

REPORT

Council

Meeting Date: April 24, 2023

FROM: Legal Department

DATE: April 11, 2023

SUBJECT: Delegation of Municipal Powers and Duties By-law 2023-021

LOCATION: Town-wide

WARD: Town-wide

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RECOMMENDATION:

1. That the report titled Delegation of Municipal Powers and Duties, dated April 11, 2023, from the Legal Department, be received.
2. That By-law 2023-021, a by-law to delegate certain powers and duties under the *Municipal Act, 2001*, S.O. 2001 c.25, the *Planning Act*, R.S.O. 1990 c. P. 13, and other Acts, and to repeal By-law 2021-077, as amended, and to repeal By-law 2012-013, be passed.

KEY FACTS:

The following are key points for consideration with respect to this report:

- The *Municipal Act, 2001* provides municipalities with flexibility in governing their affairs, including authority to delegate powers and duties to individuals or bodies.
- Matters which are eligible for delegation include administrative matters and other matters which are routine, administrative, or operational in nature, but do not include more significant powers such as establishing budgets and tax rates, approving Official Plans or Zoning By-laws, and other powers which are more legislative in nature.
- Efficiencies in both service delivery and the cost of providing services are possible through the delegation of additional powers and duties, in whole or in part.
- In considering the appropriateness of any delegation of powers, it is necessary to maintain comparable levels of accountability, consultation, transparency, and adherence to municipal policy direction.

- This report proposes some areas where expanded delegated authority will provide value and meet accountability and transparency requirements, as well as propose some revisions to existing delegated authority to either align with current operational practices or legislative updates, and to reinforce appropriate levels of accountability and transparency.

BACKGROUND:

Sections 23.1- 23.5 of the *Municipal Act* provides municipalities with options for delegating powers and duties to individuals or bodies. Subject to certain limits, Council may decide which matters require Council's direct attention, which matters require Council's input and direction, and which matters require limited or no direct Council involvement.

In December 2007, Council approved a delegation policy. Under this policy, additional by-laws and procedures are required describing the manner in which delegated powers are to be exercised and reported to Council. In 2010, staff conducted a review and certain additional delegations of authority were considered and implemented.

In September 2021, staff identified additional opportunities and challenges related to delegated authority and a determination was made to improve efficiencies through expanding delegations without compromising appropriate levels of accountability and transparency. By-law 2021-077, a by-law to delegate certain powers and duties under the *Municipal Act, 2001*, S.O. 2001 c.25, the *Planning Act*, R.S.O. 1990 c. P. 13, and other Acts, was passed. Members of the senior leadership team were consulted and asked to comment on the effectiveness of their existing delegations and to identify matters within their respective areas which would benefit from additional delegation.

In the September 2021 staff report (Appendix C), a commitment was made to Council for staff continue to identify additional opportunities and challenges related to delegated authority and to continue to work on monitoring and compliance mechanisms associated with delegated authority. Staff developed formal processes, criteria, and reporting requirements, related to delegated authority and continue to examine existing processes as to the making of decisions. Council, as delegating agent, may impose such terms and conditions upon any delegation as it sees fit, and this shall include the power to vary such terms or rescind the delegation in question.

COMMENT/OPTIONS:

Broad delegation of authority is a real opportunity for a municipal council to streamline municipal decision-making. At the same time, it can be a challenge for municipal councils to develop delegation by-laws that serve both council and the

delegated person or body effectively. Effective delegation by-laws establish clear lines of accountability and communication between council and the delegate.

Matters which traditionally generate public interest or require policy decisions have not been considered for delegation. However, there are other matters which require less direct attention from elected representatives. In general, these decisions fall into one of the following categories:

1. Decisions that are routine or minor in nature - Decisions in this class vary in the level of importance, but do not require direct input from Council.
2. Decisions based on defined criteria (limited discretion) - Sometimes it is possible to separate a decision into two components, the first being made by Council with staff implementing the decision and exercising discretion and/or professional judgment based on criteria established by Council. Necessary public input and/or policy decisions are made at the earlier stage of the process.
3. Decisions that are routine or minor – but require additional formality. Sometimes the decision itself is routine or minor but needs to be documented through a by-law. This is particularly true for decisions involving rights in land which often require a formal record or by-law as proof of a decision being made by the proper authority.

Implementation of Delegation

The Council process serves several purposes in addition to decision making:

- It provides an opportunity for public comment
- It creates a formal record of the decision
- Public agendas and reports provide transparency of decision making
- Transparency of decision making and the involvement of multiple individuals in the process assists in risk management and protection against fraud
- Circulation of reports prior to them being placed on the agenda provides documentation of interdepartmental consultation and assists in coordinating the actions of various departments

The importance of these issues varies depending on the nature of the decision. For matters in which one or more of these issues is important, substitutes for the Council process must be built into documented process for the use of the delegated power. Staff recommend approving the Delegation of Municipal Powers and Duties By-law 2023-021 (Appendix A).

Appendix B is a tracked changes version of By-law 2023-021, which identifies changes made to the current Delegation of Municipal Powers and Duties By-law (By-law 2021-077, as amended). As can be seen in Appendix B, notable revisions have been made to the authority delegated to Commissioners, Town Solicitor, and Director of Human Resources.

Except for emergency situations, where the exercise of a delegated power or duty requires the expenditure of money or subjects the town to potential financial loss or obligation, the funding of the expenditure or provision for the loss or obligation must be part of an approved budget as a condition of the exercise of the delegated authority. Where that is not the case, the matter would have to come to Council.

Engagement and Communication

In order to promote accountable and transparent municipal governance, guided by simple, open, and transparent decision making, engagement and communication with staff and Council is critical. It is imperative that staff delegated authority are fully aware of their responsibilities. The framework principles of the by-law speak to the shared responsibilities of governance and the organization, and recognizes the tools required surrounding rules and compliance requirements. Ensuring effective communication to ensure the process and methods are maintained, controlled, monitored, and reported, are key success factors.

Monitoring and compliance

To ensure the effectiveness of the delegation by-law and establish clear lines of accountability and communication between council and the delegate, every delegation of power or authority will have a corresponding accountability and transparency mechanism. As identified in the revised policy, where applicable, departments are responsible for reporting to Council on the exercise of delegated authority.

Housekeeping item

Staff recommend repealing By-law 2012-013, a by-law to appoint valuers of livestock and poultry for the Corporation of the Town of Oakville. Authority to enact By-law 2012-013 was covered under Provincial legislation and is not a delegated authority often exercised. Staff recommend that this delegated authority be captured under the Delegation of Municipal Powers and Duties By-law 2023-021, which would make By-law 2012-013 redundant.

Next steps

In accordance with the Delegation of Municipal Powers and Duties Policy, town staff is responsible for adhering to the parameters of this policy and for ensuring appropriate application of delegated authority. The policy and by-law will be reviewed and brought to Council on a four-year cycle, to allow for a review by each new term of Council to enable any desired adjustments to the delegated authorities.

CONSIDERATIONS:

(A) PUBLIC

Delegation of individual powers and duties will take place through public reports providing an opportunity for public input. The changes implemented through this report impact decisions which are considered minor, and of limited public interest. Improvements to service delivery through a more efficient process are considered in the public interest.

(B) FINANCIAL

Efficiencies in decision making and service delivery through increased delegation should result in cost savings.

(C) IMPACT ON OTHER DEPARTMENTS & USERS

Members of the Senior Leadership Team from all departments were consulted as part of this project. Commissioners and Directors of affected departments and other members of staff will continue to be involved in the establishment and implementation of processes, where necessary, for the exercise of delegated powers.

(D) CORPORATE STRATEGIC GOALS

This report addresses the corporate strategic goal(s) to:
Accountable Government

(E) CLIMATE CHANGE/ACTION

This matter does not impact climate change.

APPENDICES:

Appendix A – By-law 2023-021

Appendix B – By-law 2023-021 (identifying tracked changes)

Appendix C – September 28, 2021 Staff Report

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Recommended by:

Vicki Tytaneck, Town Clerk

Submitted by:

David Huctwith, Assistant Town Solicitor