

# THE CORPORATION OF THE TOWN OF TILLSONBURG

## BY-LAW 2020-091

**A BY-LAW to adopt and maintain a policy with respect to the delegation of the Corporation of the Town of Tillsonburg's powers and duties and to repeal By-Law 4017.**

**WHEREAS** paragraph 270(1)6 of the Municipal Act, 2001, S.O. 2001, c. 25 provides that a municipality shall adopt and maintain a policy with respect to the delegation of its powers and duties;

**BE IT THEREFORE ENACTED** by the Council of the Corporation of the Town of Tillsonburg as follows:

### 1. Definitions

In this By-Law:

- a) "Act" shall mean the Municipal Act, S.O. 2001, c. 25.
- b) "Administrative Powers" shall mean those powers that a natural person could delegate and that relate to the management of the municipal corporation.
- c) "Legislative Powers" shall mean those powers that require policy setting and by-law making.
- d) "Officer" shall mean an employee of the Town holding some position of responsibility or authority.
- e) "Policy" shall mean a high-level overall plan embracing the general goals and acceptable procedures especially of a governmental body.
- f) "Procedure" shall mean specific methods employed to express policies in action in day-to-day operations of the organization.
- g) "Quasi-Judicial Powers" shall mean those powers that require judgement and decision making. These decisions are based less on policy and procedure, and more on the adjudication of individual rights and duties.
- h) "Town" shall mean the Corporation of the Town of Tillsonburg.

### 2. Powers that cannot be Delegated

Section 23.3 (1) of the Act sets out the specific circumstances in which a municipality cannot delegate its powers or duties as follows:

- 2.1. appointing or removing officers of the municipality whose appointment is required by the Municipal Act (i.e. Clerk or Treasurer);
- 2.2. imposing taxes;
- 2.3. incorporating corporations;
- 2.4. adopting or amending the official plan;
- 2.5. passing zoning by-laws;
- 2.6. adopting or amending the municipal budget; and
- 2.7. other powers or duties as prescribed.

### 3. Restrictions Regarding Delegation of Legislative and Quasi-Judicial Powers

Legislative and quasi-judicial powers may only be delegated to the following:

- 3.1. one or more members of Council or a committee of Council;
- 3.2. a body having at least two members of whom at least 50 per cent are members of Council and/or Council appointees; or
- 3.3. an individual who is an officer, employee or agent of the Town, but only if the power delegated is of a minor nature.

4. Scope of Power

- 4.1. All delegations of Council powers, duties or functions shall be effected by by-law.
- 4.2. Unless a power, duty or function of Council has been expressly delegated by by-law, all of the powers, duties and functions of Council remain with Council.
- 4.3. A delegation may be restricted or revoked at any time without notice unless the delegation by-law specifically limits Council's power to restrict or revoke the delegation. This limitation to Council's power shall not extend beyond the term of the current council and will not restrict the power of succeeding councils to revoke the delegation.
- 4.4. A delegation may provide that only the delegate can exercise the delegated power or that both Council and the delegate can exercise the power jointly.
- 4.5. 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 such conditions, approvals and appeals as Council considers appropriate.
- 4.6. Council has the authority to establish an appeal body to hear appeals or review decisions made under a delegated power as per Section 284.1 of the Act. This includes the power to determine procedures, powers and rules of those conducting the appeal.
- 4.7. Unless specifically authorized by statute or regulation, any delegation of Council decision-making powers and duties to any Board or Committee of Council shall be authorized by by-law. Such delegated powers and duties, if any, shall be set out in the terms of reference adopted by Council pursuant to the Town's Procedure By-law.

5. Authorization of Expenditures

- 5.1. Council has the ultimate authority for all expenditures. Council delegates this authority through the authorization of budgets, the purchasing policy or by specific resolution.
- 5.2. The Purchasing Policy sets out the authority for Procurement and sets purchase limits. It also provides direction on the circumstances in which certain purchasing mechanisms are appropriate (i.e. informal quotes, written quotes, tender submissions or requests for proposal).

6. Authority to Execute Agreements

- 6.1. Despite Section 5 (3) of the Act, Section 23.1 (3) provides that Council may require that the delegate act by by-law, resolution or otherwise.
- 6.2. Whereas it is desirable and expedient in the conduct of Council's affairs to delegate certain powers and duties to staff, this policy shall authorize a

Director to enter into an agreement and shall authorize the Director and the CAO or Town Clerk to legally bind the Corporation by jointly executing said agreement without by-law approval if the following criteria are met:

- 6.2.1. the subject matter is non-financial;
- 6.2.2. the subject matter is financial or procured in accordance with the purchasing policy and for which approved operating or capital budget exists;
- 6.2.3. the subject matter is of an administrative or operational nature and relates to the management of the municipal corporation; and
- 6.2.4. the agreement is for a term not exceeding five (5) years.

## 7. Town Clerk and Director of Operations

### 7.1. Planning Agreements

- 7.1.1. Section 5 (1) of the Planning Act, R.S.O. 1990 provides that Council may, by by-law, delegate any authority, subject to certain restrictions, to an appointed officer identified in the by-law either by name or position occupied.
- 7.1.2. Whereas it is desirable and expedient in the conduct of Council's affairs in respect to the Planning Act, R.S.O. 1990 Section 30, 41, 50, 51 and 53 to delegate certain powers and duties to appointed officers for the purpose of expediting the execution of certain agreements, this policy shall authorize the Town Clerk and the Director of Operations to execute on behalf of the Corporation of the Town of Tillsonburg:
  - 7.1.2.1. community improvement plan agreements;
  - 7.1.2.2. development agreements for the purpose of site plan control;
  - 7.1.2.3. part lot control agreements;
  - 7.1.2.4. severance agreements;
  - 7.1.2.5. easement agreements;
  - 7.1.2.6. pre-servicing agreements; and
  - 7.1.2.7. subdivision agreements.

## 8. Chief Administrative Officer (CAO)

### 8.1. Appeal of Planning Decisions to the Ontario Municipal Board

- 8.1.1. Section 5 (1) of the Planning Act, R.S.O. 1990 provides that Council may, by by-law, delegate any authority, subject to certain restrictions, to an appointed officer identified in the by-law either by name or position occupied.
- 8.1.2. Whereas it is desirable and expedient in the conduct of Council's affairs in respect to the Planning Act, R.S.O. 1990 to delegate certain powers and duties to staff, and for the purpose of lodging appeals prior to the end of an appeal period for a planning application, this policy shall authorize the CAO, in consultation with the County Development Planner to appeal the decision of a planning application on the basis of

sound planning reasons, subject to the appeal being confirmed by Council at the following Council session.

8.2. Minor Sign Variances – Sign By-Law 3798

8.2.1. Section 23.1 (1) of the Act provides that a municipality may "delegate its powers and duties under this or any other Act to a person or body" subject to certain restrictions.

8.2.2. Whereas it is desirable and expedient in the conduct of Council's affairs to delegate certain powers and duties to staff, and for the purpose of shortening the time period required to process applications for Minor Sign Variances, this policy shall authorize the CAO or his/her designate to consider minor sign variances applications with regard to:

8.2.2.1. Special circumstances or conditions applying to the property, building or use;

8.2.2.2. Pre-existing special circumstances or conditions not created by the owner;

8.2.2.3. Sign will detrimentally alter the character of the building, property or area; and

8.2.2.4. The general intent and purpose of the Sign By-law is maintained.

8.2.3. Whereas applications that are considered not to be minor in nature will be considered by Town Council and any minor variance applications at the discretion of the CAO to be determined not to be minor in nature will be considered by Town Council for final decision.

8.3. Restricted Acts after Nomination Day (By-Law 3444)

8.3.1. In the event that Council becomes "lame duck" and restricted by the provisions of Section 275 of the Municipal Act, 2001 in an election year, the following duties shall hereby be delegated to the CAO:

8.3.1.1. the appointment or removal from office of any officer of the municipality, except officers whose appointment is required by the Municipal Act (i.e. Clerk or Treasurer);

8.3.1.2. the hiring or dismissal of any employee of the municipality;

8.3.1.3. the disposition of any real or personal property of the municipality which has a value exceeding \$50,000 at the time of disposal, if the disposition was not included in the most recent budget; and

8.3.1.4. making any expenditure or incurring any other liability which exceeds \$50,000, if the liability was not included in the most recent budget.

8.3.2. Section 275 (6) provides that nothing in the Act "prevents any person or body exercising any authority of a municipality that is delegated to the person or body prior to nomination day".

9. Town Clerk

9.1. Municipal Freedom of Information and Protection of Privacy Act (By-Law 2535)

- 9.1.1. Section 3 (1) of the Municipal Freedom of Information and Protection of Privacy Act, 2001, R.S.O. 1990 provides that the members of the council of a municipality may by by-law designate from among themselves an individual or a committee of the council to act as head of the municipality for the purposes of the Act.
- 9.1.2. Section 49 (1) of the Municipal Freedom of Information and Protection of Privacy Act further provides that a head may in writing delegate a power or duty granted or vested in the head to an officer of the institution.
- 9.1.3. Whereas it is desirable and expedient in the conduct of Council's affairs to designate a head for the purposes of the Municipal Freedom of Information and Protection of Privacy Act and to delegate certain powers and duties vested in the head to an officer of the corporation, this policy shall designate the Mayor as head and shall authorize the Town Clerk or his/her designate to act as head pursuant to the provisions of the Municipal Freedom of Information and Protection of Privacy Act.

9.2. Records Retention (By-Law 3933)

- 9.2.1. Section 3 (1) of the Municipal Freedom of Information and Protection of Privacy Act, 2001, R.S.O. 1990 provides that the members of the council of a municipality may by by-law designate from among themselves an individual or a committee of the council to act as head of the municipality for the purposes of the Act.
- 9.2.2. Section 49 (1) of the Municipal Freedom of Information and Protection of Privacy Act further provides that a head may in writing delegate a power or duty granted or vested in the head to an officer of the institution.
- 9.2.3. Whereas it is desirable and expedient in the conduct of Council's affairs to designate a head for the purposes of the Municipal Freedom of Information and Protection of Privacy Act and to delegate certain powers and duties vested in the head to an officer of the corporation, this policy shall designate the Mayor as head and shall authorize the Town Clerk or his/her designate to act as head pursuant to the provisions of the Municipal Freedom of Information and Protection of Privacy Act.

9.3. Licensing of Businesses with the Town of Tillsonburg (By-Law 3666)

- 9.3.1. Whereas Section 150 & 151 (1) of the Municipal Act, 2001, S.O. 2001, c. 25, without limiting the broad powers granted to municipalities through sections 9, 10 and 11 of the Municipal Act, 2001, c. 25 provides that a local municipality may licence, regulate and govern any business wholly or partly carried on within the municipality.

9.3.2. Whereas it is desirable and expedient in the conduct of Council's affairs to delegate certain powers and duties to staff, this policy shall authorize the Town Clerk or his/her designate to act as Licensing Officer for the purpose of issuing a Business License pursuant to the terms and conditions set out in the current By-Law to govern the licensing of businesses within the Corporation of the Town of Tillsonburg.

#### 9.4. Municipal Significant Events

9.4.1. Whereas the Alcohol and Gaming Commission of Ontario (AGCO) Regulation 389/91 requires that an organization that is not a registered Charity Organization or does not have a not for profit organization designation, they must be designated as a 'municipal significant event' by the municipality in order to obtain a Special Occasion Permit (SOP).

9.4.2. Whereas it is desirable and expedient in the conduct of Council's affairs to delegate certain powers and duties to staff, this policy shall authorize the Town Clerk or his/her designate to provide the designation for the purpose of obtaining a Special Occasion Permit from the AGCO.

#### 9.5. Site Plan Control (By-Law 3513)

9.5.1. Section 5 (1) of the Planning Act, R.S.O. 1990 provides that Council may, by by-law, delegate any authority, subject to certain restrictions, to an appointed officer identified in the by-law either by name or position occupied.

9.5.2. Whereas it is desirable and expedient in the conduct of Council's affairs to delegate certain powers and duties to staff, and for the purpose of shortening the time period required to process applications for Site Plan Control, this policy shall authorize the Town Clerk and the County Development Planner to:

9.5.2.1. sign final site plans for the purpose of indicating that final approval has been granted by the approval authority and is acceptable for registration purposes;

9.5.2.2. grant extensions of site plan approval; and

9.5.2.3. change the conditions of site plan approved plans and draft approved site plans.

#### 10. Director of Operations

##### 10.1. Encroachment on Municipal Land (Policy Aug 12, 2013 Council Resolution)

10.1.1. Whereas it is desirable and expedient in the conduct of Council's affairs in respect of encroachments on Municipal land to delegate certain powers and duties to appointed officers for the purpose of expediting the execution of certain agreements, this policy shall authorize the Director of Operations and the Town Clerk to approve and jointly execute on behalf of the Corporation of the Town of Tillsonburg encroachment agreements for the purpose of allowing

certain encroachments on town owned land for a determined period of time. In addition, The Director of Operations or his/her designate shall be authorized to approve temporary encroachment permits on municipal land for a short period of time.

## 10.2. Temporary Road Closures

10.2.1. Whereas it is desirable and expedient in the conduct of Council's affairs to delegate certain powers and duties to staff, this policy shall authorize the Director of Operations or his/her designate to temporarily close a road or any part of it under the jurisdiction of the Town for any period.

10.2.2. Such a temporary road closure is appropriate in the following circumstances:

10.2.2.1. during construction, repair or improvement of the road or any works under, over, along, across or upon it, where the construction, repair or improvement is initiated either by the Town or a utility company with a statutory right of access or an access agreement with the Town allowing occupancy of the highway OR where it is privately initiated by other than a utility company with a statutory right of access or an access agreement with the Town allowing occupancy of the highway but only for a period not exceeding 21 days;

10.2.2.2. where, in the opinion of the Director of Operations or his/her designate, environmental factors such as, but not limited to, flooding of the road, erosion of the roadbed, trees or tree limbs fallen across or along the road, or other material lying or being upon the road, would present a hazard to the traveling public;

10.2.2.3. to facilitate a social, recreational, community, athletic, or cinematographic event, or any combination of them where the organization requesting the event accepts the responsibility for establishing suitable detour roads, erection and removal of barricades and signs, maintenance and restoration of detour roads and all associated costs, provide \$5,000,000.00 liability insurance naming the Town as an additional insured, and holds the Town harmless from any action or cause or style of action;  
or

10.2.2.4. to facilitate the movement of an oversized load.

11. THAT By-Law 4017 is hereby repealed.

12. THAT this By-Law shall come into full force and effect upon passing.

**READ A FIRST AND SECOND TIME THIS 14th day of SEPTEMBER, 2020.**

**READ A THIRD AND FINAL TIME AND PASSED THIS 14th day of SEPTEMBER, 2020.**

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MAYOR – Stephen Molnar

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TOWN CLERK – Michelle Smibert