SUBJECT: Protocol for Declaring Business Improvement Areas (B.I.A.s) as Dormant and Main West Esplanade Business Improvement Area (B.I.A.) Dormant Status (PED09294) (Wards 1 & 2 and City Wide)

RECOMMENDATION:

a) That the Dormant Business Improvement Area Status Procedure, as attached as Appendix ‘A’ to Report PED09294, be adopted.

b) That the Main West Esplanade Business Improvement Area (B.I.A.) become dormant (a non-active B.I.A.) for a three-year term and that the Main West Esplanade B.I.A. issue a cheque to the City of Hamilton for all monies that are currently in the Main West Esplanade B.I.A. bank account(s).

c) That Finance staff be directed to create an account to hold the funds of the Main West Esplanade B.I.A.

d) That Finance staff be directed to oversee the account and fulfil any financial obligations of the dormant Main West Esplanade B.I.A. throughout the term.

e) That Public Works staff be directed to store any material assets of the B.I.A. and the cost for storage be invoiced to Finance for payment from the B.I.A. account.

f) That Downtown and Community Renewal Division staff be directed to undertake the appropriate program modifications to identify that Financial Incentive Programs are available only to property owners/authorized tenants within the existing ACTIVE City-wide Business Improvement Areas.

Tim McCabe
General Manager
Planning and Economic Development Department
EXECUTIVE SUMMARY:

Report PED09294 recommends that the Main Street West B.I.A. becomes dormant. Currently there appears to be little interest in running the B.I.A. The three-year term as a dormant B.I.A. would provide an opportunity for the members to revive the B.I.A. if interest is generated. To address the possibility of a B.I.A. becoming dormant, a protocol has been drafted and is attached as Appendix ‘A’ to this report.

BACKGROUND:

A B.I.A.’s proposed budget is to be prepared and approved by the Board of Directors and presented to its membership at the Annual General Meeting (AGM). Once presented to the members, the proposed budget is submitted for approval by City Council. The AGM of the Main West Esplanade B.I.A. was held on December 3, 2008 and attended only by J. Bush, who was the Chair at the time, and E. Maloney, Coordinator of Business Improvement Areas for the City of Hamilton. Without the attendance of the members of the B.I.A., there was no opportunity to present the proposed budget for 2009. A second meeting was held on February 13, 2009 with only two members attending. No budget was submitted to Council for approval and a B.I.A. levy to fund the budget was not charged to the commercial/industrial assessed properties within the area.

A letter of resignation was submitted by the Chair of the Main West Esplanade B.I.A. to the Downtown and Community Renewal Division on February 27, 2009. On July 7, 2009 confirmation of resignation was received by the Downtown and Community Renewal Division from another member of the Board of Directors for the Main West Esplanade B.I.A. The resignations resulted in only two members on the Board of Directors, one being the Ward Councillor who is appointed by the City. Staff have been unsuccessful with efforts to contact the other remaining director.

To determine the future of the Main West Esplanade B.I.A., the Coordinator of Business Improvement Areas for the City of Hamilton arranged a meeting of the members on July 21, 2009. Notice of the meeting was mailed to the property owners and hand delivered to the businesses that comprise the Main West Esplanade B.I.A. The notice advised that the Main West Esplanade B.I.A. was in question due to the resignation of two (2) of the four (4) appointed directors of the Board of Management and that a budget for 2009 had not been processed. The meeting was attended by Councillor McHattie, one commercial property owner and E. Maloney. It was determined at the meeting that there was no interest in continuing the B.I.A. at the current time. It was noted that within the next few years, there may be interest to revive the B.I.A., due to the potential announcement of rapid transit within the area. Changes may provide a more pedestrian friendly environment, attracting more people to the area and triggering the property owners and tenants to revisit the B.I.A. concept. Rather than dissolving, it was requested that the B.I.A. be placed in a dormant state. Staff propose to review the issue of reviving the B.I.A. after three (3) years.
ANALYSIS/RATIONALE:

Staff is recommending that, as requested, the Main West Esplanade B.I.A. become dormant. A dormant B.I.A. would be described as follows:

- All activities of the B.I.A. cease.
- The B.I.A.’s material assets are held in storage by the City.
- Funds that are currently in the B.I.A.’s bank account are transferred to the City of Hamilton and would be held in an account and Finance staff would oversee the account.
- The financial incentives that are available to an active B.I.A. are not available to the properties within the dormant B.I.A.

The 2008 financial documents of the Main West Esplanade B.I.A were submitted, as required for auditing purposes. They showed that funds are available to cover outstanding debt currently identified and projected for the term of the dormancy. The process that is required to revive a dormant B.I.A. would not be cumbersome. The three-year term would provide enough time for the members to determine if there is an interest to revive the B.I.A. Reviving the B.I.A. would involve calling an AGM, holding an election and preparing a proposed budget to be submitted for approval by City Council. The Coordinator of Business Improvement Areas for the City of Hamilton would facilitate this process.

ALTERNATIVES FOR CONSIDERATION:

The B.I.A. could be dissolved which requires the repeal of the by-law(s) that designated the area and established the Board of Management. Upon dissolution of the B.I.A, the assets and liabilities of the B.I.A. become the assets and liabilities of the City. If there were interest in reviving the B.I.A. after dissolution, a new by-law would be required in accordance with sections 204 and 210 of the Municipal Act, 2001. The process is onerous (in comparison to reviving a dormant B.I.A.) and not recommended at this time.

The City could act as a caretaker. This requires that the City continue minimal B.I.A. activities such as installing and maintaining banners. Each year that the status remains, the City would impose a levy to cover the above costs. The balance of the B.I.A. funds would be used for these activities, with a levy imposed each year as required. The financial incentives that are available to an active B.I.A. would not be available in these circumstances. Acting as a caretaker would require that City staff from various departments to undertake functions and responsibilities that are normally undertaken by the B.I.A. members or staff that are hired by the B.I.A. and is not a recommended option.

FINANCIAL/STAFFING/LEGAL IMPLICATIONS:

Financial – There would be no financial implications as the Main West Esplanade B.I.A. currently has funds that would be sufficient to cover costs during the three-year term, e.g. the cost for banner storage.
Staffing – Finance staff would be required to oversee the account holding the funds. Public Works staff would be required to oversee the removal and storage of the material assets, e.g. banners and ornamental decorations.

Legal – Subsection 216(1) of the Municipal Act, 2001 (the Act) authorizes a municipality to dissolve or change a local board. As a business improvement area is a local board for all purposes under subsection 204(2.1) of the Act, this is sufficient authority for Council to adopt the report’s recommendations, making the Main West Esplanade B.I.A. dormant.

POLICIES AFFECTING PROPOSAL:

Not applicable.

RELEVANT CONSULTATION:

Corporate Services Department – Financial Services Division and Legal Services Division
Public Works Department

CITY STRATEGIC COMMITMENT:

By evaluating the “Triple Bottom Line”, (community, environment, economic implications) we can make choices that create value across all three bottom lines, moving us closer to our vision for a sustainable community, and Provincial interests.

- Community Well-Being is enhanced. □ Yes ☐ No
- Environmental Well-Being is enhanced. □Yes ☐ No
- Economic Well-Being is enhanced. □Yes ☐ No

Does the option you are recommending create value across all three bottom lines?
□ Yes ☐ No

The recommendations are a necessity in light of the circumstances of the Main West Esplanade B.I.A.

Do the options you are recommending make Hamilton a City of choice for high performance public servants?
□ Yes ☐ No

EM:vk
Attachs. (2)
Dormant Business Improvement Area (B.I.A.) Status Procedure

Definition of a Dormant B.I.A.
All functions of the B.I.A. cease to exist. The material assets would be held in storage as determined by the City. The funds in the B.I.A.’s bank account would be transferred to the City and held in an account. Financial incentives available to active B.I.A.’s would not be available to non-active B.I.A.’s.

Procedure

1. Upon failure of a B.I.A. to satisfy the legislated requirements of the Municipal Act, 2001, the Downtown and Community Renewal Division will send a notice advising the members of the B.I.A. of this and inviting them to a meeting to determine the future of the B.I.A.

2. An information report will be provided for City Council to apprise them of item 1.

3. If the meeting demonstrates a lack of interest in an active B.I.A., staff will undertake an assessment of the B.I.A. An inventory list would be prepared identifying all the material assets of the B.I.A. The finances of the B.I.A. would be reviewed to determine its ability to meet financial obligations.

4. Staff will determine if the dormant status could be supported, and if it can, will prepare a report recommending this for Council approval. The term for dormant status will be three (3) years.

5. Once Council approves the dormant status, the members of the B.I.A. will be advised of this by means of a notice sent by the Downtown and Community Renewal Division.

6. The B.I.A. would provide a cheque to the City of Hamilton for any funds that the B.I.A. holds and close its account(s).

7. The Finance Department would create an account to hold the funds. It will be responsible for any activity of the account, including meeting any of the B.I.A.’s financial obligations.

8. The Public Works Department would be responsible for storage of any material assets and will submit invoices to the Finance Division for any costs associated with inspection, removal or storage which may be paid from the B.I.A. account.

9. During the dormant term, the B.I.A. may be revived by the membership. This would require a meeting of the members to elect a Board of Management and to prepare a proposed budget. The B.I.A. would be re-instated as an active B.I.A. for the year in which the proposed budget is approved by Council, provided that the approval occurs on or before March 1. The Downtown and Community Renewal Division would assist with the facilitation of the process to revive the B.I.A.
10. A report would be submitted for Council appointment of the elected Board of Management and approval of the proposed budget.

11. Once item 10 is approved by Council, any remaining funds in the account will be transferred to the active B.I.A.

12. Throughout the term of the dormant B.I.A., the Downtown and Community Renewal Division would annually canvas the members of the B.I.A. to gauge their interest in reviving the B.I.A. If there is an interest, the Downtown and Community Renewal Division would facilitate meeting(s) with respect to such a revival.

13. If the B.I.A. is not reinstated prior to the expiration of the three (3) year term, a report will be prepared to advise City Council. Council may resolve to dissolve the B.I.A., which requires the repeal of the by-law(s) that designated the area and established the Board of Management. Upon dissolution of the B.I.A., the assets and liabilities of the B.I.A. become the assets and liabilities of the City. The report will include recommendations with respect to the distribution of any remaining B.I.A. assets.