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**Subject:** Delegated Authority – Council Failure to Meet Quorum Requirements During COVID-19 (Novel Coronavirus) Pandemic

**Report to:** Regional Council

**Report date:** Wednesday, March 18, 2020

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## Recommendations

1. That until the end of the COVID-19 (Novel Coronavirus) Pandemic, as declared by Health Canada, and where Council or its appointed Committees fail to meet the quorum requirements under Section 237 of the Municipal Act, 2001, the Acting Chief Administrative Officer **BE DELEGATED** authority to exercise the following actions in the interests of ensuring continuity of necessary municipal services:
  - 1.1. The disposition of any real or personal property of the municipality;
  - 1.2. Making any expenditure or incurring any other liability subject to them being included in the approved budget;
  - 1.3. The appointment or removal from office of any officer of the municipality, excluding those set out in s.23.3 (1)1 of the Municipal Act.
2. That the Regional Chair and Clerk **BE AUTHORIZED** to execute such agreements, instruments, conveyances and other related documents necessary to give effect to the transactions authorized by the Acting Chief Administrative Officer under the delegated authority approved until the end of the COVID-19 (Novel Coronavirus) Pandemic;
3. That the Acting Chief Administrative Officer **BE DELEGATED** authority to exercise any discretionary corporate actions in response to unforeseen circumstances that arise due to the COVID-19 (Novel Coronavirus) Pandemic and to exercise delegated authority where such authority has not already been provided by Council subject to the limitations prescribed in the Municipal Act, until the end of the COVID-19 (Novel Coronavirus) Pandemic; and

4. That the Acting Chief Administrative Officer **BE DIRECTED** to report to Regional Council all actions taken pursuant to this delegation.

### **Key Facts**

- On March 11, 2020, the World Health Organization declared COVID-19 (Novel Coronavirus) a global pandemic.
- On March 17, 2020, the Province of Ontario enacted a declaration of emergency with respect to COVID-19 and took extraordinary actions to help to continue to protect the health and safety of all individuals and families.
- It is possible that the isolation of Members of Council, whether preventative in nature or in relation to a confirmed case of COVID-19, could impact the ability of Regional Council to meet the quorum requirements.
- This report has been prepared to assist in ensuring the continuity of business during this uncertain time.

### **Financial Considerations**

This delegated authority is subject to the requirement that the expenditure or liability can be accommodated within an approved budget.

### **Analysis**

With respect to the current COVID-19 Pandemic recently declared by the World Health Organization, it is possible that the isolation of Members of Council, whether preventative in nature or in relation to a confirmed case of COVID-19, could impact the ability of Regional Council to meet the quorum requirements under Section 237 of the Municipal Act, as follows:

237 (1) A majority of the members of a municipal council is necessary to form a quorum with the following exceptions:

1. In the upper-tier municipalities of Durham, Niagara and the County of Oxford, a majority of members representing at least one-half of the lower-tier municipalities is necessary to form a quorum.
2. In the upper-tier municipalities of Halton, York and The District Municipality of Muskoka, a majority of members representing a majority of the lower-tier municipalities is necessary to form a quorum.

3. In The Regional Municipality of Peel, a majority of members representing all lower-tier municipalities is necessary to form a quorum.

While Section 238(3.1) of the Municipal Act now contemplates electronic participation in meetings if provisions related to this are included in the municipality's Procedural By-law, the Municipal Act also states that any electronic participation by a member **shall not be counted in determining quorum**. This restriction eliminates any opportunity for Council to undertake an amendment to the Procedural By-law to implement full electronic participation in a meeting. Electronic participation can be an option to allow those members who may be physically unable to attend Committee and Council meetings to participate. Staff were recently informed that the Province will be considering an amendment to the Act to enhance the provisions allowing for electronic participation by a member in light of the pandemic; however, staff is unaware of the particulars of the potential changes and the related impacts.

As was reported to Council prior to the 2018 Municipal Election, Section 275 of the Municipal Act stipulates certain periods where a Council cannot make decisions during Municipal Elections, and restricts certain actions of Council. This is commonly referred to as a *Lame Duck Council*.

When Council is in "Lame Duck", it may not engage in the following actions:

The appointment or removal from office of any officer of the municipality;

The hiring or dismissal of any employee of the municipality;

The disposition of any real or personal property of the municipality which has a value exceeding \$50,000 at the time of disposal; and

Making any expenditures or incurring any other liability which exceeds \$50,000.

The restrictions on the actions identified above do not apply if the disposition or liability was included in the most recent budget adopted by Council before Nomination Day. The municipality is also not prevented from taking any action in the event of a declared emergency.

On December 7, 2007, Council adopted Policy C3-D07 (now C-A-08) with respect to the delegation of powers and duties. This policy sets out the scope of the powers and duties

under which Council may delegate its legislative and administrative authority and to establish principles governing such delegation.

Common practice in municipalities in Ontario is to provide delegated authority to the Chief Administrative Officer (CAO) to exercise those acts under which Council is prohibited in the event that there is a Lame Duck Council. This was the case in Niagara Region in 2018.

The Region has a number of measures already in place to ensure that Council failing to meet quorum requirements would have minimal impact on the day-to-day operations of the Region. These measures include, but are not limited to, the adoption of the Procurement By-law; adoption of the annual budget; approval of specific policies that delegate certain authority to the CAO or other senior staff; approval of the by-law to provide for the roles and responsibilities of the Chief Administrative Officer and Chief Administrative Officer appointing By-law; and adoption of other similar measures. Notwithstanding these measures, providing clear delegated authority to the CAO during the COVID-19 pandemic will ensure the efficient management of the corporation and the ability to respond to issues in a timely fashion in the event that quorum for a meeting of Council cannot be achieved.

For clarity, pursuant to Section 229 of the Act, the CAO is responsible for exercising general control and management of the affairs of the municipality for the purpose of ensuring the efficient and effective operation of the municipality; and performing such other duties as are assigned by the municipality.

The responsibilities of the CAO are more specifically detailed in By-law 2020-09, being a by-law to provide for the roles and responsibilities of the Chief Administrative Officer, that was approved by Council on February 20, 2020.

In accordance with Section 23.1 of the Municipal Act, the following rules apply to delegating any of the municipality's powers or duties:

A delegation may be revoked at any time without notice unless the delegation specifically limits the municipality's power to revoke the delegation.

A delegation shall not limit the right to revoke the delegation beyond the term of the council which 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 or deemed delegation of a duty results in the duty being a joint duty of the municipality and the delegate.

A delegation may be made subject to such conditions and limits as the council of the municipality considers appropriate.

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 which apply to the delegated power and any duties related to the power are deemed to be delegated with the power.

In accordance with Sections 23.2 and 23.3 of the Municipal Act, Council is not authorized to delegate any of the following powers and duties:

- Appoint or remove statutory officers (i.e. Regional Clerk, Treasurer)
- Taxation matters
- Incorporating Corporations
- Adopting or amending official plans
- Zoning by-laws
- Matters related to small business counseling and municipal capital facilities
- Community improvement plans
- Adopting or amending the budget of the municipality
- Any other power or duty that may be prescribed by legislation
- Legislative powers to a Corporation

## **Alternatives Reviewed**

Council can decline to authorize the proposed delegation of authority, in which case in the event that quorum is not achieved at a meeting of Council; any business items requiring approval beyond the scope of any existing delegation of authority will be adjourned to the next Council meeting until such time as quorum is achieved.

## **Relationship to Council Strategic Priorities**

This report has been prepared as a response to the COVID-19 (Novel Coronavirus) pandemic; however, does align with Council's Strategic Priority of Sustainable and Engaging Government.

## **Other Pertinent Reports**

None.

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**Prepared by:**  
Ann-Marie Norio  
Regional Clerk

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**Reviewed by:**  
Donna Gibbs  
Director, Legal and Court Services  
Corporate Services

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**Submitted by:**  
Ron Tripp, P.Eng.  
Acting Chief Administrative Officer

## **Appendices**

None.