

## **Business Improvement Areas of British Columbia**

### **“General Meetings During the COVID-19 Pandemic”**

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**Zoom Webinar**

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Most business improvement areas (BIAs) are incorporated under the *Societies Act* of BC. The Act can be found online at: [http://www.bclaws.ca/civix/document/id/complete/statreg/15018\\_01](http://www.bclaws.ca/civix/document/id/complete/statreg/15018_01)

Before calling or holding the AGM, you should review both the Act and your bylaws.

#### **Ministerial Order**

On April 21, 2020, the British Columbia Minister of Public Safety and Solicitor General made an [order](#) under the *Emergency Program Act*. The Order permits a society to use telephone or other communications medium at its meetings even if its bylaws prohibit the use of such technology. In addition, the Order confirms that a meeting can be held solely by telephone or other communications medium with no physical location. If a meeting is held solely by telephone or other communications medium, the notice of meeting must provide instructions for attending at or participating in the meeting and, if applicable, instructions for how to vote at the meeting.

#### **Technology**

If a BIA can use video conferencing to hold a meeting, a range of platforms are available. If only a few people are attending, a meeting could be held on a simple smartphone application like Facetime, WhatsApp or Google Video Chat. For larger groups, a BIA can use paid for service providers like Zoom or GoToMeeting or other platforms designed for large meetings. The BIA will also need to review its bylaws to see how votes can be conducted. Typically most voting is done by a show of hands or orally. However, some voting may have to be conducted by a secret ballot – most commonly used in a contested director election. If the meeting platform cannot facilitate voting by secret ballot, the BIA may need to use a secondary platform just for the secret ballot (e.g., a questionnaire/survey service such as SurveyMonkey).

Each BIA should consider whether it has any obligations to local governments that may set meeting requirements above and beyond the requirements that apply to all societies. The Vancouver Charter has some provisions addressing BIAs in Vancouver, but nothing in the Charter explicitly addresses meetings.

The rules generally applicable for societies under the *Societies Act* (British Columbia) are as follows:

#### **Annual General Meetings (AGMs)**

A society must hold an AGM each calendar year. A society can apply to the Registrar of Companies for an extension until March 31st of the next year. However, the society's bylaws might require the AGM to be held by a specific date in the year. If your bylaws reflect the requirements under the former Society Act, they may require that each AGM be held within 15 months after the previous AGM.

At the AGM, societies present financial statements to their members. The financial statements must be prepared for a period ending not more than six months before the AGM. This typically means that the society will hold its AGM within six months of its fiscal year. However, it is possible to delay the meeting beyond that six-month point and still be compliant. In order to do this, the society must prepare financials that cover the last fiscal year and the additional months required to be within the six month rule.

The AGM does not have to be a physical meeting. A society is deemed to hold an AGM if all its voting members consent in writing to a resolution covering the AGM business. The AGM is 'held' on the date the last voting member consents to the resolution, or a later date specified in the resolution.

### **Meetings by Telephone or Video Conference**

Unless restricted by its bylaws, a society can hold a members' meeting, including the AGM, by telephone or another communications medium. The meeting can be entirely held by electronic means or may be an in-person meeting with some members participating electronically. All the people participating in the meeting, whether in person or electronically, must be able to communicate with each other, and any votes must be conducted in a manner that adequately discloses the intention of the members.

Directors are permitted to hold meetings in any manner that want, including by telephone or video, unless restricted by the bylaws.

### **Proxies and Voting Alternatives for Members**

If permitted by the bylaws, members can appoint someone to be their proxy to attend and vote at the meeting on their behalf. If your bylaws are silent on the question of proxies, they cannot be used. The bylaws can also permit indirect or delegate voting, or voting by mail or another means of communication (such as mail-in or electronic ballots).

If using proxies or voting alternatives, it is important to carefully review the bylaws for the rules and whether the alternatives can be used for all business or only some (such as director elections). You should check your bylaws to see whether they restrict who can be a proxy holder, or the number of proxies they may exercise. Unless the bylaws provide otherwise, the proxy must be a member of the society and may be a person under the age of 19 years.

Unless the bylaws say otherwise, a proxy is only valid for the meeting for which it has been given. An ongoing proxy is only valid if the bylaws provide for it.

In a virtual meeting, it may be a challenge to determine how proxy votes are being exercised. A good practice is for the chair of the meeting to confirm the number of proxies at the beginning of the meeting, and to ask for each member's vote first, before asking each proxy holder to confirm how they are voting the proxies.

The proxy appointment may limit its use; for example, a member giving a proxy could specify that it is only to be used for a vote on the election of directors. Unless the proxy appointment contains such a limit, the proxy holder can do anything that could be done by the party giving the proxy, including proposing and seconding resolutions. For example, a member holding proxy could move a resolution and then use the proxy to second it.

### **Adjourning or Postponing Meetings**

If a meeting notice was sent prior to the COVID-19 pandemic, the directors have the authority, if acting in good faith, to adjourn the meeting to a later date.

If a meeting is held, but not enough people participate to meet your quorum requirements, the business of the meeting cannot be conducted. The quorum for members' meetings is three voting members, unless the bylaws set a higher number. The bylaws may have specific rules about when the meeting may be rescheduled, what is the quorum at the rescheduled meeting, or how to give notice of the rescheduled meeting.

### **Written Resolutions Instead of a Meeting**

We noted earlier that members can conduct the AGM by written resolution instead of holding a meeting. Members can also conduct any other business by written resolution. If the resolution is an ordinary resolution (requires a majority vote at a meeting), it can be passed in writing if the resolution is sent to all the voting members and at least 2/3rds consent in writing. A special resolution (requires at least a 2/3rds vote at a meeting) can also be passed in writing if all voting members consent. "Writing" is defined in the *Electronic Transactions Act* to include email.

Directors' resolutions can also be passed by in writing instead of holding a meeting. In order to pass the resolution, all of the directors must consent, unless the bylaws set a lower threshold.

*If you have questions not answered in the above material, feel free to ask Mary through Lori Baxter at [info@bia.bc.ca](mailto:info@bia.bc.ca).*