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**SUMMARY OF PROPOSED AMENDMENTS**  
**TO THE BY-LAWS**  
**of the**  
**BANFF LAKE LOUISE TOURISM BUREAU**

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NOTE TO READER – This is a summary prepared to assist the reader in determining some of the amendments to the By-laws and related governance documents of the Bureau. It is not a legal document. The proposed By-laws are available for review by contacting the Bureau directly.

## **Purpose & History**

This Summary sets out some of the material changes to the proposed By-laws and related governing documents of the Banff/Lake Louise Tourism Bureau (“Bureau”) as of March 1, 2010. The Bureau formed a Governance and By-law Committee to undertake a comprehensive review of the By-laws. The Governance and By-law Committee prepared and presented the “proposed “ By-laws to the Board of Directors of the Bureau. After further review and discussion, the Board of Directors approved the form of proposed By-laws to go forward to the Membership at a Special Meeting of the Members.

The prior By-laws had undergone a series of revisions over time resulting in a complex document with multiple cross references. The By-laws have been re-ordered and re-formatted into a more cohesive and logical structure. The By-laws are now gender neutral.

## **Summary of Proposed Governance Model Changes to the Bureau**

The proposed By-laws include the following changes to the governance structure of the Bureau:

- The proposed By-laws clearly define Full Membership and Associate Membership. The Eligibility requirements of Members are now set out in detail
- The proposed by-laws expressly sets out the authority of the Board to be the decision maker (and to enter into third party agreements that are necessarily for the continued operation of the Bureau) whilst preserving the rights of the Membership using the existing model. For instance, the Board has clear authority to determine the annual Financial Contribution and to enter into agreements with Contractual Members and the Town of Banff whilst the Members are entitled to full disclosure of Business Category allocations and retain the right to amend the allocation of the Financial Contribution within the Business Category.
- The proposed By-laws define the three types of Membership meetings – Annual General Meetings, Special Meetings and General Meetings. The proposed By-laws now set out detailed procedures for Members meetings, namely proper notice procedures, who can call a meetings quorum at meetings, business that can be transacted, proxies procedures and adjournment.
- The election of Directors and the representation of Business Categories by members of the Board of Directors remains largely unchanged however the Chairperson has been provided with additional authority to preside at meetings and “move-along” meetings so business is conducted with efficiencies.
- The Ski Area director no longer is excepted from the rule that all Directors can only serve for 2 terms.
- The Related Corporation Rule continues to apply. That rules states only one director can be nominated from a Corporate Member, including its subsidiaries and affiliates. The Joint Venture exception has been removed. That exception stated Joint Ventures were not included within the definition of Related Corporation and Joint Ventures could have up to 2 directors.
- Directors must be tied to the Member who nominated the director. That means the employee must be an employee or officer of the Member and Members cannot appoint unrelated third party nominees.

- The duties and tasks of elected officers have been codified – meaning the duties and responsibilities are expressly set out in the proposed By-laws.
- The proposed By-laws contain new *in-camera* provisions setting out when *in camera* session are appropriate and the procedures applicable thereto.
- The proposed By-laws create three standing Committees (Executive Committee, Audit and Finance Committee and Governance and Nominations Committee) and the duties and responsibilities of those committees.
- The proposed By-laws contain changes to the Conflict of Interest provisions designed to clarify the identification of a conflict and procedures applicable when a conflict is identified. The Chairperson has been provided with additional authority to identify and resolve conflicts (although the onus to declare a conflict remains with individual directors)
- The proposed By-laws contain new provisions regarding confidentiality.
- The proposed By-laws have transition provisions meaning any directors that are duly elected members of the Board remain as directors until the end of their term notwithstanding changes to the By-laws

### **Article 2 – Membership (formerly Sections 2.1, 2.5, 2.6)**

Attached is a diagram showing the Membership structure.

The amendments to the Membership provisions are as follows:

1. The proposed By-laws clarify the definitions of who are Members and clearly set out the three categories of Membership (Full Member, Contractual Member and Associate Members).
2. All Full Members are either Resident Businesses or individuals (professionals) or organizations (charities and not for profits). Resident Businesses is a defined term meaning a Licensed Business.
3. Full Members who qualify as Resident Businesses are automatically Full Members (upon payment of fees). Full Members who do not qualify as Resident Businesses (such as Not For Profits and professionals) must have their Membership application approved by the Board.
4. The application procedures for Associate Members are set out in greater detail. The eligibility requirement for Associate Members is now set out in the Associate Membership Policy.
5. Sales Offices are now defined and can only be Associate Members
6. Non-Resident Lodging, Restaurants/bars Retail or Ski Area are prohibited from being Members as these businesses organizations would utilize the Bureau's resources to draw visitors outside of the Park

7. The Associate Membership Policy has been updated by the Associate Membership Policy Committee and approved by the Board of Directors.
8. The Associate Member Policy has been revised so that Associate Members who partially or fully compete with the business of Full Members are not eligible for membership, (including existing Associate Members). There are exceptions for Associate Members that partially compete. The Associate Members undergo review by the Board annually to ascertain whether they continue to qualify as Associate Members pursuant to the Policy. The By-laws have been amended and updated to accommodate the procedures for the Associate Member review as follows (in summary):
  - a. Associate Memberships exist for 1 year then terminate December 31 of each Year (which previously existed by was not clearly written).
  - b. If the Board decides to renew the Associate Membership because the Member continues to qualify, then the Associate Membership is renewed for the next year;
  - c. If the Board decides the Associate Member is not eligible, then the Associate Membership is not renewed. In such case the Associate Member (under the Policy) has 30 days to appeal to the Board setting out its eligibility requirements. The Board makes a final decision at that time.
  - d. The proposed By-laws state the matter can then be referred to binding arbitration.

**Rights, Privileges and Obligations of Members**

9. The proposed By-laws define the contractual relationship between Members and the Bureau by defining the Rights and Privileges of Members as well as the duties and obligations of Members. The basic law of an Association is the law of contract – a “*contract of association among constituent members*”. With the advent of TIF and Schedule “B” Fees, the Members’ obligations (largely to provide funds) have been changed from being implicit in the prior By-laws to explicit in the proposed By-laws. The prior provisions regarding “Privileges” of Membership have been replaced.
10. The proposed By-laws re-organize Full Membership and Associate Membership into a consistent logical format:

<p><b>Full Membership</b></p> <ul style="list-style-type: none"> <li>▪ Full Membership Eligibility</li> <li>▪ Applications for Full Membership</li> <li>▪ One Membership</li> <li>▪ Rights and Privileges of Full Members</li> <li>▪ Duties and Obligations of Full Members</li> </ul>	<p><b>Associate Membership</b></p> <ul style="list-style-type: none"> <li>▪ Associate Member Eligibility</li> <li>▪ One Membership</li> <li>▪ Non-Resident Businesses</li> <li>▪ Annual Review of Associate Memberships</li> <li>▪ Rights and Privileges of Associate Members</li> <li>▪ Duties and Obligations of Associate Members</li> </ul>
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### **Membership & Business Categories (Section 2.6 – formerly in Definitions section)**

The proposed By-laws confer a direct authority upon the Board to allocate Full Members and Associate Members into Business Categories. The proposed By-laws expressly state a Member can be in more than 1 Business Category. The 5 Business Categories remain largely unchanged excepting for the use of the term “carrying on business” which is a term used in various statutes, including the Income Tax Act.

### **Resignation, Suspension and Continuing Obligations (Sections 2.17 & 2.18 (formerly Sections 2.7 & 2.8)**

The legal relationship between the Bureau and its Members contain a sensitive anomaly, namely that a Member can resign, be expelled or be suspended (and in so doing loses the rights and privileges of membership) but the Member remains obligated to continue paying Schedule “B” Business License Fees and/or amounts under any Contractual Agreement between the Member and the Bureau. This has been maintained in the proposed By-laws.

The majority of Members pay Financial Contributions either by

- Schedule “B” Business License Fees
- Tourism Improvement Fund Agreements

The application form for Members (Full and Associate Members) is being amended to create separate contracts for Full and Associate Members who do not fit within either of the above categories.

The obligation to pay the Financial Contributions is set out in both the By-laws and in separate contractual agreements or under the Schedule “B” Business Licensing system

The proposed By-laws now expressly state expulsion, suspension or resignation does not terminate the obligations under the separate contractual agreements or under the Schedule “B” Business Licensing system. This means Members can resign their Membership but will still have continuing obligations to pay the Financial Contribution.

These provisions would support a debt action (a law suit) against such a Member by the Bureau or commencement of fines under the Schedule “B” Business Licensing System by the municipality. However, in recognition that the Bureau is a member based organization, the proposed By-laws defer the decision of whether to commence a legal action to the Board (rather than making such a confrontation mandatory).

The reasoning behind these provisions is that the Bureau makes financial commitments over multi-year periods and needs the surety that Members cannot simply “walk away” at their discretion.

The principals of “natural justice” (a common law concept that requires procedural fairness and protects against arbitrary exercise of power) are applicable to expulsion of Membership in an Association. The executive at the Bureau advised they cannot recall this ever being an issue so there was no need to expand those procedural requirements. The Board was given further authority to determine when suspension is warranted by inclusion of “*conduct detrimental to the interests and Objectives of the Bureau*”.

### **Article 3 Membership Fees and Financial Contributions (formerly Sections 2.1 & 2.3)**

The revenue source of the Bureau is derived largely from the Member's Financial Contributions. The provisions in the prior By-laws regarding Membership Fees and Financial Contributions appear to have been assembled by a series of amendments over a long period of time and were scattered through-out the By-laws. Article 3 of the proposed By-laws endeavors to:

1. retain the overall concepts of nominal Membership Fees of \$1.00 and dynamic Financial Contribution funding mechanisms;
2. bring all of provisions of Membership Fees and Financial Contributions under one Article to make it easier for Members to understand;
3. retain the transparency of publishing the Financial Contribution of each Business Category in the Annual Business Plan.
4. clearly set out that the Board has the authority to determine the Annual Contribution (not the municipality nor the Members);
5. compel Members to make the Financial Contribution payment to the Bureau;
6. exempt all Business that pay Schedule "B" Fees to the Town from the obligation to make payment directly to the Bureau.

The prior By-law required the Board to consider such matters as: distribution of average expenditures in Business Categories; economic multiplier effects, expenditures by business category. These concepts have all been removed from the proposed By-laws. The reasoning is that these concepts are superseded with the advent of TIF and the new Schedule "B" Licensing Fees under the Alternative Revenue Strategy implemented in 2007. The Board can continue to take these concepts into account, however entrenching these concepts in the By-laws now causes confusion and contradictory obligations.

The mandatory written agreement between the Bureau and Contractual Members in Section 3.4 has been replaced with Board authority to enter into agreements in Section 3.6. These contractual agreements were not being entered into on a regular basis – other than the TIF Agreements. The Membership application forms will be amended so all new members will agree to express contractual terms to pay the Financial Contribution.

### **Member's Meeting to Revise Distribution of Business Categories Fees**

The concept that the Members of a Category can control the distribution of the Business Category Fees among themselves is continued (and demonstrates a good balance between the authority of the Board and the Members) however that concept is now subject to TIF Agreements and Schedule "B" Licensing By-laws. The Weighted Votes remain. The Proposed By-laws now includes clarification of the procedural requirements as well as clearly sets out such resolutions are subject to amendments of the Municipal By-laws.

### **Town of Banff Business Licensees (Section 3.8 – formerly Section 2.3 (e))**

Members are excepted from paying the Financial Contribution to the Bureau so long as the Town of Banff Destination Marketing Agreement is in place and the Town of Banff collects the

Schedule “B” Licensing Fees. However, that exemption terminates in the event the Town and the Bureau terminate the Destination Marketing Agreement.

### **Administration Fees**

The Board can levy Administration Fees upon any group of Members (Full, Associate) or and Business Category. This accords with the amended Associate Membership Policy. It is a recognition that some membership categories demand a disproportionate amount of the Bureau resources (employee time) and, in such case, the Board can consider fees to compensate the Bureau for the extra costs.

### **Article 4 Members Meetings (formerly Sections 3.0, 3.2, 3.3, 3.4, 3.5, 3.6, 3.7)**

Article 4 of the proposed By-laws brings all of the meeting procedures under one Article and has been re-organized. There are 3 Members Meetings

1. Annual General Meetings
2. Special Meetings
3. General Meetings

Article 4 of proposed By-laws follows the following order (which is a standard procedural order for meetings):

#### **Annual General Meeting**

- (a) Appointment of Auditors
- (b) Annual Reports and Budgets
- (c) Business At Annual General Meeting
- (d) Quorum at Annual General Meeting

#### **Special Meetings (Calling and Notice)**

- (a) Special Meetings (Calling and Notice)
- (b) Special Meeting Business
- (c) Special Resolution
- (d) Quorum at Special Meetings

#### **General Meetings**

- (a) General Meetings (Calling and Notice & Business)
- (b) General Meeting Business & Quorums

#### **General Meeting Provisions**

- Transaction of Business at Meetings
- Chairperson at Meetings
- Voting
- Proxies
- Corporate and Organizational Nominees
- Waiver of Notice
- Declarations
- Rules and Regulations

The By-laws state all Special Meetings must pass the dual voting system – a regular vote (1 vote per Member) and a Weighted Vote. This was previous practice but not consistently set out in the By-laws.

#### **Article 5 Board of Directors (formerly Section 4.0)**

Section 4.1 of the prior By-laws contains the essential wording...that the Board has “*power to manage and control the affairs of the Bureau*”...and the right to “*delegate those powers*”. No change has been made to those empowering provisions.

The By-law Committee did not elect to increase the elected directors from the Lodging Business Category from 3 to 4 . All other representation of Business Categories by directors remains unchanged.

Section 4.3 of the prior By-laws authorizing the Board to change its Elected Membership has been completely removed. Such a provision is contradictory to the model of Business Categories being guaranteed representation. Entrenching the representation of Business Categories (by fixed number of Directors representing each Business Category) is an essential right of the Membership that cannot be altered by the will of the Board.

Section 5.5 of the proposed By-laws clearly state Associate Members cannot be directors. This is consistent with the rights and privileges of the Associate Membership.

The appointed Directors (Mayor of Town of Banff and Superintendent of Parks Canada) – in Section 4.4 of the prior By-laws remain. However, these appointed Directors can only have one “alternate”. The rationale is that proper functioning of the Board requires continuity of Board Members and numerous alternates standing in for the appointed Director does not achieve that continuity. Elected Directors cannot appoint alternates and if they miss meetings, votes continue in their absence. These same provisions should apply to appointed Directors with the exception that they can have one alternate in their place annually.

Section 4.5 (f) of the prior By-laws has been removed. Section 4.5 (f) was an exception that the Ski Area director may stand for election for more than two terms. The rationale for the amendment is that all elected directors should be treated equally.

The proposed By-laws state the directors have authority to control what marketing materials are, and are not, permitted on the Bureau website and Visitor Information Centers. Advertising anything (ie: non-resident businesses) is not an automatic right of Membership.

#### **Article 6 Election of Directors (formerly Section 5.0)**

The nomination and election of Directors, in advance of the Annual General Meeting, remains in place. The Bureau staff commented on the administrative work associated with electing directors in advance of the Annual General Meeting. Previous Section 5.0 is now Article 6.

#### **Article 7 Officers of Bureau (formerly Section 8)**

The officer’s provisions of the prior By-laws underwent revisions with emphases on enhancing the powers of the chairperson, both for the sake of efficiency and to resolve disputes at the Board level. The foremost power is the ability to limit discussion or debate or calling for motions to be put forth in board meetings to ensure business of the meeting proceeds in an expedient manner.

These powers were felt necessary due to the size of the Board of Directors and the complexity of matters dealt with at those meetings.

The duties of the Vice-president, Secretary and Treasurer have been amended so as to bring those offices in line with normal duties and requirements of those officers in similar corporate structures and to allocate responsibility for proper governance.

The role and reporting requirements of the Chief Executive Officer are set out in more specific detail.

### **Article 8 Meetings of the Board (formerly Section 9)**

The amendments are largely a “cleaning up” of the meeting procedures.

One request to the By-law Committee was to implement e-mail voting procedures. Upon review of the *Societies Act* and the Common Law regarding governance generally, this is a case where the law has not kept up with the technological advancements and the principle that the directors must meet face to face remains a fundamental tenant of directors meetings. The law needs to change and the proposed By-laws allows e-mail meetings in a limited fashion

Section 8.12 of the proposed By-laws includes provisions for email voting in “extraordinary circumstances”. The determination of what constitutes extraordinary circumstances is determined by the Chairperson and is not otherwise defined. Other than entrench the e-mail voting terms in the By-laws, the proposed By-laws authorize the Board to pass email voting policies. The rationale is that policies can be amended from time to time as technology (and the law) change ensuring flexibility (and the implementation of new email policies can be made by the Board of Directors and by the Membership). To ensure compliance with the Societies Act, any motion passed by an e-mail vote must be ratified at the next Board meeting. An e-mail voting Policy was drafted for Board approval following passage of the proposed By-laws.

New to the proposed By-laws (Section 8.14), are extensive *In Camera* meeting procedures. A balance must be struck between a Board that is transparent as well as ensuring confidential matters can be addressed. The *In Camera* meeting procedures set out a series of steps and resolutions that must be followed in order to go *In Camera*. All business that is transacted by resolution of the Board derived from *In Camera* sessions shall be done after the *in camera* session has ended and be recorded in the regular minutes of the meeting. This ensures the necessary transparency remains enacted.

### **Article 9 Committees (formerly Section 8)**

The proposed By-laws create three standing committees:

- (a) Executive Committee;
- (b) Audit and Finance Committee; and,
- (c) Governance and Nominations Committee.

The proposed By-laws set out the duties and obligations of these committees.

The reason for the three standing committees is to ensure there is governance and oversight for key aspects of the Bureau’s operations. In particular, a standing Audit and Finance Committee is a necessity. The Executive Committee is charged with the day to day decisions between Board meetings and the Governance and Nominations Committee continues on the review of governance of the Bureau as well as seeking nominations for the Board of Directors.

The proposed By-laws allow for the creation of additional committees from time to time by the Board. Other Committees may be charged with such specific tasks as the Board may determine and authorize.

#### **Article 10 Conflict of Interest (formerly Section 11)**

A great deal of debate/discussion took place at the Committee and Board level regarding conflict of interest of Directors. A balance has to be struck between ensuring good governance and addressing conflicts of interest (including perceived conflicts of interest). The former and proposed By-laws create “constituent” Directors. All elected Directors are elected as representatives of certain Business Categories and members of those Business Categories expect their elected Director to represent their interests at the Board of Directors meetings. That same director has a duty to ensure his or her “pecuniary interests” do not compromise that director’s judgment in carrying out his or her duties as a director of the Bureau.

There are two approaches: The first is to include a general statement defining a conflict of interest generally. The second approach is to set out specific examples of when a conflict of interest exists. The By-law Committee decided that the former is an absolute necessity and should be included. The By-law Committee decided that the latter would likely cause confusion, although several committee members stated that acts of the Bureau that directly benefit single Business Category to the exclusion of all other Business Categories should be cited as a conflict of interest for the director elected by the benefiting Business Category.

Section 8.6 of the proposed By-laws includes a provision whereby the Chairperson is given additional powers and authority to make a declaration that a Director is in a perceived conflict of interest. It is intended that the Chairperson, preferably a senior member of the Board, has the ability to remind a director that he or she has a perceived conflict of interest. If the Chairperson decided that Director is in a conflict of interest and the Director refuses to agree, the Chairperson has certain powers to suspend the debate and the discussion and refer the matter to the Governance and Nominations Committee for review. The Governance and Nominations Committee is authorized to review the matter and provide advice back to the Board of Directors. The Board of Directors then holds a vote whether a conflict of interest does exist – if it does, the director is prohibited from further participation in the discussion and is not permitted to vote. If the Board votes that the Director does not have a conflict of interest, the meeting proceeds in the ordinary course.

It is important to recognize that in a small community with Directors representing Business Categories (the latter being entrenched in the By-laws) there is an inherent degree of perceived conflict and the By-law Committee was cognizant not to entrench By-laws that results in a dysfunctional Board.

The obligation rests upon the individual director to declare he or she is in a conflict position and excuse himself or herself from voting or discussing the matter further. The prior By-laws stated that a director who contravenes the Conflict of Interest terms was disqualified as a Director. This has been maintained in the proposed By-laws – but is not without controversy. In the proposed By-laws, there are no other punitive measures imposed upon a conflicted director that does not make a declaration and participates in the Board vote. Such provisions would be unusual in a corporate structure of this nature. The resulting resolution is not voided – but can be re-visited by the Board at any time.

**Article 11 Confidential Information (new)**

The proposed By-laws include provisions addressing use and control of confidential information. These were not in the prior By-laws.

**Article 12 Protection of Directors and Officers (formerly Section 12)**

These provisions are essentially the same as set out in the prior By-laws. There is a provision whereby the Bureau may expressly purchase and maintain errors and omissions insurance on behalf of the Board.

**Article 13 Non Partisan (formerly Section 13)**

These provisions remain largely unchanged.

**Article 14 General (formerly Section 14, 15 & 16)**

These provisions remain largely unchanged.

End of Summary