



THE CORPORATION OF THE CITY OF COURTENAY

STAFF REPORT

To: Council

File No.: 0250-20

From: Director of Financial Services

Date: September 13, 2023

Subject: Downtown Courtenay Business Improvement Area Bylaw Update

PURPOSE:

To provide Council with information on the process to adopt a new Business Improvement Area (BIA) for the Downtown Courtenay Business Improvement Area (DCBIA), and to seek Council direction to create a new BIA bylaw.

BACKGROUND:

A Business Improvement Area is a specialized tool permitted under the *Community Charter* to create a local service tax specifically for commercial properties. This local service tax applies only to a specific area and can be used as a business promotion scheme which includes beautifying, graffiti removal, heritage conservation or business promotion. All funds collected through the BIA must flow to the DCBIA.

The current "Downtown Courtenay Business Improvement Area Bylaw No. 2264, 2002" was adopted in January 2003 with an annual levy of \$60,000 that has not changed since adoption. The maximum levy is authorized in the bylaw and can only be increased with a new bylaw, which requires property owner approval.

Delegates from the DCBIA provided a presentation to Council at the June 28, 2023 regular Council meeting and requested that Council update the Downtown Courtenay Business Improvement Area Bylaw No. 2264 to increase the maximum local area service property tax. They have requested an increase in their levy to \$120,000 for 2024, and increasing each subsequent year to a maximum of \$225,000 in 2033. They have also requested that the City gain property owner approval for the new bylaw via the "Council Initiative – Subject to Petition Against" process.

DISCUSSION:

Part 7, Division 5 – Local Services Taxes section of the *Community Charter* provides the required steps to adopt a new BIA bylaw. In order for Council to adopt a new BIA bylaw, it must gain property owner approval from the property owners. There are two options for gaining property owner approval (from the provincial BIA guide):

- **Petition for service:** Generally initiated by local business owners, the petition must include information about the proposed business improvement area including boundaries and estimated cost. The petition must be signed by the owners of at least 50 percent of the parcels that would be subject to the local area tax and those persons must be the owners of parcels that in total represent at least 50 percent of the assessed value of land and improvements that would be subject to the local service tax.
- **Council initiative - subject to petition against:** A municipal council can also initiate the establishment of a business improvement area by providing an opportunity for a petition against the proposed service. Council must give notice of a petition against in accordance with section 94

of the *Community Charter* and by mailing notice to all the owners of parcels that would be subject to the local service tax. The notice must include information about the proposed business improvement area including boundaries and estimated cost. Unless Council receives a sufficient petition against within 30 days it can proceed. The threshold for sufficient petition against (50 percent of parcels and 50 percent of assessed value as described above) is the same as for a petition for service.

The DCBIA has engaged its members about this change, including approving key elements of the bylaw in a vote at its June 2023 Annual General Meeting. However, it has not started any formal process to gain property owner approval and does not propose to petition its members per the “Petition for Service” option. The DCBIA has requested that Council use the “Council initiative” option under section 213 of the *Community Charter*.

The Council initiative option is similar to an alternative approval process in that it requires a petition against rather than votes in favour. Here is an overview of the process:

- Council gives first three readings to the proposed bylaw
- The City conducts notifications, including notices in the paper and notification of all property owners within the local area service
- Following publication of the second notice in the paper, a minimum 30-day period starts
- During the 30-day period, affected property owners may submit a form if they do not want the bylaw to proceed. If a minimum of 50% of parcel owners, representing at least 50% of total assessed value do not want the bylaw to proceed and submit valid forms, then the petition against has succeeded and Council is not permitted to adopt the bylaw.
- If the number of objectors and combined assessment of objectors is below 50%, Council is permitted to adopt the bylaw.
- Following bylaw adoption, the City would wait a month for the quashing period to be over prior to proceeding with the bylaw. The quashing period is a one-month period when a bylaw may be challenged in the BC Supreme Court and possibly quashed (Local Government Act s. 623).

There are 106 parcels in the DCBIA. One form may be submitted per parcel, and the majority of property owners for a parcel must sign the form. This means that in order to gain property owner approval, fewer than 53 owners would submit a form to oppose the bylaw. The DCBIA has conducted member outreach to gain support for the increased levy (see Attachment “Downtown Courtenay Improvement Area Bylaw Review”) and feels their members will support the increased levy.

Staff propose the following timeline, if Council chooses to proceed with the bylaw and the “Council initiative” option for property owner approval:

- September 13 – Council provides direction to proceed with the bylaw
- September 27 – Council gives first, second, and third readings of the bylaw
- October 4 and 11 – Notices in the paper, notices sent to property owners
- October 12 to November 15 at 4pm – 30-day period for property owners to submit forms opposing the bylaw
- November 15/16 – Corporate Officer certifies the results of the property owner approval process
- November/December – Staff report to Council on the results. If the bylaw has received property owner approval, Council may consider adopting the bylaw.
- One-month quashing period follows
- The new levy would be in place for the 2024 taxation year

POLICY ANALYSIS:

Division 5 of the *Community Charter*, Local Service Taxes, provides guidance on the creation of business improvement area bylaws. The bylaw must:

- Describe the service
- Define the boundaries of the local service area
- Identify the methods of cost recovery for the service, including the form of local service tax and the portion of the costs of the service that are to be recovered by the local service tax
- If applicable, identify the portion of the costs of the service that are to be recovered by a general property tax
- Identify the business promotion scheme for which the money will be granted
- Identify the organization to which the money will be granted
- Establish the maximum amount of money to be granted
- Establish the maximum term over which it may be granted

A BIA bylaw must be completed prior to the annual property tax bylaw deadline of May 14 to permit appropriate taxation of the BIA. If the bylaw is not updated by that date, the DCBIA will not be able to increase its levy. Additionally, the current DCBIA bylaw does not comply with s. 215 of the *Community Charter*, which requires that the bylaw establish a maximum term. If the “Council initiative” option did not succeed, that would mean that Council would be unable to propose the same service as a Council initiative for one year. The DCBIA would be able to make its own petition for local area service at any time, and it is possible it would still be able to meet the deadline of May 14 for the 2024 taxation year.

The DCBIA has also explored the idea of expanding the DCBIA boundaries, but estimate they will not be ready to proceed with a boundary expansion until 2025. A boundary expansion would also require property owner approval and a new bylaw. If the DCBIA requested a change to the maximum levy at the same time, a boundary expansion would require property owner approval of the entire DCBIA area. If the DCBIA requested only a boundary change, with the maximum levy remaining the same, property owner approval would only be required for the proposed additions to the area.

The DCBIA initially proposed a 5-year term for the bylaw. This would mean that the bylaw would have to be updated again by May 2029 or the DCBIA would not be able to receive funding in the 2029 tax year. Staff have recommended including ten years in the bylaw as a safety net if issues arise with the planned expansion of the BIA, or if other unforeseen circumstances prevent the DCBIA from updating the bylaw within five years. The DCBIA agreed and proposed a 10-year schedule of levy increases (see attached). The process to bring a new bylaw into place is not quick or simple, so reducing the number of times the process needs to be completed may also reduce the administrative burden on the City. A BIA bylaw can be repealed before its expiry date, so there is no restriction on a bylaw update prior to 2033.

FINANCIAL IMPLICATIONS:

The administration costs of the “Council Initiative” option, while more costly than the “Petition for Local Area Service” option, are not significant and limited to mostly advertising and postage. The City is not imposing an additional taxation burden on properties outside of the DCBIA, and therefore the financial implications are restricted to those eligible properties within the DCBIA.

The proposed bylaw continues the practice of using property value taxation method to distribute the BIA levy. A BIA can use a parcel tax to distribute the levy, however, the DCBIA has not requested a change to the current method of distribution of the levy. This means that properties with a higher assessment value will pay a higher proportion of the levy, rather than a flat rate per parcel.

The annual property taxation method for the DCBIA is well established, and again has limited impact on the City's operations. Annually, the City calculates the required tax rate to levy the requested amount, and the BIA tax rate is included in the City's annual property tax bylaw. The City collects the required taxation and forwards the funds onto the DCBIA after the July property tax deadline.

The DCBIA has requested the following funding for 2024-2033 (Appendix C).

| Annual DCBIA Levy | |
|--------------------------|---------------------|
| Year | Levy |
| 2024 | \$ 120,000 |
| 2025 | 130,000 |
| 2026 | 145,000 |
| 2027 | 160,000 |
| 2028 | 175,000 |
| 2029 | 185,000 |
| 2030 | 195,000 |
| 2031 | 205,000 |
| 2032 | 215,000 |
| 2033 | 225,000 |
| Total | \$ 1,755,000 |

The current DCBIA levy, set in 1995 and unchanged since then, is \$60,000. The new requested levy amount was arrived at through the DCBIA's engagement process with its members. Currently there are 106 properties within the DCBIA, and the average levy in 2023 was \$567. There is one property that pays more than \$3,000 towards the DCBIA, three that pay more than \$2,000 and 6 that pay more than \$1,000. These 10 properties combined contributed \$17,920 towards the \$60,000 levy for 2023.

With the proposed increase in the DCBIA levy, the distribution of the levy is expected to remain consistent as the levy is based upon assessed value. The amount paid under the new bylaw in 2024 would be about double the amount paid in 2023. The total levy increase from 2023 (\$60,000) to 2033 (\$225,000) is \$165,000 which is equivalent to 275% increase. Assuming similar assessment distribution the expected average DCBIA levy in 2033 would be \$1,559 per property.

ADMINISTRATIVE IMPLICATIONS:

The property owner approval process would be a collaboration between Corporate Services (Legislative Services and Communications) and Financial Services departments. The additional work required will impact current work programs, i.e. some delays in other projects. Actual impact depends on the number of forms submitted and volume of inquiries about the property owner approval process.

While the "Petition for Service" method of property owner approval would be less costly and time-consuming for the City, it is not what the DCBIA has requested, and staff do not recommend it as it may not be feasible at this time. The DCBIA is undergoing a change in staffing and may not have the capacity for the petition for service. The bylaw update could be delayed if Council requested that the DCBIA undertake the "Petition for Service" method.

STRATEGIC PRIORITIES REFERENCE:

Strong Neighbourhoods – Through improved investment in the downtown core.

Arts, Culture and Heritage – Through improved support to the DCBIA additional events could be held.

Local Economy – Through improved support of the DCBIA the local economy will continue to flourish.

PUBLIC ENGAGEMENT:

Staff would empower the public (applicable property owners) based on the IAP2 Spectrum of Public Participation, as the DCBIA property owners will have the power to decide whether to approve the bylaw. Members of the public who are not DCBIA property owners will be informed through the required public notifications.

OPTIONS:

1. THAT Council direct staff to proceed with an update to the Downtown Courtenay Business Improvement Area Bylaw to increase the maximum levy, as requested by the DCBIA;

THAT Council consider first, second and third readings of the “Downtown Courtenay Business Improvement Area Bylaw No. 3105, 2023” at the September 27, 2023 Council meeting;

AND THAT Council direct staff to undertake property owner approval for the proposed bylaw using the “Council initiative – subject to petition against” method under s. 213 of the Community Charter.

2. THAT Council direct staff to proceed with an update to the Downtown Courtenay Business Improvement Association Bylaw to increase the maximum levy, as requested by the DCBIA;

AND THAT Council direct staff to work with the DCBIA and seek property owner approval using the “Petition for Service” method under s. 212 of the Community Charter.

3. THAT Council provide alternative direction to staff.

APPENDIX:

Appendix A – Downtown Courtenay Business Improvement Area Bylaw No. 3105, 2023

Appendix B – 2023-07-21 DCBIA Bylaw Review (Urban Systems)

Appendix C – DCBIA letter re: 10-year term

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