



The Corporation of the Town of Tecumseh

Legislative & Clerk Services

To: Mayor and Members of Council

From: Laura Moy, Director Legislative Services & Clerk

Date to Council: March 8, 2022

Report Number: LCS-2022-09

Subject: Restricted Acts of Council after Nomination Day
Lame Duck Provisions

Recommendations

It is recommended:

That Report LCS-2022-09 regarding the restricted acts of Council after Nomination Day (Lame Duck Provisions), **be received**;

And that a by-law **be prepared** to delegate authority to the Chief Administrative Officer with respect to the actions set out in the Municipal Act, 2001 Section 275(3) during the period which Council may be restricted from certain acts, as set out in Section 275 of the Municipal Act, 2001.

Background

The *Municipal Act, 2001*, S.O. 2001 c.25 (Act), under Section 275 sets out the actions of Council, which can be restricted after nomination day and/or following voting day.

Specifically, the Act states in Section 275(1):

The council of a local municipality shall not take any action described in subsection (3) after the first day during the election for a new council on which it can be determined that one of the following applies to the new council that will take office following the election:

1. If the new council will have the same number of members as the outgoing council, the **new council will include less than three-quarters of the members of the outgoing council...**

The basis for determining the above is found in Section 275(2) which states:

- (2) If a determination under subsection (1) is made,
 - (a) after nomination day but before voting day, the determination shall be based on the nominations to the new council that have been certified and any acclamations made to the new council; or
 - (b) after voting day, the determination shall be based on the declaration of the results of the election including declarations of election by acclamation.

If there is a determination under subsection (2), the restricted acts of Council, under subsection (3) are:

- 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 had a value exceeding \$50,000 at the time of disposal*; and
- d) making any expenditures or incurring any other liability which exceeds \$50,000*.

* does not include items already approved in the annual budget.

Further, Section 275 does not prevent any person or body from exercising any authority of a municipality that has already been delegated to the person or body prior to nomination day. Additionally, nothing in this section of the Act prevents a municipality from taking any action in the event of an emergency.

Comments

Section 275 of the Act is commonly referred to as the “Lame Duck Provisions”.

Tecumseh Council will be subject to the restrictions set out in Section 275(3) of the Act only when it has become mathematically impossible for less than three-quarters (75%) of the members of the outgoing Council to be re-elected.

The Ministry of Municipal Affairs and Housing advises the lame duck provisions only apply when it is **absolutely certain** that less than 75% of the members of the outgoing Council will be returning as members of the incoming Council.

More specifically, these provisions apply to two different periods:

- After nomination day (August 19, 2022), but before voting day (October 24, 2022), less than 75% of the incumbent members of Council have been certified as candidates in the upcoming election and have not been acclaimed to office;

For Tecumseh, this would mean less than six (6) members of the existing Council are not running for the next term of Council or are not running for different offices, Lame Duck Council would apply.

or

- After voting day (October 24, 2022), less than 75% of the incumbent members of Council have been declared elected to the incoming Council, either through the declaration of the election results or through declarations of election by acclamation.

For Tecumseh, this would mean less than six (6) members of the existing Council would be returning to the next term of Council.

Councils are permitted to delegate authority of the duties listed in Section 275(3) to maintain operations during established Lame Duck Council periods. However, this delegation is required prior to the periods coming into effect. As there is the possibility that the Town is at risk for the Lame Duck Council classification, it is recommended that a delegation of authority be established so that it can be enacted, if required. Where no Lame Duck Council classification exists, accordingly, the by-law would have no effect.

Common practice is to provide the delegated authority to the Chief Administrative Officer to exercise the responsibilities listed in Section 275(3). Administration recommends the passing of a by-law to provide that delegated authority should an official Lame Duck Council be declared. Council is reminded that the Chief Administrative Officer already has delegated authority for the recruitment and dismissal of employees as well as for a variety of expenditures currently granted through the

Procurement By-law (in conjunction with the Director of Financial Services). These authorities remain in effect during this period.

In the event there becomes a need for the Chief Administrative Officer to exercise any of the authorities delegated to her under this section of the Municipal Act, an Administrative Report on the particular matter will be given to the current Council at their next following meeting.

A by-law will be prepared for adoption by Council to formally delegate the authorities as recommended, and requiring a report from Administration should these authorities be exercised, for Council's consideration at the March 22, 2022 meeting.

Consultations

People & Culture
Financial Services
Legislative Assembly of Ontario
Association of Municipalities of Ontario

Financial Implications

There are no financial implications.

Link to Strategic Priorities

Applicable	2019-22 Strategic Priorities
<input checked="" type="checkbox"/>	Make the Town of Tecumseh an even better place to live, work and invest through a shared vision for our residents and newcomers.
<input checked="" type="checkbox"/>	Ensure that Tecumseh’s current and future growth is built upon the principles of sustainability and strategic decision-making.
<input type="checkbox"/>	Integrate the principles of health and wellness into all of Tecumseh’s plans and priorities.
<input checked="" type="checkbox"/>	Steward the Town’s “continuous improvement” approach to municipal service delivery to residents and businesses.
<input type="checkbox"/>	Demonstrate the Town’s leadership role in the community by promoting good governance and community engagement, by bringing together organizations serving the Town and the region to pursue common goals.

Communications

Not applicable

Website

Social Media

News Release

Local Newspaper

This report has been reviewed by Senior Administration as indicated below and recommended for submission by the Chief Administrative Officer.

Prepared by:

Laura Moy, Dipl. M.M.
Director Legislative Services & Clerk

Recommended by:

Margaret Misek-Evans, MCIP, RPP
Chief Administrative Officer

Attachment Number	Attachment Name
None	None