

Schedule A to By-law 69 -2019

**Mitchell Business Improvement
Area**

CONSTITUTION



Adopted by Board of Management

September 4, 2019

Contents

ARTICLE 1 - THE ORGANIZATION 3

ARTICLE 2 - MEMBERSHIP AND VOTING..... 3

ARTICLE 3 - BOARD OF MANAGEMENT COMPOSITION 4

ARTICLE 4 - BOARD OF MANAGEMENT ELECTION PROCEDURES 5

 CALL OF AN ELECTION 5

 NOMINATIONS 6

 ELECTION..... 7

 BOARD OF MANAGEMENT OFFICERS..... 7

ARTICLE 5 - DUTIES OF ELECTED BOARD MEMBERS..... 7

ARTICLE 6 – FINANCIAL POLICY 9

ARTICLE 7 - COMMITTEES OF THE BOARD 10

ARTICLE 8 – MEETINGS OF THE BOARD OF MANAGEMENT..... 10

ARTICLE 9 – MEETINGS OF THE MEMBERSHIP..... 11

ARTICLE 10 - STANDARD OF CARE AND CODE OF CONDUCT AND CONFLICT OF INTEREST 12

ARTICLE 11 - POLICIES 13

ARTICLE 12 - RESERVE FUND 13

ARTICLE 13 – CLOSED MEETING INVESTIGATOR..... 13

ARTICLE 14 - FORMS 13

ARTICLE 15 – CONSISTENCY WITH LEGISLATION 14

MITCHELL BUSINESS IMPROVEMENT AREA BOUNDARY MAP – Index ‘A’..... 15

ARTICLE 1 - THE ORGANIZATION

- 1.1 The purpose of the Mitchell BIA under the *Municipal Act, 2001*, as amended is:
- To promote the commercial area of Mitchell as a business and shopping area;
 - To oversee the improvement, beautification and maintenance of municipally-owned land, buildings, and structures within the boundaries of the Mitchell BIA, beyond that provided at the expense of the Municipality generally.
- 1.2 The boundaries of the Mitchell BIA are as shown on Index "A" to this constitution.
- 1.3 The affairs of the Mitchell BIA are governed by the Board of Management (hereafter referred to as the "Board of Management" or the "Board") which is a corporation consisting of its directors;
- 1.4 The Board is a local board of the Municipality of West Perth (hereafter referred to as the 'Municipality') as defined by the *Municipal Act, 2001*, as amended or its successor legislation.
- 1.5 The Board shall be comprised of 5 to 7 directors. Directors shall include a Council Member appointed directly by the Municipal Council. The remainder of the directors are elected by the Membership and appointed by the Municipal Council. The Mayor is a voting ex-officio.
- 1.6 The fiscal year shall be January 1st to December 31st.

ARTICLE 2 - MEMBERSHIP AND VOTING

- 2.1 Members of the Mitchell BIA as outlined in the *Municipal Act, 2001*, as amended, consist of:
- a) Persons who are assessed, on the last returned assessment roll, with respect to rateable property in the area that is in a prescribed business property class and tenants of such property.
 - b) Tenant means the tenant of commercial or industrial property with a gross lease including a portion of taxes with respect to rateable property in the area.

- 2.2 A list of all commercial and industrial members in the designated area will be kept by the Secretary of the Board. The Secretary at his or her discretion may request every property owner to provide tenant information for the purposes of maintaining an accurate list.
- 2.3 If necessary, the Clerk of the Municipality may accept a list provided under clause 210(2)(b) or the declaration of a person that the person is a tenant member of the Mitchell BIA. The determination by the Clerk is final.
- 2.4 Each member has one vote, regardless of the number of properties that the member may own or lease within the Mitchell BIA.
- 2.5 Every member that is a corporation or partnership has one vote regardless of the number of shareholders or partners that the member has.
- 2.6 Where a member is a corporation it may nominate in writing one individual to vote on behalf of the corporation.
- 2.7 Where a member is a partnership it may nominate in writing one of the partners to vote on behalf of the partnership.
- 2.8 The Membership list shall not be utilized by any member for any purpose whatsoever other than as may be specifically approved by the Board upon request or by use by a certified candidate during a board election. Any member who uses all or part of the Membership list for unauthorized purposes will receive a warning from the Board that includes, among other things, a provision stipulating that any subsequent unauthorized use will result in:
 - a) That member's email privileges being revoked such that all communication will thereafter be in writing and,
 - b) The Membership being advised of such revocation.
- 2.9 In certain circumstances where the Municipality is passing a by-law affecting the Mitchell BIA, the Clerk of the Municipality will be required to establish a Membership list pursuant to S. 210 of the Municipal Act, 2001, as amended.

ARTICLE 3 - BOARD OF MANAGEMENT COMPOSITION

- 3.1 The Board of Management shall consist of five (5) to seven (7) directors as follows:
 - a) One (1) member of Council to be appointed by the Municipality; and
 - b) The remaining directors selected by a vote of the membership of the Business Improvement Area and appointed by the Municipality.

- c) The Mayor is a voting ex-officio member of this board and retains all powers granted to all other Directors on the Board of Management.
- 3.2 Council may refuse to appoint a Member selected under section 3.1 in which case Council may:
 - a) Leave the position vacant, appoint their alternate choice; or
 - b) Direct that a meeting of the Members be held to select another candidate for Council's consideration.
- 3.3 Directors shall serve for a term that is the same as the term of the Council that appoints them or until their successors are appointed.
- 3.4 The Mitchell BIA Board is elected by its members and is not required to submit applications as part of the Municipal selection process for boards and committees when a direct election is being held.
- 3.5 The seat of a director shall become vacant if a director is absent from three (3) consecutive regular meetings of the Board without being authorized to do so by a resolution of Council.
- 3.6 If a seat of a director becomes vacant for any reason during the term of office, Council may fill the vacancy for the remainder of the vacant director's term and may seek the Board's recommendation if an election should be held.
- 3.7 Directors shall serve without remuneration. Directors may be reimbursed for all reasonable expenses directly relating to their functions as Board members provided those expenses are approved in advance by resolution of the Board.

ARTICLE 4 - BOARD OF MANAGEMENT ELECTION PROCEDURES

CALL OF AN ELECTION

- 4.1 An election will be conducted within four (4) months of a new term of Council commencing or as directed by Council. Municipal staff will assist with the election process.
- 4.2 If a seat of a director becomes vacant for any reason during the term of office, Council may fill the vacancy for the remainder of the vacant director's term and may seek the Board of Management's recommendation if an election should be held.
- 4.3 The date and location of the election shall be advertised to the membership by any or all of the following: email, direct mail, public advertisement and/or

social media accounts. Notice will be provided for a minimum of (3) weeks in advance of the election.

- 4.4 A Nomination Committee shall be formed by resolution at a Board meeting. Municipal staff will be the Nominating Committee.

NOMINATIONS

- 4.5 At the call of the election as specified in section 4.1, the Nomination Committee shall advertise the call for nominations and election by any or all of the following: email, direct mail, public advertisement and/or social media accounts. Notice will be provided for a minimum of (3) weeks to the membership.
- 4.6 Nomination forms shall be made available on the Municipality's website and at any other location specified by the Nominating Committee. These locations will be advertised in the call for nomination advertisements.
- 4.7 All nominations must be received and approved by the Nominating Committee.
- 4.8 Nominations filed by a property owner or tenant assessed commercially or industrially in the business improvement area, shall be submitted on the specified nomination form, directly to the Nomination Committee.
- 4.9 Nominations filed by individuals not assessed commercially or industrially in the business improvement area, must be nominated by two (2) Members assessed commercially or industrially within the business improvement area prior to submitting their nomination to the Nomination Committee.
- 4.10 Nominations will be due as prescribed by the Board of Management. The due date must be advertised in the call for nominations advertisement.
- 4.11 A person may withdraw his or her nomination by filing a written withdrawal with the Nominating Committee before the close of nominations.
- 4.12 If on the first business day following nomination day, the number of certified candidates for an office is the same as or less than the number to be elected, the Nominating Committee shall immediately declare the candidate or candidates elected by acclamation.
- 4.13 Subject to section 4.12, the Nominating Committee shall extend the nomination period by one week from the date of acclamation for additional nominations for the remaining seats. If the number of certified candidates still does not exceed the remaining number of vacancies, the Nominating

Committee shall immediately declare the additional candidate or candidates acclaimed.

ELECTION

- 4.14 The Nomination Committee are the Returning Officers and are responsible for the election.
- 4.15 The Returning Officers may appoint, in writing, Assistant Returning Officers (ARO's) and such other officials required to assist in the Business Improvement Area Election.
- 4.16 The Business Improvement Area Election shall be conducted by ballot and held at the date, time and location specified by the Nominating Committee. No proxies will be permitted.
- 4.17 Each member has one vote regardless of the number of properties that the member may own or lease in the Business Improvement Area.
- 4.18 Every member that is a corporation or partnership has one vote regardless of the number of shareholders or partners that the member has.
- 4.19 A Candidate may appoint a scrutineer to represent him or her during voting and the counting of votes, including a recount.
- 4.20 The Nomination Committee shall place the results of the election on the Municipality's website and indicate that all appointments are subject to Council approval.

BOARD OF MANAGEMENT OFFICERS

- 4.21 The Board, as soon as is practicable after its members are appointed, shall select a Chair and other officers as it may deem necessary and as are lawfully authorized to properly conduct the business of the Board.

ARTICLE 5 - DUTIES OF ELECTED BOARD MEMBERS

- 5.1 All Board of Management Directors are voting members. The duties of each of the elected Board members of the Mitchell BIA are as follows:
 - 1) Board Members
 - a) Exercise the powers and discharge the duties of the office honestly, in good faith, and in the best interests of the Mitchell BIA and exercise the degree of care, diligence, and skill that a reasonable and prudent person would exercise in comparable circumstances

2) **The Chair:**

The Board Members elect a chair. The Chair shall:

- a) Chair all board of management meetings of the Mitchell BIA;
- b) Rule on all procedural matters and maintain decorum;
- c) Ensure motions and amendments are clearly expressed and, if there is no motion under consideration, summarize the discussion for the purpose of the minutes;
- d) Have general supervision of the affairs of the Mitchell BIA;
- e) Sit as voting ex-officio, on all Mitchell BIA committees;
- f) Be the public representative of and spokesperson for the Board;
- g) Perform any other duties which the Board may assign from time to time.
- h) Work with staff of the Municipality to ensure legislative obligations are met, including but not limited to those regarding staff, volunteers, committees and Board members of the BIA.

3) **The Council Representative:**

The Municipality appoints a Council representative. The Council representative is eligible to Act as Chair of the BIA. The Council representative shall:

- a) Represent the interests of the BIA Board including providing timely reports on BIA activities to Municipal Council.
- b) Report on regular Council deliberations to the BIA Board that may be of interest to the day-to-day operations of the BIA.
- c) Represent the broader interests and responsibilities of the Municipality of West Perth.
- d) Act as a liaison between the BIA Board of Management and Municipal staff where opportunities for additional support and collaboration are identified.

5.2 The Mitchell BIA shall ensure that the following additional functions are undertaken by a Board Member, by hired staff or by the Municipality for the BIA:

1) **The Secretary shall:**

- a) Give the required notice as per the Board's procedural rules contained within this document for every Board and general meeting of the Mitchell BIA.
- b) Take minutes of each such meeting and shall record in the minutes the following: the place, time and date of meeting, the name of the person presiding and the Board members present and absent, any correction to

and the adoption of, the minutes of the previous meeting, and all resolutions. All minutes of every meeting shall be printed and signed by the Secretary and Chair and provided to the Clerk for purposes of record keeping;

c) Perform any other duties that the Board may assign from time to time.

2) The Treasurer shall:

a) Keep and maintain the financial records and books of the Mitchell BIA which shall include but be not limited to keeping of all receipts and disbursements in proper books of account, depositing all moneys or valuable effects;

b) Prepare the financial statements of the Mitchell BIA;

c) Maintain an inventory of all tangible and intangible assets owned or leased by the Mitchell BIA;

d) Prepare and distribute the proposed annual budget in accordance with the requirements of the Municipality;

e) Prepare written financial updates for the membership's review and consideration at each regular meeting;

f) Perform any other duties that the Board may assign from time to time.

ARTICLE 6 – FINANCIAL POLICY

6.1 The annual budget shall be presented to the membership for information before being taken to Council for approval.

6.2 The Board shall follow all Municipal procurement policies. Should a question arise, the Municipality's Treasurer shall be consulted.

6.3 The Board shall not:

a) Spend any money unless it is included in the overall budget approved by the municipality or in a reserve fund;

b) Incur any indebtedness extending beyond the current year without the prior approval of Council; or

c) Borrow money including bank account overdrafts, credit cards, lines of credit, private loans from members of the public or businesses or loans from board members or any other person, business, group or organization.

- 6.4 Board members shall observe the laws, policies, and practices governing all matters related to confidentiality, privacy, and access to information. Should a question arise, the Municipal Clerk shall be consulted.

ARTICLE 7 - COMMITTEES OF THE BOARD

- 7.1 The Board may establish committees to carry out the objectives of the Mitchell BIA or to advise the Board.
- 7.2 The Board shall prescribe the duties of all such committees by resolution or as defined in Board approved terms of reference.
- 7.3 Committee members selected by the Board need not be members, but shall be individuals committed to the advancement of the purposes of the Mitchell BIA. The Chair is an ex-officio member of each committee.
- 7.4 The Board may allocate funding to one or more committees to undertake approved, specific tasks on behalf of the Board, provided an account of all planned expenditures is presented at each Board meeting throughout the tenure of the committee, for review and approval. Committee members are responsible for their budgeted funds and must seek Board approval for any funds that exceed this budget.
- 7.5 Significant decisions of a committee shall be subsequently ratified by the Board before they are implemented or take effect.
- 7.6 The Chair of a committee shall present progress reports and make recommendations to the Board on all projects undertaken.
- 7.7 Committee(s) of the Board are at the discretion of the Board of Management and can be restructured at any time.

ARTICLE 8 – MEETINGS OF THE BOARD OF MANAGEMENT

- 8.1 All Board of Management meetings must follow the rules and procedures defined in the Municipality's Procedural By-law.
- 8.2 It is anticipated that there will be at minimum a quarterly meeting of the Board of Management.

ARTICLE 9 – MEETINGS OF THE MEMBERSHIP

- 9.1 Meetings of the Membership may be called by resolution of the Board, but at least one Annual General Meeting of the Membership shall be held annually. If a written request is made by at least ten (10) members of the Mitchell BIA to call a membership meeting, it is the duty of the Chair, to summon a meeting of the Membership within 30 days of the request being delivered.
- 9.2 Membership meetings shall be held at such place in the Municipality as the Board determines in a meeting space open to the public and accessible.
- 9.3 The notice and agenda for a Membership meeting should reach members no later than on the Friday preceding the scheduled meeting.
- 9.4 The notice and agenda for a Membership meeting shall be posted on the Municipality's website and e-mailed to each member.
- 9.5 All motions arising at any meeting of the Membership shall relate to an item on the agenda for that meeting and the Chair shall have the right to determine whether a motion is in order.
- 9.6 A member may request during any meeting of the Membership that an item be added to the agenda as "new business." The majority of qualified members present shall make a determination at that time whether to amend the agenda to include such item or whether to defer such item to the agenda of the next meeting of the Membership.
- 9.7 All questions shall be decided by a majority vote of the qualified members present unless otherwise stated in this by-law or as required by law. A tie vote shall be deemed to be lost.
- 9.8 No vote shall be taken by ballot or any other method of secret voting except the election of the Chair of the Board may be designated by secret ballot if so determined by the Board.
- 9.9 At all meetings of the membership, every motion shall be decided by a show of hands from all qualified members in attendance. The Chair shall declare that a motion has been carried or not carried. All motions, resolutions or proceedings shall be recorded without note or comment. It is not necessary to record the number or the proportion of votes.
- 9.10 The Secretary shall have a current Membership list available for viewing at
Mitchell BIA Constitution
September 4, 2019

each Membership meeting.

- 9.11 Except as specified in this Article, all other meeting procedures shall follow the Procedural By-law designated and approved by Council.

ARTICLE 10 - STANDARD OF CARE AND CODE OF CONDUCT AND CONFLICT OF INTEREST

- 10.1 Every Board member of the Mitchell BIA shall:
- a) exercise the powers and discharge the duties of the office honestly, in good faith, and in the best interests of the Mitchell BIA; and
 - b) exercise the degree of care, diligence, and skill that a reasonable and prudent person would exercise in comparable circumstances.
- 10.2 The Board of Directors shall follow the Municipality of West Perth's code of conduct as approved by Council and specified for Municipality Boards. Upon receiving a complaint, the Integrity Commissioner may investigate any Directors alleged breach of the code of conduct and/or the Municipal Conflict of Interest Act, as amended, subject to provisions of the Municipal Act, 2001, as amended.
- 10.3 Every Board member who has any direct or indirect interest concerning any matter to be considered by the Board, or any direct or indirect interest in any contract or arrangement, or proposed contract or arrangement with the Board shall disclose his or her interest in the manner required by the *Municipal Conflict of Interest Act*, as amended and shall:
- a) Provide a written declaration of his or her interests as soon as he or she became aware of any such interest, and in any event, prior to or during the next meeting of the board;
 - b) request that his or her declaration be recorded in the minutes of the meeting; and
 - c) not vote on any resolution or participate in any discussion with respect to the resolution concerning the contract or proposed contract.
- 10.4 Effective March 1, 2019, Directors may request advice respecting their obligations under the *Municipal Conflict of Interest Act*, as amended.
- 10.5 All Integrity Commissioner duties and responsibilities relating to the Board is specified in the *Municipal Act, 2001*, as amended.

ARTICLE 11 - POLICIES

- 11.1 The by-law of the Municipality governing the procurement of goods and services (which also governs the sale of surplus goods) applies to the Board.
- 11.2 The Municipality of West Perth records retention policy applies to all Board documents. Each Board is encouraged to provide their records to the Clerk's Office for archival storage. All Board Members are responsible for the retention of documents related to the business of the Mitchell BIA.

Under section 2(3) of the Municipal Freedom of Information and Protection of Privacy Act, as amended, records relating to the business of the Board are accessible to the public upon request.

ARTICLE 12 - RESERVE FUND

- 12.1 The Board may provide in its budget for the establishment and maintenance of a reserve fund.

ARTICLE 13 – CLOSED MEETING INVESTIGATOR

- 13.1 Under Section 239.1 of the Municipal Act, 2001, as amended, any individual may request that an investigation be undertaken to determine whether a municipality or local board has complied with section 239 or a procedural by-law under subsection 238(2), in respect of a meeting or part of a meeting that was closed to the public.
- 13.2 Should an investigation take place, the Investigator may request information or records to examine and the Board shall comply with such requests.
- 13.3 Under Section 239.2(11) of the Municipal Act, as amended, the Board shall ensure reports commissioned by the Investigator are made public.

ARTICLE 14 - FORMS

- 14.1 The Board may create forms from time to time, for purposes of managing the affairs of the Mitchell BIA. Forms will be circulated to Municipality staff for consultation prior to publication and distribution.
- 14.2 Such forms may be changed by the Board without the necessity of an amendment to this By-law.

ARTICLE 15 – CONSISTENCY WITH LEGISLATION

- 15.1 Where reference is made in this by-law to legislation (municipal, provincial and federal) it shall be meant to include all amendments made to that legislation from time to time or the introduction of new legislation.
- 15.2 If there is any conflict between any provisions contained in this By-law and any provision of the Municipal Act 2001 and other legislation the latter shall prevail, and the provisions herein affected shall be modified to the extent necessary to remove such conflict, and as so modified this By-law shall remain in full force and effect.

MITCHELL BUSINESS IMPROVEMENT AREA BOUNDARY MAP – Index 'A'

Being the map of the boundaries established originally by By-law 130-2008 of the Municipality of West Perth.

