



Meeting Date: August 15, 2018

Submitted by: Ann Wright, Clerk

Report No: C-03-18

Subject: "Lame Duck" Council Restrictions Update

Recommendation:

That the Council for the municipality of Middlesex Centre receives Report C-03-18 entitled "Lame Duck" as information.

Purpose:

To provide an update on the "Lame Duck" status of Council.

Background:

On April 4, 2016, the Ontario Minister of Municipal Affairs and Housing introduced Bill 181, the Municipal Elections Modernization Act, 2016 (MEMA). The MEMA received Royal Assent on June 9, 2016. Bill 181 and the changes the MEMA contains the most significant updates to the Municipal Elections Act, 1996 and the conduct of Municipal Elections in Ontario within the last 20 years.

A specific change to the Municipal Elections Act through Bill 181 altered the Nomination Period for candidates for the 2018 Municipal Election. Nomination Day was in July as opposed to being in September making the time period between nomination day and Election Day longer. This amendment meant that Council could be in a "Lame Duck" position longer than in previous elections.

Another amending piece of provincial legislation, being Bill 68 (Modernizing Ontario Municipal Legislation Act), implements a change to Council's term of office. This amendment sets November 15 as the start date for a new term of Council. This amendment was implemented to shorten the potential "Lame Duck" period between when the existing Council is still sitting and the new Council takes Office.

For the 2018 Municipal Election, the amendment includes a transitional rule under Section 1.1 of the Act, which keeps the start date for the 2018 Council term as December 1, 2018. The next Municipal in 2022 will see the new Council term commence on November 15, thus shortening the Lame Duck period for the next Municipal Election.

The 2018 Municipal Election will have a longer “Lame Duck” period than in the past, which is why staff brought forward a by-law for Council’s consideration delegating certain powers to Municipal Officials pursuant to Section 275 of the Municipal Act, 2001.

On April 11, 2018 report C-01-18 was brought forward to Council. In that report the following information was provided:

Restricted Acts After Nomination Day

Section 275 of the *Municipal Act, 2001* restricts certain actions either after nomination day or after Election Day, when it can be determined that the new council will include less than $\frac{3}{4}$ of the current members (less than 6 members). These restrictions continue until the date the new council takes office. This period is generally referred to as the ‘lame duck’ period.

The restrictions are as follows:

- 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 expenditures or incurring any other liability which exceeds \$50,000.

The restrictions regarding disposition of property, expenditures or incurring other liability do not apply if the disposition or liability was included in the most recent budget. Additionally, nothing in the section prevents the municipality from taking action in the event of an emergency.

Subsection 275 (6) of the *Municipal Act, 2001* provides that nothing in this section prevents any person or body exercising any authority of the municipality that is delegated to the person or body prior to nomination day for the election of a new council.

Such delegated authority is provided to ensure the efficient management of the municipal election during the election period. A draft by-law has been prepared for council’s consideration to allow for some delegation if a lame duck period materializes during the election.

On April 11, 2018 at their regular meeting of Council, Council passed By-Law 2018-032 to delegate authority to Municipal Officials to act in the event that the Council’s actions become restricted under Section 275 of the Municipal Act, 2001 (Restricted Acts after Nomination Day)

Analysis:

Pursuant to the Municipal Act, the Council for the Municipality of Middlesex Centre fell under section 275(1), Restricted Acts, on July 30, 2018 upon the certification of the nominations of the candidates for the 2018 Municipal Election and will remain as such until the new term of Council begins on December 1, 2018.

As per by-law 2018-032 the authority of Council to act is delegated as follows:

- a. to the Mayor, as Chief Executive Officer of the Municipality, to be the authority to appoint an Acting Chief Administrative Officer in the event of a vacancy in such position;
- b. to the Chief Administrative Officer to be the authority to employ, suspend, or dismiss any employee of the Municipality, including but not limited to, the Directors, the Fire Chief, and the non-union and unionized employees; and
- c. to the Chief Administrative Officer or Treasurer to be the financial signing authority as follows:
 - i. expenditures exceeding \$50,000, that had been previously approved by Council; or that was contained in the current budget;
 - ii. in case of a declared emergency;
 - iii. for the disposition of any real or personal property of the Municipality which has a value exceeding \$50,000 at the time of disposal.

Financial Implications:

None

Attachment:

By-Law 2018-032

**Municipality of Middlesex Centre
By-Law 2018-032**

Being a by-law to delegate authority to Municipal Officials to act in the event that the Council's actions become restricted under Section 275 of the Municipal Act, 2001 (Restricted Acts after Nomination Day)

WHEREAS Section 23.1 of the Municipal Act, 2001, Chapter 25, as amended, authorizes council to delegate certain powers and duties;

AND WHEREAS Sections 224(d) and 224(e) of the Municipal Act, 2001, Chapter 25, as amended, provides that it is the role of council to ensure that administrative policies, practices and procedures and controllership policies are in place to implement the decisions of council; to ensure the accountability and transparency of the operations of the Municipality; and to maintain the financial integrity of the municipality;

AND WHEREAS Section 225(a) of the Municipal Act, 2001, Chapter 25, as amended, provides that it is the role of the head of council to act as chief executive officer of the municipality;

AND WHEREAS Section 227(c) of the Municipal Act, 2001, Chapter 25, as amended, provides that it is the role of the officers and employees of the municipality to carry out other duties required under this or any Act and other duties assigned by the municipality;

AND WHEREAS Section 229 of the Municipal Act, 2001, Chapter 25, as amended, provides that a municipality may appoint a chief administrative officer who shall be responsible for exercising general control and management of the affairs of the municipality for the purpose of ensuring the efficient and effective operation of the municipality and performing such other duties as are assigned by the municipality;

AND WHEREAS Section 275 of the Municipal Act, 2001, c. 25, as amended, provides that the actions of a council of a local municipality shall be restricted after the first day during the election period that the new council will include less than three-quarters of the members of the outgoing council;

AND WHEREAS subsection 275(3) of the Municipal Act, 2001, c. 25, as amended, restricts Council from taking action on 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; and
- d. making any expenditures or incurring any other liability which exceeds \$50,000.

AND WHEREAS subsection 275(4) of the Municipal Act, 2001, c. 25, as amended, provides that c and d above do not apply if the disposition or liability was included in the most recent budget adopted by the council before nomination day in the election;

AND WHEREAS subsections 275(4.1) and (6) of the Municipal Act, 2001, c. 25, as amended, provides that nothing in this section:

- i. prevents a municipality taking any action in the event of an emergency;
- ii. prevents any person or body exercising any authority of a municipality that is

delegated to the person or body prior to nomination day for the election of the new council.

NOW THEREFORE the Council of The Corporation of the Municipality Middlesex Centre hereby enacts as follows:

1. **THAT**, in the event that the Council's actions become restricted under Section 275 of the Municipal Act, 2001, c. 25, as amended, the authority of the Council to act shall be and the same is hereby delegated as follows:
 - a. to the Mayor, as Chief Executive Officer of the Municipality, to be the authority to appoint an Acting Chief Administrative Officer in the event of a vacancy in such position;
 - b. to the Chief Administrative Officer to be the authority to employ, suspend, or dismiss any employee of the Municipality, including but not limited to, the Directors, the Fire Chief, and the non-union and unionized employees; and
 - c. to the Chief Administrative Officer or Treasurer to be the financial signing authority as follows:
 - i. expenditures exceeding \$50,000, that had been previously approved by Council; or that was contained in the current budget;
 - ii. in case of a declared emergency;
 - iii. for the disposition of any real or personal property of the Municipality which has a value exceeding \$50,000 at the time of disposal.
2. **THAT** this By-law shall come into force and take effect on the final passing thereof.

READ a first and second time in Open Council this 11th day of April, 2018.

READ a third time in Open Council and finally passed this 11th day of April, 2018.


Al Edmondson, Mayor


Ann Wright, Clerk