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MUNICIPAL ACT AMENDMENTS: APPOINTMENT OF INVESTIGATOR/ MANDATORY POLICIES

The Finance and Administration Committee recommends the adoption of the recommendations contained in the following report, November 20, 2007, from the Regional Solicitor, as amended to include the following recommendation 5:

5. the Region establish an interim fee of \$50 for each request for an investigation, with the fee to be refundable in the event that the investigator finds that the Region has not complied with the closed meeting requirements, and that staff report to the Committee's meeting of February 7, 2008 regarding the appropriate fee.

1. RECOMMENDATIONS

It is recommended that:

1. Regional Council appoint Local Authority Services Ltd. ("LAS") as the investigator for complaints regarding closed meetings of Regional Council and its committees, pursuant to subsection 239.2 of the *Municipal Act, 2001*.
2. The Region enter into an agreement with LAS setting out the terms of its retainer and that the Regional Chair and the Regional Clerk be authorized to sign the agreement, subject to the approval of Legal Services.
3. The Regional Solicitor prepare a by-law for presentation to Regional Council to confirm the appointment of LAS as investigator.
4. Regional Council adopt the policies on the Sale and Disposition of Land, Public Notice Requirements, Accountability and Transparency and Delegation of Powers and Duties of Regional Council, as set out in Attachments 1, 2, 3 and 4 respectively to this report.

2. PURPOSE

The purpose of this report is to advise Council of amendments to the *Municipal Act, 2001* (the "Act") which will come into force on January 1, 2008 and to seek Council's direction on implementing these new legislative requirements.

3. BACKGROUND

Bill 130, the *Municipal Statute Law Amendment Act, 2006* introduced amendments to the *Municipal Act, 2001*. Most of the amendments were proclaimed in force effective January 1, 2007. Implementation of some provisions, however, has been delayed to allow municipalities to prepare for changes to policy and procedures. In particular, the requirement to appoint an investigator to deal with complaints with respect to closed meetings, and the requirement to adopt certain policies will come into force on January 1, 2008.

4. ANALYSIS AND OPTIONS

4.1 Investigation of complaints of closed meetings

Effective January 1, 2008, the Act will permit any person to request an investigation as to whether a municipality has complied with the closed meeting rules under the Act and the municipality's procedure by-law. Municipalities may appoint an investigator for this purpose. If a municipality has not appointed an investigator, any complaint will be referred to the Provincial Ombudsman for investigation, by default.

The Association of Municipalities of Ontario ("AMO") has proposed a program whereby a related corporation, Local Authority Services Ltd. ("LAS") will establish a roster of qualified individuals to serve as investigators. Enrolment in the program will require entering into an agreement with LAS for the provision of investigative services. LAS has provided a draft agreement. The agreement is for an initial term of two years, but can be terminated on 90 days' notice. The initial retainer fee for the term is \$600.00. In addition, daily fees of \$1,250.00 per day plus reasonable disbursements are payable for an investigation.

A working group from the Municipal Law Departments Association of Ontario ("MLDAO") has undertaken to coordinate comments on the draft agreement proposed by LAS and to submit proposed amendments on behalf of its membership. Many common concerns have been identified. The agreement provides for LAS to appoint an individual investigator in each case. Municipalities would have no input into the selection. Many have argued for a veto power in cases where the investigator is perceived to be biased because of previous dealings with the municipality. Other concerns include the need to provide for a process to deal with frivolous or vexatious complaints, and a need to protect matters that are subject to solicitor/client privilege from public disclosure.

The majority of municipalities consulted, including the Region's local municipalities, have indicated their intention to participate in the AMO program. Staff recommend that the Region enter into an agreement with LAS and enact a by-law appointing LAS as investigator under the Act, effective January 1, 2008. In the interim, staff will continue to address outstanding issues in consultation with MLDAO.

The termination provisions in the agreement would enable Council to consider other options in the future depending on the outcome of negotiations with AMO and experience with the LAS program in handling any complaints.

4.2 Mandatory Policies and Procedures

Effective January 1, 2008, it will be mandatory for Regional Council to adopt policies with respect to the following matters:

- sale and other disposition of land;
- hiring of employees;
- procurement of goods and services;
- the circumstances in which the Region shall provide notice to the public, and the form of such notice;
- the manner in which the Region will try to ensure it is accountable to the public for its actions and the manner in which the Region will try to ensure that its actions are transparent to the public; and
- the delegation of its powers and duties.

The Region is well positioned though its existing policies to comply with the above requirements. The Region's policy on hiring employees was recently updated and no significant amendments are recommended at this time. Amendments to the Region's purchasing by-law and procurement policy have already been presented to Council and were adopted at its meeting on November 15, 2007. The Region currently has policies in place for sale of land and for certain notice requirements, but amendments to the Act have provided an opportunity to review existing policies and suggest enhancements. Although the requirement for specific policies on accountability, transparency and delegation are new, the Region is substantively in compliance with the legislation through its existing practices and procedures. The new policies will essentially be a consolidation and formal restatement of current practices.

4.3 Policy for sale and other disposition of land

The Act previously set out mandatory procedures for the sale of land, including the requirement to declare land surplus, to obtain appraisals and give notice to the public of the proposed sale. These mandatory provisions have now been eliminated. Council is required to adopt a policy governing its sale of land but the terms of the policy are entirely within the discretion of Council.

Regional staff have reviewed the existing policy and identified areas in which the process may be streamlined without compromising transparency and accountability.

The following amendments are recommended:

- the requirement to formally declare land surplus before proceeding with disposition has been eliminated. This provision has required two consecutive reports to Council, the first to Finance and Administration Committee for the declaration of surplus and a second report to Transportation and Works Committee to authorize the transaction. Staff are of the opinion that a single report to Council authorizing the sale satisfies the need for public disclosure.
- A two-stream process is proposed for dealing with surplus property. Properties will be classified as having either a “general market demand” or a “limited market demand”. The former would include properties that can be marketed commercially as a building lot. The majority of the Region’s surplus property is surplus road widenings and would be classified as having a limited market demand. Typically these properties are of interest only to adjacent land owners. A more streamlined process is proposed for such properties.
- The proposed policy would permit the Chief Administration Officer to approve sales of properties up to a value of \$50,000.00, provided that 90% of the appraised value is achieved and the terms of the agreement are acceptable to Legal Services. This authority is intended to parallel the process for land acquisitions, which provides for approval by the Chief Administration Officer and the Commissioner of Corporate Services at an administrative level without a report to Council.
- It is also recommended that properties conveyed to area municipalities or public agencies be subject to a restrictive covenant for the initial two years following transfer, requiring that the property remain in public ownership. This “anti-flip” clause has been required by some public agencies, including Ontario Realty Corporation and the Town of Aurora.
- Reports will be submitted at least quarterly to Council advising of any lands disposed of under the delegated authority.

Subject to the above amendments the general process remains substantially unchanged and will be as follows:

- Appraisals will be conducted for all surplus property prior to proceeding with disposition.

For property having general market demand, the following process will apply:

- Notification of potential surplus properties will initially be circulated to all Regional departments for expressions of interest.

- A notification will then be circulated to local municipalities and other public agencies to determine whether there is any interest in purchasing the property at fair market value.
- If no public agency wishes to purchase the property, it will be marketed by public tender or through a real estate broker to realize the highest market price.

For property having a limited market demand, the circulation process will not apply. Following an appraisal, potential purchasers will be identified and the property will be sold for the highest price. Offers over \$50,000 or which do not realize at least 90% of appraised value will be reported to Council for consideration.

The proposed Policy for Sale and Disposition of Land is attached as Attachment 1.

4.4 Public Notice Requirements

Consistent with the trend towards greater self-governance, all prescribed notice provisions have been eliminated. Council now has discretion to determine the circumstances under which it will give notice to the public and the timing and form of such notice.

At its meeting on June 21, 2007, Regional Council adopted a staff recommendation to continue formal notice for permanently closing highways and changing the name of a highway, matters which formerly were subject to stringent notice requirements.

The draft notice policy incorporates these recommendations and sets out a framework of general principles governing public notice. The requirement to give timely notice of public information sessions in addition to regularly scheduled committee meetings is also addressed.

The policy will not affect specific notice provisions prescribed in other statutes, including the *Planning Act*, the *Development Charges Act* and the *Environmental Assessment Act*.

A copy of the draft Public Notice Requirements policy is attached as Attachment 2.

4.5 Accountability and Transparency

The requirement for a policy governing accountability and transparency is new. The content of the policy is not prescribed. This is consistent with the overall theme of recent municipal reforms in replacing prescriptive requirements with a self governance model. Staff from Legal Services participated in a working group with other members of the Municipal Law Departments Association of Ontario to draft a template policy for accountability and transparency. The policy establishes statements of principle and sets out those current policies and practices that support the principles of accountability and transparency.

The proposed draft Accountability and Transparency policy is attached as Attachment 3.

4.6 Delegation of Powers and Duties

The Act now provides for a broader power for Council to delegate its powers and duties. This includes legislative and regulatory powers which may be delegated to one or more members of Council or a Committee. This could potentially provide for a high level of decision making at the Committee level should Council determine that this is appropriate.

Legislative powers with respect to minor matters may also be delegated to staff. This codifies provisions which have already been implemented by Regional Council, for instance the authority for the Commissioner of Transportation and Works to approve temporary road closures. The draft policy on Delegation of Powers and Duties sets out a framework of principles to govern Council's delegation of its powers and duties. The chart attached to Schedule "A" to the policy sets out those matters which have already been delegated by Regional Council and cites the authority in each case. Additional matters may be delegated from time to time as directed by Council.

The summary of matters delegated to date does not reflect the recent reorganization of the Transportation and Works Department. It is recommended that Regional Council authorize the Chief Administrative Officer to designate the appropriate Commissioner, when appointed, to undertake those matters within their respective departments.

A copy of the draft policy on Delegation of Powers and Duties of Regional Council is attached as Attachment 4.

5. FINANCIAL IMPLICATIONS

There are no direct financial implications associated with this report.

6. LOCAL MUNICIPAL IMPACT

The amendments to the Act will apply equally to local municipalities and each will be required to adopt its own policies to comply with the new requirements. Regional staff have been working cooperatively with local municipal staff in the development of these policies and working towards common solutions, in particular with regard to the appointment of an investigator.

7. CONCLUSION

Effective January 1, 2008, certain amendments to the *Municipal Act, 2001* will come into force. Council will be required to adopt policies on several matters, including notice requirements, sale of land, accountability and transparency and delegation of its powers

and duties. Proposed drafts of each of these policies are attached to this report for consideration by Council. The Act also provides for a complaint process with regard to Council's compliance with the closed meeting requirements of the Act. Complaints will be referred to an investigator appointed by the Region. Failure to appoint an investigator will result in referral of the complaint to the Provincial Ombudsman. Staff recommend that, effective January 1, 2008, Council appoint Local Authority Services Ltd. as the investigator and enter into an agreement with LAS setting out the terms of this retainer. The Senior Management Group has reviewed this report.

(The attachments referred to in this clause are attached to this report.)