

Subject: Restricted Acts Provision of the *Municipal Act, 2001*

Recommendation:

BE IT RESOLVED THAT Council receive Report 2022-0055 Clerks – Restricted Acts Provision pursuant to Section 275 the *Municipal Act, 2001*, for information;

AND THAT Council direct the Town Clerk to prepare and present a Delegation of Authority By-Law for certain acts during a “lame duck” period for Council’s consideration at the next regular meeting of Council.

Background:

Council is elected for a four-year term. Within the fourth year of the cycle, during the election period, Council is subject to Section 275 of the *Municipal Act, 2001* (the “Act”).

Section 275(2) of the Act states there are two potential periods in which a Council for a municipality may be restricted in its authority to take certain actions. The restrictions are further referenced in Section 275(3) of the Act, and are commonly referred to as “lame duck provisions”.

All municipal councils within Ontario have the potential to become lame duck following Nomination Day (August 19, 2022) or following Election Day (October 24, 2022).

It is critical to prepare for the possibility that the Town of Pelham Council may be a lame duck Council and restricted from taking certain actions. It is best practice for a Council to pass a delegation of authority by-law delegating authority to staff during a lame duck period.

Analysis:

Determining Lame Duck Status

It is the responsibility of the Clerk to determine if a Council is deemed to be lame duck. This determination is based upon the rules stipulated within Section 275 of the Act.

As there are no changes to the size or composition of the Town of Pelham Council for 2022, the Town is subject to Section 275 (1)1. of the Act, which states Council would be considered lame duck:

1. If the new council will have the same number of members as the outgoing council, the new council **will** include less than three-quarters of the members of the outgoing council. [emphasis added]

This means, if following Nomination Day, it is determined 75% (three-quarters) of the current Council **will not** be returning, the restricted acts will be imposed in accordance with the Act.

It is important to note, it is only when it becomes mathematically impossible for 75% (three-quarters) of the members of the outgoing Council to be re-elected that the Council will be subjected to the restrictions set out within the Act.

Restrictions

If a municipal Council becomes lame duck, the restrictions which apply are as follows:

- (3) The actions referred to in subsection (1) are,
 - 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.

Exception

(4) Clauses (3) (c) and (d) 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.

Emergencies

(4.1) Nothing in this section prevents a municipality taking any action in the event of an emergency.

Following Nomination Day

The Town of Pelham's Council is comprised of seven (7) members. 75% (three-quarters) of 7 is 5.25; therefore, the Town of Pelham must have a potential of six (6) members returning to the new Council to **not** be considered lame duck.

For example:

- If six (6) members of the current Council run for their existing seats, the Council **will not** be considered lame duck as there is a possibility that 75% of the outgoing Council will return; or
- If four (4) members of the current Council run for the office of Mayor (head of Council) and two (2) members run for their existing seats, the Council **will be** considered lame duck as there is certainty that 75% of the outgoing Council will not return.

Following Election Day

Following Election Day once the election results are known, based on the same question as to whether the new Council will be composed of 75% (three-quarters) or more members of the outgoing Council, the Clerk will determine if the Council is considered lame duck.

For example:

- If six (6) members of the current Council run for their existing seats and win, the Council **will not** be considered lame duck as there is a certainty that 75% of the outgoing Council will return; or
- If six (6) members of the current Council run for their existing seats and only five (5) win, the Council **will be** considered lame duck as there is certainty that 75% of the outgoing Council will not return.

Conclusion

To protect the Municipal Corporation from being unable to conduct normal business and to ensure all needs are met, staff recommend Council pass a delegation of authority by-law to delegate powers to staff during a lame duck period. It is important to note, this by-law would only be effective during a lame duck period.

Should Council for the Town of Pelham not be deemed lame duck, the by-law will not be implemented. Passing such a by-law is considered best practice.

As an accountability measure, the Chief Administrative Officer and / or the Town Clerk will write a report to the new Council in late 2022 indicating each use of the delegated authority by senior staff during the lame duck period.

Financial Considerations:

There are no financial considerations.

Alternatives Reviewed:

None. It is important to the Municipal Corporation and business continuity that Council implement a delegation of authority by-law during the potential 'lame duck' period.

Strategic Plan Relationship: Strong Organization

A delegation of authority by-law for certain acts during a 'lame duck' period ensures the municipality can function fully should the Town of Pelham Council be deemed lame duck.

Consultation:

None.

Other Pertinent Reports/Attachments:

Draft Delegation of Authority By-Law for Certain Acts during a "Lame Duck" Period.

Prepared and Recommended by:

Holly Willford, B.A.
Town Clerk

Prepared and Submitted by:

David Cribbs, BA, MA, JD, MPA
Chief Administrative Officer

The Corporation of the Town of Pelham

By-law No. XXXX(2022)

Being a by-law to Delegate Authority to the Chief Administrative Officer for Certain Acts During a "Lame Duck" Period

WHEREAS Section 275 of the *Municipal Act, S.O. 2001, c. 25*, as amended, 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 as defined in Section 275(1) and 275(2);

AND WHEREAS Section 273(3) of the *Municipal Act, S.O. 2001, c. 25* 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 in order to be prepared should Council authority cease (Lame Duck) between Nomination Day (August 19, 2022) and commencement of the Council Term, Pelham Council deems it necessary to enact a Delegation By-law;

AND WHEREAS Council deems it expedient to delegate authority to the Chief Administrative Officer and Officers of the Corporation of the Town of Pelham to take action, where necessary, on certain acts during the "Lame Duck" period;

NOW THEREFORE the Council of the Corporation of the Town of Pelham enacts as follows:

1. THAT where specified joint delegation of authority is to be exercised, in the absence of consensus, the delegation of authority rests with the Chief Administrative Officer (CAO);
2. THAT the CAO be delegated the authority to hire or remove any employee of the municipality with the exception of statutory officers of the municipality;
3. THAT the CAO be delegated the authority to appoint any Acting statutory officer of the municipality in the event of a departure or vacancy of such an officer's position;
4. THAT the CAO and the Treasurer are jointly delegated as the financial signing authority for expenditures outside the current budget, exceeding \$50,000;

5. THAT the CAO and Clerk are jointly delegated the authority to execute any Agreement of Purchase and Sale pertaining to the disposition of any real or personal property of the municipality which has a value exceeding \$50,000 at the time of disposal;
6. THAT the CAO and the Clerk are jointly appointed signing authority for all agreements pursuant to Article 5;
7. THAT the CAO shall report to Council on any actions taken under the restrictions listed in Section 275(3) of the *Municipal Act, S.O. 2001* between Nomination Day and the commencement of the Council Term;
8. THAT this By-law shall take effect only in the event that Council Authority ceases under Section 275 of the Municipal Act, being the Lamé Duck provisions, and shall cease upon the Swearing In of the 2022-2026 Municipal Council for the Town of Pelham.

Read, Enacted, Signed and Sealed this

XXst Day of XXXX, 2022.

Marvin Junkin, Mayor

Holly Willford, Town Clerk