

**CITY OF PORT COLBORNE
MAIN STREET BUSINESS IMPROVEMENT AREA
BOARD OF MANAGEMENT TERMS OF REFERENCE**

Date of Adoption: September 27, 2010
Revised: May 26, 2015 (Name Change)

ESTABLISHMENT:

Reports:

Clerk's Division Report 2010-16, dated May 25, 2010, Subject: Designation of a Port Colborne Gateway Business Improvement Area, dated May 25, 2010.

Clerk's Division Report 2010-23, dated July 12, 2010, Subject: Establishment of a Board of Management for the Port Colborne Gateway Business Improvement Area

By-laws:

By-law No. 5466/63/10, Being a By-law to Designate an Improvement Area as the Port Colborne Gateway Business Improvement Area Pursuant to Section 204 of the Municipal Act, 2001, S.O. 2001, c. 25, as amended.

By-law No. 5495/92/10, Being a By-law to Establish a Board of Management for the Port Colborne Gateway Business Improvement Area Pursuant to Section 204 of the Municipal Act, 2001, S.O. 2001, C. 25, as amended.

GENERAL:

These Terms of Reference set out the mandate and operation of the Main Street Business Improvement area. These rules and procedures in are to be observed at meetings of the general membership, the Board and committees of the Board.

Section 238(2) of the *Municipal Act, 2001* provides every municipality and local board shall pass a procedure by-law for governing the calling, place and proceedings of meetings. The rules and procedures contained in this policy shall be observed in this regard. Where greater clarification is required, the Board shall observe the City of Port Colborne By-law to Govern the Proceedings of Council and Committee Meetings, By-law 4314/150/02.

BACKGROUND:

A Business Improvement Area (BIA) is an organized group of property owners and businesses within a specified geographic area that come together, upon approval of the municipality, to organize, finance and carry out physical improvements and promote economic development in their designated area. Each BIA has a board of

management which is an organization set up to provide business promotion and improvement functions.

The City of Port Colborne established the Main Street Business Improvement Area on May 25, 2010 for lands fronting on Main Street East and West, west of Highway 140/Elizabeth Street and east of Highway 58/Westside Road. On July 12, 2010 the Port Colborne Main Street Business Improvement Area Board of Management was established.

MANDATE:

Section 204(1) of the *Municipal Act, 2001* (the Act) provides that a local municipality may designate an area as an improvement area and may establish a board of management, to 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; and to promote the area as a business or shopping area.

LOCAL BOARD STATUS:

Under the Act, a BIA is designated as a "local board" of the municipality for all purposes. This means that all provisions related to local boards under the Act apply to the BIA. These provisions require a BIA board to adopt and maintain certain policies, including the following:

- Sale and other disposition of land;
- Hiring of employees;
- Procurement of goods and services, etc.

The Board has adopted and will strictly adhere to the policies of the City of Port Colborne with regard to the policies and procedures outlined above. Council has the authority to establish policies for the Board as deemed necessary.

MEMBERSHIP:

Members of the BIA consist of the following:

- a. Persons or corporations that are assessed, on the last returned assessment roll, with respect to commercial or industrial property in the BIA area; and
- b. All commercial or industrial tenants of such property.

A member who has recently purchased a property and is not yet on the assessment rolls or has recently leased a property, will have to provide proof of ownership / tenancy in order to vote at a general meeting.

COMPOSITION:

The Board shall be composed of seven (7) members.

The following are eligible to be member on the Board of Management of the BIA:

- a. One (1) or more persons appointed directly by Council; and
- b. One (1) or more persons selected by a vote of the membership.

Where possible, the BIA Board shall be representative of the various types of business and property owners and the geographic boundaries of the BIA.

A member of the Board does not have to be a member of the BIA but must be voted in by the membership and approved by Council.

Council must approve all members of the Board and may refuse to appoint a member of the Board, in which case Council may leave the position vacant or direct that a meeting of the members be held to select another candidate.

The BIA may appoint non-voting members to the Board or sub-committees from the community at large who are willing to volunteer their time.

The term of office is the same as that of the City Council that makes the appointments. In an election year the Board continues until a successor Board is appointed.

If a vacancy occurs for any cause, a person may be appointed by Council to fill the vacancy for the unexpired portion of the term and the appointed person is not required to be a member of the business improvement area.

The Board shall solicit interest from the membership and direct expressions of interest to be submitted to the City Clerk.

Council may also appoint a person to fill the vacancy.

If the Board resolves to seek the removal of a member from the Board or the appointment of a replacement or additional member to the Board, it shall give to the Clerk, signed minutes of the Board meeting at which the vote was held on this matter, and the Clerk shall report to Council.

The appointment of new members comes into effect when Council adopts the appointing by-law/resolution.

BOARD OF MANAGEMENT OFFICERS:

The Board of Management, at its first meeting following appointment by Council or as soon as possible thereafter, shall select (by majority vote, if desired) a Chair, Vice-Chair, Secretary and Treasurer who shall serve for the term of the Board or until he or

she resigns from the position or is removed from office by resolution and majority vote of the Board. Additional officer positions (i.e. a second Vice-Chair, or Co-Chair) may be appointed by the Board, if deemed desirable.

Duties of Officers:

The Chair shall:

- a. preside over all meetings of the BIA and of the Board, follow the agenda, and decide on whether motions are in order;
- b. rule on all procedural matters and maintain decorum;
- c. ensure motions and amendments are clearly expressed and, if there is no motion under consideration, summarize the discussion for the purpose of the minutes;
- d. may vote on resolutions and shall vote to break a tie;
- e. have general supervision of the affairs of the BIA;
- f. direct long-term strategic planning;
- g. sit, *ex-officio*, on all sub-committees;
- h. whenever there is a change of Treasurers, ensure that all past records of the Board are transferred to the succeeding Treasurer.
- i. be the public representative of, and spokesperson for, the Board; and
- j. perform any other duties, which the Board may, from time to time, assign.

The Vice-Chair shall:

- a. exercise any or all of the duties of the Chair in the absence of the Chair or if the Chair is unable for any reason to perform those duties; and
- b. perform any other duties that the Board may, from time to time, assign.

The Secretary shall:

- a. give notice of each regular and special meeting of the Board together with an agenda of the matters to be considered so that the notice and agenda will reach members in accordance with the notice provisions.
- b. give notice of the Annual General Meeting and General Meetings in accordance with the notice provisions; and
- c. prepare and distribute agendas for all meetings;
- d. prepare and distribute all minutes of each regular and special meeting of the Board and shall record in the minutes: the place, time and date of meeting; the name of the Chair, the Members present and the Members absent; any correction to, and the adoption of, the minutes of the previous meeting; declarations of interest; and, all resolutions;
- e. provide a signed copy of meeting minutes to all members of the Board and the City Clerk's Office (including a Treasurer's report) as soon as possible after the meeting minutes have been adopted by the Board;
- f. conduct and keep all BIA correspondence and maintain all non-financial BIA records; and
- g. perform any other duties that the Board may, from time to time, assign.

The Treasurer shall:

- a. keep and maintain the financial records and books of the BIA;
- b. receive, deposit, disburse and record all monies;
- c. maintain all banking and financial records;
- d. prepare reports as required by the City's Director of Community and Corporate Services;
- e. maintain and update an inventory of all physical assets owned or leased by the BIA and notify the City's Director of Community and Corporate Services of all changes;
- f. assist the auditor in the preparation of the financial statements of the BIA;
- g. prepare and distribute the proposed annual budget in accordance with the requirements of the City;
- h. report on the financial affairs of the BIA at all meetings: and
- i. perform any other duties that the Board may from time to time assign;

The Board may also appoint other committees and hire paid full-time or part-time staff to fulfill some of these duties.

BOARD OF MANAGEMENT MEETINGS:

Calling and Notice of Meetings (Board Meetings):

The Board shall provide public notice of its meetings at least three (3) days in advance of the meeting date by posting same on its website or posting the notice in a visible location in the BIA Office, if applicable.

The agenda shall be considered as notice of a meeting.

The Board shall hold at least four meetings per year, including the Annual General Meeting.

An annual schedule of Board meetings shall be prepared and made available to the public.

The Board may hold its meetings at any place in the City of Port Colborne as it may from time to time determine.

Sub-committee meetings will be scheduled as required to complete the assigned work.

Agenda and Minutes (Board Meetings):

The Chair, in consultation with the Secretary, and other members of the Board as required, shall establish the agenda for each meeting, based on matters submitted prior to the agenda deadline. Board members are entitled to submit agenda items for consideration by forwarding them to the Secretary prior to the agenda distribution deadline.

The agenda may include a time limit for discussion items. If an item requires lengthy discussion, it may be better to appoint an ad hoc committee to look into the matter in advance and report its recommendations to the next Board meeting.

The Secretary shall distribute the agenda and previous meeting minutes to all Board members a minimum of three business days prior to the subject Board meeting.

The Secretary shall make the agenda available to the public after delivery of the agenda to the Board members.

The Secretary shall record the minutes of each meeting and present the minutes at the following meeting for adoption. Once the minutes have been adopted they shall be forwarded to the City Clerk's Office.

The financial report, presented by the Treasurer at each Board meeting, should be incorporated into the minutes, as well as reports from other active committees.

Agendas and minutes should be available to the membership and posted on the BIA website, where applicable.

Quorum (Board Meetings):

Quorum is the majority of Board members, unless Council approves an alternative quorum figure.

Members of Council appointed to the Board shall be included for the purpose of determining quorum.

If quorum is not reached and maintained, the Board may not put any binding decisions to a vote. The members may hold an informal discussion in such a situation, but may not vote on any issue until the next meeting where there is a quorum. Secretary shall report to the next meeting of the Board on any proposals made at the informal gathering. Any proposals made at the informal gathering shall be submitted to the Board for consideration at the next regular meeting.

Voting and Motions (Board Meetings):

Each member shall have one (1) vote regardless of the number of properties that he or she owns or businesses that he or she leases.

Every Board member has a vote on all motions, unless prohibited by law (i.e. declared conflict of interest).

Council-appointed members are full voting members of the board.

BIA members cannot vote at a meeting of the Board.

The members of the Board shall vote on any motion arising at any meeting of the Board. All motions must be seconded prior to proceeding to a vote.

All questions shall be decided by a majority vote unless otherwise stated in these Terms of Reference or as required by law.

A tie vote means a motion does not carry.

All motions arising at any meeting of the BIA membership, other than those arising under new business, shall relate to an item on the agenda for that meeting and the Chair shall have the right to determine whether a motion is in order.

Every motion shall be decided by a show of hands.

The Chair shall declare that a motion has been carried or not carried. The motion shall be entered into the minutes of the Board.

Deputations (Board Meetings):

The Board may hear deputations from the public at its discretion and may set limits for speaking time.

Attendance (Board Meetings):

No member shall be absent from any regular meeting of the Board without providing substantive notice of such absence to the Chair and Secretary at least seventy-two (72) hours prior to the commencement of the meeting from which the member shall be absent, where practical.

Where a member is absent from meetings of the Board for more than three (3) successive months without being authorized to do so by a resolution of the Board, the member's seat shall be declared vacant.

Council must first approve Board members before they may vote. Therefore, in an election year, the new Board cannot officially assume its duties until approved by Council. The outgoing Board must continue to hold office until Council approves their successors.

Public Access (Board Meetings):

Board meetings shall be open to all BIA members and the public except in the case of qualified closed meetings, in accordance with Section 239 of the *Municipal Act, 2001*.

GENERAL MEETINGS:

Date and Location (General Meetings):

The Annual General Meeting of the BIA, to which all members of the BIA shall be invited, must be held at least once a year, to present the proposed program of activities and budget for the coming year, for discussion and approval by a majority of the voting members present.

The Annual General Meeting shall be held at a location in the City of Port Colborne and on a date determined by the Board of Management.

The Board of Management may, from time to time, call a General Meeting of the Members of the BIA for any date and time to be held at a location in Port Colborne, as specified in the notice.

Agenda (General Meetings):

The Annual General Meeting agenda shall include, but not be limited to:

1. minutes of the last annual general meeting;
2. annual activity and financial report of the board of management;
3. audited financial statement;
4. appointment of auditor for following year;
5. proposed annual budget for the following year;
6. election of board of management (if a municipal election year); and
7. any other business that may properly be brought before the meeting.

Public Access (General Meetings):

General meetings shall be open to the public except in the case of qualified closed meetings, in accordance with Section 239 of the *Municipal Act, 2001*.

Comments and questions from non-BIA members of the public attending such meetings shall be permitted at the discretion of the meeting Chair.

Notice (General Meetings):

The Board shall distribute notices of the Annual General Meeting or General Meeting at least ten (10) business days before the date of the meeting to all BIA members.

The Board shall send the notice of the annual general meeting by prepaid mail or electronically at least ten (10) days before the date of the meeting to business improvement area property owner members.

The Board shall distribute notices at least ten (10) days before the date of the annual general meeting to business improvement area tenant members and Council member(s) sitting on the Board.

The agenda shall be considered as notice of a meeting.

Notice of the Annual General Meeting must include the meeting agenda and a summary of the proposed budget for the following year.

The Board's complete audited financial statements, with balance sheet and revenue and expenditure statements must be available at the annual general meeting.

The accidental omission to give notice of any meeting or the non-receipt of any notice by any BIA member shall not invalidate any resolution passed or any proceedings taken at any meeting.

The Board shall send notice of a general meeting including the agenda and accompanying materials, to the Clerk's Office at least fifteen (15) business days in advance of the general meeting.

Annual Budget and Financial Statements (General Meetings):

A BIA's annual budget, once approved by the general membership, shall be signed by the Chair and Treasurer and submitted along with a copy of the meeting notice and minutes to the Director of Community and Corporate Services for consideration by Council. The BIA will be provided with key dates for the BIA's budget submission and approval.

At the general meeting, the Board is required to make available the most recent audited financial statements including balance sheets, and revenue and expenditure statements.

Nominations (General Meetings):

Meetings to nominate and elect a Board of Management shall be held at least once every four years. The Board members continue to serve until a successor is appointed.

Valid nominations can be accepted at the meeting; however, members are encouraged to present nominees to the Board in advance of the meeting.

The Board members subsequently choose from among themselves who will hold specific offices.

Please refer to the Nomination Protocol attached hereto as Appendix "A" for further information about the procedure for the nomination members to the Board of Management.

Quorum (General Meetings):

Quorum for general meetings is the majority of Board members. As long as proper notice has been sent, in compliance with these Terms of Reference and quorum is reached, even a sparsely attended general meeting may deal with agenda items. All businesses and property owners shall be provided with notice of decisions made as soon as possible after the meeting.

Voting and Motions (General Meetings):

Each member has one (1) vote regardless of the number of businesses the member leases, the number of properties the member owns, or the member's total assessed property value.

Every motion shall be decided by a show of hands.

In the case of a written ballot, possibly used during the nomination of Board members, the voter shall print his/her name so ballots can be publicly inspected. The ballots shall be retained by the Board for two (2) weeks following the meeting.

All motions arising at any meeting of the BIA membership, other than those arising under new business, shall relate to an item on the agenda for that meeting and the Chair shall have the right to determine whether a motion is in order.

All questions shall be decided by a majority vote unless otherwise stated in this by-law or as required by law.

A tie vote means a motion does not carry.

The Chair shall declare that a motion has been carried or not carried. The motion shall be entered into the minutes of the BIA.

CONFLICT OF INTEREST

The *Municipal Conflict of Interest Act* requires that the first item on the published agenda of each Board meeting shall be declarations of conflict of interest. When this item is addressed at the meeting, each member must state those agenda items for which they have a conflict as defined in the Act, and refrain from participating in any discussion or voting on those items.

The Secretary shall record the name of the member and the declaration in the minutes.

It is suggested that before assuming a Board position, members be given a copy of the Act.

If a conflict of interest reduces the number of voting members below quorum, not less than two (2) members shall constitute a quorum.

FINANCIAL MANAGEMENT AND REPORTING:

The Board shall adhere to banking arrangements and business practices that are acceptable to the Director of Community and Corporate Services.

All bank accounts and financial records are to be maintained by the Board's Treasurer and are reviewed annually by the City.

The BIA must hold at least one membership meeting to discuss and adopt the proposed annual budget.

The fiscal year of the Committee will be January 1 to December 31 annually. The annual budget submission deadline to the Director of Community and Corporate Services will be December 15th of each year for the subsequent year. The budget submission shall include a copy of the notice of the annual meeting and minutes.

The BIA's annual report must also be submitted by the date and in the form required by the City, and the report shall include financial statements audited by the City's auditor.

It is suggested that annual budgets be drawn up as part of a long-term (three-year) plan, thereby avoiding wide fluctuations in the amount of annual levies.

Each year's plan of activities should be governed by what can reasonably be afforded in one (1) year.

A long-term plan may include a combination of promotional activities and physical improvement projects to be completed over a period of time longer than a year.

The BIA cannot enter into long-term contracts as it cannot incur any indebtedness extending beyond the current year without Council approval, and it cannot borrow money.

BIA Levy:

The municipality shall annually raise the amount required for the purposes of the Board of Management.

Upon the recommendation of the Board, the City established a minimum and maximum charge for separately assessed properties, in dollar amounts. An annual minimum charge of \$125 and an annual maximum charge of \$250 are established for each property separately assessed.

Once Council approves the BIA budget, a by-law will be prepared allocating each owner member a special charge to cover the budget established by the Board and approved by Council. This is referred to the BIA Levy.

The City will send notice of the BIA Levy by mail or e-mail to all assessed owners and the Board.

Any property in the prescribed business property class within the Main Street BIA zone with a total Commercial Assessment value under \$5,000 be exempted from the Main Street BIA levy/minimum fee charge until such time as the board deems otherwise appropriate.

Financial Practices:

A Board member shall not accept fees, or any other consideration, for serving on the Board.

The Board is responsible for approving all activities undertaken by any Committee of the BIA, and each Committee should report regularly to each Board meeting.

The Board shall not borrow money, incur overdrafts or spend any money not included in the budget approved by Council or in a reserve fund. Incurring indebtedness extending beyond the current year-end requires prior approval by City Council.

The City's external Auditor is the Auditor of the Board of Management and must be given access to all financial records of the BIA at all times.

Where a member of the Board of Management or staff person has reason to believe that a theft or fraud has occurred, the person shall immediately bring the matter to the attention of the Director of Community and Corporate Services and the City Clerk.

The Board shall maintain a written inventory of physical assets. This inventory shall be reviewed and updated annually. The City's BIA Office and the City Clerk should be notified when any changes occur.

Any legal or audit fees incurred shall be at the expense of the Board.

APPENDICIES:

Appendix "A" - Nomination Protocol for the Main Street Business Improvement Area

Appendix “A” to Main Street BIA Terms of Reference

Nomination Protocol for the Main Street Business Improvement Area

This protocol is to be used for Annual General Meetings or Special Meetings where nominations to the Board are required.

1. The Board shall set a date, time and place for nominations to the Board.
2. Notice shall be provided to the membership in accordance with the BIA Terms of Reference, and at least 10 days in advance of the nominations taking place.
3. The membership shall be invited to submit nominations to the Board in advance of the meeting.
4. A voting membership accountability mechanism should be established in advance of the nomination meeting (ex. prior to entry to membership meeting, name of member is crossed off membership list and hand is stamped).
5. At the nomination meeting, the names of the nominees received prior to the meeting shall be posted and displayed.
6. The Board shall select a Board member to act as Chair to carry out the nomination process or may request the Clerk of the City of Port Colborne to do so.
7. A nominee must be present to accept or be nominated.
8. The Nominating Chair shall call the meeting to order, state the number of directors to be selected and:
 - a. Recite the nominees posted and ask each to confirm their intention to stand for selection to the Board and to briefly state their interest in serving the Board.
 - b. Call for additional nominees, confirm willingness to stand and post names.
 - c. Prior to announcing the closing of nominations, the Chair shall call for any further nominations two more times.
 - d. At the close of nominations, a ballot form shall be distributed either with the names of the nominees included or via instruction for the member to write down the names of the nominees and number to be selected.
 - e. Upon completion of the ballot, it shall be delivered to the Nominating Chair and one other witness for counting.

- f. The Chair shall announce the results.
- g. The Chair of the Board shall inform the Clerk of the results of the selection process who shall in turn submit same to Council for consideration.
- h. The nomination process shall be included in the minutes of the meeting.
- i. The Nomination protocol as set out herein shall be utilized for the vacancies that exist on the Main Street Business Improvement Area Board of Management.