



Report to: General Committee

Date Report Authored: January 16, 2015

SUBJECT: Amendments to Business Improvement Area (BIA) By-laws
PREPARED BY: M. A. Pettit, Deputy Clerk, ext. 8220
C. Turpin, Public Services & Records Co-ordinator, ext. 2082
L. Riegel, Assistant City Solicitor, ext. 3582

RECOMMENDATION:

- 1) That the report titled "Amendments to Business Improvement Area By-laws" be received; and,
- 2) That By-law 279-86 establishing the "Markham Village Business Improvement Area" commonly referred to as the "Markham Village BIA (MBIA)" By-law be repealed in its entirety and the attached by-law, noted as Appendix "A" to this report, be enacted; and,
- 3) That By-law 169-83 known as the "Unionville Business Improvement Area (UBIA)" By-law be repealed in its entirety and the attached by-law, noted as Appendix "B" to this report, be enacted; and,
- 4) That Staff be directed to undertake a comprehensive review, including consultation with the Boards of Management of both the MBIA and UBIA to determine further governance improvements and report back prior to the end of the 2018 term; and further,
- 5) That Staff be authorized and directed to do all things necessary to give effect to this resolution.

PURPOSE:

To repeal and replace the Markham Village Business Improvement Area (MBIA) and the Unionville Business Improvement Area (UBIA) by-laws to ensure they are consistent with and accurately reflect the business improvement area ("BIA") provisions of Municipal Act, 2001 (the "Act"), and to provide clarity regarding the membership eligibility criteria, and the election of Directors to the Board of Management.

BACKGROUND:

The MBIA by-law was last updated in 1987 and does not align with the BIA provisions of the Act passed in 2001 or the current standard practices of the MBIA. The UBIA by-law was last updated in 2012 to adjust the composition of the Board, but does not accurately reflect the provisions of the Act. These amendments to the by-laws provide consistency with the Act, and provide clarity regarding the membership eligibility criteria and the election of Directors to the Board of Management.

OPTIONS/ DISCUSSION:

Amendments

According to the Act *“members of an improvement area consist 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 tenants of such property.”* The current BIA by-laws do not recognize that tenants of rateable property are eligible members and as such are entitled to voting rights. The Act also notes that tenancy shall be determined by the Clerk in accordance with Section 204(5) and that the determination of the Clerk is final. The proposed by-laws have been updated to include these components, which brings them into compliance with the Act.

The Act provides for the election of a Board of Management, consisting of one or more Directors appointed directly by the City. The remaining Directors are selected by the membership of the BIA and their selection is subject to ratification by Council. Each member of the improvement area is entitled to one vote regardless of the number of properties that the member may own or lease.

The Act also provides that members which are Corporations (“Corporate Members”) can appoint a nominee to vote on their behalf (often referred to as proxy voting), since the Corporation itself cannot physically cast a ballot. The appointment of a nominee by Corporate Members is the only circumstance where proxy voting is permitted by the BIA provisions of the Act. Therefore, the use of proxy voting is not available to non-Corporate Members. In the past there has been general confusion among the MBIA and UBIA members regarding the eligibility and process for appointing nominees for the purpose of voting. The proposed by-laws provide delegated authority to the City Clerk to approve voting procedures to be followed by the MBIA and UBIA members, which will ensure fair and consistent voting and election processes.

The proposed by-laws also provide clarity on the eligibility requirements for Directors to be appointed to the Board of Management. The proposed by-laws provide that to be eligible to serve as a Director of the Board of Management, an individual must be a member, or an individual appointed as a nominee by a Corporate Member (which individual is a shareholder, director, officer or employee of the Corporate Member). Consistent with the ability of Corporate Members to appoint a nominee to vote on their behalf, Corporate Members may appoint a nominee to run for (and if selected by the members and appointed by Council) serve as a Director of the Board of Management.

Governance Review

The term of the Directors on the Board of Management is the same as the term of Council that appointed them. Staff recommend that prior to the conclusion of the term of Council in 2018, a full governance review be undertaken that includes the consultation with the Boards of Management of both the MBIA and UBIA. Such a review would require time to complete, and if undertaken at this time, would delay the appointment of the Directors to the MBIA and UBIA Boards of Management, to the detriment of the BIAs. The future

review may include, among other things, an assessment of the effectiveness of current governance procedures and standard practices.

FINANCIAL CONSIDERATIONS AND TEMPLATE

Not applicable

HUMAN RESOURCES CONSIDERATIONS

Not applicable

ALIGNMENT WITH STRATEGIC PRIORITIES:

This report aligns with the Municipal Services Strategic Priority by ensuring good governance and effective operation of Markham's Business Improvement Areas and compliance with the provisions of the Municipal Act.


BUSINESS UNITS CONSULTED AND AFFECTED:

Legal Services

RECOMMENDED BY:

23/01/2015

X



Kimberley Kitteringham
City Clerk

X



Catherine Conrad
City Solicitor

X



Trinela Cane
Commissioner, Corporate Services

ATTACHMENTS:

Appendix "A": Proposed Markham Village Business Improvement Area (MBIA) By-law"

Appendix "B": Proposed Unionville Business Improvement Area (UBIA) By-law