



FORMAL REPORT

To: Mayor Strathdee and Members of Council

Prepared by: Brent Kittmer, CAO/Clerk

Date of Meeting: 13 March 2018

Subject: **CAO 10-2018 Lame Duck Council Delegation By-Law**

PURPOSE

The purpose of the report is to allow Council to consider a delegation of authority by-law in the event Council will be in a “lame duck” position and restricted acts after Nomination Day. A delegation by-law must be passed prior to Nomination Day for it to be in force.

RECOMMENDATION

THAT CAO 10-2018 Lame Duck Council report be received; and

THAT By-Law 25-2018, being a by-law to delegation authority to staff in the event of a lame duck council following Nomination Day be approved.

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 that the MEMA contains, represent the most significant updates to the *Municipal Election 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 impacts the change in the Nomination Period; nomination period has been moved from January to May 1, 2018. Nomination Day (deadline to submit candidacy) is now July 27, 2018 rather than the former September deadline time period. This amendment means that Council could be in a ‘Lame Duck’ position longer than in the past.

Another amending piece of provincial legislation being Bill 68 Modernizing Ontario’s Municipal Legislation Act implements a change to the term of office of Council. This amendment provides a new start date for a new term of Council from December 1 following the regular election, to a new date of November 15. 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. However, 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 to begin on December 1, 2018.

REPORT

The determination of whether a Municipal Council is in a restricted position occurs at two points in time. A lame duck Council occurs when it can be determined that the new Council will have less than 75% of the members of the outgoing Council as per Section 275(1) of The Municipal Act, 2001. For St. Marys, the 75% threshold is met when less than 6 members of Council are determined not to be returning.

- a) **Between July 27th, 2018 to October 22, 2018** - The determination shall be based on the candidates that have been certified by the Municipal Clerk. If fewer than 6 of the incumbent

members choose to run for Council, the restrictions set out in the *Municipal Act*, 2001, will apply; and

- b) **Between October 22nd 2018 to November 30th, 2018** - The election results are declared by the Municipal Clerk shortly after the municipal election. If the election results in fewer than 6 of the incumbent Council Members returning to Council, the restrictions set out in the *Municipal Act*, 2001, will apply.

Determination of Restricted Act of Council - Lame Duck Position:

- If 6 or more of the incumbent Councillors were acclaimed after July 27, 2018, then there would NOT be a “lame duck” period at all.
- If 2 or more of council decide not to run again, then there WOULD be a “lame duck” period July 27 to Nov. 30.
- If at least 6 of councillors put their names forward as candidates, then there would NOT be a “lame duck” period from July 27 through to Oct. 22 (Election Day), because it would not be certain that 3/4 of council would NOT be returning. After Oct. 22, it would depend on the number of councillors re-elected to determine if the “lame duck” period would start Oct. 22 and run to the Nov. 30 swearing in.
- If 6 or more of the incumbents were re-elected, then the “lame duck” period would NOT commence on Oct. 22.
- If 2 or more of the incumbents were NOT re-elected, the “lame duck” period would commence Oct. 22.

Restrictions

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

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 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.

There are, however, provisions in the *Municipal Act*, 2001 that could reduce the impact of a lame duck situation. Subsection 275(4) provides that restrictions in clauses (c) and (d) to not apply if the disposition or liability was approved by Council in the annual budget provided the budget is adopted before Nomination Day. In addition, Section 375(6) provides that nothing prevents a person or body from exercising authority delegated by Council. Delegation of powers must be done prior to the start of the lame duck period.

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 2018 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. A By-law Delegating authority to staff pursuant to Section 275 of the *Municipal Act*, 2001 in regards to Restricted Acts would expire when the new Council is sworn in.

SUMMARY

In the 2018 Municipal Election there is the potential for a longer 'Lame Duck Period' than in the past. The importance of preparing a by-law delegating certain powers to staff pursuant to Section 275 of the Municipal Act, 2001 is increased. A draft by-law is included in the March 13, 2018 Council agenda for consideration . The by-law delegates certain authorities to the CAO/Clerk to ensure that the business of the Town can continue in the event that there is a Lame Duck Council. The by-law includes a provision for the CAO/Clerk to report back to Council if any of the delegated authority is acted upon.

FINANCIAL IMPLICATIONS

None.

STRATEGIC PLAN

Not applicable to this report.

OTHERS CONSULTED

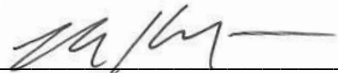
None.

ATTACHMENTS

None.

REVIEWED BY

Recommended by the CAO



Brent Kittmer
CAO / Clerk