

Pilon, Janet

Subject: Restrictions on Use of Veto Powers & New By-laws

From: Viv Saunders

Sent: April 22, 2024 6:45 AM

To: Horwath, Andrea <Andrea.Horwath@hamilton.ca>; Office of the Mayor <Officeofthe.Mayor@hamilton.ca>

Cc: clerk@hamilton.ca

Subject: Restrictions on Use of Veto Powers & New By-laws

Dear Madam Mayor,

With the greatest respect, you need to (re) read the Municipal Act. A mayor cannot use the Strong Mayor framework to override a section 270 by-law.

Specifically, what is excluded in the Strong Mayors powers (and is also specifically noted in the Ministry's Section 10 of the Municipal Councillor's Guide*) is that Vetos and Powers Re by-laws do not apply for any prescribed sections in the Municipal Act:

Veto powers

Application

284.11 (1) This section applies with respect to by-laws under,

- (a) this Act and the regulations, other than under any prescribed section;
- (b) the [Planning Act](#) and its regulations, other than under any prescribed section; and
- (c) any other prescribed Act or regulation or prescribed section of an Act or regulation. [2022, c. 18](#), Sched. 2, s. 1.

Powers re by-laws

284.11.1 (1) This section applies with respect to by-laws under,

- (a) this Act and the regulations, other than under any prescribed section;
- (b) the [Planning Act](#) and its regulations, other than under any prescribed section; and
- (c) any other prescribed Act or regulation or prescribed section of an Act or regulation. [2022, c. 24](#), Sched. 3, s. 8.

Procedure

(2) Despite any procedure by-law passed by the municipality under [subsection 238 \(2\)](#) and subject to any prescribed requirements, if the head of council is of the opinion that a by-law could potentially advance a prescribed provincial priority, the head of council may propose the by-law to the council and require the council to consider and vote on the proposed by-law at a meeting. [2022, c. 24](#), Sched. 3, s. 8.

I fully appreciate the reasoning for going down this path however, what is "prescribed" in the Act, are all of the by-laws approved by Council under section 270. Section 270 deals with regulations that are key Accountability & Transparency by-laws for various municipal matters such as procurement, disposition of land & such as per this section of the Ministry's Municipal Councillor's Guide:

Ensuring accountability and transparency is one of council's roles under [section 224](#) of the [Municipal Act, 2001](#) (the Act), and is a priority in maintaining public trust. Councillors are, of course, accountable to the public as elected officials. However, it is also important that procedures and policies are clearly set out and accessible, and that the day-to-day operations of the municipality are transparent.

Ontario municipalities and members of council operate under a legislated accountability and transparency framework that include rules for the municipality and rules for members of council and local boards. Local accountability and transparency frameworks consist of a mix of requirements and options.

Key requirements for municipalities include:

- adopting policies related to accountability and transparency specified in [section 270 of the Municipal Act, 2001](#)
- establishing a code of conduct for members of council and certain local boards, ensuring access to an Integrity Commissioner
- certain [Municipal Conflict of Interest Act](#) and open meeting requirements

Discretionary options for municipalities include appointing additional accountability officers, such as a municipal Ombudsman or auditor general. Municipalities may also wish to adopt a broader range of local policies than those [mandated under section 270 of the Municipal Act, 2001](#).

Hence, since 'The sale and disposition of land policy' by-law #14-204 (approved and adopted by Council under Section 270 of the Municipal Act) is a mandated by-law in a prescribed section of the Act, any discussions/amendments/resolutions appear to clearly fall outside of the Municipal Act's section 284.11 and 284.11.1 Strong Mayor/Good Governance regulations.

I know this isn't the outcome you and others want, so you might choose to ignore this email, however in my opinion you and our Council need to find a way to carry out your duties *under* and not outside *this Act or any other Act*. No person of reasonable thought would presume that the legislature would give a single elected official the power to solely pick and choose which municipal assets are 'surplus' & instruct Staff to dispose of them during their elected term of office; even during a housing crisis.

Respectfully,

Viv Saunders

*[Section 10 Strong Mayor Powers & Duties](#) in Ministry's Municipal Councillor's Guide:

Bring forward matters for council consideration related to provincial priority

The head of council can bring forward matters for council consideration if they are of the opinion that considering the matter could potentially advance a provincial priority in this [regulation](#).

When bringing forward such a matter for council consideration, the head of council should consider whether any rules with respect to notice and public consultation apply to the exercise of a particular municipal authority.

By-law power related to provincial priorities

The head of council can propose certain municipal by-laws if they are of the opinion that the proposed by-law could potentially advance a prescribed provincial priority in this [regulation](#). When using this power, the head of council can only propose by-laws made under:

- the [Municipal Act, 2001](#)
- the [City of Toronto Act, 2006](#)
- the [Planning Act](#)
- section 2 of the [Development Charges Act](#)

When proposing the by-law, the head of council must provide a copy of the proposed by-law and their reasons for the proposal to the clerk and each member of council. The head of council can require council to consider and vote on the proposed by-law at a meeting (despite any rules in a local procedure by-law). By-laws proposed by the head of council using this power are passed if more than one-third of all council members vote in favour of the by-law. The head of council is also able to vote on passing the by-law.

Note: municipal procedure by-laws and by-laws related to filling a vacancy on council are excluded from this power. There is also a separate process related to proposing the municipal budget. Read "[Municipal budget process](#)" in this section for more information.