New Business Improvement Zone By-law
File FL-7 (Vol 5.)

17. The Executive Policy Committee has been advised that The City of Winnipeg Act contained provisions setting out procedures for the creation of Business Improvement Zones by the City, and, the process for approving Business Improvement Zone budgets.

The new City of Winnipeg Charter has eliminated these provisions and assigns to Council the task of creating a by-law that will govern Business Improvement Zones.

In designing this new general by-law, the Business Improvement Zone Liaison Officer for the City provided a summary of the proposed changes to every Business Improvement Zone in the City and invited comments and suggestions. A meeting was held to hear from the Business Improvement Zones and written comments were welcomed. The By-law No. 8111/2002 as outlined on Attachment "A", was redrafted to incorporate these suggestions.

Although the By-law retains the core of the current Business Improvement Zone structure, it also contains several provisions that differ from the provisions in The City of Winnipeg Act. Some key changes are as follows:

Format

- The By-law combines the common provisions that regulate all Business Improvement Zones into a single, general by-law. Only items unique to a particular Business Improvement Zone (such as the description of its area and the number of Board members) would be contained in an individual Business Improvement Zone by-law.

Creation, termination and boundary alteration

- Currently, a Business Improvement Zone can be formed or a new area added to a Business Improvement Zone if ten (10%) per cent of businesses in an area petition for this change. The new By-law raises this to one-third (1/3) of businesses representing one-third (1/3) of the total business assessment in the area, thereby ensuring that a significant level of support is achieved before an area becomes part of a Business Improvement Zone. As is currently the case, written objections filed by one-third (1/3) of the businesses representing one-third (1/3) of the total business assessment in the area can defeat a petition.

- For the first time, rules are established for withdrawal from a Business Improvement Zone. A petition from at least fifty (50%) per cent of the businesses representing at least fifty (50%) per cent of the business assessment in the area to be withdrawn is required and one-third (1/3) of businesses in the area to be withdrawn can veto the withdrawal by objecting in writing.

- Council is given the final say about a request to alter the boundaries of a Business Improvement Zone and may refuse to do so if it is not beneficial to the businesses within the new boundaries.

- For the first time, rules about termination are set out. Certain events trigger Council consideration of termination (for example, a request by fifty (50%) per cent of Business Improvement Zone members, failure to produce a budget for two consecutive years) but Council has the final say about termination.

Budget approval

- Rather than going to a Community Committee, then Executive Policy Committee and then Council for approval, as is the case currently, a budget approved at a Business Improvement Zone's Annual General Meeting would be sent directly to Council for approval or rejection.

- As is the case currently, Council would approve the vast majority of budgets without controversy. However, under the new system, if one-third (1/3) of Business Improvement Zone members representing one-third (1/3) of the total business assessment in the zone send written objections to the budget to Council, the budget is automatically rejected and sent back to the Business Improvement Zone. The Business Improvement Zone could hold another General Meeting to get a second budget passed and then submit that budget to Council.

- When considering a subsequent budget adopted by a Business Improvement Zone, Council may approve the budget regardless of the fact that one-third (1/3) of member businesses have objected to it.

Board empowerment

- Business Improvement Zones would be allowed to enter into long-term leases or debt obligations so long as this is explicitly noted in their budgets.

- Additional flexibility would be given to Business Improvement Zone boards to attract business and new businesses to their zone.

Financial issues

- At the request of the Board, a Business Improvement Zone could receive up to fifty (50%) per cent of its total budget from the City prior to June 30. (The current maximum is five (5%.) per cent. Interest at the City's rate of borrowing plus one (1%) per cent would be charged on any advance payment.

- A Business Improvement Zone could choose its own fiscal year, subject to Council approval.

Report of the Executive Policy Committee dated September 18, 2002

Annual General Meeting, board meetings and procedures

- Some minor changes are proposed to procedures for electing new board members and for approving a budget at an Annual General Meeting, or to board meetings and procedures. In general, the changes will give Business Improvement Zone boards greater flexibility and authority to manage their own affairs.

For the information of Council, a Financial Impact Statement prepared and dated September 12, 2002, indicates that based on a review of procedural changes that the new by-law would generate, it has been determined there are no apparent financial impacts to the City related to such changes.

The Executive Policy Committee recommends:

I. That Council enact By-law No. 8111/2002 to establish general procedures relating to all Business Improvement Zones, as well as the necessary corresponding by-laws for each existing Business Improvement Zone to achieve consistency with the general provisions.

II. That Clause 3(1) (a) of By-law No. 8111/2002 be amended by deleting the words “at least one-third” wherever they appear and replacing them with the words “more than fifty per cent”.

II. That the Proper Officers of the City be authorized to do all things necessary to implement the foregoing.

Attachment "A" referred to in Clause 17 of the Report of the Executive Policy Committee dated September 18, 2002

REFERENCE: FILE NO.

THE CITY OF WINNIPEG

BY-LAW NO. 8111/2002

A By-law of THE CITY OF WINNIPEG to establish policies and procedures for Business Improvement Zones within the City of Winnipeg.

THE CITY OF WINNIPEG, in Council assembled, enacts as follows:

Short Title

1. This By-law shall be referred to as the "Business Improvement Zone Procedures By-law."

Definitions

2. In this By-law

"Board" means the governing body of a zone;

"business" means a business that is listed on the latest revised taxable Business Assessment Roll;

"City" means The City of Winnipeg.

"Clerk" means the City Clerk.

"Council" means the Council of The City of Winnipeg.

"General Meeting" means a meeting called by the board that is open to all member businesses of a zone and includes an Annual General Meeting.

"member business" means a business that is listed on the latest revised taxable Business Assessment Roll and is located within the boundaries of a zone;

"proprietor" of a business means the person in whose name the premises of a business are assessed;

"zone" means a business improvement zone established or continued by by-law.

Establishment of Business Improvement Zones

3(1) Council may by by-law establish a zone where

(a) a petition requesting the establishment of a zone signed by at least one-third of the proprietors in the proposed area of the zone representing at least one-third of the total taxable business assessment in the proposed area of the zone has been filed with the Clerk;

(b) subject to subsection (2), notice has been sent by ordinary mail by the Clerk to all proprietors of businesses in the proposed area of the zone, notifying them that written objections to the establishment of the zone may be filed with the Clerk and advising them that, unless sufficient objections to the establishment of the zone are made by a date specified within the notice, the zone may be established; and

(c) no more than one-third of the proprietors of businesses in the proposed area of the zone representing at least one-third of the total taxable business assessment of the proposed area of the zone have objected in writing to the establishment of a zone prior to the date set by the Clerk.

3(2) The date specified in the notice for the filing of objections to the establishment of a zone may be determined by the Clerk and shall be at least 30 days after the notice referred to in clause (b) of subsection (1) has been mailed to all proprietors of businesses within the proposed zone.

Boundaries of zones

4(1) Subject to subsection (2), the boundaries of a zone established under section 3 shall be those set out in a petition referred to in section 3.

4(2) Council may by by-law alter the boundaries of a zone

(a) where an area is proposed to be added to an existing zone, if the procedures and requirements set out in section 3 have been met with respect to the businesses located in the additional area; or

(b) where an area is proposed to be withdrawn from an existing zone, if

(i) a petition requesting the withdrawal of the area from a zone signed by at least 50% of the proprietors of businesses in the area proposed to be withdrawn from the zone, representing at least 50% of the total taxable business assessment in that area has been filed with the Clerk;

(ii) notice has been sent by ordinary mail by the Clerk to all proprietors in the area proposed to be withdrawn from the zone, notifying them that written objections to the withdrawal of the area from the zone may be filed with the Clerk within 30 days and advising them that, unless sufficient objections to the withdrawal of the area from the zone are made by a date specified within the notice, Council may by by-law allow the area of the zone to be withdrawn; and

(iii) no more than one-third of the proprietors of businesses in the area proposed to be withdrawn from the zone representing at least one-third of the total taxable business assessment of the proposed area of the zone have objected in writing to the withdrawal of the area of the zone prior to the date set by the Clerk.

and if, in the opinion of Council, the alteration would have a beneficial effect on the businesses within the area described by the new boundaries.

Objects of a board

5(1) A zone shall be governed and administered by a board established or continued by by-law.

5(2) The objects of a board are

(a) to beautify, improve and maintain real property of the City in the zone subject to the authorization by Council, and

(b) to promote improvements and economic development in the zone.

Authority of a board

6. A board is hereby given authority to:

(a) conduct or commission any studies and prepare any designs which may be necessary to attain its objects;

(b) develop or assist in the establishment of parking or other facilities that will promote economic development in the zone;

(c) organize and support events designed to attract business to the zone and to encourage the development of new businesses in the zone;

(d) establish the internal management procedures of the board;

(e) adopt rules and procedures that are not inconsistent with this By-law to govern the conduct of meetings of the board and committees appointed by the board; and

(f) take other actions to carry out its object

Membership of a board

7(1) This section does not apply to board members appointed by Council.

7(2) A member of a board must be a proprietor, director or an employee of a member business.

7(3) An individual ceases to be a member of the board who:

(a) has served three consecutive terms on the board;

(b) resigns from the board by sending written notice to the Chair of the board to that effect;

(c) fails to attend three consecutive regular meetings of the board unless his or her absence is authorized by resolution of the board;

(d) is hired as a full-time employee by the City;

(e) ceases to be a proprietor, director or an employee of a business in the zone;

(f) is removed from the board by resolution of Council.

7(4) Where an individual ceases to be a member of a board before his or her term has expired, the board may appoint an individual who is eligible to be a member of the board to serve on the board until the next Annual General Meeting at which time an eligible individual shall be elected to a new term or to serve out the remainder of the term, as the case may be.

7(5) Subject to subsection (7), the term of a board member is two years and runs with the fiscal year of the zone.

7(6) No more than a bare majority of terms of board members may end in any year so that approximately half of the terms terminate annually.

7(7) In order to ensure that approximately half of the terms of board members terminate annually, a by-law creating a zone may specify that, in the first year of a Board, a number of terms shall end after one year and the others shall end after two years.

No remuneration

8. The zone must not pay to board members and board members must not receive any remuneration for carrying out their duties as board members, but the board may authorize reimbursement to board members for reasonable expenses incurred on behalf of the zone.

Officers of the board

9. A board shall elect a Chair or President, Vice-Chair or Vice-President, Secretary, Treasurer and any other officers it wishes from among the members of a board.

Board meetings

10(1) A board shall hold at least eight regular board meetings each calendar year.

10(2) The first regular meeting of a new board shall be held at a time and place designated by the Chair of the preceding board and within one month following the beginning of a fiscal year.

10(3) Special board meetings may be convened by any member of the board if, at least twenty-four hours prior to the meeting, all members of the board have been notified of the date, time and place of the meeting and the matters on the agenda for the meeting, or unless all members attend the board meeting and unanimously consent to holding the meeting.

10(4) At regular meetings, the members of the board may consider or transact any business that is within the authority of the board. At a special meeting, only those matters specifically identified by the convenor as being on the agenda for the meeting may be discussed and voted on.

10(5) The chairman and all members present may vote on every question before the board, and in the event of a tie vote, the question is deemed to have been decided in the negative.

10(6) A simple majority of the members of the board constitutes a quorum.

10(7) The Secretary of the board is responsible for ensuring that minutes are kept of all meetings of the board and committees appointed by the board.

10(8) A board may by resolution adopt a policy that provides that, where a member of the board cannot attend a meeting in person for reasons set out in the resolution, the member may participate in the meeting by electronic or other communication devices that enable him or her to hear and speak to the members who are present and that the member shall be considered to be in attendance at the meeting for the purposes of establishing a quorum, for voting and for other purposes.

Board Committees

11(1) The board may establish standing committees or *ad hoc* committees and may delegate to them authority to deal with any matter within the authority of the board.

11(2) A committee of a board may consist of members of the board as well as other individuals appointed by the board.

11(3) Committees may deal only with the matters or questions referred to them by the board and may only take actions authorized by the board.

F. General Meetings

12. The board may call General Meetings of the zone to discuss issues and make decisions on any matter within its authority.

G. Notice of General Meetings

13(1) At least 15 days prior to a General Meeting, the board must provide notice to every member business of the date, time, location and agenda of the General Meeting.

13(2) Notice of the General Meeting may be hand delivered or sent by ordinary mail to the street address of the member businesses.

H.

I. Conduct of General Meetings

14(1) A board may appoint a Chair and a Recording Secretary for a General Meeting, who need not be a proprietor, director or employee of a member business.

14(2) The Chair of a General Meeting may take such actions as are necessary to ensure the orderly conduct of the meeting and to ensure that the agenda of the meeting is followed and the purposes of the meeting are achieved.

Annual General Meeting

15(1) Within the six month period prior to the beginning of its fiscal year the board must conduct a General Meeting that it has designated as the Annual General Meeting.

15(2) The purposes of an Annual General Meeting are

(a) to allow member businesses to consider, ask questions about and comment on the program, zone levy and budget proposed by the board for the next fiscal year;

(b) to elect individuals to fill vacancies on the board; and

(c) to obtain approval from member businesses for a budget for the next fiscal year.

Election of board members

16(1) Elections to the board shall take place at the Annual General Meeting.

16(2) An individual may stand as a candidate for election to the board if he or she

(a) will be eligible to serve as a board member at the onset of his or her term;

(b) has been nominated in writing by proprietors, directors or employees from at least ten different member businesses; and

(c) has declared in writing that he or she will serve on the board if elected.

16(3) Where the number of candidates is equal to or fewer than the number of vacancies on the board, they are deemed to have been elected by acclamation

16(4) Where the number of candidates exceeds the number of vacancies on the board, the Chair must announce the number of vacancies on the board and ensure that a ballot paper containing the names of all nominees is distributed to each representative of a member business present.

16(5) Each member business is entitled to vote for candidates for election to the board at the Annual General Meeting but only one representative of a member business may vote in any round of voting.

16(6) Anyone who is eligible to vote may mark the ballot in favour of as many candidates as there are vacancies on the board. Ballots marked with more votes than the number of vacancies are invalid and must not be counted.

16(7) The Chair must appoint two individuals to collect and tabulate the ballot papers and their certification as to the tabulation of the ballots is final and not subject to appeal.

16(8) The Chair must declare the candidates with the largest number of votes to have been elected to fill the vacancies on the board.

16(9) If two or more candidates for the last vacancy on the board receive the same number of votes, an additional round of voting shall be held between the candidates who received the same number of votes on the first ballot.

16(10) Where all the vacancies on the board are not filled at an Annual General Meeting, the board may appoint proprietors, directors or employees of member businesses to fill the vacancies on the board.

16(11) A separate election at the Annual General Meeting must be held to elect a board member to fill the unexpired term of an individual who has ceased to be a board member.

Approval of budget

17(1) The board of a zone must recommend a proposed program, budget for the next fiscal year and estimated zone levy for consideration and approval by member businesses at the Annual General Meeting.

17(2) The budget must explicitly identify any indebtedness or any other obligation that extends beyond the current fiscal year and must include a note stating that approval of the indebtedness or obligation at the meeting will result in the imposition of a business improvement zone tax to the extent of the indebtedness or obligation pursuant to subsection 18(7).

17(3) A budget being recommended by the board for approval must be made available upon request to a member business at least 7 days prior to the General Meeting at which it will be considered.

17(4) Each member business is entitled to vote to approve or not approve a budget but only one representative of a member business may vote in any round of voting

17(5) Where a budget is considered at a General Meeting and the Chair concludes that no budget will receive majority support at the meeting, the Chair may adjourn the meeting temporarily but must announce a time and location at which the meeting will continue.
17(6) If no budget is approved at an Annual General Meeting, another General Meeting may be called by the board to consider the same or a new budget.

17(7) A budget is approved by the zone when it receives support from a majority of the member businesses represented at the meeting and must be submitted by the Board to the City Clerk for approval by Council.

Approval by Council of zone budgets
18(1) After receiving the budget approved at an general meeting of a zone and at least fifteen days prior to the Council meeting at which a by-law approving a zone's budget is considered, the Clerk must publish in a daily newspaper having a general circulation in the City a notice providing the following information:

(a) the location where the proposed budget of a zone may be viewed;

(b) the fact that proprietors of businesses in the zone are entitled to file with the Clerk written objections to the proposed budget and that, unless sufficient objections to the budget are filed by a date specified within the notice, the proposed budget may be approved by Council;

(c) an address at which written objections to the proposed budget may be filed with the Clerk.

18(2) The date referred to in subsection (1) by which objections to the proposed budget may be filed shall be set by the Clerk and must be

(a) prior to the meeting of Council at which the by-law is being considered; and

(b) at least ten days after the date the notice referred to in subsection (1) was published.

18(3) Council may by by-law approve the proposed budget of a zone where

(a) the proposed budget has been approved by the members businesses of the zone in accordance with the procedures set out in this by-law; and

(b) no more than one-third of the member businesses of the zone representing at least one-third of the total business assessment of the zone have objected in writing to the proposed budget prior to the date set by the City Clerk.

18(4) Where the City Clerk determines that more than one-third of the proprietors of member businesses representing at least one-third of the total business assessment of the zone have objected in writing to the proposed budget prior to the date set for filing objections, the City Clerk shall so advise

Council and shall advise the Board of the zone in writing that the proposed budget has not been approved by Council.

18(5) Where a proposed budget for a zone is not approved by Council, the Board may call another General Meeting to approve a subsequent budget and, where the Board submits a subsequent budget to Council, subsections (1), (2) and (3) of this section apply.

18(6) Notwithstanding subsection (3), where a subsequent budget has been approved by the zone, Council may consider and approve the subsequent budget despite the fact that more than one-third of the proprietors of businesses in the zone representing at least one-third of the total business assessment of the zone have objected in writing to the subsequent budget.

18(7) Where the budget submitted by a zone includes indebtedness or any other obligation that extends beyond the current fiscal year, it is deemed to represent approval by the membership of a zone of a minimum budget for the zone for the years during which the indebtedness or obligation is outstanding and a business improvement zone tax may be imposed to the extent of that indebtedness or obligation in succeeding years notwithstanding that the zone may not have submitted a budget to Council or Council has not approved a budget for those years.

Fiscal year

19. The fiscal year of a zone runs from January 1 to December 31 unless a by-law creating or continuing a zone sets out a different fiscal year for that zone.

Financial responsibilities of board

20(1) A board may not expend more in any fiscal year than the amount in the budget approved by Council.

20(2) Notwithstanding subsection (1), a board may draw on surpluses from previous years despite the fact that this was not projected in the budget approved by Council.

20(3) The board may not incur any indebtedness or any other obligation that extends beyond the current fiscal year unless the indebtedness was approved in the budget of the zone for that fiscal year.

20(4) The board may carry over any unexpended funds to its next fiscal year.

Accountability and transparency

21(1) Within 90 days following the Annual General Meeting, the Chair of the board must file with the Clerk and make available to all member businesses

(a) a report indicating whether or not the Annual General Meeting was held in compliance with the procedures set out in this By-law;

(b) the names of the individuals elected to fill vacancies on the board;

(c) the budget approved at the meeting, if any;
(d) a complete set of audited financial statements for the previous fiscal year including a balance sheet and a revenue and expenditure statement;

(e) a description of the activities of the board during the previous fiscal year.

21(2) All books, documents, records of transactions, minutes and accounts of the board may be inspected at any reasonable time by the Auditor of the City of Winnipeg or by an auditor appointed for this purpose by Council.

Payment to zone

22(1) Where Council approves a budget submitted by a zone and authorizes payment of an amount to the Board of the zone, such payment may be made on the following schedule:

(a) 75% of the approved budget on June 30;

(b) 15% of the approved budget on August 31;

(c) 10% of the approved budget on October 31.

22(2) Where Council approves the budget of a zone and the date established by Council at which the zone levy is due and payable is not the same date as that upon which business taxes become due and payable, then Council may direct payment to the Board, or on behalf of the Board, of an amount not exceeding the amount approved, such payment to be made in accordance with the following schedule:

(a) 75% of the approved budget on the last day of the month following the date when the zone levy is due and payable;

(b) 15% of the approved budget on the last day of the second month following the date when the zone levy is due and payable;

(c) 10% of the approved budget on the last day of the third month following the date when the zone levy is due and payable.

22(3) Notwithstanding the provisions of subsections (1) and (2), at the request of a Board, the City Treasurer may, prior to the first payment to a board under subsections (1) or (2), advance funds not exceeding 50% of the budget approved by Council, and the amount of funds advanced plus interest at the City's principal banker's prime rate of borrowing plus one percentage point must be deducted from the City's first payment scheduled in subsections (1) or (2).

Costs incurred by the City

23. Uncollected zone levies and any costs incurred by the City on the account of a zone shall be deducted by the City from funds payable to the zone in the year in which they were incurred or in a subsequent year.

Termination of a zone

24(1) Council may by by-law terminate a zone where

(a) a petition requesting the termination of a zone signed by at least 50% of the proprietors of member businesses representing at least 50% the total business assessment in the zone has been filed with the Clerk; or

(b) Council has declined to approve a subsequent budget under subsection 18(5);

(c) a Board has failed to submit annual budgets to Council for approval in two consecutive years;

(d) a Board has failed to comply with its financial responsibilities under section 20;

(e) The zone has otherwise failed to comply with the by-law establishing it; or

(f) Council has concluded for any reason that it is the interests of the City to terminate the zone.

24(2) Unless otherwise set out in the by-law terminating a zone, upon termination of a zone

(a) its net assets become the property of the City; and

(b) the Chief Financial Officer of the City is responsible for ensuring that the financial and other affairs of the zone are wound up.

25. This By-law comes into effect on January 1, 2003.

DONE AND PASSED, in Council assembled, this day of , 2002.

_____
Mayor

_____
City Clerk

Approved as to substance:

_____
Director of Planning, Property
and Development

Certified as to form:

_____
City Solicitor/Manager of
Legal Services