
TO: GENERAL COMMITTEE

SUBJECT: DELEGATED AUTHORITY TO EXECUTE NON-DISCLOSURE AGREEMENTS

WARD: ALL

PREPARED BY AND KEY CONTACT: P. DYCK, BUSINESS DEVELOPMENT OFFICER, X5228

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GENERAL MANAGER APPROVAL: Z. LIFSHIZ, EXECUTIVE DIRECTOR INVEST BARRIE

CHIEF ADMINISTRATIVE OFFICER APPROVAL: M. PROWSE, CHIEF ADMINISTRATIVE OFFICER

RECOMMENDED MOTION

1. That the Executive Director of Invest Barrie be authorized to execute Non-Disclosure Agreements on behalf of the Corporation for the purpose of pursuing business opportunities, where appropriate, and in a form approved by the Director of Legal Services and the Chief Administrative Officer.

PURPOSE & BACKGROUND

2. The purpose of this staff report is to seek delegated authority to permit the Executive Director of Invest Barrie to execute Non-Disclosure Agreements (NDA's) for the purpose of pursuing business opportunities, where appropriate.
3. Non-Disclosure Agreements are legal documents requiring the Corporation to follow particular protocols as it relates to confidential business matters. Businesses that are looking to locate, test/pilot/study new products of services, or expand in the City of Barrie will sometimes request that the City sign a Non-Disclosure Agreement in order that discussions between the two parties remain confidential during the site selection or pilot process. The purpose of this is to protect business interests related to their existing employees, shareholders or competitive positioning in the marketplace.
4. Requests to execute Non-Disclosure Agreements are infrequent. However the ability for staff to execute an NDA, can be a key criteria for keeping the business interested in the City of Barrie as a business location. The authority to execute such agreements is also critical for Invest Barrie in being able to provide key information and business case data to effectively support the attraction of businesses to Barrie.

ANALYSIS

5. Staff currently do not have the authority to execute NDA agreements
6. The purpose of the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA) is to provide a right of access to information under the control of institutions with limited and specific exemptions, while protecting the privacy of individuals. MFIPPA covers institutions such as Ontario municipalities, municipal service boards, school boards, public library boards, etc. MFIPPA

requires the “head” for the institution to refuse to disclose a record about a third party when certain criteria are met. The record may be released if the third party provides its consent.

7. The position of City Clerk was designated as the “head” of The Corporation of the City of Barrie for the purposes of MFIPPA under By-law 90-110 and would provide notice to a third party if access to a record that meets the criteria, was requested. The third party would be given the opportunity to provide representations as to why the information should not be disclosed.
8. Although the above noted protection exists for specific third party information, it must be supplied in confidence either implicitly or explicitly. In order to explicitly identify records that businesses wish to remain confidential in advance of any detailed discussions, some businesses have requested that a representative of the City execute an NDA.
9. MFIPPA requires that any third party information the City receives must be treated with confidentiality, but in order to retain the confidentiality it must meet three main tests:
 - a) The information received must fit within one of the specified categories of third party information (trade secret, scientific, technical, commercial, financial and labour relations information);
 - b) The information must have been supplied in confidence, either implicitly or explicitly; and
 - c) The disclosure of the information could reasonably be expected to cause certain harms.
10. Any Non-Disclosure Agreements would be reviewed by the Legal Department to ensure that the agreements reflect the City’s obligations under applicable legislation prior to being signed.

ENVIRONMENTAL MATTERS

11. There are no environmental matters related to the recommendation.

ALTERNATIVES

12. The following alternatives are available for consideration by General Committee:

Alternative #1

General Committee could choose not to provide delegated authority for the to execute Non-Disclosure Agreements.

This alternative is not recommended as staff wish to be responsive to the needs of business clients who may be considering a move, or expansion in Barrie. If the City is not in a position to sign a Non-Disclosure Agreement it could be misconstrued that the City is not open for business.

FINANCIAL

13. There are no financial considerations related to the recommendation.

LINKAGE TO 2014-2018 STRATEGIC PLAN

14. The recommendations included in this Staff Report support the following goal identified in the 2014-2018 Strategic Plan:

- Vibrant Business Environment