

Subject: Bylaw No. 17/021 – Chief Administrative Officer (CAO) Bylaw**APPROVALS:**

David Leflar, Director
Annette Antoniak, Interim Chief Administrative Officer

Recommendations:

1. THAT Bylaw No. 17/021, being the Chief Administrative Officer Bylaw, be read a second time.
2. THAT Bylaw No. 17/021 be read a third and final time.

Summary:

The *Municipal Government Act* (“MGA”) requires Council to pass a bylaw establishing the position of Chief Administrative Officer (“CAO”). The MGA prescribes certain powers and duties of a CAO that are independent of the Council but also allows Council to assign additional duties to the position, delegate Council functions of an administrative nature to the CAO, and place limitations or conditions on the CAO’s authority to exercise the Municipality’s natural person powers. Bylaw No. 17/021 addresses all of these aspects, replacing the existing CAO Bylaw which no longer adequately serves the needs of the Municipality.

Background:

The current CAO Bylaw was passed in 2001 and has had only minor, cosmetic amendments since its adoption.

Not surprisingly considering its age, the current CAO Bylaw does not even use the expression “natural person powers” let alone address the question of what limitations or conditions are to be placed on the CAO’s otherwise unfettered authority to exercise them. The current bylaw also fails to account for the growth over 16 years in both the size and the complexity of the municipal organization, which has made it more and more inefficient over time for Council to occupy itself with the numerous purely administrative duties assigned to it by the statute. Finally, the current CAO Bylaw is not well drafted and contains ambiguities that occasionally cause confusion around what is and is not within the authority of the CAO.

Rationale for Recommendations:

The MGA specifies certain things that a Council must do – which cannot be delegated -- chief among them being: passing bylaws, appointing a CAO, adopting budgets, and granting equitable relief from taxation. All other municipal powers may be exercised by the CAO unless Council specifies otherwise. Perhaps the most noteworthy of these is the Municipality’s “natural person powers” (granted to the Municipality under MGA section 6) the most important aspect of which is the capacity to enter into contracts and enforce the obligations of contracting counterparties.

(The definition at subsection 2(9) goes into more detail on the scope of natural person powers.) There are also numerous powers and duties of a purely administrative nature that the MGA somewhat anachronistically assigns to the Council, which can be delegated to the CAO who in turn has the authority to sub-delegate to the appropriate municipal officer(s) or employee(s).

The most straightforward approach for a CAO Bylaw is to start from the proposition that the CAO, as administrative head of the municipality, should be empowered to exercise the full range of administrative powers under the MGA – leaving Council largely free to focus on high level governance matters such as: setting policy directions, determining how public money will be spent, and enacting bylaws. Then, if the administrative powers of the CAO are to be limited or subject to any conditions in order to allow the Council a measure of input into such matters, the bylaw should specify clearly what those limitations or conditions are.

Bylaw No. 17/021 does all of this. Limitations and conditions on the CAO's scope of authority are found in sections 14 to 21. Some of these are substantive restrictions on the CAO's authority, while others are more in the nature of direction to the CAO to inform Council in advance before taking certain kinds of actions. This is in keeping with best practices of municipal government, highlighting the importance of good communication between the governance side and the administrative side, and thereby ensuring that Council will be well informed of key administrative decisions having significant implications for our residents, before they are actually made. It is anticipated that by taking this approach, a spirit of co-operation and teamwork between Council and CAO will be encouraged and will soon become our normal way of doing public business.

Bylaw No. 17/021 also empowers the CAO to appoint designated officers to carry out administrative duties where required under the MGA (bylaw sections 7 through 10) and delegates to the CAO the responsibility to deal with a range of strictly administrative matters that would otherwise have to go to Council (bylaw clauses 2(10) (a) and (b) in conjunction with section 12). This does not in any way preclude the many and varied conversations that regularly occur between the CAO and individual Council members on administrative issues, most often when a resident has an issue or complaint that is brought to the attention of a Councillor. But it does make clear that the final decision on how to resolve the issue or complaint, if it engages only an administrative function, lies with the CAO.

Finally, it should be noted that Bylaw No. 17/021 will allow the CAO to proceed forthwith to issue a new General Delegation Order to give all levels of Administration clear direction on the scope of their authority to contract on behalf of the Municipality or to approve expenditure of municipal funds. The existing Delegation Order is badly out of date because it was made under an administrative structure very different from the one that now exists, and can only be replaced in an effective manner if there is clarity in the CAO Bylaw about what powers the CAO has that can potentially be delegated. In this way, passage of Bylaw No. 17/021 – a *governance* action by Council – will greatly facilitate the CAO's task of improving the efficiency of the *administrative* side of the organization.

Attachment

1. Bylaw No. 17/021