

# CITY OF WELLAND

## POLICY

<b>Policy Title:</b> Delegation of Power	
<b>Date of Approval:</b> November 27, 2007	<b>Policy Number:</b> GOV-001-0003
<b>Lead Role:</b> Council	<b>Support Role:</b> City Manager Gen. Mgrs.
<b>Cross Reference:</b> By-Law 2007-179	<b>Next Review Date:</b>
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### Policy Statement:

Previous legislation under the Municipal Act, 2001, and other legislation governing municipal governments in Ontario have given authority to a municipality, through its Council by resolution or by-law, to delegate power to the Mayor, committees and agencies, and to staff as appropriate. Those previous delegations of power continue to be recognized in this policy.

Future delegation of power will continue to be by resolution or by-law of Council and will also be in accordance with Section 23 of the Municipal Act, 2001, as amended.

### Purpose:

Section 270 of the Municipal Act, 2001, as amended, (the "Act") requires the City of Welland to adopt a policy for the Delegation of Power to demonstrate its accountability to its citizens; and, to enhance the previous powers subject to any new limitations specifically set out in the Act.

### Scope:

Sections 9, 10, and 11 of the Act provide the context of municipal powers, including general welfare powers. They are to be interpreted broadly and generously within their context and statutory limits. The natural persons power of a municipality in Section 9 provide the scope of authority to enter into agreements, to purchase land and equipment, to hire employees, and to delegate administrative responsibilities to committees, staff members and other bodies such as boards of management. It is further recognized that the municipality exercises this authority through the enactment of by-laws.

In the context of enhanced scope, it is recognized that the previous delegations of power have occurred in virtually every by-law approved by the City. The Purchasing Policy (By-law), the Procedural By-law of Council and the Confirmatory By-law are just three examples where power has been delegated to administer the decisions enacted by the City.

The services and authority provided to the City of Welland in Section 11 of the Act provide the general basis for areas for which the City may delegate its power. This includes the recognition that other specific powers in other legislation where provided can also be delegated.

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Delegation of Powers and Duties (Excerpt from Municipal Act, 2001, as amended):

### **DELEGATION OF POWERS AND DUTIES**

#### **General power to delegate**

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.

#### **Scope of power**

(2) The following rules apply to a by-law delegating any of the municipality's powers or duties:

- 1) 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.
- 2) A delegation shall not limit the right to revoke the delegation beyond the term of the council which made the delegation.
- 3) 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.
- 4) A delegation or deemed delegation under paragraph 6 of a duty results in the duty being a joint duty of the municipality and the delegate.
- 5) A delegation may be made subject to such conditions and limits as the council of a municipality considers appropriate.
- 6) 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 power and any duties related to the power are deemed to be delegated with the power. 2006, c. 32, Sched. A, s. 15.

#### **Same**

(3) The conditions and limits referred to in paragraph 5 of subsection (2) may include such matters as the following:

- 1) A requirement that the delegate act by by-law, resolution or otherwise, despite subsection 5 (3).
- 2) Procedures that the delegate is required to follow.
- 3) The accountability of the delegate and the transparency of the delegate's actions and decisions. 2006, c. 32, Sched. A, s. 15.

#### **Restriction re delegation of legislative and quasi-judicial powers**

23.2 (1) Sections 9, 10 and 11 do not authorize a municipality to delegate legislative and quasi-judicial powers under any Act except those listed in subsection (2) and the legislative and quasi-judicial powers under the listed Acts may be delegated only to,

- a) One or more members of its council or a council committee;
- b) A body having at least two members of whom at least 50 per cent are,
  - i) Members of its council,
  - ii) Individuals appointed by its council,

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- iii) A combination of individuals described in subclauses (i) and (ii); or
- (c) An individual who is an officer, employee or agent of the municipality. 2006, c. 32, Sched. A, s. 15.

### **Restriction re applicable Acts**

- (2) For the purposes of subsection (1), the listed Acts are this Act, the Planning Act, a private Act relating to the municipality and such other Acts as may be prescribed. 2006, c. 32, Sched. A, s. 15.

### **Restriction re certain corporations**

- (3) Despite clause (1) (b), no delegation of a legislative or quasi-judicial power shall be made to a corporation incorporated in accordance with section 203. 2006, c. 32, Sched. A, s. 15.

### **Restriction re officers, employees, etc.**

- (4) No delegation of a legislative power shall be made to an individual described in clause (1) (c) unless, in the opinion of the council of the municipality, the power being delegated is of a minor nature and, in determining whether or not a power is of a minor nature, the council, in addition to any other factors it wishes to consider, shall have regard to the number of people, the size of geographic area and the time period affected by an exercise of the power. 2006, c. 32, Sched. A, s. 15.

### **Same**

- (5) Without limiting subsection (4), the following are examples of powers considered to be of a minor nature:
  - 1) The power to close a highway temporarily.
  - 2) The power to issue and impose conditions on a licence.
  - 3) The powers of the council of a municipality that are described in the following provisions of the old Municipal Act, as those provisions read on December 31, 2002:
    - i) Paragraphs 107, 108, 109 and 110 of section 210.
    - ii) Paragraph 3 of section 308.
    - iii) Subsection 312 (2) and clauses 312 (4) (a) and (b). 2006, c. 32, Sched. A, s. 15.

### **Regulations**

- (6) The Minister may make regulations prescribing Acts for the purpose of subsection (2). 2006, c. 32, Sched. A, s. 15.

### **Powers that cannot be delegated**

- 23.3 (1) Sections 9, 10 and 11 do not authorize a municipality to delegate any of the following powers and duties:
- 1) The power to appoint or remove from office an officer of the municipality whose appointment is required by this Act.
  - 2) The power to pass a by-law under Parts VIII, IX and X.

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- 3) The power to incorporate corporations in accordance with section 203.
- 4) The power to adopt an official plan or an amendment to an official plan under the Planning Act.
- 5) The power to pass a zoning by-law under the Planning Act.
- 6) The powers to pass a by-law under subsections 108 (1) and (2) and 110 (3), (6) and (7).
- 7) The power to adopt a community improvement plan under section 28 of the Planning Act, if the plan includes provisions that authorize the exercise of any power under subsection 28 (6) or (7) of that Act or under section 365.1 of this Act.
- 8) The power to adopt or amend the budget of the municipality.
- 9) Any other power or duty that may be prescribed. 2006, c. 32, Sched. A, s. 15.

### **Delegation of administrative powers**

- (2) Nothing in subsection (1) prevents a municipality from delegating its administrative powers. 2006, c. 32, Sched. A, s. 15.

### **Regulations**

- (3) The Minister may make regulations,

- (a) Restricting or imposing conditions on the power of a municipality to delegate its power and duties;
- (b) Prescribing powers and duties for the purpose of paragraph 9 of subsection (1). 2006, c. 32, Sched. A, s. 15.

### **Effect of delegation to municipal service boards**

23.4 (1) When a municipality has delegated a power or duty to a municipal service board, the municipality may provide that any existing by-law or resolution of the municipality that relates to the delegated power or duty is, to the extent it applies in any part of the municipality, deemed to be a by-law or resolution of the municipal service board. 2006, c. 32, Sched. A, s. 15.

### **Limitation**

- (2) If a municipal service or activity is under the control and management of a municipal service board, nothing in this Act or a by-law made under this Act,
  - (a) Authorizes the municipal service board to provide for the financing of the municipal service or activity otherwise than by fees and charges under Part XII (Fees and Charges) unless the municipal service board has the consent of the municipality to do so;
  - (b) removes from the municipality its power to finance the capital and operating costs of providing the service or activity as if the municipality had control and management of the service or activity; or
  - (c) Removes from the municipality its power to deal with real and personal property in connection with the service or activity as if the municipality had control and management of the service or activity. 2006, c.32, Sched. A, s.15.

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### **Delegation re hearings**

#### **Application**

23.5 (1) This section applies when a municipality is required by law to hold a hearing or provide an opportunity to be heard before making a decision or taking a step, whether the requirement arises from an Act or from any other source of law. 2006, c. 32, Sched. A, s. 15.

#### **Delegation authorized**

(2) Despite subsection 23.2 (1), sections 9, 10 and 11 authorize a municipality to delegate to a person or body described in that subsection the power or duty to hold a hearing or provide an opportunity to be heard before the decision is made or the step is taken. 2006, c. 32, Sched. A, s. 15.

#### **Rules re effect of delegation**

(3) If a municipality delegates a power or duty as described in subsection (2) but does not delegate the power to make the decision or take the step, the following rules apply:

- 1) If the person or body holds the hearing or provides the opportunity to be heard, the municipality is not required to do so.
- 2) If the decision or step constitutes the exercise of a statutory power of decision to which the Statutory Powers Procedure Act applies, that Act, except sections 17, 17.1, 18, and 19, applies to the person or body and to the hearing conducted by the person or body. 2006, c. 32, Sched. A, s. 15.