

**KITCHENER DOWNTOWN BUSINESS IMPROVEMENT AREA BOARD OF
MANAGEMENT**

BY-LAW NO. 1

Downtown Kitchener BIA Organizational Bylaw

1. Definitions and Interpretation.....	1
2. Application	2
3. Objects of the BIA	2
4. Head Office.....	2
5. Membership	2
6. Directors	3
7. Officers	5
8. Members	6
9. Members Meetings	6
10. Directors Meetings.....	8
11. Committees of the Board and Board Governance	9
12. Records	10
13. Execution of Document	10
14. Bank and Banking.....	11
15. Protection of Directors and Officers	11
16. General.....	12

**KITCHENER DOWNTOWN BUSINESS IMPROVEMENT AREA BOARD OF
MANAGEMENT**

BY LAW NO. 1

A By-law relating generally to the conduct of the business and affairs of the KITCHENER DOWNTOWN BUSINESS IMPROVEMENT AREA BOARD OF MANAGEMENT (the "BIA")

BE IT ENACTED as a By-law of the BIA as follows:

1. Definitions and Interpretation

1.1 In this By-Law, including this clause, unless the context or subject matter requires a different meaning:

- (a) "BIA" means the Kitchener Downtown Business Improvement Area Board of Management;
- (b) "Board" means the board of directors of the BIA;
- (c) "By-Law" means this By-Law, as may be amended from time to time;
- (d) "Corporations Act" means the *Corporations Act*, RSO 1990, c C.38, as may be amended from time to time, or such other successor legislation as may be enacted that applies to the BIA;
- (e) "Council" means the Council of the City of Kitchener;
- (f) "Director" means a member of the Board of Directors, provided that "Director" shall not include an Ex-Officio Director, unless the intention appears otherwise;
- (g) "Downtown" means the "Improvement Area" as defined in the Enacting Bylaw, as may be amended from time to time;
- (h) "Enacting Bylaw" means Chapter 70 to the City of Kitchener Municipal Code.
- (i) "Ex-Officio Director" shall mean those persons specified in Section 6.3 of this By-Law;
- (j) "Member" means a member of the BIA as defined in Section 8.1 of this By-Law, in accordance with the Enacting Bylaw and the Municipal Act;
- (k) "Municipal Act" means the *Municipal Act, 2001*, SO 2001, c 25, as may be amended from time to time;
- (l) "Officer" means the Chair, Vice-Chair, Executive Director, Secretary and Treasurer, who shall be appointed by the Directors pursuant to this By-Law and such other officers as may be appointed by the Board to fulfill those functions set out in this By-Law or as are prescribed by the Board;

1.2 Words importing the singular number include the plural and vice versa, words importing persons include firms and corporations and vice versa, and words importing one general shall include any.

1.3 The headings used throughout this By-Law are inserted for reference purposes only and are not to be considered or taken into account in construing the terms or provisions of this By-Law nor to be deemed in any way to qualify, modify or explain the effect of any such terms or provisions.

2. Application

2.1 This By-Law applies to all matters concerning the business and affairs of the BIA.

2.2 In the event of any conflict between this By-Law and the Enacting Bylaw or the *Municipal Act*, the Enacting Bylaw and the *Municipal Act* shall prevail.

2.3 Any matter concerning the rights of the Members of the BIA not addressed within this Bylaw, the Enacting Bylaw, or the *Municipal Act* shall be determined in accordance with the provisions of the Corporations Act applicable to non-share capital corporations.

3. Objects of the BIA

3.1 The objects of the BIA shall be:

- (a) to oversee the improvement, beautification and maintenance of municipally-owned land, buildings and structures in the Downtown beyond that provided at the expense of the municipality generally; and
- (b) to promote the Downtown as a business or shopping area.

[*Municipal Act*, s 204(1)]

3.2 The BIA shall be carried on without the purpose of direct gain for its Members and any profits or other accretions to the BIA shall be used in promoting its objects.

4. Head Office

4.1 The Head Office of the BIA shall be at such location in the City of Kitchener as the Directors may from time to time determine.

5. Membership

5.1 The members of the BIA shall be the persons who are assessed, on the last returned assessment roll for the City of Kitchener, with respect to rateable property in the area that is in a prescribed business property class and tenants of such property. [*Municipal Act*, s 204(4)]

5.2 A corporate member may nominate in writing one individual to vote on behalf of the corporation. [*Municipal Act*, s 204(7)]

5.3 Each member of an improvement area has one vote regardless of the number of properties that the member may own or lease in the improvement area. [*Municipal Act*, s 204(6)]

6. Directors

6.1 The affairs of the BIA shall be managed by the Board of Directors who, in addition to all the powers and authority which are by this By-Law expressly conferred upon them, may exercise all such powers and do such acts and things as may be exercised or done by Directors under the Corporations Act or Directors of a board of management established under Section 204 of the Municipal Act.

6.2 Number of Directors and Composition of Board

- (a) The Board of Directors shall consist of such number of Directors as designated by a resolution of Council, from time to time. [Enacting Bylaw, s 70.2.2; *Municipal Act*, s 204(2)]
- (b) At least one Director shall be a member of Council. [Enacting Bylaw, s 70.2.2; *Municipal Act*, s 204(3)]
- (c) The remaining Directors shall be individuals assessed for business assessment in respect of land in the Downtown or nominees of such individuals or of corporations so assessed, provided that at least one Director shall be a representative of the business community not engaged in the retail sale of merchandise [Enacting Bylaw, s 70.2.2]

6.3 Ex-Officio Directors

- (a) In addition to the Directors set out above, the Board shall appoint the following persons as ex-officio Directors of the BIA (the "**Ex-Officio Directors**")
 - (i) the Mayor of the City of Kitchener (if not already a Director);
 - (ii) a representative of the Waterloo Regional Police Services, designated by it from time to time;
 - (iii) a representative of the Economic Development Team of the City of Kitchener, designated by it from time to time; and
 - (iv) the Executive Director of the BIA.
- (b) The Ex-Officio Directors:
 - (i) may attend meeting of the Board of Directors at the pleasure of the Board; and
 - (ii) shall not be entitled to vote as such.

6.4 Term of Office

- (a) The term of the Directors shall commence upon their appointment, and continue for the duration of the term of the Council that appointed them, provided they shall continue as the Directors until their successors are appointed by Council. [Enacting Bylaw, s 70.2.3; *Municipal Act*, s 204(10)]

6.5 Election of Directors

- (a) The Directors, excluding the Director or Directors who shall be a member of and appointed by Council, (the "**Elected Directors**") shall be chosen by the Members by election at a Members Meeting. [Enacting Bylaw, s 70.2.2; *Municipal Act*, s 204(3)]
- (b) Following the election of Council, a Meeting of the Members shall be held for the purpose of electing the Elected Directors.
- (c) The Election shall be by ballot, show of hands, or such other method chosen by the Chair of the Members Meeting.
- (d) Any person seeking election as an Elected Director shall submit his or her notice of intention to seek election in writing to the BIA no later than seven (7) days prior to the Members Meeting at which Elected Directors are to be Elected.

6.6 Vacancies

- (a) The office of Director shall be vacated if such Director:
 - (i) Resigns his or her office by notice in writing to the BIA;
 - (ii) Fails to continue to hold the qualifications set out within these By-Laws
- (b) Any vacancies shall be filled by appointment by Council for the unexpired portion of the term. [Enacting Bylaw s 70.2.5; *Municipal Act*, s 204(12)]

6.7 Nomination

- (a) The Board shall appoint a Nomination Committee all of whom need not be Directors.
- (b) The purpose of the Nomination Committee shall be:
 - (i) to seek out and encourage qualified persons to run for election as Directors of the BIA;
 - (ii) to seek out and encourage qualified persons to fill vacancies in the Board; and

- (iii) to recommend to Council that such persons be approved and appointed Directors.
- (c) The Nomination Committee may consider, when determining whether to recommend to Council that a person be approved and appointed as a Director of the BIA, any matter which the Nomination Committee considers relevant and appropriate, including:
 - (i) the skills, background, and expertise of the person seeking a position on the Board, and that of the existing Board;
 - (ii) representation of Members of different types and sizes of businesses;
 - (iii) representation of the diversity of the Downtown and the City of Kitchener; and
 - (iv) any other factor the Nomination Committee deems relevant.
- (d) The recommendation of the Nomination Committee shall not be a pre-requisite to a Member (or, in the case of a corporation that is a Member, that Member's representative) being elected or appointed as a Director.

7. Officers

7.1 The Board of Directors shall appoint from amongst themselves the following Officers who shall have the responsibilities set out, and such other responsibilities as determined by the Board from time to time.

- (a) Chair. The president shall have, in addition to such duties as may be prescribed from time to time by the Board, the following duties:
 - (i) Act as the spokesperson for the board of directors;
 - (ii) Chair all Board meetings;
 - (iii) Be charged with the supervision of the affairs and operations of the BIA;
 - (iv) Have general direction of all BIA activities under policies set by the Board of Directors;
- (b) Vice-Chair. The Vice-President shall, in addition to such duties as may be prescribed from time to time by the board, assume the duties and responsibilities of Chair in the Chair's absence.
- (c) Secretary. The secretary shall, in addition to such duties as may be prescribed from time to time by the Board;

- (i) Attend all board meetings and record or have recorded all facts and minutes of all proceedings in the books kept for that purpose (it being acknowledged that the secretary may assign the recording duties);
- (ii) Be responsible for the BIA's books and records.
- (d) Treasurer. The treasurer shall, in addition to such duties as may be prescribed from time to time by the Board:
 - (i) Monitor all financial transactions and oversee the maintenance of records and accounts of the BIA;
 - (ii) Present an annual financial report to the Board;
 - (iii) Report any financial discrepancies to the Board

7.2 The Board of Directors shall appoint the following Officers, who need not be directors and who shall have the responsibilities set out, and such other responsibilities as determined by the Board from time to time.

- (a) Executive Director. The Executive Director shall be the chief executive officer of the BIA and shall have the responsibility for the general management and direction of the business and affairs of the BIA, subject to the authority of the Board.

7.3 The Board may also appoint such other Officers as it may from time to time deem necessary, who need not be Directors.

7.4 The term of office of such Officers shall be for the term of the Board. In default of such appointment, the then incumbents shall hold office until their successors are appointed

8. Members

8.1 Members of the BIA shall consist of persons who are assessed, on the last returned assessment roll of the City of Kitchener, with respect to rateable property in the Downtown that is in a prescribed business property class and tenants of such property. [*Municipal Act*, s 204(4)]

8.2 Both individuals and corporations may be members of the BIA.

9. Members Meetings

9.1 Time and Place. Members Meetings shall be held at a time and place determined by the Board.

9.2 Notice

- (a) Notice of every Members Meeting shall be published on the BIA's website. Notice shall also be sent by email to each Member at that Member's last known email address, or by delivering written notice to each place of business in the Downtown.

- (b) Notice shall be given no less than ten (10) days prior to the date of the Members Meeting.
- (c) Notice shall specify the time, date, and location of the Members Meeting.
- (d) Notice may, but shall not be required to, provide that Members may participate electronically, together with instructions specifying how to attend electronically.

9.3 Quorum. At any Members Meeting, twenty (20) Members present (either in person or, in the case of a corporation that is a Member, by the presence of its representative) shall form a quorum, provided that no more than ten (10) of such Members or representatives constituting a quorum shall be Directors.

9.4 Voting.

- (a) Each Member has one vote regardless of the number of properties that the member may own or lease in the Downtown. [*Municipal Act*, s 204(6)]
- (b) A corporation that is a Member may nominate in writing one individual to vote on behalf of the corporation. [*Municipal Act*, s 204(7)]
- (c) One individual may be nominated for voting purposes by two or more corporations that are Members [*Municipal Act*, s 204(8)]
- (d) Every motion shall be decided by a show of hands, unless a poll is demanded. If a poll is demanded, such poll shall be taken in such manner as the Chair of the Meeting directs.

9.5 Annual Meeting

- (a) A Members Meeting shall be called annually for the purpose of discussing the proposed Budget of BIA for the following fiscal year. The Budget is subject to approval by Council. [*Municipal Act*, s 205(1)].
- (b) At the first Members Meeting following the election of a new Council, in addition to discussing the proposed Budget of the BIA, an election shall be held for Directors.

9.6 Special Meeting.

- (a) A Special Meeting may be held to transact such other business as may properly be brought before a Members Meeting.
- (b) A Special Meeting may be held concurrently with an Annual Meeting.

9.7 Participation by Electronic Means

- (a) If a Notice of a Members Meeting provides that Members may participate electronically, Members who are present electronically shall be counted towards quorum for that meeting, and may vote by electronic means.

10. Directors Meetings

10.1 A majority of the Board shall constitute a quorum for any meeting of Directors. In the event of any vacancy in the Board, a majority of the remaining Directors shall constitute a quorum.

10.2 A meeting of the Board at which a quorum is present is competent to exercise all or any of the authorities and powers vested in or exercisable by the Board.

10.3 Questions arising at any meeting of the Board shall be decided by a simple majority of votes. In the case of an equality of votes, the question is defeated. A Director disagreeing with the majority at a meeting may have their dissent recorded with the reason thereof.

10.4 The Board shall meet immediately following the Annual General Meeting of the Members. Notwithstanding anything to the contrary contained in this By-Law, no formal notice of such meeting of the Board shall be necessary provided that a quorum of the Board is present.

10.5 A resolution signed by all Directors, shall be as valid and effectual as if it has been passed at a meeting of the Board duly called and constituted.

10.6 Meetings of the Board shall be open to the public. [*Municipal Act*, s 239(1)]

10.7 Notwithstanding Section 10.6, a Board Meeting (or part of a Board Meeting) may be closed to the public if the subject matter being considered is:

- (a) the security of the property of the BIA;
- (b) personal matters about an identifiable individual, including BIA employees;
- (c) a proposed or pending acquisition or disposition of land by BIA;
- (d) labour relations or employee negotiations;
- (e) litigation or potential litigation, including matters before administrative tribunals, affecting the BIA;
- (f) advice that is subject to solicitor-client privilege, including communications necessary for that purpose;
- (g) a matter in respect of which a council, board, committee or other body may hold a closed meeting under another Act;
- (h) information explicitly supplied in confidence to the BIA by Canada, a province or territory or a Crown agency of any of them;

- (i) a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence to the BIA, which, if disclosed, could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
- (j) a trade secret or scientific, technical, commercial or financial information that belongs to the BIA and has monetary value or potential monetary value; or
- (k) a position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of BIA.

[*Municipal Act*, s 239(2)]

10.8 Notice of a Meeting of the Board shall be posted on the BIA's website, which notice shall include the time, date, and location.

10.9 Electronic Participation. A Notice of Meeting of the Board may, but shall not be required to, provide that the Directors or other parties may participate electronically in the meeting. In such case Directors present electronically shall be counted towards quorum for that meeting, and may vote by electronic means.

11. Committees of the Board and Board Governance

11.1 The Board may appoint such Committees as it deems necessary or appropriate from time to time.

11.2 In addition, the Board shall form the following Committees:

- (a) Governance Committee
 - (i) The Governance Committee shall be composed of such Directors as the Board may designate from time to time.
 - (ii) The Governance Committee shall regularly evaluate the governance of the BIA, the Board, and its members, and perform such other functions as the Board may designate from time to time.
 - (iii) The Governance Committee shall establish written policies regarding the internal governance of the Board, including policies regarding the identification of conflicts of interest.
 - (iv) The Governance Committee shall coordinate with Council to ensure the timely approval and appointment of Directors.
 - (v) The Governance Committee shall set the Board agenda from time to time, meet regularly with the Executive Director regarding the Board's strategic

priorities, and performs such other functions designated by the Board from time to time.

(b) Nomination Committee

- (i) The functions of the Nominations Committee shall be as set out in Section 6.7 of this Bylaw.
- (ii) The Nomination Committee and the Governance Committee may be composed of the same persons.

(c) Finance Committee

- (i) The Finance Committee shall be composed of such Directors as the Board may designate from time to time.
- (ii) The purpose of the Finance Committee is provide oversight and where appropriate review and make recommendations to the Board on financial matters concerning the BIA.
- (iii) The Finance Committee shall review the accounting and administrative systems in place from time to time.

11.3 The Finance Committee shall, with the Executive Director, prepare, review, and recommend for approval by the Board, the proposed budget of the BIA for each fiscal year. All Committees shall report to the Board as a whole, and provide a summary of the Committee's opinions and findings on the matters discussed, but need not retain full minutes of all Committee meetings.

12. Records

12.1 The Board shall cause minutes to be made in books provided for that purpose and keep records, as required by the Corporations Act, including:

- (a) of all appointments of Officers made by the board;
- (b) of the names of the Board present at each meeting of the Board; and
- (c) of all resolutions and proceedings of all general meetings, meetings of the board and any committees.

13. Execution of Document

13.1 Any document, cheque, contract, or agreement entered into by the BIA may be signed by:

- (a) two Directors of the Board; or
- (b) the Executive Director and one Director of the Board

14. Bank and Banking

14.1 The Bank of the BIA shall be such bank or financial institution as the Board may from time to time appoint.

14.2 All monies received by the BIA shall be deposited forthwith in the name of the BIA in such bank as is appointed by the Board.

14.3 All cheques, drafts, withdrawals from the BIA's Bank Account(s) and orders for payment of money, and all notes and acceptances and bills of exchange, shall be signed or authorized by any two of the Directors or Officers as the Board may from time to time designate.

15. Protection of Directors and Officers

15.1 Limitation of Liability. No Director, Officer, past Director, or past Officer of the BIA shall be liable for the acts, receipts, neglects or defaults of any other Director or Officer, or for joining in any receipt or other act or for any loss or expense happening to the BIA through the insufficiency or deficiency of title to any property acquired by, for or on behalf of, the BIA, or for the insufficiency or deficiency of any security in, or upon which, any of the moneys of the BIA shall be invested, or for any loss or damage arising from the bankruptcy, insolvency or wrongful act of any person with whom any of the moneys, securities or effects of the BIA shall be deposited, or for any loss occasioned by any error of judgement or oversight on his or her part, or for any other loss, or oversight on his or her part, or for any other loss, damage or misfortune whatsoever which shall happen in the execution of the duties of his or her office or in relation thereto unless the same shall happen through his own neglect or default provided nothing herein shall relieve any Director or Officer, past Director or past Officer for any breach of duty to act in accordance with the Corporations Act.

15.2 Indemnity of Directors and Officers. Every Director, Officer, past Director, and past Officer of the BIA and his or her personal representatives, heirs, executors and administrators, and estate and effects, respectively, shall from time to time and at all times, be indemnified and saved harmless out of the funds of the BIA from and against:

- (a) all costs, charges and expenses whatsoever that he sustains or incurs in or about any action, suit or proceeding that is brought, commenced or prosecuted against him for or in respect of any act, deed, matter or thing whatsoever, made, done or permitted by him, in or about the execution of the duties of his office; and
- (b) all other costs, charges and expenses that he sustains or incurs in or about or in relation to the affairs thereof, except such costs, charges or expenses that are occasioned by his own willful neglect or default.

15.3 Liability Insurance. The BIA shall purchase and maintain such insurance for the benefit of its Directors, Officers, past Directors, and past Officers, as such, as the Board may from time to time determine.

16. General

16.1 The By-Law shall be known as the "Downtown Kitchener BIA Organizational Bylaw".

16.2 This By-Law shall constitute the BIA's "procedure by-law", within the meaning of the *Municipal Act*. [*Municipal Act*, s 238]

16.3 The By-Law shall come into effect immediately.

16.4 All prior By-Laws of the BIA are hereby repealed.