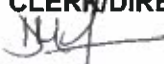


TO: GENERAL COMMITTEE


SUBJECT: TEMPORARY DELEGATION OF AUTHORITY TO THE CHIEF ADMINISTRATIVE OFFICER

WARD: ALL

PREPARED BY AND KEY CONTACT: D. MCALPINE, CITY CLERK/DIRECTOR OF LEGISLATIVE AND COURT SERVICES, EXT. 4421

SUBMITTED BY: D. MCALPINE, CITY CLERK/DIRECTOR OF LEGISLATIVE AND COURT SERVICES 

GENERAL MANAGER APPROVAL: R. FORWARD, MBA, M.SC., P.ENG., GENERAL MANAGER OF COMMUNITY AND CORPORATE SERVICES 

CHIEF ADMINISTRATIVE OFFICER APPROVAL: C. LADD, CHIEF ADMINISTRATIVE OFFICER 

RECOMMENDED MOTION

1. That in accordance with the City of Barrie Delegation of Powers and Duties Policy, the Chief Administrative Officer be delegated temporary authority during the period of August 26, 2014 to December 31, 2014 to undertake the following actions:
 - a) To award or accept (proceed with the purchase of goods, services, or construction from one or more selected suppliers/contractors) contracts where Section 6 of the Procurement By-law would normally apply, subject to
 - i) The ability to manage through total budget management as appropriate; and
 - ii) The award and availability of sufficient funds is to the satisfaction of the Director of Finance/Treasurer;
 - b) To adjust capital project funding including draws from reserves when bid prices exceed the lesser of 10% or \$250,000, under the following circumstances:
 - i) The adjustment is in the best interest of the Corporation as delays would result in significant financial loss to the Corporation or the adjustment is required to fulfil an existing obligation of the City; and
 - ii) Such adjustment is to the satisfaction of the Director of Finance/Treasurer;
 - c) To negotiate and authorize the sale on behalf of the City of various parcels of industrial land in the Mapleview West Business Park and the South Barrie Industrial Park for the purpose of business development, in consultation with the Director of Business Development and subject to the following:
 - i) The value of the land that is the subject of sale does not exceed \$300,000 per acre;
 - ii) That Council policies and guidelines with respect to industrial land sales be given consistent and equitable application;

- iii) The property has been declared surplus and notice has been provided in accordance with By-law 95-104 as amended;
 - iv) The sale price represents market value based on an appraisal of the site;
 - v) The purchaser is not seeking any exceptions to the standard covenants with respect to timelines for development or minimum lot coverage; and
 - vi) The Agreement of Purchase and Sale is to the satisfaction of the Director of Legal Services and Director of Business Development;
- d) To authorize extensions in the period to start construction for a maximum of two years, said extension to be deemed satisfactory in consultation with the Director of Business Development and Director of Legal Services and subject to the following:
- i) The provision of a written undertaking to commence construction within one year and to complete construction within two years;
 - ii) That all undertakings be received within 30 days of the notification from the City of the extension and if not received within the 30 days, the City may exercise its option to repurchase;
 - iii) If construction is not commenced or completed as granted by the extension, the owner immediately deed back the lands unencumbered to the City;
 - iv) The purchaser has demonstrated commitment and made an investment in the property to facilitate the proposed development; and
 - v) That the owner reimburses the City for administration and legal costs in the amount of \$1,400.00 per the current Fees By-law;
- e) To waive a right of repurchase for a property and remove any restrictive covenants registered on title, under the following circumstances:
- i) The purchaser has an offer to purchase the property from a business that would generate employment in the community and/or would result in the development of lands that would otherwise be vacant for an extended period of time;
 - ii) The proposed use for the property conforms to the general purpose and intent of the City's Official Plan and Zoning By-law; and
 - iii) The terms of any agreements required are to the satisfaction of the Director of Legal Services and Director of Business Development;
- f) To extend the timeline from November 30, 2014 to March 31, 2015, for the Mady Development Corporation (Mady) to deliver 1,359m² (14,628SF) of leased office space to the City and provide 90 public parking spaces, should such extension be required; and
- g) To provide direction in regard to the conduct of litigation or potential litigation, including, without limiting the foregoing, the settlement of litigation or potential litigation where the settlement is deemed fair and reasonable and in the best interest of the Corporation by the CAO in consultation with the appropriate General Manager and the Director of Legal Services.

2. That the Mayor and City Clerk be authorized to execute any documents that may be requisite to give effect to the actions identified above.
3. That a memorandum be submitted by the Chief Administrative Officer to Council advising of the exercise of the delegated authority in the first quarter of 2015.

PURPOSE & BACKGROUND

4. The purpose of this staff report is to obtain delegated authority for the Chief Administrative Officer to undertake specific actions during the period of August 26, 2014 to December 31, 2014.
5. Council adopted the City of Barrie Delegation of Powers and Duties Policy in December of 2007, to establish the general manner in which authority is delegated and to maintain accountability. Delegated authority is typically provided to ensure the efficient management of the municipal corporation and the ability to respond to issues in a timely fashion.
6. The council of a municipality is restricted from taking certain actions either after Nomination Day (September 12th, 2014) or after Voting Day (October 27th, 2014), when it can be determined that the new council will include less than three-quarters of the members of the outgoing council. The restrictions continue until the date the new council takes office (December 2014). This period of time is referred to as the "lame duck" period.
7. After nomination day but before voting day, the determination of whether the actions identified in Section 275 (3) of the Municipal Act are restricted, is based on the nominations to the new council that have been certified and any acclamations made to the new council. After Voting Day (October 27th, 2014), the determination is based on the declaration of the results of the election including declarations of election by acclamation.
8. If a council of a municipality is in a "lame duck" position, it may not engage in the following actions:
 - a) the appointment or removal from office of any officer of the municipality;
 - b) the hiring or dismissal of any employee of the municipality;
 - c) the disposition of any real or personal property of the municipality which has a value exceeding \$50,000 at the time of disposal; and
 - d) making any expenditures or incurring any other liability which exceeds \$50,000.
9. The restrictions on the actions identified in 8 c) and d) do not apply if the disposition or liability was included in the most recent budget adopted by City Council before Nomination Day. The municipality is also not prevented from taking any action in the event of an emergency.
10. It should be noted that nothing in section 275 of the Municipal Act prevents any person or body from exercising any authority that was delegated to that person or body by Council prior to Nomination Day.
11. Barrie City Council is composed of 11 members, therefore provisions will take effect when it becomes mathematically impossible for nine members of the outgoing Council to be re-elected. Examples of when the "lame duck" provisions would apply are as follows:
 - a) If fewer than 9 current members run for re-election; or
 - b) If 9 members run for re-election, but more than 1 of the members is running for the same office.

ANALYSIS

12. In 2014, the "lame duck" period could extend from September 12th until the new Term of Office begins (December 1). The inaugural meeting scheduled for December 1, 2014 for the Council-elect is a ceremonial event and no business is transacted. As a result, a potential "lame duck" period of three months would exist.
13. Staff have been reviewing areas of potential delegation or pre-authorization for any anticipated business which may arise after September 12th. Delegating authority to a person or body to make decisions would reduce delays in projects and support Barrie's positioning as an investment ready community for economic development initiatives.
14. It is recommended that authority to undertake a number of actions be delegated to the Chief Administrative Officer for a temporary period that would start immediately following the last meeting of Council prior to Nomination Day and extend until December 31, 2014. The following paragraphs outline the proposed delegated authority:

Awarding/Accepting Contracts

15. Currently Section 6 of the Procurement By-law indicates that the contract awards identified in Appendix "A" to Staff Report CLK006-14 are subject to Council approval. While these specific circumstances would occur rarely, if ever, the flexibility to award during the "lame duck" period would eliminate any delays in these types of operating matters.

Adjusting Capital Projects

16. Currently, the Chief Administrative Officer, General Managers, Executive Directors and Department Heads are authorized to award contracts administratively if the award is within the approved budget. If there are insufficient funds for capital projects that are the equivalent to the lesser of 10% or \$250,000, the project may be funded from a holding account. Council approval is required for capital projects where the insufficient funds are equal to more than 10% or more than \$250,000. The timing of several projects within the 2014 Capital Plan is such that should submissions in response to Requests for Proposals (RFPs) or tenders exceed the total budgeted amount by greater than 10% or \$250,000, based on current approval levels, it may not be able to be awarded during the "lame duck" period. While staff continue to feel that the budget estimates for RFPs and tenders are reasonable, in order to avoid the work identified in various RFPs and tenders being placed on hold until the term of the new Council begins, staff are requesting the delegated authority to avoid unnecessary delay in the project(s).
17. Although staff makes its best efforts to anticipate budget requirements within the 2014 Business Plan and Capital Plan, there may be a requirement to adjust a funding source or to provide interim funding for a project (including funding from reserves) where other funding sources are anticipated to become available at a future date. These budget adjustments would typically be presented to Council for approval. An adjustment would only be undertaken if it was deemed to be in the best interest of the Corporation (as delays would result in significant financial loss to the Corporation) or the adjustment is required to fulfil an existing obligation of the City. If a matter has the potential to be resolved in December, it will be presented to the 2014-2018 Council for consideration.

Industrial Land Sales - Mapleview West Business Park and the South Barrie Industrial Park

18. City owned land in the Mapleview West Business Park and South Barrie Industrial Park has been available for sale for several decades. Without delegated authority to sell industrial land, an offer that was received during the three month "lame duck" period, would not be able to be accepted. This could result in the loss of a potential employer within the community. Throughout the year, staff receive inquiries related to industrial land sales that may be time sensitive for the purchaser.
19. It is recommended that the delegated authority be limited to properties where the sale price does not exceed \$300,000 per acre, the property has already been declared surplus and notice has been provided, and the price represents market value based on an appraisal of the land. In addition, the delegated authority would only extend to circumstances where the purchaser is not seeking an extension in the standard timelines for development or a reduction in the percentage associated with the minimum lot coverage.
20. The delegated authority would not include any lands that are located outside of the two specified business/industrial parks.

Previous Industrial Land Sale Covenants – Development Timelines and Rights of Repurchase

21. A number of Agreements of Purchase and Sale have been authorized by City Council over the past several years. A standard development covenant requires the purchaser to obtain a building permit within one year and to complete construction within two years of the purchase date. Another standard covenant in Barrie's industrial land sales is a first right of refusal to repurchase lands based upon an agreed upon price, if the development timelines have not been met.
22. Some purchasers of City-owned industrial lands may still be feeling the effects of the down turn in the economy and require an extension related to the timelines to develop their property. Delegating authority to provide such extensions where the purchaser has demonstrated commitment and made an investment in the property to facilitate the development could be granted subject to the purchaser providing a written undertaking to commence and complete construction, and the owner reimbursing the City for administration and legal fees as per the current Fees By-law.
23. If a purchaser has received an offer for a parcel of land that has not been developed in accordance with the covenants, the existing Agreements of Purchase and Sale generally provide a limited amount of time for the City to respond to a right to repurchase. Delegated authority is recommended for circumstances where the purchaser has received an offer to purchase the property from a business that would generate employment in the community and/or would result in the development of lands that would otherwise be vacant for an extended period of time. Further the proposed use would be required to conform to the general purpose and intent of the City's Official Plan and the Zoning By-Law.

Extension to timeline for completion related to Collier Centre (90 Collier Street and 55 Mulcaster Street)

24. On August 30, 2010, City Council adopted Motion 10-G-332 regarding the award of the Request for Proposal (RFP) to Mady for the redevelopment of 90 Collier Street and 55 Mulcaster Street. The City and Mady executed documents which identified that Mady would provide leased office space to the City and the provision of 90 public parking spaces by June 30, 2014. In November of 2013, the City provided an extension from June 30, 2014 to November 30, 2014 for the Mady Development Corporation (Mady) to Deliver 1,359m² (14,628SF) of leased office space to the City and Provide 90 public parking spaces.

25. A number of factors can impact a construction schedule including but not limited to weather, subcontractors, utility coordination, etc. As the current extension of the timeline falls within the period of restricted acts, it is recommended that delegated authority be provided to the Chief Administrative Officer to extend the timeline for the delivery of the office space and parking spaces for an additional 4 months, should it be required.

Settlements associated with Litigation

26. As a relatively large public sector corporation, the City of Barrie is the subject of litigation. Offers of settlement are almost always time limited and may require a decision of Council that it would not be able to provide during the "lame duck" period. To facilitate the resolution of litigation impacting the municipality, it is recommended that the authority to settle litigation or potential litigation be delegated to the Chief Administrative Officer, where the offer of settlement is deemed to be fair and reasonable and in the best interest of the Corporation by the Chief Administrative Officer in consultation with the appropriate General Manager/Executive Director and the Director of Legal Services.

Next Steps

27. In exercising the delegated authority, the Chief Administrative Officer shall ensure that any documentation associated with the delegation is to the satisfaction of the Director of Legal Services and any financial matters are to the satisfaction of the Director of Finance/Treasurer.
28. To ensure Council is informed, a memorandum would be submitted by the CAO to Council advising of the exercise of the delegated authority.

ENVIRONMENTAL MATTERS

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

ALTERNATIVES

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

Alternative #1 General Committee could recommend that any or all of the proposed actions not be delegated on a temporary basis to the Chief Administrative Officer.

Delegating authority for the actions identified in the recommended motion will allow for the efficient management of the corporation's time sensitive business during the "lame duck" period.

Alternative #2 General Committee could amend any conditions associated with the delegated authority recommended.

The conditions associated with the delegated authority have been reviewed with the potentially impacted departments and are deemed to provide clear direction and/or limits to the delegated authority that are reasonable.

FINANCIAL

31. There are no direct financial implications resulting from the recommended motion. Indirectly, the recommended motion creates the potential for the CAO to expend funds, execute agreements or adjusting funding sources, including funding from reserves that bind the corporation. To ensure Council is informed, a memorandum would be submitted by the CAO to Council advising of the exercise of the delegated authority.

LINKAGE TO 2010-2014 COUNCIL STRATEGIC PLAN

32. The recommendation(s) included in this Staff Report are not specifically related to the goals identified in the 2010-2014 City Council Strategic Plan.

Appendix "A"

Section 6 of the Procurement By-law – Prescribed Council Approval

6 PRESCRIBED COUNCIL APPROVAL

- 6.1 Despite any other provision of this By-law, save and except for the circumstances in Section 5.3 CAO authority, the following contract awards are subject to Council approval:
- 6.1.1 Any contract requiring approval from the Ontario Municipal Board;
 - 6.1.2 Any contract prescribed by statute to be made by Council;
 - 6.1.3 Any contract that requires debt financing;
 - 6.1.4 Any contract prescribed by a court order;
 - 6.1.5 Where the Procurement By-law is being waived;
 - 6.1.6 Where Council has expressly directed staff to report prior to award;
 - 6.1.7 Where authority to approve has not been expressly delegated;
 - 6.1.8 Where a submission in response to a call for bid contains an irregularity not resolved by the Purchasing Review Committee;
 - 6.1.9 Where there is a challenge to the call for bids process that cannot be resolved by the Purchasing Review Committee.