

BY-LAW NO. 2021 - XX

A by-law of the City of Ottawa to provide standardized governance for Boards of Management for Business Improvement Areas (BIAs).

WHEREAS Subsection 204(1) of the *Municipal Act, S.O. 2001, c25*, as amended, provides that the 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 the City of Ottawa has established various BIAs by way of by-laws designating the improvement area and establishing a Board of Management for the improvement area; and

WHEREAS on December 9, 2020, City Council directed staff to develop a standardized BIA Governance By-law;

THEREFORE the Council of the City of Ottawa enacts as follows:

APPLICATION

1. This by-law is made pursuant to Subsection 216(1) of the *Municipal Act, 2001* and applies to the Business Improvement Area (BIA) Boards of Management, hereinafter called a "Board," identified in [Schedule A](#).
2. Any new Board formation or existing Area expansion shall take effect on January 1 of the following year once approved by Council.
3. Pursuant to Subsection 204(2.1) of the *Municipal Act, 2001*, each Board is a local board of the City of Ottawa for all purposes.

BOARD COMPOSITION REQUIREMENTS

4. Each Board shall consist of a minimum of five (5) directors and a maximum of fifteen (15) directors, appointed by City Council, as follows:
 - (a) One (1) or more of the directors shall be a Member of Council; and
 - (b) The remaining directors shall be individuals assessed for business assessment, or tenants of such property, in respect of land in the Area of nominees of such individuals or of corporations so assessed.
5. Ward Councillors appointed directly by City Council to a Board pursuant to Subsection 204(3)(a) of the *Municipal Act, 2001* shall be *ex officio*, non-voting directors of the Board.
6. The General Manager, Planning, Infrastructure and Economic Development, is delegated the authority to appoint to a Board those directors who have been selected by a vote of the membership of the improvement area in accordance with

Subsection 204(3)(b) of the *Municipal Act, 2001*.

7. The Board's Term of Office runs concurrently with that of the Council appointing it, being four (4) years, with directors to hold office until their successors are appointed.

8. Where a vacancy on the Board occurs, the Board may nominate a replacement who shall hold office for the remainder of the term for which the replacement's predecessor was appointed, subject to City Council approval. If there is no quorum of the Board, the remaining directors shall call a General Meeting of the BIA to nominate one or more replacements.

9. The Board may recommend to City Council the removal of a director for:

- (a) absence from three (3) consecutive meetings of the Board, or four (4) meetings in a 12-month period;
- (b) failure to perform any duty or tasks as set out in this by-law and any governing policies;
- (c) a breach of the provisions of this by-law regarding conflict of interest;
- (d) a breach of the provisions of this by-law regarding confidentiality and privacy of information; and
- (e) a breach of the provisions of this by-law regarding the Standard of Care referred to in Section 37 and/or behaviour deemed harmful to the welfare or best interests of the BIA are extenuating circumstances.

10. To recommend to Council the removal of a director from office for any of the reasons set out in Section 9, a resolution shall be made and approved by two thirds of the directors present at a duly called meeting of the Board to which notice specifying the intent to pass such resolution has been given.

11. No Board member shall receive remuneration in payment for services carried out in that capacity. Board members may be reimbursed for all reasonable, out-of-the-ordinary expenses directly relating to their functions as Board members. Reimbursement for any such expenses must be approved in advance by the Board of Management.

ROLES AND RESPONSIBILITIES OF THE BOARD

12. The Board shall be responsible for:

- (a) making decisions on policy affecting the BIA including those policies required by Subsection 270(2) of the *Municipal Act, 2001*;
- (b) managing the affairs of the BIA;
- (c) hiring of Executive Director and staff, where required, of the BIA;
- (d) appointing such committees as may be required to accomplish the work of the BIA; and
- (e) fulfilling any requirements under this by-law and any other applicable City of Ottawa by-laws and legislative requirements.

13. The Board may, on behalf of the BIA, exercise all the powers that the BIA may legally exercise in fulfillment of its objects, unless the Board is restricted by law or

by the members from exercising those powers. These powers include, but are not limited to, the power:

- (a) to enter into contracts or agreements;
- (b) to execute documents;
- (c) to direct the manner in which any other person or persons may enter into contracts or agreements on behalf of the BIA;
- (d) to purchase, lease or otherwise acquire, sell, exchange or otherwise dispose of real or personal property, securities or any rights or interests for such consideration and upon such terms and conditions as the Board may consider advisable; and
- (e) to purchase insurance to protect the property, rights and interests of the BIA and to indemnify the BIA, its members, the Board, and officers from any claims, damages, losses or costs arising from or related to the affairs of the BIA.

OFFICERS OF THE BOARD

14. Each Board shall:

- (a) Elect from among its directors a Chair and Vice-Chair, who shall serve their term or until they are removed from their officer role by resolution of the Board; and
- (b) Appoint a Treasurer and a Secretary who shall serve their term or until they are removed from their officer role by resolution of the Board.

15. Where required, officers shall be elected, or appointed, as the case may be, by the Board at the first meeting following the Annual General Meeting.

16. The Chair shall:

- (a) chair all meetings of the BIA and of the Board, when present in person and able;
- (b) have general supervision of the affairs of the BIA;
- (c) sign all by-laws and execute any documents with the Secretary;
- (d) perform any other duties that the Board may assign from time to time;
- (e) sit, *ex officio*, on all committees; and
- (f) ensure that all past records of the Board are transferred to the succeeding Treasurer when there is a change of Treasurer.

17. 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 assign from time to time.

18. The Treasurer shall:

- (a) cause to be kept and maintained the financial records and books of the BIA;
- (b) assist the auditor in the preparation of the financial statements of the BIA;
- (c) perform any other duties that the Board may assign from time to time;

- (d) maintain or cause to be maintained an inventory of all physical assets owned or leased by the BIA; and
- (e) cause to be prepared and distributed the proposed annual budget in accordance with the requirements of the City of Ottawa.

19. The Secretary shall:

- (a) keep or cause to be kept records and books of the BIA, including the registry of officers and directors, the registry of members, the minutes of the Annual General Meeting, General Meetings and meetings of the Board or any committees thereof, any committee reports, the by-laws and resolutions;
- (b) certify copies of any record, registry, by-law, resolution or minute;
- (c) send or cause to be sent any notices required for the Annual General Meeting, General Meetings and meetings of the Board of Management; and
- (d) perform any other duties that the Board may assign from time to time.

COMMITTEES OF THE BOARD

20. Each Board may establish Standing Committees and ad hoc committees as may be deemed necessary to carry out the objectives of the BIA or to advise the Board. The Board shall prescribe the duties of all such committees.

21. All committees, Standing and ad hoc, are required to conduct business in accordance with the BIA Governance By-law and Procedure By-law.

22. All members of committees, as determined by the Board from time to time, are subject to the same rights and responsibilities in their capacity as members of committees, as those required by the Board.

23. Each Standing and ad hoc committee is considered a committee of the Board of Management and as such, is responsible to the Board. Each committee shall make recommendations to the Board for its approval, and shall report to the Board, through each committee Chair, as determined by the Board, from time to time.

24. Standing committees of the Board may include, but not be necessarily limited to:

- (a) Governance and Operations Committee;
- (b) Economic Development Committee;
- (c) Communications Committee; and
- (d) Safety and Security Committee.

25. Each Standing and ad hoc committee shall be chaired by a Board director, as elected by the Board. Committee members shall be Board directors, members and non-members from within the BIA.

26. Unless otherwise states in the by-laws, the Terms of Reference for each committee shall be determined by the Board, from time to time.

EXECUTIVE DIRECTOR

27. The Board of Management shall hire or contract an Executive Director, where required, and prescribe the duties of this position, which shall include as follows:

- (a) The Board shall delegate to the Executive Director the responsibility for the general management and the execution of the policies and programs of the BIA; and
- (b) The Executive Director shall:
 - (i) be the Chief Administrative Officer;
 - (ii) be the senior staff position, responsible for the hiring and termination of all other staff;
 - (iii) attend all meetings of the Board and be entitled to speak on all matters, without the right to vote;
 - (iv) sit *ex officio*, on all committees; and
 - (v) may perform duties as set out for the Secretary in Section 19.
- (c) The Executive Director may be appointed by the Board to the role of Secretary as described in Section 19, with all of the duties of the Secretary as set out in this by-law.

28. The Board shall establish the remuneration for the Executive Director through a resolution of the Board.

29. The Board shall annually, and jointly with the Executive Director, carry out a formal and written evaluation of the position of the Executive Director, within a mutually determined and agreed upon approach, process, and time frame. The Chair of the Board shall represent the Board in this matter.

BY-LAWS

30. By-laws of the BIA respecting the Board and its designated area of management may be enacted, amended or repealed by Council in accordance with any statutory requirements in the *Municipal Act*.

ACCOUNTABILITY AND TRANSPARENCY

31. The Code of Conduct for Members of Local Boards (By-law No. 2018-399, as amended) applies to Board directors.

32. Members of Council are bound by the Code of Conduct for Members of Council (By-law No. 2018-400, as amended).

33. The statutory authorities of the City of Ottawa Auditor General and Integrity Commissioner apply to each Board and its directors.

34. The external Auditor for the Corporation of the City of Ottawa shall be the Auditor for each BIA and all books, documents, transactions, minutes and accounts of each BIA shall at all times be open to the external Auditor's inspection.

CONFIDENTIALITY AND PRIVACY OF INFORMATION

35. Each BIA, through its Board, shall abide by and act in accordance with the laws, policies, and practices governing all matters related to confidentiality, privacy, and access to information. In this regard, every director shall:

- (a) respect the confidentiality of all matters discussed at Board meetings that fall within section 239(2) of the *Municipal Act* and any related information and

- documentation to which one may have access to in the capacity as director of the BIA;
- (b) respect and act in accordance with the BIA policies governing the privacy and access to information to which one may acquire in the capacity of director of the BIA; and
 - (c) respect and act in accordance with applicable provisions of the Code of Conduct for Members of Council or Code of Conduct for Members [directors] of Local Boards, as the case may be, with respect to confidentiality.

CONFLICT OF INTEREST

36. Each director shall disclose any direct or indirect pecuniary interest in any matter considered by the Board in the manner required by the *Municipal Conflict of Interest Act* (MCIA) and shall undertake any action required under the MCIA with respect to same.

STANDARD OF CARE

37. Each director and officer of the Board shall:
- (a) exercise the powers and discharge the duties of the office honestly, in good faith, and in the best interests of the BIA; and
 - (b) exercise the degree of care, diligence, and skill that a reasonable and prudent person would exercise in comparable circumstances.

MEETINGS

38. Pursuant to Subsections 238(2) and (2.1) of the *Municipal Act, 2001*, each Board shall pass a Procedure By-law for governing the calling, place and proceedings of meetings, and providing for public notice of meetings, which includes at minimum the provisions set out in Schedule B.

39. The Procedure By-law adopted by each Board pursuant to Section 38 shall be provided by the Board to Economic Development Services staff upon adoption and following any amendments approved by the Board.

40. Each Board shall keep proper minutes and records of every meeting of the Board and shall forward true copies of such minutes and records to all directors of the Board and to Finance Services staff, to be stored in a central repository, as soon as possible upon completion.

41. Annual General Meetings of each BIA shall be held in the fourth quarter of the current year or in the first quarter of the following year.

ANNUAL REPORT REQUIREMENTS

42. On or before March 31 in each year, each Board shall submit its annual report for the preceding year to Economic Development Services staff.

43. The annual report shall be in the form of a written e-document and include the BIA's mandate, strategic directions and annual highlights as well as the audited

financial statements.

FINANCIAL REQUIREMENTS

44. The BIA annual budget shall be approved by each Board and provided to Finance Services staff in the required format no later than the third Friday in January.
45. Finance Services staff shall provide monthly financial statements to each Board and manage its annual audit.
46. The BIA shall not borrow money and, without the prior approval of City Council, shall not incur indebtedness extending beyond the current year.
47. Each Board shall accept the BIA's annual financial audits within thirty (30) days of receiving the audit.
48. Upon approval of the annual budget by the Board and City Council, the Executive Director may expend funds as identified in the budget, subject to the BIA procurement policy.
49. The fiscal year of the BIA shall terminate on December 31 in each year.

SIGNING AUTHORITY

50. Three (3) persons shall have signing authority for the BIA: the Chair, the Treasurer, and the Executive Director.
51. Two (2) signatures of the persons identified in Section 50 shall be required on all cheques issued by the BIA.

INSURANCE REQUIREMENTS

52. Each Board shall be required to maintain commercial general liability insurance with a minimum limit of at least \$5,000,000 per occurrence.

HEAD OFFICE

53. The head office of the BIA shall be located within the designated boundaries of the BIA at such a place that the Board may determine from time to time.

BIA MEMBERSHIP ELIGIBILITY

54. The following shall be eligible for membership in the BIA:
 - (a) Property Owners: Members of the 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
 - (b) Tenants: Tenants of such rateable property who by the terms of their lease are responsible for the part of the taxes that the tenant is required to pay under the tenant's lease.

55. Every member is entitled:
- (a) to attend any Annual, General or Special Meeting of the members of the BIA;
 - (b) to vote on each question arising at any Annual, General or Special Meeting of the members of the BIA;
 - (c) to be nominated as a Director of the BIA; and
 - (d) to participate in the activities of any sub-committee or related steering committee with the support and direction of the Board.
56. If a member is a corporation or a partnership it shall designate, in writing to the Board, a nominee to attend an Annual, General Meeting or Special Meeting of the BIA on its behalf and where a member operates one or more corporations or partnerships or two or more tenanted locations it shall appoint a different nominee for each such entity or location.

POLICY REQUIREMENTS

57. Pursuant to Subsection 270(2) of the *Municipal Act, 2001*, each Board shall adopt and maintain policies with respect to the following matters that shall include the following provisions, at minimum:

- (a) *Sale and other disposition of land*

The sale and other disposition of land does not apply to the BIA.

- (b) *Hiring of employees*

The BIA believes in equal opportunity in employment practices without discrimination on the grounds of race, religious beliefs, color, gender, sexual orientation, physical disability, mental disability, ancestry, place of origin, age, marital status, source of income or family status.

- (c) *Procurement of goods and services*

The Executive Director has approval to make expenditures, upon Board approval, as follows:

Amount	Process
\$0 - \$2,499	At the discretion of the Executive Committee or Executive Director
\$2,500 - \$4,999	Executive Committee approval required
\$5,000+ or Contracts	<ol style="list-style-type: none"> 1. Minimum of two quotes required or rationale/justification for sole sourcing; 2. Selection of local business where reasonable and effective; and 3. A vote by the Board of Management

58. Policies adopted by each Board pursuant to Section 57 shall be provided by the Board to Economic Development Services staff upon adoption and following any amendments approved by the Board.
59. Pursuant to Section 88.18 of the *Municipal Elections Act, 1996*, before May 1 in the year of a regular election, each Board shall establish rules and procedures with respect to the use Board resources during the election campaign period, which shall, at minimum, include the provisions set out in Schedule C.
60. Rules and procedures established by each Board pursuant to Section 59 shall be provided by the Board to Economic Development Services staff upon adoption and following any amendments approved by the Board.
61. The Council-BIA Relations Policy in Schedule D applies to all Members of Council and directors and employees of each BIA.

RECORDS

62. All records, documents and correspondence pertaining to the activity of the Board are considered to be records of the BIA Board Corporation and are subject to the provisions of the *Municipal Freedom of Information and Protection of Privacy Act*.
63. The records of the Board shall be retained and preserved in accordance with the provisions of the City's *Records Retention and Disposition By-law*.

REVIEW MECHANISM AND DISSOLUTION

64. Should a majority vote of the BIA Board be made to dissolve the BIA, a request shall be made to the City of Ottawa to repeal the by-law establishing the BIA.
65. Upon the repeal of a by-law under the *Municipal Act, 2001*, the Board of Management is dissolved, and the assets and liabilities of the Board become the assets and liabilities of the municipality.
66. If the liabilities assumed under Section 65 exceed the assets assumed, the City of Ottawa 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.

CONFLICT

67. In the event of a conflict between a by-law establishing a BIA Board of Management and this by-law, this by-law prevails to the extent of the conflict, but in all other respects the by-law establishing the BIA Board of Management remains in effect.

CITY CLERK

MAYOR

BY-LAW NO. 2021 – XX

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A by-law of the City of Ottawa to provide standardized governance for Boards of Management for Business Improvement Areas.

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Enacted by City Council at its meeting of XXX, 2021.

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LEGAL SERVICES

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COUNCIL AUTHORITY:
City Council – XXX