



MUNICIPALITY OF **West Elgin**

Staff Report

Report To: Council Meeting
From: Jana Nethercott, Clerk
Date: 2022-03-10
Subject: Lame Duck Council Considerations

Recommendation:

That West Elgin Council hereby receives the report from Jana Nethercott, Clerk re: Lame Duck Council Considerations for information purposes; and

That West Elgin Council directs the Clerk to prepare the necessary By-Law prior to Nomination Day (August 19, 2022) to delegating authority to the Chief Administrative Officer from August 19, 2022 to November 16, 2022 to:

- a) Be the financial signing authority for expenditures, outside the current budget, exceeding \$50,000 and/or for the disposition of any real or personal property of the municipality which has value exceeding \$50,000 at the time of disposal;
- b) Be the authority to hire or remove any officer from/to employment with the Municipality of West Elgin. That the authority to hire as delegated be restricted to not exceed the overall previously allotted compliment number of staff positions excluding those that are 100% provincially funded.
- c) To have discretion to bind the Corporation for projects/ new funding opportunities with the Provincial and/or Federal governments(s) in instances where the contribution of other levels of government totals 66% or greater with a cap of \$100,000 for the municipal contribution;
- d) That the CAO/Treasurer shall submit to Council an informational report, containing the details relevant to the exercise of all delegated authority by that position under the By-Law.

Purpose:

The purpose of this report is to provide Council information on the possibility of Lame Duck status and to get direction on preparing the necessary by-laws to continue Municipal Operations.

Background:

The *Municipal Act, 2001* establishes the governing authority for municipalities and municipal Councils in Ontario. Under Section 275 of the *Municipal Act*, a municipal Council is prohibited from performing certain actions in a municipal election year where it is determined that there will be a material change in its membership during the next term of office. This is commonly referred to as 'the restricted acts clause' (or a 'lame duck' Council).

More specifically, Section 275(1) of the *Municipal Act* provides “that where three quarters (3/4) of the members of the outgoing Council of the municipality will not be returning, the following authorities of the Council will cease on Nomination Day (August 19, 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 has value exceeding \$50,000 at the time of disposal;
- d. Making any expenditure or incurring any other liability which exceeds \$50,000.

*Exceptions to clauses (c) and (d) do not apply if the disposition of liability was included in the most recent budget adopted by the Council before Nomination Day of the 2022 Municipal Election.

The restricted acts clause may be triggered depending on the outcome of two key dates in the upcoming Municipal Election. These key dates are Nomination and Final Voting Day. If it is apparent that the incoming Council will be comprised of less than three quarters (i.e., 75%) of its current membership, the Council is required to refrain from certain acts until its next term begins.”

The next Municipal Election is scheduled for October 24, 2022. As such, Council could be in a restricted acts situation during one or both of the following timeframes in 2022:

1. From Nomination Day through to the end of the current term of Council (August 19, 2022 – November 14, 2022); or,
2. From Final Voting Day in the 2022 Municipal Election through to the end of the current term of Council (October 24, 2022 – November 14, 2022).

As Municipality of West Elgin Council is comprised of five (5) members, the restricted acts clause would apply if fewer than four (4) incumbent Members of Council were to return for the 2022-2026 term. There are two scenarios in which Council would be subject to a restricted acts period in respect of the 2022 Municipal Election:

1. If two (2) or more incumbent members of Council decide not to run for re-election (restricted acts period: August 19, 2022 – November 14, 2022); or,
2. If fewer than four (4) incumbent members of Council are re-elected (restricted acts period: October 24, 2022 – November 14, 2022).

If neither of these situations occur, Council would not be subject to a restricted acts period in 2022.

Land Matters

Pursuant to Section 275(3)(c), a municipality can close a real estate transaction during the 'Lame Duck' period only if the Council passed a by-law approving the execution of the agreement of purchase and sale in advance of the 'Lame Duck' period.

Expenditures

A contract could be awarded by a 'Lame Duck' Council in excess of \$50,000 so long as the amount was included in the approved 2022 annual budget. However, the 'Lame Duck' Council would not be able to award a contract if the amount of the tender or bid exceeds the amount included in the budget.

Emergencies

Pursuant to Section 275(4)(4.1), there are no clauses within that Section that prevent a municipality from taking action in the event of an emergency within the municipality.

Delegation of Authority

Section 275(6) provides that the authority of a municipality can be delegated to a person or body prior to Nomination Day for the election of the new Council.

The eventual delegation of authority By-Law to be presented for Council's consideration is important to ensure the continuity of Municipal Services during a "Lame Duck" scenario. For the purpose of ensuring transparency and accountability with respect to this delegation of authority, the Chief Administrative Officer/Treasurer is required to report upon the utilization of delegated authority throughout this period at the conclusion of the "Lame Duck" period.

Financial Implications:

There are no financial implications.

Policies/Legislation:

Municipal Act, 2001
Municipal Elections Act, 1996