TO: Mayor and Members of Council
FROM: Hal Linscott, Director of Legal Services and City Solicitor
RESOURCE STAFF: As above
DATE OF MEETING: August 24, 2010
SUBJECT: Delegation of Authority to Director of Legal Services and City Solicitor for Various Administrative Matters

EXECUTIVE SUMMARY:

This report seeks Council’s approval to pass a by-law to delegate authority to the Director of Legal Services and City Solicitor to deal with various administrative matters related to commencing, defending, appealing and settling legal proceedings before the Courts and Administrative Tribunals involving the municipality. In addition, the by-law confirms the current practice that the Director of Legal Services and City Solicitor, in consultation with the relevant department director, is assigned the exclusive authority for retaining and instructing all external lawyers required by the City. The by-law also delegates authority to release one foot reserves, utility easements, options to repurchase, price adjustment agreements and restrictive covenants in favour of the City when those are no longer required by the municipality.

Section 23.1 of the Municipal Act, 2001 authorizes a municipality to delegate its powers and duties under that or any other Act to an individual who is an officer or employee of the municipality, subject to limitations set out in the Municipal Act. Council at its meeting of December 18, 2007 adopted a policy regarding the delegation of powers and duties. The proposed delegation of authority contemplated in this report complies with the Act and the City’s delegation policy, including a requirement to report on the exercise of delegated authority to the Administrative Policies Committee on a semi-annual basis. The proposed delegation, with limited exceptions, reflects and formalizes the manner in which administrative matters related to legal matters have been managed for the last decade.

RECOMMENDATION:

That Council pass the “By-Law to Delegate Authority to the Director of Legal Services and City Solicitor for Various Administrative Matters” in the form attached as Exhibit “A”.
AUTHORIZING SIGNATURES:

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<tr>
<th>ORIGINAL SIGNED BY DIRECTOR OF LEGAL SERVICES</th>
<th>ORIGINAL SIGNED BY CHIEF ADMINISTRATIVE OFFICER</th>
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<tr>
<td>Hal Linscott, Director of Legal Services and City Solicitor</td>
<td>Gerard Hunt, Chief Administrative Officer</td>
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CONSULTATION WITH THE FOLLOWING COMMISSIONERS:

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<th>Commissioner</th>
<th>Consultation Required</th>
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<tr>
<td>Cynthia Beach, Sustainability &amp; Growth</td>
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<td>Terry Willing, Community Services</td>
<td>N/R</td>
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<tr>
<td>Denis Leger, Transportation, Properties &amp; Emergency Services</td>
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<tr>
<td>Jim Keech, President and CEO, Utilities Kingston</td>
<td>N/R</td>
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(N/R indicates consultation not required)
OPTIONS/DISCUSSION:

The proposed by-law, attached to this report as Exhibit “A”, would delegate authority to the Director of Legal Services and City Solicitor for the conduct of all litigation before the Courts and Administrative Tribunals, subject to such instructions as may be issued by Council from time to time. The delegation of authority is subject to Council's continuing authority to vary the terms or rescind the delegation of authority and requires the Director, in exercising the delegated authority, to have regard to the consistent and equitable application of all Council policies and guidelines. Semi-annual reporting on the exercise of the delegation would be required. As is the current practice, significant litigation and administrative tribunal matters would continue to be reported to Council in a timely fashion, at milestones such as the commencement of proceedings, mediation hearings, offers to settle and decisions regarding appeals arose.

The delegation would include the authority to:

1. Settle actions against the City for damages of up to $100,000 and where the settlement amount is greater than $100,000 but less than $500,000 to settle with the approval of the Chief Administrative Officer. Settlement of actions against the City for amounts greater than $500,000, which has never occurred in the almost 10 years that the current Director of Legal Services and City Solicitor has held that position, would require the consent of Council. It should be noted that the City has insurance policies in place to protect the City against claims for damages, including legal costs, arising from a variety of claims that municipalities typically experience such as slip and falls on sidewalks, allegations of damages arising from unsafe municipal parks, recreation facilities and the unsafe operation of transit vehicles. At present the maximum deductible under the City’s policies of insurance is $50,000 per claim. For insured matters, any settlement amount in excess of $50,000, including the City’s legal costs in defending the claim, is covered by the insurer.

2. Authorize the payment of expenses related to the conduct of any action or matter and the payment of any costs awarded against the City, sign all documents required to conduct any action or conclude the settlement of any action or matter and take all steps to enforce orders, decisions, awards and judgments.

3. Abandon and write off any amount or claim, subject to the dollar limitations contained in the by-law, where the Director of Legal Services and City Solicitor and the City Treasurer determine that an amount of claim is uncollectible, in whole or part.

4. Together with either the Director of Engineering or Director of Planning and Development, release one foot reserves no longer required for development control or other municipal uses to the abutting owner for nominal consideration.

5. Together with the President and CEO of Utilities Kingston, release utility easements for water, sewer and gas works where utility services at those location have been discontinued to the owner of the lands over which the easement lies for nominal consideration.

6. Together with the Director of Real Estate and Construction, release options to repurchase, price adjustment agreements and restrictive covenants in favour of the City that were entered into as part of the sale of municipally owned land where the agreement or covenant has been satisfied, expired or is no longer required.
The delegation would also confirm the current practice that the Director of Legal Services and City Solicitor, in consultation with relevant department director, is assigned the exclusive authority for retaining and instructing all external legal counsel required by the City. This practice ensures that the most efficient combination of internal legal staff and external legal services is used and that external lawyers provide the appropriate level of expertise at a cost effective rate. It also assists in ensuring that external lawyers are aware of and comply with Council and corporate policies and directives, that conflicts on the part of external lawyers representing the City are avoided and that, where appropriate, internal legal staff working with external lawyers can acquire new skills and bring that expertise in-house.

EXISTING POLICY/BY LAW:

The proposed delegation of authority complies with requirements of the Municipal Act, 2001 and the City’s Delegation of Authorities and Duties Policy approved by Council in December, 2007, and reflects and formalizes the manner in which administrative matters related to legal matters have been managed for the last decade.

NOTICE PROVISIONS:

N/A

ACCESSIBILITY CONSIDERATIONS:

Copies of this report are available in alternative formats upon request.

FINANCIAL CONSIDERATIONS:

The delegations of authority contained in the proposed by-law do not give rise to any additional financial considerations.

CONTACTS:

Hal Linscott, Director of Legal Services and City Solicitor, 613-546-4291, Ext. 1296

OTHER CITY OF KINGSTON STAFF CONSULTED:

Gerard Hunt, Chief Administrative Officer, 613-546-4291, Ext. 2205
Desiree Kennedy, City Treasurer, 613-546-4291, Ext. 2220
Patricia Burns, Director of Human Resources and Organizational Development, 613-546-4291, Ext. 1280

EXHIBITS ATTACHED:

Exhibit “A” - Proposed Delegation By-Law
BY-LAW NO. 2010- EXHIBIT “A”

A BY-LAW OF THE CITY OF KINGSTON RESPECTING THE DELEGATION OF AUTHORITY FOR VARIOUS ADMINISTRATIVE MATTERS TO THE DIRECTOR OF LEGAL SERVICES AND CITY SOLICITOR

PASSED: , 2010

WHEREAS Council desires to delegate authority for various administrative matters as set out herein to the Director of Legal Services and City Solicitor;

NOW THEREFORE the Council of the Corporation of the City of Kingston hereby enacts as follows:

TERMS AND CONDITIONS

1. Council, as delegating agent, may impose such terms and conditions upon the delegation as it sees fit and this shall include the power to vary such terms or rescind the delegation in question.

2. In exercising the authority delegated by this by-law, the Director of Legal Services and City Solicitor shall have regard to the consistent and equitable application of all council policies and guidelines.

VALIDITY OF ACTIONS TAKEN

3. Any variation or rescission of a delegated authority by Council shall have no effect on the validity of any action taken pursuant to a valid delegation of authority and occurring before the terms of such delegation were varied or rescinded.

LITIGATION

4. The Director of Legal Services and City Solicitor shall be responsible for the conduct of all litigation before courts and administrative tribunals, subject to such instruction as may be issued by Council from time to time and in the conduct of such litigation, the Director shall use the most efficient combination of staff and external legal services as required to represent and defend the interests of the City in the issue at hand.

5. The Director of Legal Services and City Solicitor shall have authority to commence, defend, settle and abandon all matters within the jurisdiction of the Small Claims Court and the Ontario Court of Justice provided that the authority to settle or abandon a matter is limited to an amount not exceeding $100,000.00.

6. With respect to matters within the jurisdiction of the Superior Court of Justice, the Director of Legal Services and City Solicitor shall have the authority to:

   (a) conduct the defense of all actions and to take such steps, including all interim proceedings, as may be considered necessary or proper;
   (b) commence legal proceedings by way of application where such manner of proceeding is appropriate;
(c) commence and prosecute actions for damages and to take such steps, including all interim proceedings, as may be considered necessary or proper; and
(d) settle actions for damages up to $100,000.00.

7. In exercising the authority granted by Sections 1 – 3 inclusive, the Director of Legal Services and City Solicitor shall have authority to:

(a) authorize the payment of all expenses related to the conduct of any action or matter and the payment of any costs awarded against the City;
(b) execute all documents required to conduct any action or conclude the settlement of any action or matter; and
(c) take all steps required to enforce orders, decisions, awards and judgments.

APPEALS

8. The Director of Legal Services and City Solicitor shall have authority to:

(a) appeal decisions of the Small Claims Court and Ontario Court of Justice; and
(b) commence, conduct and participate in appeals regarding planning matters to the Ontario Municipal Board and similar administrative tribunals, including appeals from decisions of a Land Division Committee, and a Committee of Adjustment.

ADMINISTRATIVE TRIBUNALS

9. The Director of Legal Services and City Solicitor shall have the authority to make applications and take objection to all matters brought before administrative tribunals including the Ontario Municipal Board, the Environmental Assessment Board, the Ontario Highway Transport Board, the National Energy Board, the Consolidated Hearing Board, the Ontario Energy Board, the Canadian Radio-Television and Telecommunications Commission, the National Transportation Agency and other administrative tribunals, including expropriation hearings.

10. The Director of Legal Services and City Solicitor shall have authority to make applications and take objection to all matters brought before the Ontario Labour Relations Board, the Canadian Industrial Relations Board, the Ontario Human Rights Commission and the Canadian Human Rights Commission including arbitrations.

11. With respect to the matters set out in Sections 9 and 10, the Director of Legal Services and City Solicitor shall have authority to:

(a) appeal any decision of an administrative tribunal where the appeal lies to another administrative tribunal, and
(b) make applications for judicial review of decisions of administrative tribunals.

EXCEPTIONAL CIRCUMSTANCES

12. Where time constraints or other circumstances will not allow for the required authority granting procedures to be followed with respect to any legal matter, the Director of Legal Services and City Solicitor shall have the authority to take the appropriate action and report such action to the Council at the earliest opportunity.
HEARINGS OF NECESSITY

13. The Director of Legal Services and City Solicitor shall have the authority, in expropriation cases, to pay the cost of the owners in appearing at the Hearing of Necessity as provided for in Section 7(10) of the *Expropriations Act*.

INJUNCTIONS – UNDERTAKINGS

14. The Director of Legal Services and City Solicitor is authorized to give undertakings as to damages on behalf of the City in interim injunction proceedings.

CLAIMS – INSURER

15. The Director of Legal Services and City Solicitor is delegated the authority to approve payment to the City’s Third Party Liability Insurer of any deductible limit provided under an insurance policy upon the settlement of any claim in excess of the deductible limit.

CLAIMS – SETTLEMENTS

16. The Director of Legal Services and City Solicitor, with the approval of the Chief Administrative Officer, is delegated the authority to settle claims and make payment where the claim settlement is an amount greater than $100,000 but not exceeding $500,000.

17. Where the Director of Legal Services and City Solicitor and the City Treasurer deem an amount or claim of the City to be uncollectible, in whole or in part, and the amount or claim, exclusive of interest, does not exceed the amount referred to in Section 16, they have authority to abandon and write off the claim.

REPORTING OF EXERCISE OF DELEGATED AUTHORITY

18. The exercise of delegated authority pursuant to the previous Sections shall be reported to Council on a semi-annual basis. Significant litigation and administrative tribunal matters will continue to be reported to Council in a timely fashion as milestones such as the commencement of proceedings, mediation hearings, offers to settle and decisions regarding appeals arose.

EXTERNAL COUNSEL

19. The Director of Legal Services and City Solicitor, in consultation with the relevant department Director, is assigned the exclusive authority for retaining and instructing all external legal counsel required by the City.

LAND UNDER LAND TITLES ACT

20. The Director of Legal Services and City Solicitor shall have the authority to make applications under the Land Titles Act to bring under the Act such lands of the City as the Director of Legal Services and City Solicitor deems proper.
ONE FOOT RESERVES

21. The Director of Legal Services and City Solicitor shall have the authority, jointly with either the Director of Engineering or the Director of Planning and Development, whichever is applicable, to approve the release and conveyance of reserves of land held for purposes of developmental control and not exceeding 300 mm (one foot) in width where no longer required for that or other municipal purposes, to the holder in fee simple of properties abutting upon the reserves of land to be released and conveyed.

EASEMENTS FOR WATER WORKS AND SEWAGE WORKS

22. The Director of Legal Services and City Solicitor shall have the authority, jointly with the President and Chief Executive Officer, Utilities Kingston, to approve the release of easement for waterworks, sewage works and gas works where utility services provided by these works at the location of the easements have been discontinued, to the holder in fee simple of lands subject to the easements, for nominal consideration.

RESTRICTIVE COVENANTS

23. The Director of Legal Services and City Solicitor shall have the authority, jointly with the Director of Real Estate and Construction, to approve the release of options to repurchase, price adjustment agreements and restrictive covenants in favour of the City that were entered into as part of the sale of municipally owned land where the agreement or covenant has been satisfied, expired or is no longer required, to the holder in fee simple of the lands subject to agreement or restrictive covenant, for nominal consideration.

INTERPRETATION

24. Each section of this by-law and every part of each section is an independent section or part of a section and the holding of any section or party thereof to be void or ineffective for any cause shall not be deemed to affect the validity of any other section or parts thereof.

25. Headings are for reference purposes only and shall not affect in any way the meaning or interpretation of the provisions of this by-law.

26. This By-Law shall come into force and take effect on the date of its passing.

GIVEN FIRST AND SECOND READINGS

GIVEN THIRD READING AND FINALLY PASSED

CITY CLERK MAYOR
Delegation of Powers and Duties Policy

I. Purpose

The Municipal Act, 2001 (the Act) requires that all municipalities adopt and maintain a policy with respect to the delegation of Council’s legislative and administrative authority. The purpose of this policy is to set out the scope of the powers and duties which Council may delegate its legislative and administrative authority and to establish principles governing such delegation. Unless a power, duty, or function of Council has been expressly delegated by Council pursuant to this policy, all of the powers, duties and functions of Council remain with Council. This policy has been developed in accordance with the Act in order to comply with its other applicable sections, including section 270. This policy applies to all committees of Council, departments and staff.

II. Definitions:

i) Legislative Powers - Includes all matters where council acts in a legislative or quasi judicial function including enacting by-laws, setting policies, and exercising decision making authority.

ii) Administrative Powers - Includes all matters required for the management of the corporation which do not involve discretionary decision making.

III. Policy Statement

The Council of the City of Kingston, as a duly elected municipal government is directly accountable to its constituents for its legislative decision making, policies, and administrative functions. Council’s decisions are generally expressed by by-law or resolution of Council carried by a majority vote. The efficient management of the municipal corporation and the need to respond to issues in a timely fashion require Council to entrust certain powers and duties to committees and staff while concurrently maintaining accountability, which can be effectively accomplished through the delegation of legislative and administrative functions. Council authority will be delegated within the context set out in the Act and will respect the applicable restrictions outlined in the Act.

IV. Policy Requirements

1. All delegations of Council powers, duties or functions shall be effected by bylaw. Such by-law shall provide reporting requirements as appropriate to Council.

2. Unless a power, duty, or function of Council has been expressly delegated by bylaw, all of the powers, duties and functions of Council remain with Council.
3. A delegation of a power, duty or function under any bylaw to any member of staff includes a delegation to a person who is appointed by the CAO or selected from time to time by the delegate to act in the capacity of the delegate in the delegate’s absence.

4. Subject to section 3, a person to whom a power, duty or function has been delegated by bylaw has no authority to further delegate to another person any power, duty or function that has been delegated, unless such sub-delegation is expressly permitted.

5. Legislative matters may be delegated by Council where they are minor in nature or where Council has explicitly provided for the terms and conditions under which the powers shall be exercised, and must take into account the limitations set out in the Act.

6. Administrative Matters may generally be delegated to staff subject to the conditions set out in the delegation and in this policy, and must take into account the limitations set out in the Act.

V. **Obligations of Delegate**

In exercising any delegated power, the delegate shall ensure the following:

1. That expenditures related to the matter shall have been provided for in approved budgets or shall otherwise receive specific authorization from Council.

2. That the scope of the delegated authority shall not be exceeded by the delegate.

3. That where required by the specific delegated authority, reports shall be submitted to Council advising of the exercise of a delegated power and confirming compliance with the delegated authority and this policy.

4. That all policies regarding insurance and risk management shall be honoured.

5. That regard shall be given to the consistent and equitable application of all council policies and guidelines.

6. That any undertaking or contract with a third party shall be subject to the approval of the Director of Legal Services or designate and shall in accordance with the Purchasing By-Law No. 2000-134 as amended.