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Town of Aurora

## General Committee Report

No. CS22-038

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**Subject:** Restricted Acts (Lame Duck)

**Prepared by:** Michael de Rond, Town Clerk

**Department:** Corporate Services

**Date:** June 21, 2022

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### Recommendation

1. That Report No. CS22-038 be received; and
2. That a by-law delegating authority to the CAO be brought forward to the July 12, 2022 Council meeting

### Executive Summary

This report provides information to Council regarding acts that are restricted leading up to and following the Municipal election, and more specifically;

- The Municipal Act may restrict what a Municipal Council can do leading up to the election and for a brief period after the election.
- Staff recommend that Council enacts a temporary delegation of authority to the CAO by-law to safeguard against potential gaps

### Background

This report is to provide Council with information regarding the “Restricted Acts” provisions contained in Section 275 of the Municipal Act, 2001, S.O. 2001, c. 25 (“Municipal Act, 2001”) and to pass a by-law to temporarily provide the Town of Aurora with the ability to conduct certain business in the event that Council is restricted in authority pursuant to these provisions for the 2022 Municipal Election. Attachment 1 is the proposed By-law to delegate authority related to the Restricted Acts (Lame Duck) provisions.

## Analysis

**The Municipal Act may restrict what a Municipal Council can do leading up to the election and for a brief period after the election.**

Section 275 of the Municipal Act, 2001 prohibits municipal Councils from undertaking certain acts after Nomination Day in a municipal election year and prior to a new Council taking office under specific conditions.

A municipal Council can be in this situation during one or both of the following time periods:

- 1) for the 2022 Municipal and School Board Elections, this period is from Nomination Day on August 19, 2022 through to Voting Day on October 24, 2022; and,
- 2) from Voting Day on October 24, 2022 to November 14, 2022, the end of the 2018-2022 term of Council.

This legislative restriction is referred to in Section 275 of the Municipal Act, 2001 as 'Restricted Acts' or more commonly referred to as the 'lame duck' provision.

If, from Nomination Day to Voting Day and, from Voting Day to November 14, 2022 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 6 members), then the "Restricted Acts" or 'lame duck' provisions apply and Council is statutorily restricted from taking certain actions until the new term of Council begins on November 15, 2022.

If the Restricted Acts provision is engaged, this Council would be subject to certain restrictions as provided in Section 275(3) of the Municipal Act, 2001, including:

- 1) Appointing or removing from office any officer of the municipality;
- 2) The hiring or dismissal of any employee of the Town of Aurora;
- 3) Disposing of any real or personal property of the municipality which has a value exceeding \$50,000 at the time of disposal; and,
- 4) Making any expenditures or incurring any other liability which exceeds \$50,000.

**Staff recommend that Council enacts a temporary delegation of authority to the CAO by-law to safeguard against potential gaps**

The proposed by-law (Attachment 1) seeks to safeguard against potential gaps by temporarily delegating additional authority to the CAO beyond that already delegated by Council and would come into effect only if the Restricted Acts section should apply to

this Council. The temporary by-law provides a sunset provision, which effectively renders the by-law null and void upon the commencement of the inaugural meeting of the new Council, which is scheduled for November 15, 2022. Further, the CAO would be required to report to Council in the first quarter of 2023 regarding any exercise of this delegated authority.

### **Advisory Committee Review**

None

### **Legal Considerations**

Many of the Restricted Acts have already been delegated to staff through the Town's Delegation of Authority By-law enacted on October 22, 2018 or through other by-laws. The attached by-law delegates authority to staff of the other Restricted Acts and only for a temporary period.

### **Financial Implications**

The financial implications of the delegation relate mostly to procurement activities. There are provisions for the signing of agreements and acquisition and disposition of real or personal property, but they are much less likely to occur during the effective period.

The attached by-law ensures that business can continue with the award of open-competition procurement awards with no budget for up to \$100,000 and allowing for the progress of capital projects by authorizing the delegation of awards of up to 15 percent over the approved capital budget. The by-law also delegates Council's authority for non-standard procurements (also known as single and sole source) of \$250,000 or more.

The procurement by-law already provides staff with the ability to manage in an emergency, as per section 2.5 Emergency Purchases of the procurement policy, which is why no further delegation is needed for these situations.

A summary of the delegated activities will be provided to the new Council during the first quarter of 2023.

## **Communications Considerations**

Not applicable.

## **Climate Change Considerations**

None

## **Link to Strategic Plan**

The recommendations in this report support good, accountable governance in the Town of Aurora.

## **Alternative(s) to the Recommendation**

1. Council provide direction

## **Conclusions**

Section 275 of the Municipal Act, 2001 determines whether the restricted act provisions apply to individual Council's across Ontario. If less than six of the current members of Council do not seek re-election (or multiple members run against each other in the same ward), then Council will be restricted from the acts identified in Section 275(3) of the Municipal Act from August 19, 2022 to November 14, 2022.

If six or more current members of Council seek re-election, but less than six are re-elected, Council would be restricted from those acts from October 24, 2022 to November 14, 2022.

## **Attachments**

Attachment 1 – Draft delegation of authority by-law

## **Previous Reports**

None

## **Pre-submission Review**

Agenda Management Team review on June 21, 2022

## **Approvals**

**Approved by Techa van Leeuwen, Director, Corporate Services**

**Approved by Doug Nadorozny, Chief Administrative Officer**