



SUBJECT: Restricted acts (lame duck) delegation of authority provisions

TO: Corporate Services, Strategy, Risk & Accountability Cttee.

FROM: Office of the City Clerk

Report Number: CL-27-22

Wards Affected: Not applicable

File Numbers: 130-02

Date to Committee: July 4, 2022

Date to Council: July 12, 2022

Recommendation:

Enact a by-law to provide temporary delegated authority to the City Manager, in the event of a restricted acts provision, as attached in Appendix A to office of the city clerk report CL-27-22.

PURPOSE:

To provide information regarding the restricted acts provisions contained in the Municipal Act 2001 S.O. 2001, c. 25, (the Act), and introduce a proposed by-law to temporarily provide the Corporation of the City of Burlington with the ability to conduct certain business in the event of the Council being restricted in authority pursuant to these provisions.

Vision to Focus Alignment:

- Deliver customer centric services with a focus on efficiency and technology transformation

Background and Discussion:

Section 275 of the Act prevents municipal Councils from undertaking certain acts after Nomination Day in a municipal election year (August 19, 2022 for the 2022 municipal election) and prior to a new Council taking office under specific conditions.

This legislative restriction is referred to as 'restricted acts' or more commonly referred to as the 'lame duck' provision. Council is restricted from taking certain actions during a restricted acts provision until the new term of Council begins on November 15, 2022, if it can be determined with certainty that the new Council will include less than three-quarters of the outgoing Council Members (i.e. less than six (6) or 75% of City of Burlington Council members).

There are two periods in which lame duck may come into play, Burlington City Council can attain this certainty either beginning after Nomination Day (August 19, 2022) if less than six (6) current members are eligible to be re-elected, or after Voting Day (October 24, 2022) if less than 6 incumbents are re-elected to the next term of Council. Should either scenario occur, Council would be subject to restricted acts, and limited authorities to limited authorities if the restricted acts provision applies after either of these dates, including:

- a) appointing or removing from office of any officer of the City;
- b) the hiring or dismissal of any employee;
- 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.

Clauses c) and d) do not apply if the exceeding disposition or liability was included in the most recent budget adopted by Council prior to Nomination Day. Section 275(6) provides that nothing within this section prevents exercising an authority of a municipality that is delegated to the person or body prior to nomination day for the election of the new council.

Strategy/process

Should Council approve the draft by-law, it may protect against potential gaps during lame duck by temporarily delegating additional authority to the City Manager beyond what is already delegated by Council. This delegation would come into effect only if the Restricted Acts should apply to this Council.

Current Delegations to Staff

A review was completed to determine the current delegated authorities provided to staff established through existing by-laws. Council's existing delegations under the City Manager's By-law 132-1991 and the actions authorized by the Delegated Authority By-law 07-2022 are not impacted by these restrictions.

In particular, Schedule F, subsection 13 of the Delegated Authority By-law 07-2022 authorizes the City Manager to approve transactions and execute agreements, offers

and other documents in connection to disposition of land or any interest in land (except for a leasehold interest) for up to \$500,000.

Additionally, Schedule D of the Delegated Authority By-law 07-2022 authorizes the Chief Financial Officer to approve out of budget expenditures such as payments from contingency reserves and capital variances post tender approval for up to \$100,000.

Practical Application of the By-law

The City Manager would only exercise this temporary delegated authority when it is in the best interests of the City of Burlington and would be required to report to Council in the first quarter of 2023 regarding the use of this delegated authority.

The proposed temporary delegated authority gives the City Manager authority to when determined necessary for the best interests of the City:

- c) make an expenditure or incur any liability of any value, and
- d) dispose of any real or personal property of the City of any value.

It is understood before using the delegated powers, the City Manager will consult with either the Chief Financial Officer for expenditures over preexisting delegated amounts, or with the Executive Director of Legal Services and Corporation Counsel should a reality or property delegation be sought. The temporary by-law has a provision to render the by-law null and void upon the commencement of the inaugural meeting of the new Council.

Options Considered

A temporary by-law providing delegated additional authority to the City Manager is the recommended option. This approach ensures business continuity should Restricted Acts measures are in effect, without permanently changing delegated authority levels.

However, Council may consider implementing one of the following options:

- Provide no additional delegated authority to staff during when Restricted Acts apply. This will mean that decisions may be deferred until the new Council is in place. It may also mean that time sensitive decisions may be delayed.
 - Amend the Delegated Authority By-law 07-2022 to add a schedule for when Restricted Acts apply to Council that provides staff to have a desirable level of authority during all restricted acts or lame duck periods affecting the current and future terms of Council. Should the temporary delegation by-law be successful, then permanently changing the delegated authority by-law could be an option.
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Financial Matters:

Total Financial Impact

Approving a delegated authority by-law during the restricted period timeframe will ensure business continuity. Financial impact for this temporary delegated authority is limited to expenditures that are not pre-budgeted. For example, with a by-law in effect, there is the possibility for a tendered project to be approved more than the originally approved amount budgeted, delegated authority would be enacted.

Source of Funding

Reserve funds associated with any unbudgeted expenditure would be used for any expenditures made under restricted acts delegated authority.

Other Resource Impacts

Not applicable

Climate Implications

Not applicable

Engagement Matters:

A review of Ontario municipalities who implemented similar restricted acts delegation of authority provisions was completed in the development of the proposed by-law and has inform the report recommendation.

Conclusion:

It is recommended to approve the presented draft by-law to provide temporary delegated authority with embedded accountability mechanisms if exercised to the City Manager as a safeguard for efficient service, and business continuity for the City.

Respectfully submitted,

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City Clerk

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Appendices:

- A. Draft By-Law - Being a by-law to temporarily provide the Corporation of the City of Burlington with the ability to conduct certain business in the event of the Council being restricted in its authority pursuant to Section 275 of the Municipal Act, 2001 S.O. 2001, c. 25, as amended.

Report Approval:

All reports are reviewed and/or approved by Department Director, the Chief Financial Officer, and the Executive Director of Legal Services & Corporation Counsel.