

REPORT

Council

Meeting Date: September 28, 2021

FROM: Legal Department

DATE: September 21, 2021

SUBJECT: **Delegation of Municipal Powers and Duties Policy & By-law
2021-077**

LOCATION: Town-wide

WARD: Town-wide

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RECOMMENDATIONS:

1. That the report titled Delegation of Municipal Powers and Duties Policy, dated September 21, 2021, from the Legal Department, be received;
2. That 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, be approved; and
3. That updated Delegation of Municipal Powers and Duties Policy G-GEN-010 be approved.

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 change the structure in how delegated authority is documented.

BACKGROUND:

Historically, municipalities were required to act solely through by-laws, approved by their council, with only administrative matters delegated to staff or other bodies. This system provided a high level of control by elected officials over the affairs of the municipality, opportunities for public involvement, transparency, and a clear record of municipal decisions. However, it also resulted in councils being required to deal with many minor matters and inefficiencies in making decisions impacting both costs and service levels.

As municipalities grew in size and sophistication, it was no longer practical for municipal councils to oversee all details related to matters under their authority.

The *Municipal Act, 2001* is based on a new approach which provides municipalities with greater control over the manner in which they administer their own affairs. The options available to municipalities for determining their own process were further expanded in 2006 with the introduction of Sections 23.1- 23.5 which provide 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. Prior to the current review and report, the last amendment to this policy was made in 2012, to accurately reflect the current practice of permitting minor delegations by Council resolution (confirmed by meeting's confirming by-law).

Over time, additional opportunities and challenges have been identified leading to staff to undertake the current review. Staff have reviewed existing delegations to determine whether additional efficiencies could be achieved by expanding delegations without compromising appropriate levels of accountability and transparency. Members of senior management 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.

Other matters not included in the draft by-law accompanying this report require a broader examination of existing processes as well as the development of formal processes, criteria, and reporting requirements, related to the making of decisions.

Although preliminary work has been undertaken with respect to several of these initiatives, as further research and consultation on these items is required, staff intends to bring forward these further items in Q1 of 2023 for Council's consideration.

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.

In line with the Council endorsed strategy for the implementation of additional delegation of authority as set out in the report from the Legal Department, dated May 15, 2010, staff recommend expanding certain delegations of authority for routine or those being administrative in nature, in order to meet operational requirements while ensuring efficient and effective administrative decision making.

Expanded Delegation of Authority

Municipal powers and duties cover a broad range of matters, requiring different degrees of public input, transparency, and deliberation by elected representatives. Some matters (such as approval of budgets, taxation, Official Plans, and Zoning Bylaws) are specifically ineligible for delegation under the *Municipal Act, 2001*. Other matters, such as regulatory by-laws dealing with signs, licensing, noise, nuisance and similar "legislative" matters require public input and an exercise of policy discretion. Matters of this nature are not suitable for delegation, and would not meet the requirements of the *Municipal Act, 2001*.

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 categories noted below. Areas where expanded delegation of authority is proposed, are noted below the applicable category. Appendix A is an expanded version of Schedule A to By-law 2021-077. New delegations of authority are coloured red with a check mark in the 'New' column of Appendix A.

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.

Existing Examples

- Standard authority under purchasing by-laws (delegated to Staff)

- Biting Dog, Licensing Appeals (delegated to a Committee of Council)
- Applications for Consent to Severance (Director of Planning Services)
- Expenditures up to defined limits (CAO)

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.

Existing Examples

- Final approval of plans of subdivision – Council's involvement is at the stage of draft approval which includes the statutory public hearing and establishment of conditions of approval. Staff exercise discretion and/or professional judgment in determining whether conditions are satisfied and whether the final plan conforms to the draft plan
- Submission requirements – The range of studies that may be required for planning application is set out in the Official Plan with the exact requirements refined during the pre-consultation meeting with staff
- Permit applications – parks by-law, site alteration by-law, road occupancy by-law set general requirements with additional delegated discretion
- Execution of standard form agreements – (site plan)

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.

Existing Examples

- Part Lot Control By-laws – applications are approved by the Director of Planning Services with the by-law approved by Council without a report

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 is proposing the following approach be adopted with respect to the implementation of delegated authority by Council:

1. Council approve a delegation of authority by-law to establish the framework for delegations of authority to staff. Appendix C is draft By-law 2021-077 which staff is recommending for Council's consideration. This draft by-law contemplates the specific delegations set out in its Schedule A, subject to the limitations specified therein.

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.

2. Council approve a revised Delegation of Municipal Powers and Duties Policy as attached as Appendix B. This is a modified version of the town's existing policy reflecting that there will be a delegation by-law moving forward.

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 staff delegated authority are fully aware of their responsibilities. The framework principles of the proposed 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. If By-law 2021-077 and the revised Delegation of Municipal Powers and Duties Policy are approved, relevant staff will receive education and training on the increased scope of their authority.

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 through the Town Clerk, on the number and nature of the delegations

exercised, and confirming compliance with the limitations on the exercise of the delegated power or duty.

Staff continue work on monitoring and compliance mechanisms associated with delegated authority. The report back to Council in Q1 2023 will include recommendations associated with this review.

As identified in By-law 2021-077, 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. The plan is for the Delegation of Municipal Powers and Duties Policy to be reviewed by Council early in its new term of office so that it can make 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 Management Team from all departments and the Policy Review Administration Group were consulted as part of this project. Commissioners and Directors of affected departments and other members of staff will be involved in the development of processes 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 – Proposed Schedule A to By-law 2021-077 (identifying new delegations)

Appendix B – Proposed updates to Delegation of Municipal Powers and Duties Policy G-GEN-010

Appendix C – By-law 2021-077

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