



THE CORPORATION OF THE TOWN OF AMHERSTBURG

OFFICE OF THE CAO

MISSION STATEMENT: Committed to delivering cost-effective and efficient services for the residents of the Town of Amherstburg with a view to improve and enhance their quality of life.

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To: Mayor and Members of Town Council

Subject: Delegated Authority During Lame Duck Period

1. RECOMMENDATION:

It is recommended that:

1. Authority **BE DELEGATED** to the Chief Administrative Officer or delegate for the 2022 period during which a "lame duck" Council is in effect, pursuant to section 275 of the Municipal Act, 2001, S.O. 2001, c.25, to address matters as follows:
 - a. The disposition of any real or personal property of the municipality which has a value exceeding \$50,000 at the time of disposal; and,
 - b. Making any unbudgeted expenditures or incurring any other liability which exceeds \$50,000.
2. The Chief Administrative Officer or delegate **CONSULT** with legal counsel and the Treasurer, where appropriate, prior to exercising that delegated authority;
3. The Chief Administrative Officer or delegate **BE DIRECTED TO ADVISE** Council in writing prior to exercising the delegated authority; and,
4. **By-law 2022-081** being a by-law to authorize the delegated authority for restricted acts during the "lame duck" period be taken as having been read three times and finally passed and the Mayor and Clerk **BE AUTHORIZED** to sign same.

2. BACKGROUND:

In order to ensure municipalities are able to operate efficiently and in a timely manner during the period of restricted acts (colloquially known as the 'lame duck' period), the Municipal Act, 2001 (the "Act") gives Council a remedy in the form of delegated authority from Nomination Day up to the time when the Council-Elect takes office.

If it can be determined with certainty, following Nomination Day, that less than 75% of the current Members of Council will return to sit on the new Council, or, following the election, that the Council-Elect will be comprised of current Council Members, then 'lame duck' provisions apply and Council will be restricted in its decision-making abilities in four (4) areas:

- (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; and,
- (d) Making any unbudgeted expenditures or incurring any other liability which exceeds \$50,000.

These four (4) restrictions are the only ones noted in the Act. Clause 275(3)(a) cannot be delegated pursuant to subsection 23.3(1) of the Act, and clause 275(3)(b) authority has already been delegated to appropriate management personnel. Clauses 275(3)(c) and (d) require the delegation of authority in order to ensure business continuity and efficiency during a 'lame duck' period. Delegated authority would cease on when the Council-Elect takes office.

3. DISCUSSION:

The 'lame duck' provision is calculated on 2 dates: Nomination Day (August 19), and Election Day (October 24). If, on either of those dates, it can be determined that the new Council will include less than 75% of the outgoing Council Members, 'lame duck' applies and Council is restricted from taking certain actions until the inaugural meeting of the new Council on December 5, 2022.

Amherstburg has a seven (7) member council. The 'lame duck' provision applies as soon as it can be determined with certainty that less than 75% of the current members (5.25) may be returning, which, in the Town's situation, would be fewer than six (6) existing Members of Council.

Therefore six (6) current Members of Council are required to be certified and elected in order to avoid triggering the 'lame duck' provisions.

4. RISK ANALYSIS:

In considering clause 275(3)(a), it is important to remember that paragraph 2 of subsection 23.3(1) of the Act, confirms that, "... *the power to appoint or remove from office an officer of the municipality whose appointment is required by this Act...*" cannot be delegated.

In considering the impact of the restrictions under clause 275(3)(b), Council has already delegated various human resources decisions, including hiring and dismissal of employees, so there is little risk involved in that aspect of those restrictions. With regards to clauses 275(3)(c) and (d), subsection 275(4) of the Act provides that restrictions in those two (2) clauses do not apply if the disposition or liability was included in the most recent budget adopted by Council before Nomination Day in the election year, and Council could make those decisions. However, a 'lame duck' Council would not be able to award a contract if the amount of tenders exceeded the amount included in the budget. Accordingly, it would be prudent of Council to delegate authority to the CAO with respect to clauses 275(3)(c) and (d) so as to ensure there is an ability to address issues as they may arise which otherwise would have to wait for a decision.

It is important to note that pursuant to subsection 275(4.1) of the Act, Council is not restricted with respect to those actions set out in subsection 275(3) in the event of an emergency. Under section 1 of the Emergency Management and Civil Protection Act, an "emergency" is defined as "a situation or an impending situation that constitutes a danger to property and that is caused by the forces of nature, a disease or other health risk, an accident or an act whether intentional or otherwise."

5. FINANCIAL MATTERS:

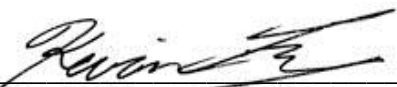
The delegation of authority to the CAO during the 'lame duck' period for section 275(3)(c) and (d) would provide the CAO with the authority to dispose of any real or personal property of the municipality which has a value exceeding \$50,000 at the time of disposal and to make any unbudgeted expenditures or incur any other liability which exceeds \$50,000. As per By-law 2022-081, section 2, the CAO will provide a report to Council on any actions taken under the delegated authority to address these restricted acts.

6. CONSULTATIONS:

In preparation of this report numerous other municipalities within southern Ontario were consulted and adopted similar provisions.

7. CONCLUSION:

Delegation of authority to the Chief Administrative Officer (CAO) to take action, where necessary, on certain acts during the 'lame duck' period will ensure the municipality is able to operate efficiently and in a timely manner. The Act gives Council a remedy to address the restricted period ('lame duck') in the form of the delegation of authority from Nomination Day up to the time when Council-Elect takes office.



Kevin Fox

Deputy Clerk/Policy and Committee Coordinator

Report Approval Details

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This report and all of its attachments were approved and signed as outlined below:

A handwritten signature in purple ink, appearing to read "Tracy Prince".

Tracy Prince

A handwritten signature in black ink, appearing to read "Valerie Critchley".

Valerie Critchley – CAO/Clerk