
Subject: Delegation of Authority for the Period of Restricted Acts after Nomination Day for the 2022 Municipal Election

Report to: Corporate Services Committee

Report date: Wednesday, June 15, 2022

Recommendations

1. That in the event, and for such period, that Regional Council is prohibited from taking certain actions pursuant to section 275 of the Municipal Act, 2001 (Act), Regional Council **DELEGATES** to the Chief Administrative Officer, only to the extent permitted by the Act and not already delegated, the following:
 - a) authority for expenditures or the incurring of any liabilities, outside current approved budgets, exceeding \$50,000;
 - b) authority, including authority to execute the agreement of purchase and sale, pertaining to the disposition of any real or personal property of the municipality which has a value exceeding \$50,000 at the time of disposal, outside current approved budgets;
 - c) authority to hire or dismiss any employee of the municipality, including a Commissioner; and,
2. That the Chief Administrative Officer **BE DIRECTED** to report to Council regarding any exercise of the delegated authority provided by Recommendation 1 in the first quarter of 2023.

Key Facts

- The purpose of this report is to seek delegated authority, only to the extent permitted and not already delegated, over certain acts to the Chief Administrative Officer (CAO) in order to allow business continuity, in the event that Section 275 of the Municipal Act, 2001 (Act) is triggered.
- Under Section 275 of the Act, Council can be restricted from performing certain actions in one or both of two separate time periods – the period from Nomination Day to Election Day (August 19 to October 24) and from Election Day to the end of the term (October 24 to November 14). This period is technically referred to as the

Restricted Acts after Nomination Day period and is also known as the “lame duck” period.

Financial Considerations

The delegation of authority itself has no direct financial implications.

Section 275 of the Act prohibits Council from undertaking certain acquisitions, spending and employee-related actions during two periods after Nomination Day (August 19) if it becomes mathematically impossible for three quarters of the members of the outgoing council to be re-elected. In order to prevent any disruption to ongoing Regional operations and to mitigate any possible impacts that may arise as a result of a Restricted Acts circumstance it is recommended Council delegate specific authorities to the CAO.

As an indirect financial implication, Council should be aware that the delegation would permit the CAO to address matters that are not included in the current approved budget; given the restriction on Council’s ability to do so under section 275.

Analysis

Under section 275 of the Act, Council can be restricted from performing certain actions in one or both of two separate time periods:

1. The period from Nomination Day to Election Day (August 19 to October 24); and
2. From Election Day to the end of the term (October 24 to November 14).

This period is technically referred to as the Restricted Acts after Nomination Day period and is also known as the “lame duck” period.

During these periods, Council is restricted in some of the actions it may take if the new Council will, with certainty, include less than 75% of the members of the outgoing Council.

For Niagara Region, the determination of whether Council is in a Restricted Acts position would be triggered as follows:

1. From Nomination Day to Election Day (August 19 to October 24) if Council will, with certainty, include less than 75% of the members of the outgoing Council.

75% of Council = 24 members

Therefore, there must be 24 or more members seeking re-election for Council to continue operating without restrictions.

Council will be restricted as of Nomination Day (August 19) if there are eight or more members not seeking re-election;

and/or

2. From Election Day to the end of the term (October 24 to November 14) if Council will, with certainty, include less than 75% of the members of the outgoing Council.

75% of Council = 24 members

Therefore, there must be 24 or more members of the outgoing Council elected.

Council will be restricted as of Election Day if there are eight or more new members on Council.

Subsection 275(3) of the Act states that, in either of the above situations, the Council of a municipality shall not take any of the following actions:

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

The Act further provides that Items c) and d) above do not apply if the disposition or liability was included in the most recent approved budget adopted by Council prior to nomination day; and, that these provisions do not apply in the case of an emergency.

In order to prevent any disruption to ongoing Regional operations, and to mitigate any possible impacts that may arise as a result of a Restricted Acts circumstance, common

practice is to provide the delegated authority to the Chief Administrative Officer to the extent permitted by the Act, to exercise the responsibilities listed in Section 275(3).

Section 23.1 of the Act authorizes a municipality to delegate certain powers and duties to the officers and employees of the municipality. In accordance with section 23.3(1) of the Act certain powers cannot be delegated, including the power to appoint or remove from office an officer of the municipality whose appointment is required by the Act (e.g. the Treasurer or Clerk); therefore the delegation of item a) above to the CAO is not included in the Recommendations.

It is recommended that Council delegate authority to the CAO to address the following matters:

- a) authority for expenditures or the incurring of any liabilities, outside current approved budgets, exceeding \$50,000;
- b) authority, including authority to execute the agreement of purchase and sale, pertaining to the disposition of any real or personal property of the municipality which has a value exceeding \$50,000 at the time of disposal, outside current approved budgets;
- c) authority to hire or dismiss of any employee of the municipality, including a Commissioner.

In addition, it is recommended that the CAO be required to provide a written report to Council in the first quarter of 2023, regarding any exercise of the authority delegated during this period.

This delegated authority would only take effect when Council is determined to be in a Restricted Acts Period in accordance with the Act and will expire when the Restricted Acts Period is no longer applicable, or when the Council-elect takes office.

It is important to note that clauses (a) and (b) do not apply if the disposition or liability was included in the most recent budget adopted by Council before Nomination Day.

Council is reminded that the CAO already has delegated authority for a variety of expenditures and approvals currently granted through the Procurement By-law (No.02-206, as amended), the Execution of Document By-law (No. 09-2016, as amended), and the CAO By-law (No. 2020-09). These authorities remain in effect during this period.

Alternatives Reviewed

Council may choose to refrain from granting the delegated authority to CAO as recommended in this report. This would mean that, in the event that s.275 is triggered, any actions prohibited by that section could not be taken by Council or Staff (unless otherwise delegated to Staff under an existing delegation of authority or in the circumstance of an emergency) during the affected period. To avoid this risk, Staff recommend approval of the delegated authority to the CAO to support business continuity and effective management of the Region.

Relationship to Council Strategic Priorities

This report will serve to reinforce the strategic priority of sustainable and engaging government by mitigating any possible impacts that may arise as a result of a Restricted Acts circumstance during the 2022 Municipal Election.

Other Pertinent Reports

None.

Prepared and Recommended by:

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This report was reviewed by Donna Gibbs, Director, Legal and Court Services.