

<b>SECTION:</b> Administration		<b>POLICY #:</b> ADM-006
<b>Date Approved:</b> December 10, 2007		<b>Delegation of Powers and Duties</b>
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<b>Authority:</b> Report CAO-14-07		

## I. PURPOSE/APPLICATION

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. 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 Hanover Council, departments and staff.

## II. DEFINITIONS(S):

1. **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.
2. **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 Corporation of the Town of Hanover, 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 by-law.
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.
3. A delegation of a power, duty or function under any by-law to any member of staff includes a delegation to a person who is appointed by the C.A.O. 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 by-law 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. Council has authorized those specific legislative matters listed in Schedule 'A' to be delegated to the individual designated subject to the terms set out therein.
7. 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.
8. Council has authorized the delegation of specific administrative matters to those individuals listed in Schedule 'B' subject to the terms set out therein.

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

- Any expenditure related to the matter shall have been provided for in the current year's budget (or authorized by the purchasing by-law).
- The scope of the delegated authority shall not be exceeded by the delegate.
- 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.
- All policies regarding insurance and risk management shall be complied with.
- Delegates shall ensure the consistent and equitable application of council policies and guidelines.

#### **V. SCOPE OF POWER SEC. 23.1 (2)**

1. A delegation may be revoked at any time without notice unless the delegation by-law specifically limits the municipality's power to revoke the delegation.
2. A delegation shall not limit the right to revoke the delegation beyond the term of the council which made the delegation.
3. A delegation may provide that only the delegate can exercise the delegated power or that both the municipality and the delegate can exercise the power.
4. A delegation or deemed delegation under paragraph 6 of a duty results in the duty being a joint duty of the municipality and the delegate.
5. A delegation may be made subject to such conditions and limits as the council considers appropriate. Council shall outline the procedures that the delegate is required to follow and specific measures for accountability of the delegate and the transparency of the delegate's actions.
6. 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 conditions, approvals and appeals which apply to the power and any duties related to the power are deemed to be delegated with the power.

#### **VI. DELEGATION OF LEGISLATIVE AND QUASI JUDICIAL POWERS**

1. Legislative and quasi-judicial powers can only be delegated to the following: Sec. 23.2(1)
  - One or more members of its council or a council committee
  - A body that has at least two members, of whom at least 50% are:
    - a) members of its council,
    - b) individuals appointed by its council,
    - c) a combination of individuals described in sub-clauses i and ii; or
  - An officer, employee or agent of the municipality (if the power delegated is of a "minor nature")
2. Restrictions of Delegation of Legislative and Quasi Judicial Powers

Council is not authorized to delegate any of the following powers and duties, Sec. 23.3 (1):

- To appoint or remove from office statutory officers of the municipality.
  - To pass a by-law and deal with issues regarding taxes.
  - To incorporate corporations.
  - To adopt an official plan or an amendment to an official plan under the Planning Act.
  - To pass a zoning by-law under the Planning Act.
  - To pass a by-law related to small business counselling and municipal capital facilities.
  - To adopt a community improvement plan.
  - To adopt or amend the municipal budget.
  - Any other power that may be prescribed.
3. Council shall only delegate legislative and quasi-judicial powers to an officer, employee or agent of the municipality which are minor in nature which is clearly defined within the policy and procedures authorizing the said delegation. Council, in determining whether or not a power is of a minor nature, should consider a number of factors as well as the number of people, the size of the geographic area and the time period affected by an exercise of the power.
  4. The delegation of legislative and quasi-judicial powers of Council are restricted to powers found in the Municipal Act, the Planning Act, a private Act relating to the municipality and “such other Acts as may be prescribed.”
  5. No delegation of legislative or quasi-judicial powers to a corporation is permitted.
  6. Any delegation of legislative or quasi-judicial powers may be subject to any regulation made by the Minister.

## **VII. DELEGATION OF ADMINISTRATIVE POWERS AND DUTIES**

1. Council may delegate any of its administrative powers and duties. Sec. 23.1(1)
2. In order for Council to authorize the delegation of any of its administrative powers and duties, it shall first approve the conditions and limitations of the delegation by the approval of a by-law.
3. Council shall approve policy and procedures for the delegation which includes measures for the monitoring and accountability of the delegate and the transparency of the delegate’s actions and decisions.
4. Any delegation of administrative powers may be subject to any regulation made by the Minister.

## **VIII. DELEGATION RE HEARINGS APPLICATION**

1. This section applies when a municipality is required by law to hold a hearing or provide an opportunity to be heard before making a decision or taking a step, whether the requirement arise from an Act or from any other source of law.
2. If Council delegates to a person or body the power or duty to hold a hearing or provide an opportunity to be heard before the decision is made or the step taken, but does not delegate the power to make the decision or take the step, the following rules apply:
  - a) If the person or body holds the hearing or provides the opportunity to be heard, the municipality is not required to do so.

- b) If the decision or step constitutes the exercise of a statutory power of decision to which The Statutory Powers Procedure Act applied, that Act, except sections 17, 17.1, 18 and 19 applies to the person or body and to the hearing conducted by the person or body.

**IX. APPEAL BODY**

1. Council may establish an appeal body to hear appeals or review decisions made under any delegated power, if it deems necessary.
2. Before an Appeal Body is established, Council shall determine procedures, powers and rules of those conducting the appeals to be approved in a by-law establishing the Appeal Body.