting; or
- by a majority of Directors by providing a written petition to the Secretary stating the date, time and purpose for the Special Meeting.

21.2 Only business dealing directly with the purpose mentioned in the notice shall be transacted at any Special Meeting.

21.3 Special Meetings should only be called when business cannot wait until the next regularly scheduled meeting in order to promote transparency.

22. Electronic Meetings

22.1 A Director may participate by electronic means in an electronic meeting.

22.2 The Secretary, in consultation with the Chair, may determine the method and technology to be used for electronic meetings based on the resources available.

22.3 Where the Rules of Procedure conflict with the need to facilitate an electronic meeting, the City staff representative, in consultation with the Chair, shall have the authority to modify the Rules of Procedure to ensure Directors, Members, Delegations and the public, as the case, may be able to effectively participate in the Electronic Meeting.

23. Annual General Meeting

23.1 The Board shall hold a general meeting annually for the purpose of presenting the budget. Annual General Meeting financial statements for the previous year and proposed budgets for the next calendar year must be presented and approved by a majority of the membership present, after which time the figures will be put before Council and the levy requested.

23.2 For greater clarity, the general meeting shall include:

- declarations of conflict of interest;
- annual budget and annual report including the audited financial statements;
- selection of directors (subject to the approval of Council) in an election year;
- new policies adopted or changes made to the governance and operating guidelines;
- minutes of the last annual general meeting; and
- any other business that may properly be brought before the meeting.

23.3 The location of the meetings will be set by the Board.

23.4 The BIA Membership, the Councillor appointed to the Board and the City staff representative shall receive written notice of the Annual General Meeting not less than ten (10) days prior to the meeting date and must be posted on the City's website.

- The accidental omission to give notice to any member, Board member officer or auditor shall not invalidate any action taken at any meeting pursuant to such notice.

23.5 Notice for annual or general meetings shall include the agenda, budget and financial statements (where applicable) and minutes from the previous meeting.

24. Quorum

24.1 Quorum of the Board shall be the majority of Directors.

24.2 No business shall be transacted at a meeting of the Board unless quorum is present.

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

24.4 The recording secretary shall record in the minutes those Directors who were present and those Directors absent from any Meeting for the purposes of determining Quorum.

24.5 The Board may establish a policy or amend its governance and operating guidelines to establish rules around quorum and proxy voting for Members at annual and/or general meetings.

24.6 If a quorum is not present within fifteen (15) minutes of the time fixed for the commencement of the meeting, the Board may proceed without a quorum, provided that at least three Members are present. The recording secretary is not required to be present and no motions will be passed or minutes prepared.

24.7 When a majority of Directors have disclosed an interest under the *Municipal Conflict of Interest Act*, the remaining Directors at that meeting shall be deemed to constitute the Quorum, provided such number is not less than two (2).

25. Voting

25.1 Each Member has only one (1) vote regardless of the number of properties that the Member may own or lease in the DBIA.

25.2 Individuals may be nominated in writing by a corporate Member to vote on behalf of the corporation pursuant to section 204 of the Act.

25.3 A majority of the Members present at an annual or general meeting shall carry a vote.

25.4 Matters arising at any meeting of the Board shall be decided by a majority vote. The Chair shall vote only in the event of a tie vote.

25.5 A Director may request a recorded vote respecting any matter to be decided by the Board. In such event, the Chair votes and if the vote is a tie, the resolution is lost.

26. Minutes

26.1 The recording secretary shall record the proceedings, including procedural motions and direction given, without note or comment.

26.2 The minutes prepared by the recording secretary and approved by the Board of Management are the official record of the Meeting proceedings.

26.3 The recording secretary shall provide copies of all minutes to the City Clerk within ten (10) days after their approval by the Board.

27. Sub-Committees

27.1 The Board may establish sub-committees which may include non-members provided that a sub-committee is chaired by a Director.

27.2 Sub-committees will be instructed to research items or issues and make recommendations for action to the Board, submitted in a written final report that is to be delivered by an established date. The Board is not required to follow the recommendations of the sub-committee.

27.3 Sub-committees will set their own meeting and operational schedule in order to fulfill the tasks set out for the sub-committee by the Board.

27.4 Sub-committees shall not have the authority to enter into a contract on behalf of the Port Colborne DBIA or commit it to any financial obligations or liability.

27.5 Committees shall be structured so that the number of the committee members is less than a quorum of the Board.

28. Complaint Process

The Board shall adopt a policy within the First Term which establishes a complaint process and disciplinary measures related to the nomination and selection of Directors. This policy will require the Board to hire an impartial investigator and allow Members to bring forward a complaint to the impartial investigator. Any disciplinary recommendation from the investigator shall be made available to the Board and City staff representative. For greater clarity, the impartial investigator cannot be a Director or member of the Port Colborne DBIA, and the policy will not be applicable to the nomination and selection of Directors for the first term.

29. Conflict of Interest

Directors are considered a member for the purpose of the *Municipal Conflict of Interest Act, R.S.O. 1990, c. M.50*, and as such, are required to adhere to the provisions of that Act. It is the responsibility of each member to identify and disclose a pecuniary interest on any item or matter which is the subject of consideration at the meeting in accordance with the *Municipal Conflict of Interest Act, R.S.O.1990, c.M. 50*.

Where a Member has any pecuniary interest, direct or indirect, in any matter and is present at a meeting at which the matter is the subject of consideration, the Member will, in accordance with *Municipal Conflict of Interest Act, R.S.O.1990, c.M. 50 (5)*:

- file a written statement of the interest and its general nature with the Clerk prior to the meeting;
- not take part in the discussion of, or vote on any question with respect to,

- the matter; and
- not attempt in any way before, during and/or after the meeting to influence the vote on the matter.

Where a meeting is not open to the public, in addition to complying with the requirements under the *Municipal Conflict of Interest Act*, the Member will forthwith leave the meeting for the part during which the matter is under consideration.

The Clerk will record the particulars of any disclosure of pecuniary interest made by Members of the Board in the minutes of that meeting and update the Pecuniary Interest Registry. The Registry will be available for public inspection.

30. Financial Procedures and Reports

30.1 The Board shall prepare a proposed annual budget for each fiscal year by the date and in the form required by the City Treasurer and shall hold one or more meetings of the Members for discussion and approval of the annual budget.

30.2 The Board shall submit the approved annual budget to Council by the date and in the form required by the City Treasurer, and Council may approve it in whole or in part but may not add expenditures to it.

30.3 The Board shall adopt and maintain only banking arrangements, bookkeeping services and sound business practices that are satisfactory to the City Treasurer, and the Board shall keep financial records and submit statements in accordance with generally accepted accounting principles.

30.4 The Board shall establish at least one bank account specific to the DBIA and the Board shall appoint at least two Directors (not including a member who is also a member of Council) with signing authority to the account. Cheques issued by the Board shall be signed by two Directors with signing authority.

30.5 All monies spent from the bank account(s) outlined in section 30.4 shall be within the budgeted provisions of the approved annual budget and spent only for the benefit of the Members' businesses.

30.6 The Board shall review and submit on a tri-annual basis by the date and in the form required by City Treasurer, a financial report that compares budget to actual with commentary on progress and differences and a financial summary of cash, accounts receivable and accounts payable.

31. Audit

The Board may be required to submit, at any time during the fiscal year, its books, records and financial information to the City Treasurer upon request.

The accounts and transactions of the Board shall be audited by the Municipal Auditor in the same manner as the accounts and transactions of the City, and all minutes, books, records, documents, transactions, accounts and vouchers of the Board shall be open to the Municipal Auditor for inspection at all times.

32. Prohibition on Borrowing

The Board shall not borrow money and, without the prior approval of Council, it may not incur any indebtedness extending beyond the current year.

33. Contracts

33.1 To enter into a contract, a resolution approved by the Board shall be required to be entered into the minutes of a board meeting and a copy of the contract is to be attached to the minutes of that meeting and provided to the City staff representative.

33.2 Once approved by resolution, a contract shall bear the signatures of two (2) Directors.

34. Procedures and Policies

Procedures for the proceedings of meetings shall be governed by the City's Procedural By-law and Robert's Rules of Order.

34.1 In accordance with subsection 270(2) of the *Municipal Act, 2001*, the Board shall adopt and maintain procurement policies. The City's Purchasing Policy may be used and adopted by the Board for its use, or it may adopt its own Purchasing Policy subject to approval of the Treasurer.

34.2 If required, the Board shall adopt and maintain a policy respecting "its sale and other disposition of land" and "its hiring of employees" in accordance with subsection 270(2) of the *Municipal Act, 2001*.

35. Remuneration

Board Members shall serve without remuneration, either directly or indirectly, for services rendered as a Board Member, but may be reimbursed for out-of-pocket expenses incurred while representing the BIA, upon approval of the Board.

36. Annual Workplan

An annual workplan with an estimate of the resources necessary for the coming year shall be prepared by the Board.

37. Governance and Operating Guidelines

These governance and operating guidelines set out the mandate and operation of the Port Colborne Downtown Business Improvement Area Board. These rules and procedures are to be observed at meetings of the general membership, the Board and (sub) committees of the Board. The Board shall operate in conformity with the provisions of the *Municipal Act* and the City's By-laws. The Board may make additions to its governance and operating guidelines provided that any additions are not in conflict with and do not undermine the intent of these governance and operating guidelines.

38. Resources

- 38.1 By-law to Govern the Proceedings of Council and Committee Meetings
- 38.2 *Municipal Act, 2001*
- 38.3 Code of Conduct
- 38.4 Appointment to Boards/Committees Policy
- 38.5 *Conflict of Interest Act*
- 38.6 Robert's Rules of Order
- 38.7 *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)*