

REPORT FROM THE DIRECTOR OF CLERKS AND PLANNING SERVICES

DESCRIPTION

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

RECOMMENDATION

That the report of the Director of Clerks and Planning Services regarding Restricted Acts (Lame Duck) Delegation of Authority Provisions be received;

And that the Clerk be directed to prepare the necessary by-law prior to Nomination Day (August 19, 2022), delegating authority to the Chief Administrative Officer from August 19, 2022 to November 20, 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 a value exceeding \$50,000 at the time of disposal;
- b) Be the authority to remove any statutory officer from/to employment with the City of Elliot Lake;

And that this by-law shall come into force only in the event when determined by the Municipal Clerk with certainty that less than 75% percent of the current members of Council will be returning to sit on the new Council after Nomination Day of the 2022 Municipal Elections

BACKGROUND

“Lame Duck” is a term that Council is referred to when it is determined that the new Council will have less than 75 percent of the membership of the former Council. The determination of whether a Municipal Council is in a restricted position pursuant to section 275 of the Municipal Act, 2001, also known as a 'Lame Duck' Council occurs twice during the Municipal Election process.

First Period

August 19, 2022 (Nomination Day) to October 24th, 2022 (Election Day). The determination shall be based on the 2022 Candidates election nominations that have been certified by the Municipal Clerk on August 22, 2022. If less than three-quarters of the existing Council Members are not running for Municipal Council, the restrictions set out in the Municipal Act, 2001, will apply; and

Second Period

October 24, 2022 (Election Day) to November 14, 2022 (last day of the current term of Council). The election results are declared by the Municipal Clerk shortly after the municipal election. If the elections result in less than 75% of the incumbent Council Members returning to Council, the restrictions set out in the Municipal Act, 2001, will apply.

ANALYSIS

The following is a brief summary of the provisions as provided pursuant to Section 275 of the Municipal Act, 2001, Restricted Acts Provision:

Restrictions

If a Council is in a 'lame duck' position, the Council shall not take on the following actions:

- a. The appointment or removal from office of any statutory 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 expenditures or incurring any other liability which exceeds \$50,000.

Clause 'B' does not apply as the authority for hiring or dismissal of any employee of the Municipality has been delegated to the Chief Administrative Officer. Clauses 'C' and 'D' above do not apply if the exceeding disposition or liability was included in the most recent budget adopted by the Council before Nomination Day of the 2022 Municipal Election.

The proposed by-law seeks to safeguard against potential gaps by temporarily delegating additional authority 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 for a sunset provision, rendering the by-law null and void upon the commencement of the inaugural meeting of the new Council, scheduled for November 21, 2022. Further, the Chief Administrative Officer would be required to report to Council in the first quarter of 2023 regarding any exercise of this delegated authority.

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) which states that nothing in this section 275 of a 'lame duck' Council under the restrictions, there is nothing that prevents a municipality from taking any 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.

Determination of Restricted Act of Council-Lame Duck Position:

In order to determine if Council is in a 'Lame Duck' position, the Municipal Clerk will follow Section 275 of the Municipal Act, 2001 and advise Municipal Council at the first meeting following August 22, 2022. (deadline for the Clerk to certify nominations) to determine if Council is now in a 'Lame Duck' position.

After Election Day, on October 24, 2022, if necessary, the Municipal Clerk will report on the City of Elliot Lake Election results to determine if Council is in a 'Lame Duck' position. If there is a 'Lame Duck Council' declared, pursuant to Section 6 of the MEA, the Term of Office may commence for the newly elected Council on November 15, 2022 and the New Council is deemed organized when a quorum of members have taken declaration of Office pursuant to section 232 of the Municipal Act, 2001. This will be done at the Inaugural Meeting of Council to take place on November 21, 2022.

At the Inaugural Meeting of Council, the By-law Delegating authority to the Chief Administrative Officer pursuant to Section 275 of the Municipal Act, 2001 in regards to Restricted Acts will expire and the newly elected Council will be sworn in for the City of Elliot Lake

FINANCIAL IMPACT

If the By-law is in effect, and the delegated authority is required to be used in the limited time period of applicability, there is the possibility for:

- any budget adjustments over \$50,000.00 are considered
- the delegation may result in the sale of real or personal property which has a value exceeding \$50,000 at the time of disposal.

Staff will endeavour to initiate as many capital projects as practical prior to the Nomination Day deadline.

LINKS TO STRATEGIC PLAN

N/A

SUMMARY

It is recommended that the Clerk be directed to prepare the necessary by-law prior to Nomination Day (August 19, 2022), delegating authority to the Chief Administrative Officer from August 19, 2022 to November 20, 2022.