

Town of Whitby

Staff Report

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Report Title: Review of the Role of Mayor and Deputy Mayor under the *Municipal Act, 2001*

Report to: Committee of the Whole

Date of meeting: May 13, 2024

Report Number: LS 07-24

Department(s) Responsible:

Office of the Chief Administrative Officer
Legal and Enforcement Services

Submitted by:

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**Acknowledged by M. Gaskell,
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1. Recommendation:

1. That this Report LS 07-24 be received for information.

2. Highlights:

- Traditionally, the office of the Mayor was considered a “first among equals” position on municipal councils.
- The role of the Mayor has evolved into an executive role for the municipality, with the most recent stage of that evolution occurring through the granting of Strong Mayor powers under Part VI.1 of the *Municipal Act, 2001*.
- In accordance with the changing legislative environment pertaining to the role of the Head of Council and the strengthening of mayoral authority, this is an opportune time to reflect on the roles and responsibilities of Mayor, and how they would shape the appointment, role, and responsibilities of the Deputy Mayor.

3. Background:

A Brief History of the Role of the Mayor

The role of Mayor in Ontario dates back to the *Municipal Corporations Act* of 1849, also known as the “Baldwin Act”, which created a basic structure of municipalities in Ontario. The Baldwin Act sought to bring local democratic self government to then Upper Canada and formed the foundation of Ontario municipal governance up to 2001. Under the Baldwin Act, counties and townships were created which elected 5 aldermen, of which they chose one to be Reeve of the Township. The responsibilities of Townships and Counties were downloaded to communities as they grew into Towns and Cities. For example, the Towns of Whitby and Brooklin were separate municipalities under the Baldwin Act until their merger into the Town of Whitby with the creation of the Regional Municipality of Durham in 1974.

As the size and relative sophistication of Towns and Cities grew, so did the responsibilities and profile of the Mayor. The Mayor could serve a quasi-administrative function overseeing the Clerk and Commissioners who were appointed by and reported directly to Council. However, with the creation of the Regional Municipality of Durham in 1974, the role of the Mayor became formalized as a “first among equals”, where the Mayor was formally elected at-large, but held few formal powers above any other member of Council.

The Role of the Mayor in the *Municipal Act, 2001*

With the passage of the [Municipal Act, 2001](#), the role of the Mayor continued under the principle of a “first among equals”. [Section 225](#) set out the following:

It is the role of the head of council [Mayor],

- (a) to act as chief executive officer of the municipality;
- (b) to preside over council meetings so that its business can be carried out efficiently and effectively;
- (c) to provide leadership to the council;
- (c.1) without limiting clause (c), to provide information and recommendations to the council with respect to the role of council described in clauses 224 (d) and (d.1);
- (d) to represent the municipality at official functions; and
- (e) to carry out the duties of the head of council under this or any other Act.

[Section 226.1](#) clarifies the role of the Mayor as the “Chief Executive Officer” of the municipality:

As chief executive officer of a municipality, the head of council [Mayor] shall,

- (a) uphold and promote the purposes of the municipality;
- (b) promote public involvement in the municipality’s activities;

(c) act as the representative of the municipality both within and outside the municipality, and promote the municipality locally, nationally and internationally; and

(d) participate in and foster activities that enhance the economic, social and environmental well-being of the municipality and its residents.

The *Municipal Act, 2001* also contained provisions whereby another member of Council could act in place of the Mayor. Notably, [Section 226](#) allowed for Council to appoint an alternative to the Mayor, with the Mayor's consent, to another body which the Mayor is a member by virtue of their office.

[Section 238\(4\)](#) also allows for a procedure by-law to designate a member of Council, other than the Mayor, to preside at the meetings of Council with the Mayor's consent.

Notably, [Section 242](#) allows for Council to appoint a member of Council to act in the place of the Mayor, where the Mayor is absent, refuses to act, or if the office of the Mayor is vacant. This section does not explicitly state that the consent of the Mayor is required in this circumstance.

The introduction of “Strong Mayor” powers

In early September 2022, the Provincial Government passed Bill 3, the *Strong Mayors, Building Homes Act, 2022*, which introduced the so called “Strong Mayor” powers in Ontario to the Cities of Toronto and Ottawa. Bill 3 amended the *Municipal Act, 2001* to introduce [Part VI.1, Special Powers and Duties of the Head of Council](#) (i.e. Mayor). The powers under Bill 3 gave the Mayor new powers to affect the Administration of the municipality, allowing the Mayor to appoint or dismiss the Chief Administrative Officer and certain management roles, as well as changing the organizational structure of the municipality. Bill 3 also granted the Mayor powers to appoint members to local boards, set and appoint members to committees of Council, allow the Mayor a veto power related to *Municipal Act, 2001* and *Planning Act* by-laws, and granted the Mayor the authority to set the municipality's budget.

These “Strong Mayor” powers were expanded in early December 2022 with the passage of Bill 39, the *Better Municipal Governance Act, 2022*. Bill 39 allowed a Mayor [to bring forward a by-law related to a prescribed Provincial Priority for Council to consider](#), and the by-law could be passed with the support of one-third of the members of Council. The Provincial Government has [identified two priorities](#) that are subject to these additional powers: the construction of 1.5 million new residential units by 2031, as well as the construction and maintenance of infrastructure to support housing.

On June 16, 2023, the Provincial Government included the Town of Whitby in its expansion of “Strong Mayor” powers to [additional municipalities in Ontario](#). As of July 1, 2023, the Mayor of Whitby could exercise the powers under Part VI.1 of the *Municipal Act, 2001* with the inclusion of the Town in [O. Reg 530/22](#).

The use of “Strong Mayor” powers is to be publicly recorded and reported. The decisions and directives of the Mayor of Whitby related to this authority are [reported on the Town's Website](#).

The Deputy Mayor role

The position of Deputy Mayor is not a formally recognized role under the *Municipal Act, 2001*. The role and responsibility of Deputy Mayor in Whitby is created under the Town's [Procedure By-law # 7462-18](#) (the "Procedure By-law"). It is noteworthy that the Strong Mayor Powers do not extend to a deputy Mayor in the absence of the Mayor.

There is no requirement for a municipality to appoint a Deputy Mayor. The responsibilities of such a role are largely at the discretion of the Mayor and Council as set out in the Procedure By-law. For example, the Mayor of the City of Toronto has authority to appoint one or more Deputy Mayors, and has in the past appointed Deputy Mayors for Toronto's former boroughs, as well as topic or issue-specific Deputy Mayors (e.g., Deputy Mayor for Housing).

In Whitby, the Deputy Mayor role dates to at least 1986, where it is mentioned under the Town's then Procedure By-law. Currently, the delegation of the Mayor's authority to the Deputy Mayor under the Procedure By-law is limited to the situations described in [Section 242](#) of the *Municipal Act, 2001*, where the Deputy Mayor can act in place of the Mayor for the role of presiding at meetings where the Mayor is unable or unwilling to do so, or if the Office of the Mayor is vacant. Under this section, the appointment of a Member of Council (i.e., Deputy Mayor) to preside at a meeting of Council does not explicitly require the Mayor's consent. The Deputy Mayor also has ancillary authority to sign documents on behalf of the Mayor under the Town's Signing By-law # 7127-16.

Traditionally, within Whitby the Deputy Mayor's role has been broader than simply presiding at meetings and signing agreements. The Deputy Mayor has acted in place of the Mayor when the Mayor is not available. This has included the Mayor's formal Council responsibilities (e.g., taking the role of Chair in a meeting if a Mayor seeks to move a matter), as well as the Mayor's responsibilities as a representative in and of the community (e.g., attending community events on the Mayor's behalf). In recognition of the increased duties and community role, the position of Deputy Mayor also carried an additional vehicle stipend under the Council Remuneration and Expenses By-law # 6500-11.

4. Discussion:**Agenda Setting and Mayoral Accountability/Council check-and-balance are the core of the "Strong Mayor" Powers**

The genesis of "Strong Mayor" powers in Ontario appears designed to increase the political accountability of the position of the Mayor, as well as to streamline the municipal decision making process related to Provincial Priorities (i.e., new and additional housing).

Ontario's "Strong Mayor" powers reflect an American Strong Mayor's authority, while maintaining a strong policy initiation and review role for Council in all areas of municipal jurisdiction. The Province [specifically acknowledges](#) the importance of the role of members of Council, through their continued ability to create and influence the policy process, and act as a check-and-balance on Mayoral power

through a two-thirds override of a Mayoral veto or by-law, and may review, debate and amend a Mayor's budget.

The Role of the Mayor has Evolved

The Province has been gradually increasing the responsibilities and accountabilities of the Head of Council/Mayor since the implementation of the *Municipal Act, 2001*. The role of Mayor is a leadership and representative role for both Council and the municipality. Sections 226 and 238(d) of the *Municipal Act, 2001* also set requirements for the Mayor to consent to other members of Council acting in the role of the Mayor. The exception is Section 242, which does not require the Mayor's consent to preside over meetings of Council, and which makes sense in the context of a Mayor who is unable or unwilling to act in their role to preside over a meeting of Council. The underlying purpose of this section is to ensure that the business of the municipality can continue in the Mayor's absence.

The role has also evolved into an executive role for the municipality, and while a Mayor may not necessarily directly manage the administration of the municipality, Part VI.1 of the *Municipal Act, 2001* grants a Mayor the authority to build a team that can reflect and implement their vision. The Province has clearly leaned-into the idea of the Mayor as a key figure and driver of policy initiatives of the municipality, whether those initiatives come from the Mayor, Council or administration.

As noted above, these additional powers increase both the profile and the accountability of the Mayor, as "Strong Mayor" Decisions and Directives under Part VI.1 are published publicly and are not decisions of the majority of Council. The role of Mayor also has extensive policy authority over housing and the infrastructure to support it, which may be one of the greatest policy challenges of our time.

The changes in the Role, Responsibilities and Accountabilities of the Mayor and Council warrant revisiting the role of Deputy Mayor

While the Chief Administrative Officer and Town Solicitor are not advocating for any particular change to the Procedure By-law to address the role of the Deputy Mayor, we recognize the above noted changes to the role of the Town's Mayor. We also recognize that the role of the Deputy Mayor, as it is currently constituted, reflects a previous governance structure where the Mayor and Deputy Mayor could be seen as the "first" and "second" among equals on Council. The role and appointment of the Deputy Mayor does not account for the current context of increasing mayoral authority, which have given a Mayor greater freedom and control over delegation, appointments and the municipality's organizational structure.

The role of the Deputy Mayor should be set out clearly to provide greater specificity to the role, as well as clearly set out the scope and context of the delegation of Mayoral authority. Further to Staff Report CLK 04-24 regarding the Procedure By-law Review, it is recommended that Council consider the appointment and assignment of responsibilities to the position of Deputy Mayor through adoption of a standalone policy. Examples of how Ontario municipalities have chosen to appoint and assign responsibilities to the position of Deputy Mayor are appended to this report as Attachments 1 and 2.

The [Appointment of Deputy Mayor Policy](#) from the City of London is one example of a standalone policy regarding the position of Deputy Mayor. Council's consideration of such a policy would provide a clear, comprehensive, and up-to-date framework for the role of Deputy Mayor. This would in-turn provide clear direction for Staff as well on how to approach the roles and responsibilities of the Mayor and Deputy Mayor, which at this point in time is unclear, specifically with respect to any particular policy agenda which may be advanced by the Office of the Mayor.

The revised Procedure By-law provides that the Deputy Mayor, regardless of how Council chooses to appoint one going forward, will be the presiding officer when the Mayor is absent. As noted above, Section 242 of the Municipal Act does not require the consent of the Mayor to appoint an alternative member of Council to preside over a meeting of Council; however, this section also does not prohibit allowing the Mayor to consent to appointment of the Deputy Mayor as a part of a Procedure By-law. Such a consent would follow the legislative trend of mayors being granted authority to consent who will represent them and would reflect how other Ontario municipalities have more recently approached the appointment of the Deputy Mayor.

Until such time as Council considers the creation of a policy regarding the Deputy Mayor position, Section 2.3 of Procedure By-law # 7462-18, which stipulates that every Regional Councillor shall serve one calendar year during the term as Deputy Mayor, will continue to apply. The necessary wording has been added to the proposed revised Procedure By-law so that adoption of a standalone policy on Deputy Mayor would supersede the appointment process outlined in the current Procedure By-law # 7462-18.

Given the changes in the role, responsibilities, and accountabilities of the Office of the Mayor, as well as the increased profile that those responsibilities and accountabilities bring, both the Chief Administrative Officer and Town Solicitor believe this is an opportune time to reflect on the roles and responsibilities of Mayor, and how they would shape the role and responsibilities of the Deputy Mayor.

Should Council at Committee of the Whole provide direction on the appointment of and general nature of the responsibilities to be assigned to the Deputy Mayor, then Staff will prepare the necessary policy to reflect that direction for Council's consideration on May 27th.

5. Financial Considerations:

Not Applicable.

6. Communication and Public Engagement:

Not Applicable.

7. Input from Departments/Sources:

This report includes input from Legislative Services.

8. Strategic Priorities:

This report generally relates to Strategic Pillar 4: Whitby's Government in the Community Strategic Plan.

9. Attachments:

Attachment 1 – Appointment of Deputy Mayor at comparator municipalities

Attachment 2 – Assignment of responsibilities to Deputy Mayor at comparator municipalities