

To: Corporate Services Committee

From: Mary Medeiros, City Clerk,
Tracy Adams, Commissioner,
Corporate Services Department

Report Number: CORP-22-16

Date of Report: March 2, 2022

Date of Meeting: March 7, 2022

Subject: Restricted Acts (Lame Duck) Delegation of Authority Provisions

Ward: All Wards

File: 03-05

1.0 Purpose

The purpose of this report is to provide Council with information regarding the “Restricted Acts” provisions contained in Section 275 of the Municipal Act, 2001, S.O. 2001, c. 25 (“Municipal Act, 2001”) and to pass a by-law to temporarily provide the Corporation of the City of Oshawa with the ability to conduct certain business in the event that Council is restricted in authority pursuant to these provisions for the 2022 Municipal Election.

Attachment 1 is the proposed By-law to delegate authority related to the Restricted Acts (Lame Duck) provisions.

2.0 Recommendation

That the Corporate Services Committee recommend to City Council:

That in accordance with Report CORP-22-16 related to the Restricted Acts (Lame Duck) Delegation of Authority Provisions, dated March 2, 2022, Council pass a by-law in the form appended as Attachment 1 to this report and in the form and content acceptable to the City Solicitor, the City Clerk and the Commissioner, Corporate Services Department.

3.0 Input From Other Sources

- Commissioner, Finance Services
- Legal Services

4.0 Analysis

Section 275 of the Municipal Act, 2001 prohibits municipal Councils from undertaking certain acts after Nomination Day in a municipal election year and prior to a new Council taking office under specific conditions.

A municipal Council can be in this situation during one or both of the following time periods: (1) for the 2022 Municipal and School Board Elections, this period is from Nomination Day on August 19, 2022 through to Voting Day on October 24, 2022; and (2) from Voting Day on October 24, 2022 to November 14, 2022, the end of the 2018-2022 term of Council.

This legislative restriction is referred to in Section 275 of the Municipal Act, 2001 as 'Restricted Acts' or more commonly referred to as the 'lame duck' provision.

If, from Nomination Day to Voting Day and, from Voting Day to November 14, 2022 it can be determined with certainty that the new Council will include less than three-quarters of the outgoing Council Members (i.e. less than 9 members), then the "Restricted Acts" or 'lame duck' provisions apply and Council is statutorily restricted from taking certain actions until the new term of Council begins on November 15, 2022.

If the Restricted Acts provision is engaged, this Council would be subject to certain restrictions as provided in Section 275(3) of the Municipal Act, 2001, including:

- a) Appointing or removing from office of any officer of the municipality;
- b) The hiring or dismissal of any employee of the City of Oshawa;
- c) Disposing 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 expenditures or incurring any other liability which exceeds \$50,000.

Subsection 275(3)(a) requires authority in the event that an officer, such as the City Clerk, the City Treasurer, the Chief Building Official and the Fire Chief, of the Municipality is required to be removed from office.

Subsection 275(3)(b) does not apply as the authority for the hiring or dismissal of any employee, other than Commissioners, of the Municipality that has been delegated to the Chief Administrative Officer ("C.A.O."). The proposed By-law delegates authority to the C.A.O. in the rare event that it is necessary to dismiss or hire a Commissioner.

Subsections 275(3)(c) and (d) only apply if the exceeding disposition or liability was not included in the most recent budget adopted by Council prior to Nomination Day.

As outlined in Section 275(4.1) of the Municipal Act, 2001, nothing in this section prevents a municipality from taking any action in the event of an emergency.

Section 275(6) provides that even if the Restricted Acts section is engaged, it does not affect any delegation of authority which has been properly granted prior to Nomination Day. Council's existing delegations such as those under the C.A.O.'s By-law, the

Delegation By-law and the Purchasing By-law, for example, are not impacted by the aforementioned restrictions.

The proposed by-law (Attachment 1) seeks to safeguard against potential gaps by temporarily delegating additional authority to the C.A.O. beyond that already delegated by Council and would come into effect only if the Restricted Acts section should apply to this Council. The temporary by-law provides a sunset provision, which effectively renders the by-law null and void upon the commencement of the inaugural meeting of the new Council, which is scheduled for November 15, 2022. Further, the C.A.O. would be required to report to Council in the first quarter of 2023 regarding any exercise of this delegated authority.

5.0 Financial Implications

There are no financial implications associated with this report.

6.0 Relationship to the Oshawa Strategic Plan

The report supports the Oshawa Strategic Plan Goal of Accountable Leadership.



Mary Medeiros, City Clerk,
Corporate Services Department



Tracy Adams, Commissioner,
Corporate Services Department



**By-law -2022
of The Corporation of the City of Oshawa**

being a by-law to temporarily provide the Corporation of the City of Oshawa with the ability to conduct certain business in the event of the Council being restricted in its authority pursuant to Section 275 of the Municipal Act, 2001 S.O. 2001, c25, as amended ("Municipal Act, 2001").

Whereas a municipal election will be held on October 24, 2022; and,

Whereas Nomination Day for the election is on August 19, 2022; and,

Whereas it is possible that Council may be restricted on Nomination Day or thereafter as a result of the operation of Section 275 of the Municipal Act, 2001; and,

Whereas it is desirable for Council to delegate certain limited authority for the purpose of ensuring the efficient operation of the Corporation of the City of Oshawa in the event that, and for so long as Council is restricted as a result of the operation of Section 275 of the Municipal Act, 2001;

It is enacted as a by-law of the Corporation of the City of Oshawa by its Council as follows:

Interpretation

1. In this by-law:

- 1.1 "By-law" means this By-law;
- 1.2 "City" means the Corporation of the City of Oshawa;
- 1.3 "C.A.O." means the City's Chief Administrative Officer or their designate;
- 1.4 "Council" means collectively the Council for the City;
- 1.5 "Department Head" means any of the Commissioner, Community Services; Commissioner, Corporate Services; Commissioner, Development Services; and, Commissioner, Finance Services;
- 1.6 "Effective Period" means any time between: 2:00 pm EST August 19, 2022 until the commencement of the inaugural meeting of Council;
- 1.7 "Officer" means any Officer of the City appointed by Council pursuant to statutory authority;
- 1.8 "Request for Proposal" means a Request for Proposal as defined in the Purchasing By-law 80-2020 ("Purchasing By-law 80-2020");

- 1.9 "Request for Tender" means a Request for Tender as defined in the Purchasing By-law 80-2020; and,
- 1.10 "Responsive and Responsible Bidder" means a Responsive and Responsible Bidder as defined in the Purchasing By-law 80-2020.

Delegation

2. This By-law shall only apply during the Effective Period, before and after which time this By-law shall be void and of no force and/or effect.
3. During the Effective Period, if at any time it becomes mathematically impossible for three-quarters of the members of the outgoing Council (less than 9) to be re-elected, thereby subjecting Council to the restrictions contained in Section 275 of the Municipal Act, 2001, the following delegations of authority shall apply:
- 3.1 Appointment or Removal of Officer
- The authority to appoint or remove an Officer or Commissioner of the City shall be delegated to the C.A.O.
- 3.2 Disposition of Property
- The authority to approve and execute agreements for the disposal of any real or personal property belonging to the City with an appraised value or a value, in the opinion, of a real estate broker is greater than \$50,000.00 shall be delegated to the C.A.O.
- 3.3 Expenditures and Liabilities
- During the Effective Period, the provisions of Section 4.08 of the Purchasing By-law apply.
4. During the first quarter in 2023, the C.A.O. shall report to Council any exercise of this delegated authority.

General

5. No delegation of authority in this By-law shall constrain or limit, in any manner whatsoever, any delegation of authority existing in any other City of Oshawa By-law or Council resolution. In the event of inconsistency between this By-law and any other City by-law or Council resolution, the provision that most effectively delegates authority prevails to the extent of the inconsistency.
6. This By-law shall come into force on the date of its passing.

By-law passed this day of , 2022.

Mayor

City Clerk