



REPORT

Council

Meeting Date: April 25, 2022

FROM: Clerk's Department

DATE: April 12, 2022

SUBJECT: Restricted Acts and Delegation of Authority Provision, By-law 2022-045, a by-law to amend By-law 2021-077, a by-law to delegate certain powers and duties under the Municipal Act.

LOCATION: Town-wide

WARD: Town-wide

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RECOMMENDATION:

1. That the report dated April 12, 2022 from the Clerk's department be received.
2. That By-law 2022-045, a by-law to amend By-law 2021-077, a By-law to delegate certain powers and duties under the *Municipal Act*, S.O. 2001 c.25, the *Planning Act*, R.S.O. 1990 c. P. 13, and other Acts, be passed.

KEY FACTS:

The following are key points for consideration with respect to this report:

- 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.
- Proposed amending By-law 2022-045, a by-law to delegate authority related to the Restricted Acts ('Lame Duck') provisions, intends to safeguard against potential gaps by temporarily delegating additional authority to the CAO beyond that previously delegated by Council.

BACKGROUND:

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) the period is from nomination day, as defined in the *Municipal Elections Act, 1996 (MEA)*, as amended, through to voting day (August 19, 2022 through to October 24, 2022); and
- (2) from voting day to the end of the current term of Council (October 24, 2022 through to November 14, 2022).

This legislative restriction in Section 275 of the *Municipal Act, 2001* is referred to as 'Restricted Acts' or more commonly referred to as the 'lame duck' provision. If, from nomination day to voting day or, from voting day to the end of the current term of Council, it can be determined with certainty that the new Council will include less than three-quarters of the outgoing Council 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.

COMMENT/OPTIONS:

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 provide the Corporation of the Town of Oakville with the ability to conduct certain business in the event that Council is restricted in authority pursuant to these provisions.

If the Restricted Acts provision is engaged, 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 municipality;
- 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) prohibits Council from appointing or removing an officer of the Municipality during the 'lame duck' period. While staff contemplated delegating this authority to the Chief Administrative Officer ("CAO") in case there is a need to appoint or remove an officer during such period, Section 23.3(1) of the *Municipal Act* restricts a municipality from delegating the power to appoint or remove from office an officer of the municipality whose appointment is required by the *Municipal Act* (Clerk and Treasurer).

In most instances, subsection 275(3)(b) is not a concern as the authority for the hiring or dismissal of any non-officer employee, other than Commissioners, of the Municipality has currently been delegated to the CAO. However, in the case of Commissioners and Fire Chief, the CAO's existing authority in that regard requires approval of Council. It is proposed therefore to delegate authority to the CAO during the 'lame duck' period to hire or dismiss a Commissioner or Fire Chief.

Subsections 275(3) (c) and (d) only apply if the disposition or expenditure exceeding \$50,000 was not included in the most recent budget adopted by Council prior to nomination day. There is, however, the possibility of a non-budgeted disposition or expenditure being required during a 'lame duck' period. It is proposed to delegate authority to the CAO during the 'lame duck' period to address such matters.

Subsection 275(4) states that clauses (3) (c) and (d), noted above, do not apply if the disposition or liability was included in the most recent budget adopted by the Council before nomination day in the election.

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

Appendix A, By-law 2022-045, a by-law to delegate authority related to the Restricted Acts ('Lame Duck') provisions and seeks to safeguard against potential gaps by temporarily delegating additional authority to the CAO beyond that already delegated by Council. These delegations of authority would only come into effect only if the Restricted Acts section should apply to Council.

Further, the CAO would be required to report to Council in the first quarter of 2023 regarding any exercise of this delegated authority.

CONSIDERATIONS:

(A) PUBLIC

The temporary delegations implemented through this report seeks to safeguard against potential gaps during the Restricted Acts periods during a municipal election year. Safeguarding in this respect is aims to promote effective service delivery and accountable, transparent governance.

(B) FINANCIAL

There is no financial impact at this time, however, efficiencies in decision making and service delivery through increased delegation should result in cost savings.

(C) IMPACT ON OTHER DEPARTMENTS & USERS

There is no direct impact on other departments at this time. CAO, Commissioners, and Directors of affected departments and other members of staff will be involved as required. The Legal department was consulted and assisted in the preparation of this report.

(D) CORPORATE STRATEGIC GOALS

This report addresses the corporate strategic goal(s) to:
Inspire public confidence through open, accountable and efficient delivery of government services.

(E) CLIMATE CHANGE/ACTION

This matter does not impact climate change.

APPENDICES:

Appendix A – By-law 2022-045, a by-law to delegate certain powers and duties under the *Municipal Act*, S.O. 2001 c.25, the *Planning Act*, R.S.O. 1990 c. P. 13, and other Acts.

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