



**City of Kingston
Report to Council
Report Number 17-313**

To: Mayor and Members of Council
From: Lanie Hurdle, Commissioner, Community Services
Resource Staff: Paige Agnew, Director, Planning, Building & Licensing Services
Date of Meeting: November 21, 2017
Subject: Delegation of Authority to Enter into Limiting Distance Agreements

Executive Summary:

The purpose of this report is to seek authority from Council for the Chief Building Official or their designate to enter into and execute limiting distance agreements under the Building Code on behalf of the city in situations where the city's interests are not affected by such limiting distance agreements.

In these cases, the city is a party to the agreement as its consent is required if the agreement is amended or deleted from title to the effected lands. Also, the agreement includes an indemnification of the city by the parties. The Chief Building Official will ensure that the limiting distance agreement complies with the Building Code and meets the following conditions:

1. No city-owned land is affected by the agreement;
2. The agreement does not impose any obligations on the city; and
3. The agreement is satisfactory to the Director of Legal Services.

Entering into an agreement on the terms outlined above constitutes an administrative act that can be delegated to city staff.

Recommendation:

That Council authorize the Chief Building Official or designate to enter into and execute limiting distance agreements under the Building Code that do not affect lands owned by the City if the agreements do not impose any obligations on the City, in a form satisfactory to the Director of Legal Services; and

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That By-Law Number 2016-189, “A By-Law to Consolidate the Delegation of Powers and Duties”, be amended as per Exhibit A (Draft By-Law to Amend By-Law Number 2016-189) to Report Number 17-313.

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Authorizing Signatures:

ORIGINAL SIGNED BY COMMISSIONER

Lanie Hurdle, Commissioner, Community Services

ORIGINAL SIGNED BY CHIEF ADMINISTRATIVE OFFICER

Gerard Hunt, Chief Administrative Officer

Consultation with the following Members of the Corporate Management Team:

Desirée Kennedy, Chief Financial Officer & City Treasurer Not required

Denis Leger, Commissioner, Corporate & Emergency Services ✓

Mark Van Buren, Acting Commissioner, Transportation & Infrastructure Services Not required

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Options/Discussion:**Background**

Subsections 3.2.3.1, 9.10.14 and 9.10.15 of the Ontario Building Code regulate the area of unprotected openings (i.e. windows) in an exposing building face (i.e. wall of a building) based on the limiting distance that applies to the wall under consideration. "Limiting distance" is defined in the Code as follows:

"Limiting distance means the distance from an exposing building face to a property line, the centre line of a street, lane or public thoroughfare, or to an imaginary line between two buildings or fire compartments on the same property, measured at right angles to the exposing building face."

These provisions deal with fire safety and are aimed at limiting the spread of fire through radiant heat from a building under fire being emitted either through windows or the wall itself, and raising the temperature of an adjacent building to a point where combustion occurs.

The Code also provides that adjacent property owners can enter into an agreement whereby they effectively redefine the property line between the two properties for the purposes of measuring limiting distance. Each owner covenants not to construct a building on his or her property unless the limiting distance for the proposed construction is measured in accordance with the agreement. The effect of the agreement is to allow one owner to measure limiting distance to a line beyond the actual property line while the limiting distance for the adjacent owner is reduced by a corresponding amount. The agreement is registered on title to both properties and binds subsequent owners.

The Code requires that the city be made a party to the agreement in addition to the owners of the lands affected by the agreement, as the city's consent is required if the agreement is amended or deleted from title to the affected lands. Also, the agreement includes an indemnification of the city by the parties.

Discussion

It would appear to be unnecessary and cumbersome to seek Council authority to enter into a limiting distance agreement on a case-by-case basis if city land is not affected by a proposed agreement. Accordingly, it is considered desirable that the Chief Building Official or their designate be authorized to enter into and execute limiting distance agreements on behalf of the city where the Chief Building Official is satisfied that the limiting distance agreement complies with the Building Code and the following conditions are met:

1. No city-owned land is affected by the agreement;
2. The agreement does not impose any obligations on the city; and
3. The agreement is satisfactory to the Director of Legal Services.

Entering into an agreement on the terms outlined above constitutes an administrative act that can be delegated to city staff.

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Conclusion

It is recommended that Council provide the Chief Building Official or their designate the authority to enter into and execute limiting distance agreements which do not affect city lands and which do not impose any obligations on the city.

Existing Policy/By-Law:

By-Law Number 2016-189 A By-Law to Consolidate the Delegation of Powers and Duties

Accessibility Considerations:

Not applicable

Financial Considerations:

Not applicable

Contacts:

Paige Agnew, Director, Planning, Building & Licensing Services 613-546-4291 extension 3252

Lisa Capener-Hunt, Manager, Building Services 613-546-4291 extension 3225

Other City of Kingston Staff Consulted:

Mary Rae, Senior Legal Counsel, Legal Services

Exhibits Attached:

Exhibit A Draft By-Law to Amend By-Law Number 2016-189

By-Law Number 2017-313

**A By-Law to Amend By-Law Number 2016-189, A By-Law to Consolidate
the Delegation of Powers and Duties (Delegation of Authority to Enter
in Limiting Distance Agreements)**

Passed: [Meeting Date]

The Council of The Corporation of the City of Kingston enacts as follows:

1. By-Law Number 2016-189 of the Corporation of the City of Kingston entitled “A By-Law to Consolidate the Delegation of Powers and Duties”, as amended, is hereby further amended as follows:
 - 1.1 By adding the following delegated authority to Schedule A:

Delegate	Delegated Authority Description	Enabling By-Law or Council Motion/ Resolution
Chief Building Official (CBO)	Authority to execute “Limiting Distance Agreements” under the Building Code on behalf of the City in situations where the City's interests are not affected by such limiting distance agreements.	[Enter Amending By-Law Number]

2. This by-law shall come into force and take effect upon the date of its passing.

Given First and Second Readings [Meeting Date]

Given Third Reading and Passed [Meeting Date]

John Bolognone
City Clerk

Bryan Paterson
Mayor