




CITY OF HAMILTON
CITY MANAGER'S OFFICE
Administration

TO:	Mayor and Members General Issues Committee
COMMITTEE DATE:	June 15, 2022
SUBJECT/REPORT NO:	Restricted Acts After Nomination Day Delegated Authority (City Wide) (CM22009)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Aine Leadbetter x2753 Andrea Holland x5409
SUBMITTED BY: SIGNATURE:	Janette Smith City Manager 

RECOMMENDATION

That Council approve and enact the draft “By-Law to Delegate Authority during any Restricted Period following Nomination Day”, attached as Appendix “A” to Report CM22009, which has been prepared in a form satisfactory to the City Solicitor.

EXECUTIVE SUMMARY

Pursuant to Section 275 of the *Municipal Act, 2001* (the “Act”), when it becomes impossible for 75% of the members of the outgoing Council to be re-elected, the Council will be subject to certain restrictions as set forth in Section 275(3) of the Act. This may occur after Nomination Day based on the nominations that have been certified, including any acclamations, or upon announcement of the results of the election after Voting Day. To ensure that the City is capable of addressing any potential impacts to operations that arise as a result of these restrictions, staff is recommending that the draft “By-law to Delegate Authority during any Restricted Period following Nomination Day” be enacted to provide the City Manager with delegated authority to act should Council’s actions be restricted.

FINANCIAL – STAFFING – LEGAL IMPLICATIONS (for recommendation(s) only)

Financial: Expenses approved under the delegated authority during the restricted period which have not been approved in the City’s annual budget will be funded through budget

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OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

appropriation transfers, and/or through reserves funding, and/or through debenture issue(s).

Staffing: There are no staffing implications

Legal: Delegation of authority prior to Nomination Day is required to ensure business related to restricted acts can continue during any restricted period.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

Section 275(3) of the Act, which identifies restricted acts after nomination day is commonly referred to as the “Lame Duck Provision”.

The City of Hamilton will be subject to the restrictions set out in Section 275(3) of the Act only when it can be determined that fewer than three-quarters (75%) of the members of the outgoing Council will be re-elected. There are two scenarios in which this may occur:

- after nomination day (August 19th, 2022), if fewer than 75% of the incumbent members of Council have been certified as candidates in the upcoming election or acclaimed to office. For the City of Hamilton, this would mean that fewer than 12 members of Council have been certified (or acclaimed) by the City Clerk on August 22, 2022.
- after voting day (October 24, 2022), if fewer than 75% of the incumbent members of Council have been declared elected to the incoming Council. For the City of Hamilton, this would mean that fewer than 12 members of Council are re-elected to office.

Should either of the above scenarios occur triggering the Lame Duck Provision of the Act, the Council for the City of Hamilton would be unable to take action in the following areas as per section 275(3) of the Act until a new Council is inaugurated on November 16, 2022:

- 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 had a value exceeding \$50,000 at the time of disposal; and
- d) making any expenditures or incurring any other liability which exceeds \$50,000.

Notwithstanding the restrictions set forth in Section 275(3) of the Act, Section 275(4) provides that subsections (c) and (d) do not apply to any disposition or liability that was included in the most recent budget adopted by the council before nomination day in the

election, and Section 275(4.1) provides that nothing in Section 275 prevents a municipality from taking action in the event of an emergency. Further, pursuant to Section 275(6), nothing in Section 275 prevents the exercise of any authority delegated prior to nomination day.

Section 23.1 of the Act permits the municipality to delegate its powers and duties to a person subject to certain restrictions. Pursuant to section 23.3(1) a municipality is not permitted to delegate the power to appoint or remove from office an officer of the municipality whose appointment is required by the Act (for example, the City Clerk, Treasurer and the City Auditor). These positions, in addition to all Statutory Officials, are identified in Appendix “B” to Report CM22009.

RELEVANT CONSULTATION

Legal Services and the Office of the City Clerk were consulted in the development of this report and the associated By-law.

Staff were consulted to understand how the restricted acts after nomination day could impact City operations and services. Staff were asked to identify programs and initiatives that may be impacted by the restrictions and were asked to provide information on delegated authority required to ensure continued operations should the City be in a “lame duck” period.

Staff additionally consulted with municipalities across the province, including Ottawa, Windsor, Oakville, Toronto, London and Kingston. As a part of this consultation, staff compiled and conducted a review of By-laws specific to the Restricted Acts after Nomination Day period in addition to broader Delegated Authority By-laws that included language addressing the restricted acts period.

ANALYSIS AND RATIONALE FOR RECOMMENDATION

In advance of each Municipal Election, there is a possibility that fewer than 75% of existing Members of Council will either not submit nomination papers as of nomination day and become certified candidates or will not be re-elected on Election Day. Should this situation occur, the Council of a Municipality would be considered to be “lame duck”, and as such would be restricted from specific acts as identified in Section 275 of the Act. While there are exceptions to the restricted acts, including where items are already approved in the Municipality’s budget, where there is an emergency or where delegated authority already exists, there remains some risk as there would be areas where a municipality might be unable to act and where work of the Municipality could be stalled until the conclusion of the inaugural meeting of the new Council on November 16, 2022.

Risks Associated with a Potential Restricted Period

The City of Hamilton has some existing delegations that would address restricted areas. Additionally, the majority of City work for 2022 has been identified with budget approved, ensuring that vast majority of City business will continue regardless of a lame duck situation. Despite this framework and budget approval, staff has identified some areas of risk. This would include, but is not limited to:

- the ability to appoint acting employees to cover the vacancy or absence of a first level of senior management and statutory officials. Statutory Officials are identified in Appendix “B” to Report CM22009: Statutory Officials.
- the ability to engage in shared grant and loan programs with other levels of government that were not available prior to the lame duck period or that were available before the lame duck period but where it was not known that the City would be successful until during the lame duck period;
- the ability to divest or acquire properties not considered as a part of the budget process; and,
- the ability to award and negotiate contracts for capital projects or to address changes in capital projects. Examples of potential areas where restricted acts could cause potential challenges are found in Appendix “C” to Report CM22009: Potential Expenditures and Liabilities During the Restricted Period. (This appendix is provided to illustrate potential scenarios and is not an exhaustive list.)

Existing Authority Delegated to the City Manager

The City Manager has existing delegated authority that would serve to address components of the restricted acts, including:

- The City Manager may appoint, promote, demote, suspend and dismiss, subject to the provisions of any personnel policies adopted by Council, or collective agreements applicable to employees of the City, all employees of the City, except the first level of senior management and statutory officials. (By-law 19-044)
- The City Manager has authority to approve the funding for any procurement of a value of up to but not including \$250,000 (By-law 20-205, as amended)

- The City Manager has authority to approve the acquisition, disposition, or lease of land or an interest in land to a value that does not exceed \$250,000 (CS01083/PD04303)

Proposed Delegated Authority During the Restricted Period

Under the proposed By-law, the City Manager would be provided with additional delegated authority during a potential Lame Duck period only with respect to:

- a) the appointment of any employee on an acting basis;
 - By including delegated authority for the City Manager to appoint any employee on an acting basis during any Restricted Period, the City will have the ability to address absences or vacancies for Statutory Officials and first level Senior Management during the restricted period until such time as a permanent appointment can be made by Council. Appendix "B" to Report CM22009: Statutory Officials identifies the Statutory Officials of the City.
- b) the disposition of any real or personal property of the City that has a value exceeding \$250,000 at the time of disposal;
 - By including delegated authority for the City Manager to dispose of any real or personal property with a value which exceeds the existing delegation of \$250,000, the City will be able address critical circumstances that arise requiring the disposition of property during the restricted period.
- c) making any expenditures or incurring any other liability of \$250,000 or more;
 - The inclusion of a delegated authority to make any expenditures or incur any other liability of \$250,000 or greater would further provide the City with the ability to cover all possible expenditures and liabilities, and to engage in grants and loans, particularly from other levels of government, where the City is responsible for some cost sharing or administrative fees, should they exceed the threshold currently existing.
 - Appendix "C" to Report CM22009: Potential Expenditures and Liabilities During a Restricted Period identifies types of costs and

liabilities that may be incurred during a Restricted Period. Note that this appendix is provided to illustrate potential scenarios and is not an exhaustive list.

- d) approving the award of contract for any capital projects where the competitively procured cost exceeds the approved capital budget for that project by \$250,000
- During a restricted period, there is the potential that capital projects that were anticipated in the budget could come in at a higher than estimated cost at the conclusion of the procurement process, or that economic pressures, including inflation or supply chain constraints, may result in cost increases requiring additional expenditures.
 - Should costs increase such that they exceed original budget by \$250,000, ordinarily Council approval would be required. Without delegating authority for approval to the City Manager, projects may be delayed, and the City could potentially incur financial impacts as costs may continue to rise or vendor relationship diminished while stalled.

The delegation of authority also includes the authority for the City Manager to negotiate, enter into and execute contracts and agreements and any ancillary documents in a form satisfactory to the City Solicitor and to take all necessary steps and actions to exercise the delegated authorities.

Checks and Balances:

The proposed By-law provides checks and balances to the provision of the delegated authority to be used during the restricted period. Under the proposed By-law, the City Manager is required to consult with the General Manager of Finance and Corporate Services and the General Manager of Planning and Economic Development prior to the acquisition or disposition of real or personal property, and to consult with the General Manager of Finance and Corporate Services and the appropriate General Manager prior to the making of any expenditure, or the incurring of any liability of \$250,000 or more or the approval of the award of contract for capital project where the cost exceeds the budget for that project by \$250,000 to ensure that any decisions made during this time resulting in expenses do not place the City in hardship.

The delegation of authority under the proposed By-law for the City Manager is limited and would come into effect only in the event that the restricted acts are triggered after nomination day or after election day. The proposed delegation of authority during the restricted period would terminate at the conclusion of the inaugural meeting of the new Council.

The City Manager, pursuant to section 7, of the By-law, will report back to Council at the first General Issues Committee on any use of the delegated authority during the restricted period.

ALTERNATIVES FOR CONSIDERATION

Council could choose not to implement a By-law to provide delegated authority to the City Manager in the event of a restricted period and instead rely on the delegated authority in place through existing policies and By-laws. This could result in the risk that delegated authority may not exist for all situations, and as such, could stall the work and operations of the City or not allow the City to participate in cost shared funding programs.

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

Our People and Performance

Hamiltonians have a high level of trust and confidence in their City government.

APPENDICES AND SCHEDULES ATTACHED

Appendix “A” to Report CM22009: A By-law to Delegate Authority during any Restricted Period following Nomination Day.

Appendix “B” to Report CM22009: Statutory Officials.

Appendix “C” to Report CM22009: Potential Expenditures and Liabilities During the Restricted Period. (This appendix is provided to illustrate potential scenarios and is not an exhaustive list)