

Staff Report



To	Committee of the Whole
Service Area	Corporate Services
Date	Monday, May 2, 2022
Subject	Delegation of Authority for the Period of Restricted Acts after Nomination Day for the 2022 Municipal Election

Recommendation

1. That a by-law be enacted to delegate authority to the Chief Administrative Officer in the event of a Restricted Acts Period for the 2022 Municipal Election.
 2. That by-law (2021)-20649, the Procedural by-law, be amended to include November 15 in the year of an election as the first day of the new term of City Council.
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Executive Summary

Purpose of Report

To seek Council's approval for the delegation of authority to the Chief Administrative Officer (CAO) for two restricted actions in the event of a Restricted Acts Period. The delegation of authority is important to the Corporation for the purposes of efficient management, business continuity and the ability to respond to issues in a timely manner.

To amend the Procedural by-law to include November 15 in the year of an election as the first day of the new term of City Council.

Key Findings

A draft by-law is attached for consideration. The by-law delegates certain authorities to the CAO to ensure that the business of the City can continue in the event that Council finds itself in a position where the restricted acts under the Municipal Act, 2001 (the Act) are in effect. The by-law includes provisions requiring the CAO to report back publicly to Council if any of the delegated authority is used.

Financial Implications

The delegation of authority itself has no effect on finances. Financial actions taken in accordance with delegated authority would be reviewed by the City Treasurer.

Report

Background

On November 20, 2020, [Bill 218, Supporting Ontario's Recovery and Municipal Elections Act](#), received Royal Assent, making a number of changes to the Municipal Elections Act, 1996 (MEA).

A specific change to the MEA through Bill 218 was moving Nomination Day in a regular election from the fourth Friday in July to the third Friday in August. In 2018, the nomination period was May 1 to July 27. As a result of Bill 218, the nomination period will be May 2 to August 19 for the 2022 Municipal Election.

Restricted Acts Periods

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 occasionally referred to as the "lame duck" period.

Determination

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.

In the City of Guelph context, 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 = 9.75 members

Therefore, there must be 10 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 three 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 = 9.75 members

Therefore, there must be 10 or more members of the outgoing Council elected.

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

Restrictions

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.

These provisions do not apply in the case of an emergency as defined by the Emergency Management and Civil Protection Act.

Clause (a) cannot be delegated pursuant to subsection 23.3(1) of the Act, and clause (b) is not applicable to Council as the power to hire and dismiss employees has been delegated to the CAO through the [CAO by-law \(2019-20425\)](#).

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

Delegation of Powers

Section 23.1 of the Act authorizes a municipality to delegate its powers and duties to the officers and employees of the municipality.

In order to prevent any disruption to ongoing City operations, and to mitigate any possible impacts that may arise as a result of a Restricted Acts circumstance, it is recommended that Council delegate authority to the CAO to address the following matters:

- a) dispose of any real or personal property of the municipality, which has a value exceeding \$50,000 at the time of disposition, except in those cases where the disposition was included in the most recent budget adopted by Council before Nomination Day in the election; and
- b) making any unbudgeted expenditures or incurring any other liability that exceeds \$50,000, except in those cases where the liability was included in the most recent budget adopted by Council before Nomination Day in the election.

In addition, it is recommended that the CAO be required to:

1. Advise Council, in writing, prior to exercising the authority delegated; and
2. Provide a written report to Council in the first quarter of 2023, regarding any exercise of the authority delegated under the by-law.

The authority delegated pursuant to the by-law would only take effect when Council is deemed 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.

Conclusion

The Act provides Council with the ability to delegate authority for restricted acts so as to ensure business continuity and effective management of the municipal corporation relating to clauses 275(3)(c) and (d) of the Act.

The delegation of authority would only come into effect during a Restricted Acts Period and would end when the new term of Council begins on November 15, 2022.

Council has the potential to be put into a Restricted Acts position as of Nomination Day on August 19 or Election Day on October 24.

The CAO would advise Council, in writing, prior to exercising the authority delegated and provide a written report to Council in the first quarter of 2023 regarding any exercise of the authority delegated under the by-law.

The restrictions would not apply in times of emergency as defined by the Emergency Management and Civil Protection Act.

Procedural By-law Amendment

The MEA has also been amended to reflect a new date for the beginning of a term of City Council by Bill 68, which received Royal Assent in 2017. Accordingly, the Procedural by-law needs to be amended as follows.

Repeal Section 10 (a) as noted below

10. Inaugural Council Meeting

a) The first meeting of Council following a regular election shall be held on the first Monday in December at 6:30 p.m. in the Council Chambers of City Hall or at such alternate location as determined by the Clerk.

Add Section 10 (a) and (b) as noted below

10. Inaugural Council Meeting

a) The first meeting of Council following a regular election shall be held on November 15 at 6:30 p.m. in the Council Chambers of City Hall or at such alternate location as determined by the Clerk.

b) If November 15 in an election year falls on a Saturday or Sunday, then the inaugural meeting of Council shall take place on the following Monday.

Financial Implications

The delegation of authority itself has no effect on finances. Financial actions taken in accordance with delegated authority would be reviewed by the City Treasurer.

Consultations

Staff have consulted with Legal, Realty and Court Services, and the Finance Department regarding the impact of restricted acts for Council during the election period and the need for authority to be delegated to the CAO to ensure operational continuity.

Strategic Plan Alignment

This report aligns with the Strategic Plan priority of Working Together for our Future. It seeks delegation of authority that ensures continuity of City services to residents during the 2022 municipal election period.

Attachments

No attachments.

Departmental Approval

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