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**Subject:** Update to Execution of Documents By-Law

**Report to:** Corporate Services Committee

**Report date:** Wednesday, August 7, 2019

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## **Recommendations**

1. That Regional Council **APPROVE** the amendment of By-law No. 09-2016 being A By-law to Govern the Execution of Documents and to Delegate Certain Administrative Powers and Duties to Staff and to Repeal By-law 126-2011 (hereinafter the “Execution By-law”) by deleting reference in section 8 thereof to “21 days” and substituting therefor “30 days”.

## **Key Facts**

- The purpose of this report is to seek approval for amendment of the Execution By-law to reflect changes to the meeting schedule of Council implemented during the current term.
- Section 2 of the Execution By-law identifies persons holding the offices or positions of Regional Chair, Regional Clerk, the Chief Administrative Officer and Commissioner of Corporate Services/Treasurer as signing officers for the Corporation.
- In circumstances where there is no regular meeting of Council for more than 21 days, Section 8 of the Execution By-law authorizes the signing officers designated by Section 2 of the Execution By-law to execute such documents as they deem reasonably necessary to carry out the business of the Regional Corporation.
- During prior terms of Council which regularly met once every three weeks, the broad authority granted by Section 8 of the Execution By-law was typically effective only during limited periodic gaps when there was more than 21 days between regular Council meetings including Council’s summer recess.
- The current regular meeting schedule of Council of approximately every four weeks means the delegated power is in effect continuously throughout the year which staff believe was not the original intent when Council approved the Execution By-law.
- Legal & Court Services are undertaking a general review of the Execution By-law and hope to bring forward more comprehensive suggested improvements during the current year but are of the opinion this particular provision should be considered by Council in advance of that more general review.

## **Financial Considerations**

There are no direct financial effects arising from this Report.

## Analysis

Section 2 of the Execution By-law identifies persons holding the following offices or positions as signing officers for the Regional Corporation:

- Regional Chair,
- Regional Clerk,
- the Chief Administrative Officer, and
- Commissioner of Corporate Services/Treasurer as signing officers for the Corporation

Subsection 6(a) of the Execution By-law provides that unless otherwise provided by law or the Execution By-law, documents may be executed by the signatures of any two of the signing officers noted in the preceding paragraph.

Section 5 indicates signing officers shall not execute a document unless authorized by by-law which authorization includes the authority granted by Section 8 and Schedule “A” of the Execution By-law, authorization under the Procurement By-law and transaction specific by-laws typically arising from a report to Council and the resulting resolutions of Council.

The purpose of this report is to seek Council’s approval for amendment of Section 8 of the Execution By-law which provides as follows:

“8. When there is no regular meeting of Council scheduled during a period of time that is more than 21 days after the date of the previously scheduled regular Council meeting, the signing officers designated under section 2 are hereby authorized to execute such documents as they deem to be reasonably required to carry on the business of the Regional Corporation.”

Section 8 provides a broad delegation of authority through the discretionary language used which would potentially permit signing officers to enter into binding arrangements of significant direct cost and/or risk without approval of Council. Examples of matters that require Council approval but could be authorized under section 8 could include:

- Execution of a contract for procured goods or services with a value in excess of five million dollars that, pursuant to the requirements of the Procurement By-law would otherwise go to Council for approval;
- Execution of Minutes of Settlement with a payment in excess of one million dollars (CAO’s current limit under Schedule “A” to the Execution By-law); or
- Entering into a revenue generating contract, with attendant costs and risks, when the contemplated revenue generated will exceed the limits, (currently \$100,000) delegated to staff by paragraph 51 of Schedule “A” to the Execution By-law;

However the section only takes effect when the period between regularly scheduled Council meetings exceed 21 days. These periods of effectiveness were typically (but not exclusively) limited to Council's the summer recess from late July to early September when the alternative methods of calling Council meetings (and obtaining quorum) i.e. special or emergency meetings as discussed later in this report may have been more difficult to implement. Attached hereto as Appendix 1 are sample meeting schedules for Council in 2012, 2013 and 2014 representing two separate terms of Council which indicate gaps in the summer of up to 49 days between Council meetings in certain years. The 2013 year indicates four gaps in excess of 21 days between Council meetings. The 2012 year indicates gaps in July-August and December-January. The 2014 year indicates a summer gap plus a gap following the election that year.

Council, in passing the Execution By-law in 2016, approved the delegation under the circumstances as then existed. The recommended change to the by-law is to remove the reference to "21 days" in the above quoted section and substitute "30 days" to better align with the current regular meeting schedule of Council. Attached hereto as Appendix 2 is Council's 2019 schedule. There are gaps between regular meetings of more than 21 days throughout the year with the exception of the meetings on April 25 and May 16. There are also gaps of greater than 30 days on three occasions.

- January – February 42 days;
- May –June 35 days;
- August – September 35 days;

As a result there is no perfect number of days to include in Section 8. The majority of Council meetings are within 28 days of the prior regular meeting. The suggested amendment to 30 days was made in an attempt to correspond with the majority of the meetings while recognizing it does not fully recreate the different circumstances that existed at the time of original passing of the Execution By-law.

The risk associated with any decision to delegate authority is the reliance upon the delegated parties. That risk is dealt with in the Execution By-law and Procurement By-law generally by the inclusion of monetary limits on such a decision making authority, in certain circumstances reporting on use of the authority after the fact and systems of checks and balances such as requiring two signatures. No such monetary limitation or specific reporting mechanism exists in Section 8 as it is currently written but will be considered as part of a comprehensive review by staff of the by-law as discussed later in this report.

The risk associated with limiting the delegated authority under Section 8 would be that time sensitive documents that may be in the best interest of the Regional Corporation to execute and which cannot be approved by an alternative by-law authority such as the Procurement By-law, will either have to be delayed to the next regular Council meeting and/or until a special or an emergency meeting of Council can be called. This risk

existed at the time of passing of the Execution By-law, the difference being only the timing to the next regular Council meeting.

The Procedural By-law (By-law 120-2010 as amended) provides authority to the Regional Chair to call a special meeting with at least 48 hours' notice and an emergency meeting under the circumstances described in Section 7 of the Procedural By-law without notice. As such there is a method to limit the risk of losing an opportunity in the event Council approves further restrictions on the applicability of Section 8 of the Execution By-law.

Legal and Court Services staff are reviewing, in consultation with other departments, the Execution By-law with the intent of bring more comprehensive amendments forward by the end of the current year. As the needs of Niagara Regions departments change and changes in the types of routine documents encountered by Niagara Region, periodic updates of the by-law are recommended.

### **Alternatives Reviewed**

Staff considered leaving Section 8 in its current form notwithstanding the changes to Council's schedule on the basis that Council may wish to include this delegated power effectively twelve months of each year. Staff recognized that when Council dates were changed the concerns raised by this report were not, to staff's knowledge, part of the discussion and as such should be raised with Council. The option to continue with the current wording is open to Council.

Staff, recognize both the ability to call Council meetings on relatively short notice and the fact that the unique use of Section 8 in the past related to a summer period when the expectation, based on the structure of the Council, might be that some Councillors vacation during the period. That situation no longer exists as there is not a dedicated "breaks period" for Council. As such staff considered recommending elimination of Section 8 entirely. It was not recommended in recognition that special and emergency meetings, while possible, should not be the norm and Council may find over-use undesirable. The option of deleting the section from the by-law altogether remains open to Council.

### **Relationship to Council Strategic Priorities**

This report supports proper and efficient of Niagara Region's core functions while balancing respect for taxpayers through appropriate application of risk analysis to Niagara Region's operations and by-laws.

## **Other Pertinent Reports**

No related reports.

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*This report was reviewed by Donna Gibbs, Director of Legal and Court Services.*

## **Appendices**

Appendix 1 Council Schedules 2012, 2013, and 2014

Appendix 2 Council Schedule 2019

Appendix 3 By-law No. 09-2016 being A By-law to Govern the Execution of Documents and to Delegate Certain Administrative Powers and Duties to Staff and to Repeal By-law 126-2011