

BY-LAW NUMBER \_\_\_\_ of 2020  
OF THE CITY OF SARNIA

**A by-law to designate an area as an improvement area and to  
establish the board of management for the purpose of  
managing the Downtown Business Improvement Area**  

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**(Re: Downtown BIA)**

**WHEREAS** subsection 5(3) of the *Municipal Act, 2001*, S.O. 2001, c. 25 as amended (the "Act") provides that a municipal power shall be exercised by by-law;

**AND WHEREAS** section 9 of the *Act* provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under the Act or any other Act;

**AND WHEREAS** subsection 10(1) of the *Act* provides that a municipality may provide any service or thing that the municipality considers necessary or desirable for the public;

**AND WHEREAS** subsection 10(2) of the *Act* provides that a municipality may pass by-laws respecting: in paragraph 1, Governance structure of the municipality and its local boards; paragraph 2, Accountability and transparency of the municipality and its operations and of its local boards and their operations; paragraph 3, Financial Management of the municipality and its local boards; in paragraph 7, Services and things that the municipality is authorized to provide under subsection (1);

**AND WHEREAS** section 11 of the *Act* provides that a lower tier municipality may pass by-laws in respect of the matters touched upon herein, including accountability, transparency, and financial management of its local boards;

**AND WHEREAS** subsection 204(1) of the *Act* provides a local municipality may designate an area as an improvement area and may establish a board of management,

- (a) 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
- (b) To promote the area as a business or shopping area.

**AND WHEREAS** section 204(2.1) of the Act provides that a Board of Management of a Business Improvement Area is a local board of the Municipality for all purposes;

**AND WHEREAS** section 208 of the Act provides that a local municipality shall annually raise the amount required for the purposes of a board of management, including any interest payable by the municipality on money borrowed by it for the purposes of a board of management;

**AND WHEREAS** subsection 208(2)(a) of the Act provides that a municipality may establish a special charge for the amount to be raised by levy upon rateable property in the improvement area that is in a prescribed business property class

**NOW THEREFORE** THE COUNCIL OF THE CORPORATION OF THE CITY OF SARNIA ENACTS AS FOLLOWS:

## **1.0 Definitions**

1.1 For the purpose of this by-law,

**"Board of Management"** means the Downtown Business Improvement Association Board of Management;

**"Downtown Business Improvement Area"** means the area as described in section 2.1.

**"City"** means The Corporation of the City of Sarnia;

**"Council"** means the Council of the City;

**"Member"** means the 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.

## **2.0 Designation of the Business Improvement Area**

2.1 The area comprising those lands in the City of Sarnia indicated within the boundary shown on Schedule "A".

## **3.0 Board of Management Established**

- 3.1 A Board of Management is hereby established under the name The Downtown Business Improvement Association.
- 3.2 The Board of Management is a local board of the City for all purposes.
- 3.3 The objects of the Board of Management are:
- (a) 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,
  - (b) to promote the area as a business or shopping area.
- 3.4 The Board of Management is not authorized to:
- (a) acquire or hold an interest in real property; or
  - (b) to incur obligations or spend money except in accordance with section 6.
- 3.5 The head office for the Board of Management shall be located in the City of Sarnia.

#### **4.0 Board Composition**

- 4.1 The Board of Management shall consist of a minimum of four (4) and up to seven (7) directors who shall be appointed as follows:
- (a) three (3) directors shall be directly appointed by Council; and,
  - (b) the remaining directors shall be appointed by Council out of candidates recommended through a vote of the Members.
- 4.2 Council may elect not to appoint as director any candidates who were recommended under section 4.1(b) and may:
- (a) leave the positions vacant; or,
  - (b) direct that a meeting of the Members be held to recommend another candidate for Council's consideration.

- 4.3 Directors shall be appointed until their successors are appointed for a term that is equivalent to the duration of the term of office of the Council that appointed them.
- 4.4 A vacancy on the Board of Management may be declared through a majority vote of Council, death, mental or physical incapacity, or for any other reason, including vacancies caused by an increase in the authorized number of directors appointed pursuant to this By-Law or when a director is absent from the meeting(s) of the Board of Management for three (3) consecutive meetings without being authorized to do so by a resolution of Council.
- 4.5 Section 4.4 does not apply to vacate the position of a director who is absent for 20 consecutive weeks or less if the absence is a result of the director's pregnancy, the birth of the director's child or the adoption of a child by the director.
- 4.6 If the position of a director becomes vacant for any reason, Council may appoint a replacement director who will serve for the remainder of the vacant director's term.
- 4.7 Council may reappoint a current director to the Board of Management.
- 4.8 Council may, by a resolution passed by a majority of its members, remove a director at any time.
- 4.9 Directors shall serve without remuneration.

## **5.0 Board Procedures**

- 5.1 Council may pass by-laws governing the Board of Management and the affairs of the Board of Management and the Board of Management shall comply with such by-laws.
- 5.2 By-laws passed by the Board of Management must not conflict with City by-laws passed under section 5.1.
- 5.3 The Board of Management shall pass by-laws governing its proceedings, the calling and conduct of meetings, and the keeping of its minutes, records and decisions consistent with any requirements set out in a by-law of the City.

- 5.4 If the Board of Management does not pass by-laws governing its proceedings, then Council's Procedure By-law shall apply to govern the proceedings of the Board of Management with any necessary modifications.
- 5.5 A majority of the directors constitutes a quorum at any meeting of the Board of Management.
- 5.6 Despite any vacancy among the directors, a quorum of directors may exercise the powers of the Board of Management.
- 5.7 A director has only one vote.
- 5.8 The meetings of the Board of Management and the meetings of the Members shall be open to the public and only those persons that the Board of Management considers to have engaged in behaviour is deemed to be disruptive to the business at hand may be excluded from the meeting.
- 5.9 The Board of Management may only close a meeting, or a part of a meeting, to the public in accordance with section 239 of the *Act*.
- 5.10 (1) The Board of Management shall elect from its directors a chair and vice-chair for the term of the appointment.
- (2) The chair and vice-chair are eligible for re-election.
- 5.11 (1) The Board of Management shall hold at least ten (10) meetings during each fiscal year and the interval between one meeting and the next shall not exceed sixty (60) days.
- (2) A majority of directors may request a special meeting of the Board of Management by serving a copy of the request on the chair or vice-chair of the Board of Management.
- (3) The chair of the Board of Management may call a special meeting of the Board of Management at any time whether or not he or she has received a requisition under subsection (2).
- 5.12 (1) The Board of Management shall appoint a secretary who shall:

- (a) give notice of the meetings of the Board of Management;
  - (b) keep all minutes of meetings and proceedings of the Board of Management;
  - (c) record without note or comment all resolutions, decisions and other proceedings at a meeting of the Board of Management whether it is closed to the public or not; and
  - (d) perform such duties, in addition to those set out in clauses (a), (b) and (c) as the Board of Management may from time to time direct.
- 5.13 (1) The Board of Management may appoint such committees as it determines necessary to conduct the business of the Board of Management.
- (2) Each committee appointed shall be composed of not fewer than three (3) directors of the Board of Management and shall perform such duties, and undertake such responsibilities, as the Board of Management specifies and shall report only to the Board of Management.
- (3) Any director may be appointed by the Board of Management as the chair or vice-chair of a committee.
- 5.14 The *Municipal Conflict of Interest Act, R.S.O. 1990, c. M.50* applies to the directors and members.
- 5.15 Council may designate an appointed official of the City who shall have the right to attend meetings of the Board of Management and its committees and to participate in their deliberations but is not entitled to vote, be the chair or vice-chair or act as the presiding officer at a meeting.
- 5.16 The Board of Management shall comply with all applicable provisions of the *Act* including, but not limited to, those relating to business improvement areas, meetings, records, remuneration and expenses, the development of policies and procedures and financial administration.

## **6.0 Financial**

- 6.1 (1) The Board of Management shall prepare and submit to Council annually a budget of its estimated revenues and expenditures by the date and in such form and detail as required by the City's Treasurer.
- (2) The Board of Management shall hold a meeting of the Members at least annually for discussion of the budget prior to submitting the budget to Council for approval.
- (3) Council may approve the budget, in whole or in part, and may make such changes to it as Council considers appropriate, but Council may not add expenditures to it.
- 6.2 The Board of Management shall not:
- (a) spend any money unless it is included in the budget approved by Council or held in a reserve fund established by Council under section 417 of the *Act*;
  - (b) incur any indebtedness extending beyond the current year without the prior approval of Council; or
  - (c) borrow money.
- 6.3 The fiscal year of the Board of Management is the same as the fiscal year of the City.
- 6.4 The accounts and transactions of the Board of Management shall be audited annually by the auditor of the City.
- 6.5 The Board of Management shall prepare and submit to Council, not later than March 31<sup>st</sup> each year an annual report for the preceding year which shall include the audited financial statements.
- 6.6 The Board of Management shall provide the City Treasurer with such financial information as the City Treasurer may require from time to time.
- 6.7 (1) The Board of Management shall keep proper books of account and accounting records with respect to all financial and other transactions of the Board of Management, including, and without limiting the generality of the foregoing:

- (a) records of all sums of money received from any source whatsoever and disbursed in any manner whatsoever; and
  - (b) records of all matters with respect to which receipts and disbursements take place in consequence of the maintenance, operation and management of the Board of Management.
- (2) The Board of Management shall keep or cause to be kept and maintained all such books of accounts and accounting records as the City Treasurer may require.
- 6.8 The Board of Management shall make all of its books and records available at all times to such persons as the City Treasurer may require and shall provide certified true copies of such minutes, documents, books, records or any other writing as the City Treasurer may require.
- 6.9 (1) Council may require the Board of Management:
  - (a) to provide information, records, accounts, agendas, notices or any paper or writing; and
  - (b) to make a report on any matter, as Council determines, relating to the carrying out of the purposes and objects of the Board of Management.
- (2) The Board of Management shall:
  - (a) file with the City Treasurer all such information records, accounts, agendas, notices, paper and all other materials as the City Treasurer may require; and
  - (b) make such reports within the time specified by the City Treasurer and containing such content as the City Treasurer may require.
- 6.10 (1) The Board of Management shall from time to time provide the City Treasurer as requested with statements of:
  - (a) revenues and expenditures;



- (b) profit and loss; and
- (c) such financial matters or operating expenditures as the City Treasurer may require.

(2) The statements referred to in subsection (1) shall be in such form as the City may require.

6.11 (1) The City is entitled to receive any profits resulting from the operations of the Board of Management and is responsible for any losses incurred by the Board of Management.

(2) Council may determine what constitutes profits for the purpose of subsection (1).

6.12 (1) Upon dissolution of the Board of Management, the assets and liabilities of the Board of Management become the assets and liabilities of the City.

(2) If the liabilities assumed under subsection (1) exceed the assets assumed, the Council may recover the difference by imposing a charge on all rateable property in the former improvement area that is in a prescribed business property class.

## **7.0 Indemnification & Insurance**

7.1 (1) Subject to subsection (2), every director or officer of the Board of Management and his or her heirs, executors, and administrators may, from time to time, be indemnified and saved harmless by the Board of Management from and against,

- (a) any liability and all reasonable costs, charges and expenses that he or she sustains or incurs in respect of any action, suit or proceeding that is proposed or commenced against him or her for or in respect of anything done or permitted by him or her in respect of the execution of the duties of his or her office; and
- (b) all other reasonable costs, charges and expenses that he or she sustains or incurs in respect to the affairs of the Board of Management.

(2) No director or officer of the Board of Management shall be indemnified by the Board of Management in respect of any liability, costs, charges or expenses that he or she sustains or incurs in or about any action, suit or other proceeding as a result of which he or she is adjudged to be in breach of any duty or responsibility imposed upon him or her under any Act unless, in an action brought against him or her in his or her capacity as director or officer, he or she has achieved complete or substantial success as a defendant.

(3) The Board of Management may purchase and maintain insurance for the benefit of a director or officer thereof, except insurance against a liability, cost, charge or expense of the director or officer incurred as a result of his or her failure to exercise the powers and discharge the duties of his or her office honestly, in good faith and in the best interests of the Board of Management, exercising in connection therewith the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

7.2 The Board of Management shall obtain and maintain at all times sufficient insurance coverage in a form and for amounts acceptable to the City that is appropriate for a Board of Management of its size and business type, which coverage shall include the City as an additional insured with respect to any loss, claims or demands made relative to the activities of the Board of Management.

## **8.0 Meetings of Members**

8.1 The Board of Management shall hold at least one (1) meeting of the Members in each calendar year.

8.2 Notice for all Members' meetings shall be:

- (a) Sent by prepaid mail to each Member not less than 15 days prior to the meeting. Notice shall be mailed to the address last provided by the Member to the Board of Management or, where no address is provided, to the property address of the owner(s) indicated on the last municipal assessment roll; or
- (b) Delivered personally to each Member.

- 8.3 Notice of a meeting of the Members shall include an agenda.
- 8.4 Each Member has one vote regardless of the number of properties that the Member may own or lease.
- 8.5 A Member that is a corporation may nominate in writing one individual to vote on its behalf.
- 8.6 A majority of the Members constitutes a quorum at any meeting of the Members.
- 8.7 The Board of Management has the authority to call any special meeting of the Members it deems necessary.

## **9.0 General**

- 9.1 Council may by by-law dissolve the Board of Management and any assets of the Board of Management remaining after its debts have been paid shall vest in the City.
- 9.2 This by-law may be referred to as the "Downtown Business Improvement Association By-law".
- 9.3 This by-law comes into force and effect on the day it is passed.

By-Law Read a First, Second and Third time this 23 day of March, 2020


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Mike Bradley  
Mayor

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Dianne Gould-Brown  
City Clerk

# Schedule 'A' Downtown Business Improvement Area

 Improvement Area Boundary

