



SUBJECT: Delegated Authority By-law

TO: Corporate Services, Strategy, Risk & Accountability Cttee.

FROM: Office of the City Clerk

Report Number: CL-03-22

Wards Affected: All

File Numbers:

Date to Committee: January 10, 2022

Date to Council: January 18, 2022

Recommendation:

Approve the by-law attached as Appendix A to office of the city clerk report CL-03-22, being a by-law to delegate various approvals to staff, and repeal by-laws 99-2012, 56-2017 and 157-1991; and

Amend the Signing Authority Corporate Policy, attached as Appendix C to office of the city clerk report CL-03-22; and

Approve the by-law attached as Appendix D to office of the city clerk report CL-03-22, being a by-law to appoint a Treasurer and Deputy Treasurer for the City of Burlington.

PURPOSE:

The purpose of this report is to approve a new Delegated Authority (DA) By-Law which delegates authority of certain powers of Council to specified senior City staff with restrictions and reporting obligations.

Vision to Focus Alignment:

- Building more citizen engagement, community health and culture
 - Deliver customer centric services with a focus on efficiency and technology transformation
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Background and Discussion:

Section 23.1(1) of the *Municipal Act, 2001, S.O. 2001,c.25, as amended* (the “Act”) provides municipalities with the ability to delegate powers and duties to individuals or bodies. This provides the municipality with control over the way they administer their own affairs, ensuring that minor or routine matters are dealt with in the most efficient and effective manner possible.

The Act stipulates the powers that cannot be delegated by a municipal Council, including:

- The power to appoint or remove from office, statutory officers of the municipality whose appointment is required under the Municipal Act,
- The power to pass a by-law under section 400.1 and Parts VIII, IX, IX.1 and X of the Act,
- The power to incorporate municipal corporations,
- The power to adopt an Official Plan or an amendment to the Official Plan,
- The power to pass a zoning by-law,
- The power to pass a by-law related to small business counselling and municipal capital facilities,
- The power to adopt a community improvement plan,
- The power to adopt or amend the budget of the municipality, and
- Any other power or duty that may be prescribed.

Delegation of authority enables municipal Councils to streamline their decision-making by focusing more on their strategic role and less on operational, transactional matters.

It is a common practice and the City of Burlington has had a by-law in place to delegate authorities to staff for administrative matters since 1992, with the most recent consolidated by-law being enacted in 2012, as By-law 99-2012, attached to this report as Appendix B.

There are general rules established for delegating authority:

- A delegation may be revoked at any time without notice unless the delegation by-law specifically limits the municipality's power to revoke the delegation.
- A delegation may not limit the right to revoke the delegation beyond the term of the council that made the delegation.
- A delegation may provide that only the delegate can exercise the delegated power or that both the municipality and the delegate can exercise the power.
- A delegation may be made subject to such conditions and limits as the council of a municipality considers appropriate. For example, the conditions and limits may include a requirement to report, procedures that the delegate is required to follow

and the accountability of the delegate and the transparency of the delegate's actions and decisions.

- Where a power is delegated, the power is deemed to be delegated subject to any limits on the power and to any procedural requirements, including conditions, approvals and appeals that apply to the power and any duties related to the power are deemed to be delegated with the power. Such a delegation or deemed delegation of a duty results in the duty being a joint duty of the municipality and the delegate.
- Where a power is delegated, staff is not prohibited from reporting to council to administer, approve or execute the matter, if the matter is politically sensitive.
- Council retains the authority to amend, revoke or reconsider, at any time and without notice, any delegated authority that has been delegated.

In 2020 a review of the City's Procurement By-law 19-2014 was undertaken and inconsistencies were noted between the existing Procurement By-law and the Delegated Authority By-law, 99-2012. The two by-laws were reviewed for consistency and alignment with financial accounting processes in place. The review revealed that the current Delegated Authority By-law 99-2012 was out of date, legislative sections had changed, and references to other by-laws were confusing and sometimes out of date. It also did not capture many of the authorities granted to staff through council resolutions.

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 the 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.

Strategy/process

Delegation of authority is an 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.

The proposed Delegated Authority By-law reflects a made in Burlington approach that works for our current operations. It reflects a balance, and clearly articulates the expectation and conditions to be exercised for each authority absent in the current by-law. It includes accurate legislative references and has been formatted into functional-specific schedules to improve customer service and readability that will streamline amendments required in the future.

Transparency and Reporting to Council

Delegated authority being provided to staff from Council instills a significant level of trust and accountability from Council to staff. However, the provision of delegated authority can also be viewed and has been viewed in the past in some cases as reducing transparency and communication with the public. To address concerns surrounding the lack of transparency and communication, staff have included in the by-law reporting requirements to provide information for the public and Council, highlighting the specific delegated authorities that are being used or will be used for the specific subject matter of the report.

Existing Delegated Authority

The proposed Delegation By-law reflects many existing authorities provided by By-law 99-2012, or by-laws that already delegate authority for specific subject matters including:

- some authorities set out in the Planning Act* for development applications under subsections 22(6), 34(10.3), 51(19) and subsection 9 of the Condominium Act, model home agreements, applications in the Parkway Belt Plan, site plans, consents, part lot control (Schedule B) (*signing authority previously captured through By-law 157-1991*),
- authorities delegated to the Committee of Adjustment to consider consent and minor variance applications (Schedule B),
- heritage permit applications (Schedule C),
- authorities to sign cheques and conduct banking and investments (Schedule C) (*previously captured through By-law 56-2017*)
- spending limits, progress payments, transfers, contingency payments, expense reports, purchase card statements, reallocation of budgets, agreements and actions related to taxes (Schedule D),
- capital variances post-tender approval, though amounts have been increased to align with the proposed Procurement By-law (Schedule D),
- donations and sponsorship submissions (Schedule D),
- transit programs (Schedule E),
- acquisition, disposition and leasing of City property (Schedule F),
- agreements with landowners for Permission to Enter, Encroachment, Landscaping and Parking (Schedule G),
- dedicating parcels of land for road widenings and remove and replace trees for capital projects on public highways (Schedule G),
- emergency and temporary road closures, *though time frames have been lengthened* (Schedule H),

- road maintenance and boundary road agreements, previously delegated through staff report recommendation (Schedule H),
- routine amendments to Traffic By-law 086-2007, as amended from time to time, *though now clearly articulates submission of the required by-laws directly to Council for approval without the submission of a corresponding staff report* (Schedule H),
- routine legal services and real estate matters (Schedule F) –*routine legal services are conducted pursuant to various existing authorities; real estate limits were increased to correspond with market changes; limits for collections have been increased from \$5000 to unlimited.*
- approval of traffic signal drawings and to erect and install traffic control signals and signal systems (Schedule H),
- facility rental agreements, agreements for the provision of recreation, community and culture services (Schedule I), and
- amendments to on-going relationship and partnership agreements with user groups who have dedicated or exclusive use of City buildings or parts thereof, *though agencies referred to have been updated* (Schedule I).

*Reflects where an application's decision has been split 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 earlier or in a later stage of the process.

New or Clarified Delegations of Authority

The proposed Delegation By-law also includes new or clarified delegations of authority. In each case, the requesting area(s) provided rationale to support existing inefficiencies, delays or impacts to customer services and/or project completion. New authorities include:

- administration of the City's Authority Requester Information System (Schedule A and H),
 - o **Rationale:** to formalize an existing approval process in a Memorandum of Understanding with the Ministry of Transportation
- appointment of Municipal Law Enforcement Officers (Schedule A),
 - o **Rationale:** to formalize an existing practice
- approval and executions of confidentiality, non-disclosure and service agreements (Schedules A and J),

- **Rationale:** to provide flexibility to staff to enable work with vendors, contractors and ensure programs, services or data being provided are done so in confidence
- authority to review and submit comments on permit applications from the Niagara Escarpment Commission (NEC)* (Schedule B),
 - **Rationale:** as a commenting agency within the NEC's development permit process, the authority to review and comment on NEC applications is intended to reinforce the City's long-standing practice on such matters
- administration of Community Heritage Fund applications (Schedule C),
 - **Rationale:** reduces the inefficiencies of staff reporting on grant application of a nominal amount
- authorize the appeal of Current Value Assessment and represent the City before the Assessment Review Board, execute Minutes of Settlement and submit Requests for Reconsideration (Schedule D),
 - **Rationale:** allows for timely appeals of Current Value Assessment and efficiency in dealing with such matters
- operating and capital grant applications, agreements and documentation unless grant requires a transfer payment agreement to be administered by the Chief Financial Officer (with execution of the documentation occurring still by Mayor and Clerk) and flexibility to bring transfer payment agreement by-laws to Council without the submission of a corresponding staff report (Schedule D),
 - **Rationale:** ensures that submission and execution of transfer payment documents meet timelines provided by other levels of government and will reduce the inefficiencies of staff developing a covering report
- submit amendments to the rates and fees by-law directly to Council for approval without the submission of a corresponding staff report (Schedule D),
 - **Rationale:** rates are set by boards under Reciprocal Agreements and increases are passed along accordingly and since the notification from the Board is not in sync with the City budget process this would allow for amendments to be presented to Council quicker, with public notice, with no net impact to the tax base
- insurance agreements and agreements necessary to carry out City Solicitor's delegated authority (Schedule F),
 - **Rationale:** ensures efficient management of the City's insurance portfolio and allows for uninterrupted and timely provision of legal services
- care and maintenance agreements for the keeping of cemetery lands where the cemetery board retains ownership of the lands (Schedule H),

- **Rationale:** provides flexibility to staff to present options to cemetery boards if they are experiencing difficulty maintaining the lands and considering the abandonment process. If abandonment proceeds, the ownership and maintenance defaults to City as per the Funeral, Burial and Cremation Services legislation
- easements and memorandum of understanding (MOU) with other levels of governments/conservation authorities and approve and execute crossing agreements for City work, approve municipal access agreements (Schedule G),
 - **Rationale:** provide flexibility to engineering services staff to approve and execute documents to provide for access to and/or over municipal land to permit work being done by contractors and other levels of government
- designate a highway or portion of a highway as a construction zone and to set a lower rate of speed within the designated construction zone (Schedule H),
 - **Rationale:** provides municipalities with a measure to improve the safety of both workers and motorists within construction areas through regulatory and enforceable signage, including doubled fines for speeding when workers are present
- issue permits pursuant to Highway Traffic Act, s.110 for the use of a Highway by a vehicle or combination of vehicles in excess of the dimensional limits set out in Highway Traffic Act, s. 109 or the weight limits set out in Highway Traffic Act, Part VIII (Schedule H)
 - **Rationale:** provides the necessary authority to staff to issue permits for overweight or oversized vehicles on city roads and in doing so, protect the city's road infrastructure
- routine software data service agreements and any associated documents (Schedule J),
 - **Rationale:** to formalize an existing practice

*Execution of agreements related to development applications remain with the Mayor and Clerk including but not limited to rezoning, subdivision, part lot control, Parkway Belt Amendments, Niagara Escarpment Plan amendments, development permit applications, sign variance, site plan and amendments and development charges.

Removed or Amended Authorities

In the by-law review the authority to assume subdivisions for traffic control purposes has been removed as it's no longer required.

Additionally, Council previously delegated the ability to transfer of funds from the Public Art Reserve Fund to the Manager of Arts and Culture and leadership has directed that

all authorities delegated by Council remain at the Executive Director or Director level for administration purposes.

Summary: Proposed Delegation By-law

Appendix A is a proposed form of a new Delegation By-law. As noted, the Delegation By-law consolidates some existing delegated authority and establishes new or clarified delegations of authority, all subject to conditions and limits set out in the proposed By-law.

Additional Process Enhancements

As part of the Delegated Authority By-law review, several process enhancements were identified.

Corporate Policy Amendments

Several Corporate policies and related by-laws were reviewed for current application, clarity and alignment with provisions in the Delegated Authority By-law.

The Signing Authority Corporate Policy was identified as a policy that requires amendments to align payment authorities, progress payment amounts and discretionary funding amounts with the proposed By-law and in addition to updating positions due to internal restructuring. In addition, the facility rental policy may come forward in the future to reflect rental practices.

Appointment of Statutory Officer(s)

Additionally, when drafting the proposed by-law, a gap was revealed regarding the appointment process of statutory officers. Certain positions within a municipal corporation are mandated and/or must be appointed by Council. The Municipal Act, 2001 Section 286(1) requires a municipality to appoint a Treasurer. As well, Section 286(2) provides for the possible appointment of one or more Deputy Treasurers.

It is a generally accepted best practice to appoint statutory officers by by-law and the proposed by-law attached as Appendix D to this report addresses the gap and reduces risk. Appointment of a Deputy Treasurer who can fulfill the statutory requirements under the Municipal Act in the absence of the Treasurer to provide redundancy to ensure that the City has proper coverage in the event of the absence of the Treasurer.

Financial Matters:

None.

Climate Implications

None.

Engagement Matters:

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 approved, relevant staff will receive education and training on the scope of their authority.

Staff from across the organization were involved in the working group to methodically review the by-law and Burlington's leadership team provided comments for consideration prior to the development of this staff report.

Conclusion:

The efficient management of the City and the need to respond to issues in a timely manner requires the delegation of certain powers and authority to staff while maintaining accountability and transparency. This can be accomplished through the delegation of certain legislative and administrative functions within the Municipal Act, 2001 as amended and the Planning Act, 1990 as amended.

The proposed Delegated Authority By-law clearly articulates the expectation and conditions to be exercised for each authority absent in the current by-law. It will contribute to more efficient, effective and transparent decision-making that will enable Council to focus on its strategic role.

Respectfully submitted,

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Appendices:

- A. Proposed Delegated Authority By-law
- B. By-law 99-2012, existing Delegated Authority By-law
- C. Proposed Amendments to Signing Authority Corporate Policy
- D. Proposed Appointment By-law for Treasurer and Deputy Treasurer

Report Approval:

All reports are reviewed and/or approved by Department Director, the Chief Financial Officer and the Executive Director of Legal Services & Corporation Counsel.