




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:	Main West Esplanade Business Improvement Area Dormancy (PED23199) (Wards 1 and 2)
WARD(S) AFFECTED:	Wards 1 and 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, attached as Appendix "A" to Report PED23199, be adopted;
- (b) That the Main West Esplanade Business Improvement Area become dormant (a non-active Business Improvement Area) for a three-year term and that the Main West Esplanade Business Improvement Area issue a cheque to the City of Hamilton for all monies that are currently in the Main West Esplanade Business Improvement Area bank account(s);
- (c) That Finance staff be directed to create an account to hold the funds of the Main West Esplanade Business Improvement Area;
- (d) That Finance staff be directed to oversee the account and fulfil any financial obligations of the dormant Main West Esplanade 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 Incentive Programs are available only to property owners/authorized tenants within the existing active city-wide Business Improvement Areas.

EXECUTIVE SUMMARY

Report PED23199 recommends that the Main Street 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 PED23199.

Alternatives for Consideration – See Page 5

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

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

HISTORICAL BACKGROUND

The City of Hamilton's Dormant Business Improvement Area Status Procedure, attached as Appendix “A” to Report PED23199 (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,

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- (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 Main West Esplanade Business Improvement Area was dormant and then revived and declared active by Council in May 2012. Since January 2022 this Business Improvement Area has been inactive and is again seeking dormancy status.

By-law 14-253, passed by Council on September 24, 2014, requires that all Business Improvement Area's 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 Main West Esplanade Business Improvement Area (map attached as Appendix "B" to Report PED23199) did not meet either requirement in either 2021 or 2022.

On September 20th, 2022, the city's Business Improvement Area Coordinator met with the Chair of the Board of Management. At that meeting, they were presented with two options, which were also confirmed in writing:

- (a) The remaining Board members would schedule an Annual General Meeting of the Business Improvement Area, at which time a new Board of Management would be elected. Subsequent to such a meeting and Council's appointment of the Board of Management, the Board would then carry on to adopt the new Business Improvement Area Procedure By-law and a Budget for 2023. The Business Improvement Area Coordinator indicated that this meeting must take place by October 31, 2022. The deadline for the Board members to inform the Business Improvement Area Coordinator that they would pursue this option was Thursday September 30, 2022, by 4:30 p.m.
- (b) Failure to fulfill the requirements outlined in (a) would result in a report to Council recommending that the Main West Esplanade Business Improvement Area be put into dormancy status.

As per the Dormancy Procedure, further action by staff will be determined by the level of demonstrated interest in maintaining an active Business Improvement Area. On September 26, 2022, a follow up meeting with the Chair of the Business Improvement Area confirmed that there is a lack of interest and lack of the financial capability of the Main Street Esplanade Business Improvement Area to meet its financial obligations.

To date further *Municipal Act, 2001* requirements of an annual audit; the annual audits for 2019 and 2020 remain incomplete. Currently no available contacts of past Board members available to complete these audits for levy money received in 2019 and 2020.

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City Staff will continue to work to see what options are available to bring this Business Improvement Area into good financial standing.

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 Main West Esplanade 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 material assets are held in storage by the city;
- (c) Funds that are currently in the Business Improvement Area 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 Main West Esplanade Business Improvement Area were submitted, as required for auditing purposes. On Sept 25, 2023, a letter was issued to the Business Improvement Area's financial institution requesting access to their bank account to confirm that funds are still 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 that 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 PED23199 – Dormant Business Improvement Area Status Procedure

Appendix “B” to Report PED23199 – Main West Esplanade Business Improvement Area Boundary Map

CG/rb