

To:	Warden and Members of Grey County Council
Committee Date:	June 9, 2022
Subject / Report No:	CCR-CW-08-22
Title:	Restricted Acts (Lame Duck) After Nomination Day - Delegation of Authority
Prepared by:	Tara Warder
Reviewed by:	Kim Wingrove
Lower Tier(s) Affected:	
Status:	

Recommendation

1. That Report CCR-CW-08-22 regarding Restricted Acts After Nomination Day (Lame Duck) Delegation of Authority be received;
2. That a by-law be prepared to delegate authority to the CAO respecting the actions set out in Section 275 (3) of the Municipal Act, 2001 during the Restricted Act After Nomination Day period.

Executive Summary

Section 275 of the Municipal Act, 2001 as amended, outlines the actions a municipal council cannot take during the restricted acts after nomination day period if a new council will include less than 75% of the members of the outgoing council.

There are a small number of actions that council cannot take during this period if it can be determined with certainty that the incoming council will include less than 75% of outgoing council members. This section exists so that a council cannot take certain actions that it would not be held accountable for as it exits after an election.

This report provides information on what the restricted acts during these time periods are and seeks support to bring forward a by-law to delegate these items to the CAO to mitigate the impacts to operations if Grey County Council is in a lame duck position.

Background and Discussion

There are two possible timeframes where a municipal council can find itself in a lame duck position:

1. Nomination Day (August 19, 2022) and Voting Day (October 24, 2022); and
2. Voting Day (October 24, 2022) to the end of the term (November 14, 2022)

When the number of seats remains the same between an outgoing and an incoming council, if the new council will include less than 75% of the members of the outgoing council, the council is in a lame duck position. Determinations are made during each of those periods.

If a council is in a lame duck position, the Act outlines the ways in which a council is restricted in its actions. Council is unable to do the following:

- (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 a value exceeding \$50,000 at the time of disposal (does not apply if this was included in the most recent budget adopted by the council before nomination day)
- (d) making any expenditures or incurring any other liability which exceeds \$50,000 (does not apply if this was included in the most recent budget adopted by the council before nomination day)

Municipal Council is not restricted in any other ways, other than those listed above.

Despite these, nothing in Section 275 prevents a municipality from taking action in an emergency.

In order to mitigate the impacts of a council being in a lame duck position, a by-law can be enacted before nomination day which delegates these responsibilities to a person or body. The draft by-law proposes to delegate these matters to the CAO only if Grey County Council is in a lame duck position. The CAO will report on any exercise of this delegated authority within the first 6 months of the new Council term.

As a note, the CAO has existing delegated authority for matters related to hiring and dismissal of employees and authority to award certain purchasing items alongside the Director of Finance as outlined in the Delegation of Duties by-law 5093-20. These delegations are unaffected by the enactment of the proposed by-law. Further, the CAO also has the ability to delegate the CAO's authority to an Acting CAO. This gives the Acting CAO ability to act during a CAO absence as per Section 1.2 of the Delegation of duties by-law. The proposed delegation to the CAO during the restricted acts period would extend to an Acting CAO if the authority of the CAO were subsequently delegated.

Legal and Legislated Requirements

Restricted Acts After Nomination Day are found in Section 275 of the Municipal Act. Grey County Council would be in a restricted acts position if it can be determined with certainty that at least 4 current members will not be returning after the election.

Section 275 (6) provides the ability to pass a by-law prior to nomination day, delegating the approval of these restricted items to a person or body.

Financial and Resource Implications

There are no financial implications related to this report.

Relevant Consultation

- Internal
- External

Appendices and Attachments

Draft By-law

Corporation of the County of Grey

By-Law _____-22

A By-law to Authorize the Chief Administrative Officer of the Corporation of the County of Grey to take action, where necessary, on certain acts during the Restricted Acts After Nomination Day “Lame Duck” Period

WHEREAS Section 275 of the *Municipal Act*, 2001, c. 25 as amended, (the “Act”) restricts acts that a Council can take after Nomination Day (August 19, 2022) and after Voting Day (October 24, 2022) if the Council is in a lame duck position;

AND WHEREAS Section 275 (3) of the Act restricts Council from taking action on the following:

- The appointment or removal from office of any officer of the municipality;
- The hiring or dismissal of any employee of the municipality;
- The disposition of any real or personal property of the municipality which has a value exceeding \$50,000 at the time of disposal; and
- Making any expenditure or incurring any other liability which exceeds \$50,000.

AND WHEREAS Section 275 (6) of the Act states that nothing in this section prevents any person or body exercising authority of a municipality that is delegated to the person or body prior to nomination day for the election of the new council;

AND WHEREAS Section 23.1 of the Act authorizes a municipality to delegate powers to a person or body;

AND WHEREAS Council deems it expedient to delegate authority to the Chief Administrative Officer of the Corporation to take action, where necessary, on certain acts during the “Lame Duck” period

NOW THEREFORE BE IT RESOLVED THAT THE COUNCIL OF
THE CORPORATION OF THE COUNTY OF GREY HEREBY ENACTS AS FOLLOWS:

1. THAT Council delegates authority to the Chief Administrative Officer of the Corporation of the County of Grey to take action, where necessary, on matters listed in Section 275 (3) of the *Municipal Act*, 2001 between Nomination Day and the commencement of the Council Term when Section 275 (1) applies.
2. The delegations in this bylaw are subject to the powers that cannot be delegated set out in Section 23.3 (1) under the *Municipal Act*, 2001.
3. THAT the Chief Administrative Officer will report to Council on any actions taken under the restrictions listed in Section 275 (3) of the *Municipal Act*, 2001 between Nomination Day and the commencement of the Council Term within the first six months of the 2022 Council term.
4. This By-law shall come into force and effect upon the final passing thereof and shall expire on November 14, 2022.

5. This By-law may be cited as the “Lame Duck Delegation of Powers By-law”.

ENACTED AND PASSED this rd day of June, 2022.

WARDEN:

CLERK: