



STAFF REPORT

Meeting Date: June 13, 2022

Title: Restricted Acts (Lame Duck Council)

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Department: Administration

Report Number: Administration-2022-023

Recommendation:

THAT Council adopt a by-law to provide the CAO with additional Delegated Authorities in the event of a Lame Duck Council.

Background:

The *Municipal Act, 2001* establishes the governing authority for municipalities and municipal councils in Ontario. Under Section 275 of the *Act*, a municipal council is prohibited from performing certain actions in a municipal election year where it is determined that there will be a material change in its membership during the next term of office. This is commonly referred to as the "restricted acts clause" (a "lame duck" council).

The restricted acts clause may be triggered depending on the outcome of two (2) key dates in the upcoming municipal election: Nomination Day (the final day to submit nominations for office) and Voting Day. If it is apparent that the incoming council will be comprised of less than three quarters (75%) of its current membership, the council is required to refrain from certain acts until the next term begins.

The municipal election is scheduled for October 24, 2022. As such, Dryden City Council could be in a restricted acts situation during one or both of the following timeframes:

- From Nomination Day through to the end of the current term of Council (August 19-November 14, 2022); and/or
- From Voting Day through to the end of the current term of Council (October 24-November 14, 2022).

Discussion:

As Dryden City Council is comprised of seven (7) members, the restricted acts clause would apply if fewer than six (6) incumbent members of Council were to return for the 2022-2026 term. There are two (2) scenarios in which Council would be subject to a restricted acts period in respect to the upcoming municipal election:

- If two (2) or more incumbent members of council decide not to run for re-election (restricted acts period would be August 19-November 14, 2022); and/or
- If fewer than 6 incumbent members of council are re-elected (restricted acts period would be October 24-November 14, 2022).

If neither of these situations occur, council would not be subject to a restricted acts period in 2022. However, if either one occurs, council would be precluded from making any decisions on the following matters until the end of the current term of council (November 14, 2022):

- a) Appointing or removing any officer of the City;
- b) Hiring or dismissing any employee of the City;
- c) Disposing of any real or personal property of the City with a value over \$50,000; and
- d) Incurring any expenditures or liabilities exceeding \$50,000.

NOTE: Restrictions do not apply to dispositions or liabilities included in the most recent budget approved by council before Nomination Day (August 19, 2022) in the 2022 municipal election.

Land Matters

With respect to land matters, a municipality can close a real estate transaction during the restricted acts period only if the council passed a by-law approving the execution of the agreement of purchase and sale in advance of the restricted acts period.

Expenditures

A contract could be awarded by a lame duck council which is in excess of \$50,000 as long as the amount was approved in the 2022 budget. However, the lame duck council is not able to award a contract if the amount of tenders or bids exceeds the amount included in the approved budget.

Emergencies

Section 275(4.1) of the *Act* provides that nothing in this section prevents a municipality taking any action in the event of an emergency.

Delegation of Authority

Section 275(6) provides that a council maintains the authority to delegate these certain powers to a person or body if the delegation is made prior to Nomination Day (August 19, 2022). Delegating authority pursuant to Section 275 of the *Municipal Act, 2001* is typically provided to ensure the efficient management of the municipality continues and provides for the ability to respond to issues in a timely manner.

Powers that CANNOT be Delegated

Section 23.3.1 of the *Municipal Act, 2001* clearly identifies the powers that cannot be delegated:

1. The power to appoint or remove from office an officer of the municipality whose appointment is required by this *Act*. (Clerk, Treasurer, Fire Chief and Chief Building Official).
4. The power to adopt an official plan or an amendment to an official plan under the *Planning Act*.
5. The power to pass a zoning by-law under the *Planning Act*, except as provided under section 39.2 of that *Act*.
8. The power to adopt or amend the budget of the municipality.

It is recommended that a by-law be prepared prior to Nomination Day (August 19, 2022) delegating the following to the CAO from August 19 to November 14, 2022:

- a) Authority to approve any expenditure or incur any liability over \$50,000 and
- b) Authority to approve the disposition of any real or personal property with a value of \$50,000 or more at the time it was acquired by the municipality.

The CAO will report to Council in December 2022 if the delegation of authority was exercised under the proposed by-law.

The Clerk/Returning Officer will advise Council following Nomination Day and Voting Day if it has been determined that the restricted acts clause of the *Municipal Act, 2001* has been engaged.