

Report to Corporate Services Committee

To: Chair and Members
Corporate Services Committee
From: Kelly Scherr, P.Eng., MBA, FEC
Deputy City Manager, Environment & Infrastructure
Subject: Delegation of Authority By-law: Environment and
Infrastructure Approvals and Agreements
Date: July 17, 2023

Recommendation

That, on the recommendation of the Deputy City Manager, Environment and Infrastructure, the attached proposed Delegation of Authority by-law (Appendix "A") **BE INTRODUCED** at the Municipal Council meeting on July 25, 2023, to:

- (a) **DELEGATE** the authority to bind the Corporation of the City of London to members of Civic Administration in a specific list of circumstances.
- (b) **AUTHORIZE** the execution by the applicable delegated member of Civic Administration of any contract, agreement or other documents, as required, to give effect to the delegated decision, as indicated in Appendix 'A'.

Executive Summary

This report requests that Council delegate the authority to bind the Corporation in certain instances to specific levels of authority within the Environment and Infrastructure Service Area.

Staff from the Environment and Infrastructure Service Area have regularly approved regulatory applications, compliance reporting, utility agreements and other submissions that could imply an authority to bind the Corporation for many years, without clear definition of the limits of that authority and without the requirement to report publicly on where it has been applied.

Under the *Municipal Act, 2001, SO 2001 c25 ("the Act")* (s.8(1)), only City Council has the authority to bind the Corporation unless otherwise delegated to staff. By delegating the authority to bind the Corporation to members of Civic Administration in specific instances and requiring staff to report on activity under those delegations, current administrative practices are better aligned with the requirements of the *Municipal Act* and the transparency of current service delivery is enhanced.

Linkage to the Corporate Plans

This project supports the 2023-2027 Strategic Plan through the following:

- Well-Run City, 1.3.a: Improved governance processes – Review municipal best practices, identifying gaps and opportunities, and deliver projects that improve performance.

Analysis

1.0 Background Information

1.1 Previous Reports Related to this Matter

This report was previously posted to the April 11, 2023 Corporate Services Committee Agenda. It was identified that a clarification was required within the proposed by-law, resulting in a deferral of the report to this meeting. It is confirmed that the requested delegations of authority to bind the corporation apply only to the Environment and Infrastructure Service Area.

2.0 Discussion and Considerations

2.1 Complexity of the Environment and Infrastructure Service Area

The administration of a municipal corporation such as the City of London is a complex undertaking requiring multiple divisions of specialized staff who are responsible for every aspect of public service delivery. Decisions are made daily by this administrative arm to ensure the effective and efficient delivery of public services throughout the municipality in accordance with the strategic plans, budgets and policy directives decided upon by Council.

The Environment and Infrastructure Service Area is no exception to this organizational complexity, with over 780 management and unionized staff responsible for essential services such as the repair and replacement of the City's roads and bridges, winter maintenance, solid waste management, wastewater collection and treatment, storm water management, forestry and parks, geomatics and surveying, construction management, and the distribution of drinking water.

Staff are regularly required to make representations or commitments on behalf of the Corporation of the City of London to meet regulatory or other obligations. While these may appear to be relatively simple administrative tasks, they can present their own complications in terms of the authority required to make those commitments.

2.2 Authority to Bind the Corporation

Broad authorities to deal with municipal matters are conferred upon municipalities by the Province of Ontario through the *Municipal Act, 2001, SO 2001 c25* ("the Act") (s.8(1)). More specifically, the City of London is a single-tier municipality and so the provisions laid out in Section 10 of *the Act* apply:

10 (1) A single-tier municipality may provide any service or thing that the municipality considers necessary or desirable for the public. 2006, c. 32, Sched. A, [s. 8](#).

The Act also clearly lays out how municipalities are to exercise their powers:

Powers exercised by council

5 (1) The powers of a municipality shall be exercised by its council. 2001, c. 25, s. 5 (1).

Council a continuing body

(2) Anything begun by one council may be continued and completed by a succeeding council. 2001, c. 25, s. 5 (2).

Powers exercised by by-law

(3) A municipal power, including a municipality's capacity, rights, powers and privileges under [section 9](#), shall be exercised by by-law unless the municipality is

specifically authorized to do otherwise. 2001, c. 25, s. 5 (3); 2006, c. 32, Sched. A, [s. 5](#).

In effect, only elected councils have the authority to exercise these powers through the passage or amendment of a by-law unless that authority is formally delegated to staff.

2.3 Ability to Delegate the Authority to Bind

The Act also provides the tools through which municipal councils can ensure sufficient control over municipal actions while still enabling efficient service delivery. Section 23 of *the Act* allows a municipality to delegate powers and duties as follows:

23.1 (1) Without limiting [sections 9](#), [10](#) and [11](#), those sections authorize a municipality to delegate its powers and duties under this or any other Act to a person or body subject to the restrictions set out in this Part. 2006, c. 32, Sched. A, [s. 15](#).

The restrictions referenced in section 23.1 do not relate to the types of authority contemplated for delegation under this proposed by-law. Therefore, Council is authorized under *the Act* to delegate the authority to bind the Corporation of the City of London to members of its administration. Council has used this delegation for other purposes previously (the business licencing and vehicle for hire by-laws are two examples). Any such delegation of authority can be revoked at any time by Council (per section 23.1 (2) 1. of *the Act*) and Council can impose whatever limits it deems appropriate upon that delegation (per section 23.1 (2) 5. of *the Act*).

2.4 Specific Authorities Requested for Delegation

In the past, many administrative acts have been undertaken by Civic Administration as a matter of course. A recent review by staff has identified that the administration may not necessarily have the authority to submit or execute these documents since some result in or imply a binding of the Corporation. Many of these administrative submissions and representations have occurred in this manner for years or even decades. This report and proposed by-law are intended to codify this informal practice to ensure that the City is compliant with *the Act* and also ensure that staff report publicly on where these tools have been used in alignment with Council's approved direction.

Since Council remains ultimately responsible for decisions that bind the Corporation of the City of London, and since *the Act* allows for delegations of authority to be limited in whatever way Council deems appropriate, it is proposed to delegate a specific list of types of activities to various levels of authority within the administration. This list would be contained within a single by-law, providing clarity for Administration and improving transparency by facilitating periodic review by Council. As described previously, Council can review, modify or revoke these delegations at any time.

The proposed by-law, attached as Appendix A to this report, includes the list of proposed delegations to the Environment and Infrastructure Service Area, in some cases with fiscal limits identified. For simplicity, all delegations are to the Deputy City Manager. However, in some cases the nature of the delegated authority may warrant the ability for the Deputy City Manager to further delegate the authority to bind the Corporation to a specific level in the administration. These instances are clearly noted.

The proposed by-law also recognizes the importance of review by Legal and Risk Management staff. These reviews already form part of document execution procedures but are not always required for other administrative acts. In order to provide clarity for Administration, including the need for those reviews for each delegated authority within the by-law itself is considered prudent. In many of the listed delegations, the agreement that would be executed takes the form of a standard document issued by a higher level of government that is not subject to any negotiation. Further, some are regulatory in nature where the commitment formalizes a non-negotiable obligation on the part of the City. In those instances, no legal or risk review would be required. Others are not as clearly laid out, and the Corporation has more flexibility in reviewing agreements and

assessing risks versus benefits. In those cases, the proposed level of authority required within Administration and the number of reviews required increases accordingly.

The list of delegations proposed at this time follows, categorized by the general type of commitment, with brief descriptions of what the individual commitment entails. Fiscal limits and the requirement for Legal or Risk Management review are detailed in the by-law, with the rationale for such limits discussed below. Each proposed delegation is identified by Group number corresponding to the table in the by-law:

Regulatory Commitments

- **Approvals or permits with governmental regulatory bodies (Group 1)** – Many Divisions within Environment and Infrastructure are required to conduct their work under the terms of various approvals from provincial or federal government ministries. These approvals have varying requirements for operations and reporting, but all share similar characteristics: obtaining approval is mandatory in order to provide the services to the public and there is very little latitude afforded to the municipality in setting the terms of those approvals. All water, wastewater and stormwater infrastructure in the City requires this type of approval from the Ontario Ministry of the Environment, Conservation and Parks (MECP), as an example. Federal and provincial ministries also require various reports to be submitted, whether pursuant to an approval or not. By applying for permits or approvals from these ministries, the City commits to compliance with terms and conditions. These commitments are technical in nature and, since they are not open to any significant negotiation, no review by Legal or Risk management is required.
- **Approvals or permits with non-governmental regulatory bodies (Group 2)** – In addition to governmental ministries, there are other bodies that have authority over areas in which Environment and Infrastructure needs to complete work, such as the Upper Thames River Conservation Authority (UTRCA). Approvals and permits typically require the City to commit to conditions for access or development. It is rare that these approvals include indemnity clauses or require the provision of enhanced insurance, so review by Legal and Risk Management is at the discretion of the delegated authority.
- **Approvals or permits from non-regulatory bodies (Group 3)** – This group of authorities has more complexity and covers a significant number of diverse activities regularly undertaken by Environment and Infrastructure, broken out in more detail below:
 - Construction permits or maintenance agreements – Separate from permits issued by regulatory bodies, there are also third parties that have authority over areas in which the City needs to complete work, like railway, hydro or gas corridor crossings. Approvals and permits typically require that the City commit to conditions for access or development. Some of these permits may include indemnity clauses or require the provision of enhanced insurance, so review by Legal and Risk Management is recommended for this group.
 - Cost-sharing agreements – City staff also endeavour, whenever possible, to coordinate capital projects with potential needs of other utilities that share the same corridor. Not only does this reduce the impact to residents, aligning projects can also reasonably be expected to result in opportunities for cost sharing. Cost sharing would be negotiated and agreed to by City staff, with contract awards completed in accordance with Council-approved procurement award processes and capital budgets as applicable. In cases where no mutually agreeable solution can be reached, direction from Council would be sought.
 - Incentive or generation agreements – As the City constructs new facilities and pursues renewable energy initiatives, the need to enter into

agreements with the relevant utilities (London Hydro, Hydro One, Enbridge, etc.) will occur more and more frequently. All of those agreements bind the City in some way. Similarly, utilities often offer incentives that allow the City to pursue energy saving or greenhouse gas reducing projects on shorter timeframes and at lower cost than would otherwise be possible. In order to apply for and enter into these agreements, typically staff must commit to performance and reporting obligations that bind the corporation. Permits may include indemnity clauses or require the provision of enhanced insurance, so review by Legal and Risk Management is recommended, but incentives typically involve the City receiving money as part of capital works already contemplated and budgeted by the affected Division. In the latter case, Legal and Risk Management review is left to the discretion of the delegated administrative authority. In all instances, approval of Council will be required if any increase to the approved capital budget is required.

- Utility Location Agreements – Work by City crews in many Divisions, such as Parks and Forestry, Sewer Operations, Water Operations and others, and City contractors managed by Construction Administration or the various Engineering and Operations Divisions, often requires the location and relocation of existing utilities. The various agreements, required to enable work around these utilities, such as Alternative Locate Agreements (ALA) and Utility Relocation Agreements, can be either job specific or standing agreements for work practices and permissions. It is recommended that the need for further review by other Divisions be at the discretion of the delegated authority.
- **Research and Community Partnerships (Group 4)** – Research and pilot testing are effective tools for the City to both contribute to broader educational and business development efforts as well as testing new technologies for application within the City. Allowing modifications to City infrastructure to permit these activities is also at the discretion of the applicable Division. Since any risk associated with these activities results from potential impacts to City operations, staff are well-positioned to assess the suitability of each application. However, term limits to administrative awards in this regard are considered appropriate to ensure that opportunities are not disproportionately awarded to any entity to the exclusion of others. In situations where standard City forms can be used, no Legal or Risk Management review is required. Therefore, those reviews are at the discretion of the delegated authority.

Data sharing is equally valuable as a tool to inform City programs and policies. Data showing patterns of utility use in the community is a good example of data sharing with a third party that provides significant benefit to both parties. However, it must be considered differently than pilot testing, since obtaining or providing this type of data may require that the City execute a data-sharing agreement with a third party. Because of the potential for privacy concerns with some data collection, a Legal review is recommended for these agreements.

- **Other Agreements (Group 5)**
 - Confidentiality agreements – Some agreements, like purchases or site access agreements, may require confidentiality agreements. This binds the Corporation, although the best understanding of the impact and how to abide by the terms rests with the affected areas of the administration. Legal review is recommended since a potential to conflict with MFIPPA obligations exists with these agreements.
 - Site access agreements for City work on private property – Both planned and emergency work on existing City assets are required frequently. In some cases, obtaining access to work sites requires some form of an access agreement with a landowner that contains terms and conditions that bind the Corporation. Often these agreements require only typical

commitments for restoration upon completion, but periodically involve additional legal, insurance or more permanent easement agreements. It is recommended that Legal and Risk management review be conducted at the discretion of Administration.

2.5 Duty of Care for Civic Administration

In all instances of delegation, despite Council retaining authority over all matters that bind the corporation, Civic Administration owes a duty of care in the execution of any document that binds the Corporation. This includes ensuring that the Risk Management and Legal departments are involved in reviewing any contract documents when appropriate and ensuring that the intent of the delegation by-law is respected. Any binding document that involves risk, insurance, or indemnities will be subject to approval by Legal Services unless it is executed in accordance with established City protocols that permit otherwise.

When the by-law allows for the Deputy City Manager to select a designate as dictated by business and service delivery needs, this is only done for those types of tasks that generate relatively standard administrative agreements and where the risk and opportunity for the Corporation is best assessed by staff.

In all cases, administrative execution would only be undertaken for agreements or commitments that do not contradict any standing Council policy directive. In any case where execution of an agreement or commitment would result in misalignment with Council policies, administrative execution should not be considered appropriate and Council direction would be sought.

2.6 Reporting

To ensure that Council remains informed of the commitments made on its behalf by Civic Administration, the Deputy City Manager, Environment and Infrastructure shall provide an annual report to Council listing instances where the delegated authority by-law was relied upon to bind the corporation. This provides a regular opportunity for Council to question any specific applications of the by-law and debate amendments if desired. The annual report also provides an opportunity for Civic Administration to request the addition, removal or amendment of delegated authorities on an ongoing basis.

Conclusion

The Environment and Infrastructure Service Area is responsible for providing safe essential services to all who live, visit and conduct business in the City of London. Efficient and effective delivery of those services requires frequent decision-making that at times commits the City to regulatory obligations, enables the City to obtain funding and incentives, and many other important but often routine administrative tasks.

Only Council has the authority to bind the Corporation of the City of London. The by-law proposed by this report would formally delegate that authority in specific instances to Civic Administration. This delegation will provide for efficient service delivery with transparency and accountability. Delegating these roles does not remove the authority of Council to revoke or amend the delegations at any time in the future, and the consolidation of delegated authorities into a single by-law simplifies adherence and the future management of this important administrative tool.

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Deputy City Manager, Environment & Infrastructure

CC: Aynsley Anderson, Solicitor II
Jason Wills, Manager III Legal Services

Bill No.
2023

By-law No. A.

A by-law to delegate the authority to bind The Corporation of the City of London in defined instances to identified positions within the Civic Administration.

WHEREAS subsection 5(1) of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, provides that the power of a municipality shall be exercised by its council;

AND WHEREAS subsection 5(3) of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, provides that a municipal power shall be exercised by by-law;

AND WHEREAS section 9 of the *Municipal Act, 2001* provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

AND WHEREAS subsection 10(1) of the *Municipal Act, 2001* provides that a municipality may provide any service or thing that the municipality considers necessary or desirable for the public;

AND WHEREAS subsection 10(2) of the *Municipal Act, 2001* provides that a municipality may pass by-laws respecting, among other things: accountability and transparency of the municipality and its operations; economic, social and environmental well-being of the municipality; and financial management of the municipality;

AND WHEREAS subsection 23.(1) of the *Municipal Act, 2001* provides that, subject to the limitations found in sections 23.2 and 23.3 of the *Municipal Act, 2001*, S.O. 2001, c. 25, a municipality may delegate its powers and duties to a person or body;

AND WHEREAS Council delegates any authority pursuant to this by-law in accordance with Schedule "G" of By-law No. A.-6151-17 "Council Policy By-law," as amended from time to time;

AND WHEREAS it is desirable to enable Civic Administration to conduct its regular duties efficiently and effectively in accordance with City Council's policies;

NOW THEREFORE the Municipal Council of The Corporation of the City of London enacts as follows:

1. The power to bind the Corporation of the City of London granted by the *Municipal Act, 2001* is hereby delegated to the applicable Deputy City Manager or their further delegate in the City's Civic Administration in the instances and subject to the conditions identified in the attached Schedule(s) to this by-law.
2. Without limiting the generality of the foregoing, the person holding the Administrative Position to whom the delegation is made shall be authorized to approve and/or execute the agreements listed in the attached Schedule(s), where, in the absence of this by-law, approval would be required by City Council and execution would be required by the City Clerk and the Mayor.
3. The delegated authority shall be applied in accordance with City Council and corporate policies in effect at the time of the action taken.
4. Executed agreements shall be funded from available Council-approved budgets, as applicable.
5. The respective Deputy City Manager shall prepare a report once annually describing the number of instances that Civic Administration exercised the delegated authority to bind under this by-law.

6. This by-law shall come into force and effect on the day it is passed.
PASSED in Open Council on July 25, 2023.

Josh Morgan
Mayor

Michael Schulthess
City Clerk

First Reading – July 25, 2023
Second Reading – July 25, 2023
Third Reading – July 25, 2023

Schedule A - Delegated Authorities in the Environment and Infrastructure Service Area											
Group	Line	Delegated Authority	Fiscal Limit - City contribution	Term Limit	DCM Able to Delegate?	Lowest Possible Delegation	Legal Review Required?	Risk Management Review Required?	Authority to Approve?	Authority to Execute?	Notes
1	-	Approvals or permits with governmental regulatory bodies	-	-	-	-	-	-	-	-	-
1	1	Regulatory applications, amendments and reporting to Federal or Provincial Governments	N/A	N/A	Yes	Director	No	No	Yes	Yes	-
2	-	Approvals or permits with non-governmental regulatory bodies	-	-	-	-	-	-	-	-	-
2	1	Upper Thames River Conservation Authority applications, amendments and reporting	N/A	N/A	Yes	Director	No	No	Yes	Yes	-
3	-	Approvals, permits and agreements with non-regulatory bodies	-	-	-	-	-	-	-	-	-
3	1	Construction and maintenance agreements/permits for work in Rail corridors	N/A	10 years	Yes	Director	No	Yes	Yes	Yes	-
3	2	Construction and maintenance agreements/permits for work in Hydro corridors	N/A	10 years	Yes	Director	No	Yes	Yes	Yes	-
3	3	Construction and maintenance agreements/permits for work in Natural Gas corridors	N/A	10 years	Yes	Director	No	Yes	Yes	Yes	-
3	4	Cost-sharing agreements with utilities	\$6M	N/A	No	-	Yes	Yes	Yes	No	1
3	5	Incentive agreements with utilities	\$6M	N/A	Yes	Director	Yes	Yes	Yes	No	1
3	6	Connection or generation agreements with utilities	\$6M	20 years	No	-	Yes	Yes	Yes	Yes	1
3	7	Utility relocation agreements	N/A	N/A	Yes	Director	No	Yes	Yes	Yes	-
3	8	Alternative Locate Agreements	N/A	5 years	Yes	Director	Yes	Yes	Yes	Yes	-
4	-	Research and Community Partnerships	-	-	-	-	-	-	-	-	-
4	1	Site access agreements for research or pilot testing in City owned facilities.	N/A	5 years	Yes	Director	Yes	Yes	Yes	Yes	2
4	2	Data access and sharing agreements with other organizations	N/A	5 years	Yes	Director	Yes	No	Yes	Yes	-
5	-	Other Agreements	-	-	-	-	-	-	-	-	-
5	1	Confidentiality agreements	N/A	10 years	No	-	Yes	No	Yes	Yes	-
5	2	Site access agreements on private property	N/A	N/A	Yes	Director	Yes	Yes	Yes	Yes	-
Note 1	Authority to execute is only granted for projects utilizing existing, Council-approved budgets.										
Note 2	Includes alterations to existing infrastructure.										