



Staff Report CL2022-022

Title of Report: CL2022-022 – Restricted Acts of Council (Lame Duck)
Period
Department: Clerks
Branch: Legislative and Council Services
Council Date: July 6, 2022

Recommendation:

Be it resolved that Council receive Staff Report CL2022-022 for information; and
That if Council is in a restricted position (Lame Duck) after Nomination Day (August 19, 2022), pursuant to Section 275 of the Municipal Act, 2001, Council delegates authority to the Chief Administrative Officer and/or other Department Heads to take action, where necessary, on certain restrictions listed in Section 275(3) of the Municipal Act, 2001; and
That Council directs the Chief Administrative Officer and/or other Department Heads to report on any actions taken under the restrictions listed in 275(3) of the Municipal Act, 2001, between Nomination Day and the commencement of the Council term; and
That this delegation be finalized through By-law 2022-093, with the delegation expiring on December 7, 2022.

Background:

With 2022 being a Municipal Election year it is important that Council and the Township are cognizant of the application of Section 275 of the Municipal Act, 2001, which is identified as "Restricted Acts After Nomination Day," but more commonly known as "lame duck" provisions.

When does Lame Duck Occur?

Under Section 275 of the Municipal Act, 2001, a Council can go lame duck if one of the following scenarios will occur with the new council that will take office following the election:

1. If the new council will have the same number of members as the outgoing council, the new council will include less than three-quarters of the members of the outgoing council.
2. If the new council will have more members than the outgoing council, the new council will include less than three-quarters of the members of the outgoing council or, if the new council will include at least three-quarters of the members of the outgoing council, three-quarters of the members of the

outgoing council will not constitute, at a minimum, a majority of the members of the new council.

3. If the new council will have fewer members than the outgoing council, less than three-quarters of the members of the new council will have been members of the outgoing council or, if at least three-quarters of the members of the new council will have been members of the outgoing council, three-quarters of the members of the new council will not constitute, at a minimum, a majority of the members of the outgoing council.

Council Restrictions during Lane Duck Period

If one of the above applies, Council is restricted from doing the following during the restricted periods:

- the appointment or removal from office of any officer of the municipality;
- the hiring or dismissal of any employee of the municipality;
- the disposition of any real or personal property of the municipality which has a value exceeding \$50,000 at the time of disposal; and
- making any expenditures or incurring any other liability which exceeds \$50,000.

Exceptions:

Clauses (c) and (d) above do not apply if the disposition or liability was included in the most recent budget adopted by Council before Nomination Day in the Municipal Election.

Land Matters: With respect to Section 275(3)(c) (land matters), a municipality can close a real estate transaction during the lane duck period only if the council passed a by-law approving the execution of the agreement of purchase and sale in advance of the lane duck period.

Expenditures: A contract could be awarded by a lane duck Council in excess of \$50,000 so long as the amount was included in the annual budget. However, the lane duck Council would not be able to award the contract if the amount of the tenders or bids exceeded the amount included in the budget.

Emergencies: The Act provides at Section 275(4.1) 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 Council maintains the authority to delegate these certain powers to a person or body if the delegation is made prior to Nomination Day. Delegating this authority pursuant to Section 275 of the Municipal Act, 2001 is typically provided to ensure the efficient management of

the municipal Corporation continues and provides for the ability to respond to issues in a timely fashion.

Powers that CANNOT be Delegated: Section 23.3.1 of the Municipal Act clearly identifies the powers that are not permitted to be delegated. This includes the power to appoint or remove from office an officer of the municipality, whose appointment is required by the Act. These positions include the Clerk, Treasurer, Fire Chief or Chief Building Official.

Restricted Periods

Restrictions are potentially in effect for two periods, in relation to the three scenarios where lame duck can occur as provided above:

1. After nomination day but before voting day, the determination shall be based on the nominations to the new council that have been certified and any acclamations made to the new council; or
2. After voting day, the determination shall be based on the declaration of the results of the election including declarations of election by acclamation.

Staff Comments:

The following lame duck scenario would be applicable in Southgate's case:

1. If the new council will have the same number of members as the outgoing council, the new council will include less than three-quarters of the members of the outgoing council.

With a seven (7) member Council, three-quarters of the members would be six (6). This means that six members of the outgoing Council will be needed to potentially form the new Council, to not be in lame duck.

To assist with continuation of municipal business during lame duck periods, many municipalities delegate authority during the restricted period to a senior officer of the Corporation, usually the CAO, and/or Department Heads. Staff are recommending that Council delegate this authority in preparation of Nomination Day. By-law 2022-093 – Restricted Acts of Council is included in this agenda package for consideration.

Financial Implications:

There are no financial implications as a result of this report.

Communications & Community Action Plan Impact:

This report has been written and presented to Council to communicate accurate information to the public.

Concluding Comments:

1. That Council receive Staff Report CL2022-022 for information; and
2. That if Council is in a restricted position (Lame Duck) after Nomination Day (August 19, 2022), pursuant to Section 275 of the Municipal Act, 2001, Council delegates authority to the Chief Administrative Officer and/or other Department Heads to take action, where necessary, on certain restrictions listed in Section 275(3) of the Municipal Act, 2001; and
3. That Council directs the Chief Administrative Officer and/or other Department Heads to report on any actions taken under the restrictions listed in 275(3) of the Municipal Act, 2001, between Nomination Day and the commencement of the Council term; and
4. That this delegation be finalized through By-law 2022-093, with the delegation expiring on December 7, 2022.

Respectfully Submitted,

Dept. Head: *Original Signed By*
Lindsey Green, Clerk

CAO Approval: *Original Signed By*
Dave Milliner, CAO

Attachments: None