



Date: November 22, 2021

To: Mayor and Council

Author: Paula Parker, Town Clerk

RE: Delegation of Authority during the Restricted Period between
Nomination Day and the Commencement of the new Term of
Council

Report No.: LS-2021-08

RECOMMENDED ACTION

It is recommended that:

1. Authority **BE DELEGATED** to the Chief Administrative Officer or delegate for the period when certain acts of Council are in effect, pursuant to section 275 of the Municipal Act, 2001, S.O. 2001, c.25, to address matters as follows:
 - Hire or dismiss any employee, except where delegation of authority is not allowed by the Act;
 - 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 unbudgeted expenditures or incurring any other liability which exceeds \$50,000.
2. The Chief Administrative Officer or delegate consult with the Town Solicitor and, where appropriate, the Director of Financial and IT Services or designate prior to exercising the delegated authority;
3. The Chief Administrative Officer or delegate **BE DIRECTED TO ADVISE** the newly elected Council in writing, at the new Council's first regularly scheduled meeting, of any exercising of delegated authority under By-law 95-2021; and,
4. **By-law 95-2021** being a by-law to authorize the delegated authority for restricted acts during the restricted period be taken as having been read three times and finally passed and the Mayor and Clerk **BE AUTHORIZED** to sign same.

BACKGROUND

The Municipal Act, Section 275 states the following:

275 (1) *The council of a local municipality shall not take any action described in subsection (3) after the first day during the election for a new council on which it can be determined that one of the following applies to the new council that will take office following the election:*

- 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.*
- 2. If the new council will have more members than the outgoing council, the new council will include less than three-quarters of the members of the outgoing council or, if the new council will include at least three-quarters of the members of the outgoing council, three-quarters of the members of the outgoing council will not constitute, at a minimum, a majority of the members of the new council.*
- 3. If the new council will have fewer members than the outgoing council, less than three-quarters of the members of the new council will have been members of the outgoing council or, if at least three-quarters of the members of the new council will have been members of the outgoing council, three-quarters of the members of the new council will not constitute, at a minimum, a majority of the members of the outgoing council. 2001, c. 25, s. 275 (1).*

Basis for determination

(2) If a determination under subsection (1) is made,

- (a) after nomination day but before voting day, the determination shall be based on the nominations to the new council that have been certified and any acclamations made to the new council; or*
- (b) after voting day, the determination shall be based on the declaration of the results of the election including declarations of election by acclamation. 2001, c. 25, s. 275 (2).*

Restrictions

(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. 2001, c. 25, s. 275 (3); 2006, c. 32, Sched. A, s. 114 (1).

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. 2001, c. 25, s. 275 (4).

Emergencies

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

Upper-tier council

(5) This section applies with necessary modifications to the council of an upper-tier municipality. 2001, c. 25, s. 275 (5).

Delegated authority unaffected

(6) Nothing in this section 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.

In order to ensure Municipalities are able to operate efficiently and in a timely manner during a restricted period (more commonly known as “Lame Duck”), the *Municipal Act, 2001* (the “Act”) gives Council a remedy in the form of delegated authority from Nomination Day up to the time when the Council-Elect takes office.

If it can be determined with certainty, following Nomination Day, that less than 75% of the current Members of Council will return to sit on the new Council, or, following the election, that the Council-Elect will be comprised of current Council Members, then “lame duck” provisions apply and Council will be restricted in its decision-making abilities in four (4) areas:

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

These four (4) restrictions are the only ones noted in the Act. Clause 275(3)(a) cannot be delegated pursuant to subsection 23.3(1) of the Act, and clause 275(3)(b) authority has already been delegated to appropriate management personnel. Clauses 275(3)(c) and (d) require the delegation of authority in order to ensure continued business continuity and efficiency during a restricted period. Delegated authority would cease once the Council-Elect takes office.

DISCUSSION

The restricted period is calculated on 2 dates: Nomination Day, and Election Day. If, on either of those dates, it can be determined that the new Council will include less than 75% of the outgoing Council Members, restrictions will apply and Council cannot take certain actions until the inauguration is complete. This restricted period of time is most often referred to as the “lame duck” period.

Kingsville has a seven (7) Member Council. The restrictions apply as soon as it can be determined with certainty that less than 75% of the current members of Council (5.25) may be returning, which, in the Town’s situation, would be fewer than six (6) existing Members of Council. Therefore, six (6) current Members of Council are required to be certified and elected in order to avoid triggering the restricted acts in Section 275 of the Act.

In considering the impact of the restrictions under clause 275(3)(a), paragraph 1 of subsection 23.3(1) of the Act, confirms that “*the power to appoint or remove from office an officer of the municipality whose appointment is required by this Act*” cannot be delegated.

In considering the impact of the restrictions under clause 275(3)(b), Council has already delegated various human resources decisions, including hiring and dismissal of employees, so there is little risk involved in that aspect of the restrictions.

With regard to clauses 275(3)(c) and (d), subsection 275(4) of the Act provides that restrictions in those two (2) clauses do not apply if the disposition or liability was included in the most recent budget adopted by Council before Nomination Day in the election year, and Council could make those decisions. However, a “lame duck” Council would not be able to award a contract if the amount of tenders exceeded the amount included in the budget. Accordingly, it would be prudent of Council to delegate authority to the CAO with respect to clauses 275(3)(c) and (d) so as to ensure there is an ability to address issues as they may arise which otherwise would have to wait until after inauguration for decision.

It is important to note that pursuant to subsection 275(4.1) of the Act, Council is not restricted with respect to those actions set out in subsection 275(3) in the event of an emergency. Under section 1 of the Emergency Management and Civil Protection Act, an “emergency” is defined as “*a situation or an impending situation that constitutes a danger of major proportions that could result in serious harm to persons or substantial damage to property and that is caused by the forces of nature, a disease or other health risk, an accident or an act whether intentional or otherwise*”.

FINANCIAL CONSIDERATIONS

The delegation of authority to the CAO during the restricted period for section 275(3)(c) and (d) would provide the CAO with the authority to dispose of any real or personal property of the municipality which has a value exceeding \$50,000 at the time of disposal

and to make any unbudgeted expenditures or incur any other liability which exceeds \$50,000. As per By-law 95-2021, section 2 the CAO will provide a report to Council on any actions taken under the restrictions listed in s. 275 (3) of the Act.

CONSULTATIONS

The CAO was consulted on this report.

CONCLUSION

Considering the delegation of authority to the Chief Administrative Officer (CAO) to take action, where necessary, on certain acts during the restricted period will ensure the municipality is able to operate efficiently and in a timely manner. The Act gives Council a remedy in the form of delegated authority from Nomination Day up to the time when the Council-Elect takes office.



Paula Parker,
Town Clerk

Reviewed by:



Susan Hirota
Director of Legal and Clerk Services

LINK TO STRATEGIC PLAN

Support growth of the business community.

Effectively manage corporate resources and maximize performance in day-to-day operations.

To become a leader in sustainable infrastructure renewal and development.

Manage residential growth through sustainable planning.

Manage growth through sustainable planning.

Link to Council 2021-2022 Priorities

- ☐ COVID-19 and the health and safety of the community
- ☐ Customer Service: Training, Technology, Staff, Review Standards/Level of service
- ☐ Housing: Affordability (lot sizes, developer incentives, second dwellings, density, etc.)
- ☐ Greenhouse: lights & dark sky, odours (site plan compliance, bylaws, other tools)
- ☐ Programming Increase: Youth and Seniors
- ☐ A development plan for Downtown Kingsville / Main Street
- ☐ Financial savings: Schools closings, Migration Hall
- ☐ Economic Development: strengthen tourism/hospitality
- ☐ COVID - economic recovery
- ☐ Communications: Strategy – Policy (social media), Website refresh and other tools, Public engagement
- ☐ Housing: Migrant Worker Housing – Inspections (Building/Fire), regulate, reduce, or increase
- ☐ Committees / Boards: Review and Report
- ☐ Policy Update: Procedural Bylaw
- ☐ Economic Development: diversify the economy, create local jobs, industrial, Cottam
- ☐ Infrastructure (non-Municipal): Union Water expansion & governance
- ☐ Infrastructure (Municipal): Asset Management Plan update, the infrastructure funding deficit
- ☒ No direct link to Council priorities