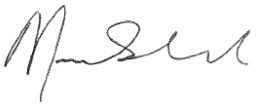




CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Economic Development Division

TO:	Mayor and Members General Issues Committee
COMMITTEE DATE:	October 18, 2023
SUBJECT/REPORT NO:	King West Business Improvement Area Dormancy (PED23198) (Ward 2)
WARD(S) AFFECTED:	Ward 2
PREPARED BY:	Cristina Geissler (905) 546-2424 Ext. 2632
SUBMITTED BY:	Norm Schleeahn Director, Economic Development Planning and Economic Development Department
SIGNATURE:	

RECOMMENDATION

- (a) That the Dormant Business Improvement Area Status Procedure, as attached as Appendix "A" to Report PED23198, be adopted;
- (b) That the King West Business Improvement Area become dormant (a non-active Business Improvement Area) for a three-year term and that the King West Business Improvement Area issue a cheque to the City of Hamilton for all monies that are currently in the King West Business Improvement Area bank account(s);
- (c) That Finance staff be directed to create an account to hold the funds of the King West Business Improvement Area;
- (d) That Finance staff be directed to oversee the account and fulfil any financial obligations of the dormant King West Business Improvement Area throughout the term;
- (e) That Public Works staff be directed to store any material assets of the Business Improvement Area and the cost for storage be invoiced to Finance for payment from the Business Improvement Area account;
- (f) That Commercial Districts and Small Business Section staff be directed to undertake the appropriate program modifications to identify that Financial

OUR Vision: To be the best place to raise a child and age successfully.

OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

Incentive Programs are available only to property owners/authorized tenants within the existing active city-wide Business Improvement Areas.

EXECUTIVE SUMMARY

Report PED23198 recommends that the King West Business Improvement Area becomes dormant. Currently there appears to be no interest in running the Business Improvement Area. The three-year term as a dormant Business Improvement Area would provide an opportunity for the members to revive the Business Improvement Area if interest is generated. To address the possibility of a Business Improvement Area becoming dormant, a protocol has been drafted and is attached as Appendix “A” to Report PED23198, this Report.

Alternatives for Consideration – See Page 5

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: There would be no financial implications as the King Business Improvement Area 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* 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 King West Business Improvement Area dormant.

HISTORICAL BACKGROUND

The City of Hamilton’s Dormant Business Improvement Area Status Procedure, attached as Appendix “A” to Report PED23198 (Dormancy Procedure) requires that:

- (a) Upon failure of a Business Improvement Area 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 Business Improvement Area of this and inviting them to a meeting to determine the future of the Business Improvement Area; and,
- (b) A report be provided to City Council to apprise them of item (a).

Please note that staff have satisfied item (a) above, and this Report is to satisfy item (b). Of note, this King West Business Improvement Area is seeking dormancy status.

By-law 14-253, passed by Council on September 24, 2014, requires that all Business Improvement Areas shall prepare and submit to Council a proposed budget for each fiscal year on or before March 31 in each year and shall hold at least one meeting of the members of the Business Improvement Area for discussion of the proposed budget before its submission to Council. This requirement is also found in the Ontario *Municipal Act, 2001*. The Board of Management of the King West Business Improvement Area (map attached as Appendix “B” to Report PED23198, this Report) did not meet this requirement in 2023.

On March 7, 2023, the King West Business Improvement Area held its Annual General Meeting. As the Business Improvement Area is currently inactive in any activities to support its membership (no events, marketing, advertising, beautification, or an active update website or business directory) the recommendation was made to consider dormancy of this area. The Annual General Meeting Minutes reflect this discussion with no objections from the members in attendance.

On May 5, 2023, confirmation was received from the King West Business Improvement Area’s insurance provider on the cancellation of their liability policy due to numerous requests for payment going unanswered.

On August 3, 2023, a meeting between the Ward 2 Councillor and the King West Business Improvement Area Board of Management suggested the direction to move the Business Improvement Area into dormancy status.

On August 14, 2023, a formal letter was mailed to all property owners advising them of the dormancy status recommendation. An electronic email was sent to all small business tenants by the Board Secretary.

To date further *Municipal Act, 2001* requirements of an annual audit; the annual audits for 2019, 2020, 2021 and 2022 remain incomplete. City Staff will continue to work to see what options are available to bring this Business Improvement Area into good financial standing.

King West Business Improvement Area budget was approved, and levy distributed in 2019 (\$5,220.18) and in 2021 (\$5,627.56). No budget was presented in 2020, 2022 or 2023 therefore no levy was distributed to the Business Improvement Area. Continued follow up from Economic Development, Financial Services and Taxation, and KPMG to work the Board of Management to ensure these audits are completed and have the

Business Improvement Area in good financial standing. Once dormancy status is approved all finances will be moved and held in trust with the city. Staff is recommending to Council that the King West Business Improvement Area move into dormancy status.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

Not Applicable

RELEVANT CONSULTATION

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

ANALYSIS AND RATIONALE FOR RECOMMENDATION

Staff is recommending that, as requested, the King West Business Improvement Area become dormant. A dormant Business Improvement Area would be described as follows:

- (a) All activities of the Business Improvement Area cease;
- (b) The Business Improvement Area's material assets are held in storage by the city;
- (c) Funds that are currently in the Business Improvement Area's bank account are transferred to the City of Hamilton and would be held in an account and Finance staff would oversee the account; and,
- (d) The financial incentives that are available to an active Business Improvement Area are not available to the properties within the dormant Business Improvement Area.

The 2018 financial documents of the King West Business Improvement Area were submitted, as required for KPMG 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 Business Improvement Area 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 Business Improvement Area. Reviving the Business Improvement Area would involve calling an Annual General Meeting, 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 Business Improvement Area 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 Business Improvement Area, the assets and liabilities of the Business Improvement Area become the assets and liabilities of the city. If there were interest in reviving the Business Improvement Area 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 Business Improvement Area) and not recommended at this time.

The city could act as a caretaker. This requires that the city continue minimal Business Improvement Area 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 Business Improvement Area funds would be used for these activities, with a levy imposed each year as required. The financial incentives that are available to an active Business Improvement Area would not be available in these circumstances. Acting as a caretaker would require city staff from various departments to undertake functions and responsibilities that are normally undertaken by the Business Improvement Area members, or staff that are hired by the Business Improvement Area and is not a recommended option.

APPENDICES AND SCHEDULES ATTACHED

Appendix “A” to Report PED23198 – Dormant Business Improvement Area Status Procedure

Appendix “B” to Report PED23198 – King Street West Business Improvement Area Boundary Map

CG/rb