

City of Mississauga
Corporate Report



<p>Date: July 11, 2022</p> <p>To: Mayor and Members of Council</p>	<p>Originator's files:</p>
<p>From: Shari Lichterman, CPA, CMA, Commissioner of Corporate Services and Chief Financial Officer</p>	<p>Meeting date: August 10, 2022</p>

Subject

Restricted Acts after Nomination Day and Delegation of Authority During Summer Recess and Election Recess

Recommendation

1. That a by-law be enacted to amend the Council Procedure By-law 0044-2022 as outlined in the Corporate Report dated July 11, 2022 from the Commissioner of Corporate Services and Chief Financial Officer titled 'Restricted Acts after Nomination Day and Delegation of Authority During Summer Recess and Election Recess'.
2. That a by-law be enacted to delegate authority to staff to address the 2022 summer recess and election recess period and restricted act provisions as outlined in the Corporate Report dated July 11, 2022 from the Commissioner of Corporate Services and Chief Financial Officer titled 'Restricted Acts after Nomination Day and Delegation of Authority During Summer Recess and Election Recess'.

Executive Summary

- If it is determined that less than 9 of Mississauga's Council Members are returning for the new term of Council, the restricted acts /lame duck provisions in Section 275 of the Municipal Act ("the Act") will apply.
- Delegated authority can be granted to the City Manager and Chief Administrative Officer during a lame-duck period to perform the restricted acts of Council referenced in Section 275 of the Act.
- Additional delegations of authority may be granted to staff to enter into agreements and execute certain matters during each Summer Recess and Election Recess, and specifically for the 2022 Summer Recess and Election Recess.

Background

During the summer and election recess period, the Council Procedure By-law 0044-2022 (“Council Procedure By-law”) delegates authority to staff to enter into certain agreements and execute certain matters to allow staff to continue business operations.

During an election year, municipal councils may be restricted in the actions they can take if certain legislated criteria are met. Section 275 of the *Municipal Act, 2001, S.O. 2001*, (“The Act”) outlines these “Restricted Acts” and the associated criteria as follows:

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, among other things, 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.

If it is determined that the above-noted criteria apply, the following are the restricted acts identified in S.275 (3) of the Act:

- (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 that exceeds \$50,000.

In relation to Section 275 (3) (a) and (b) of the Act, By-law 0219-2019 delegates the authority to the City Manager to hire and dismiss employees of the Corporation below the position of Commissioner. During a “lame-duck” period, the City Manager could be delegated with the authority to appoint or remove any employee that is appointed by City By-law, providing it is not for an office required in the Act. The power to appoint or remove Officers of the municipality whose appointment is required by the Act cannot be delegated to staff and must remain as a decision of Council.

Subsections 275 (3) (c) and (d) are generally addressed through the budget process and Council resolutions, however may require delegated authority in some cases during this period.

Section 97 of the Council Procedure By-law provides delegated authority to staff once the Election Recess has commenced to address business needs that may arise until the new term of Council begins. The Council Procedure By-law includes provisions related to the Election Recess and Summer Recess, however it does not clearly address the above-noted period.

Comments

“Lame-Duck” Provisions in the Act

The restricted acts of Council are commonly referred to as the “lame-duck provisions”. If it is determined that less than three-quarters, in Mississauga’s case, less than 9, of Mississauga’s Council Members are returning for the new term of Council, the restricted acts/lame duck provisions will be triggered.

There are two periods when the lame-duck provisions may apply:

- (1) If after Nomination Day (August 19, 2022) there are less than nine (9) members of the existing Council running for office, the lame-duck period would commence; and/or
- (2) If after Election Day (October 24, 2022) there are less than nine (9) members of Council returning for the next term of Council. In this instance the lame duck period would begin October 25, 2022, until the end of the 2018-2022 Term of Council (November 14, 2022).

The Council Procedure By-law includes provisions where during the Summer Recess and Election Recess, Council delegates authority to City staff to enter into certain agreements and to execute certain matters to allow staff to continue business operations.

The Council Procedure By-law currently defines the “Election Recess” as the period determined by the Clerk that is immediately preceding and following the municipal election when Council meets less frequently. Similar to the Summer Recess provisions and to address the potential restrictions of Section 275 of the Act, the Council Procedure By-law should be amended to delegate the authority for these actions to staff during the lame-duck period.

For greater clarity, it is recommended that the Election Recess definition be amended to include that the Election Recess also begins when it is determined that there will be a “lame-duck” council as outlined in S. 275 of the Act. In addition, it is recommended that the City Manager be delegated the authority in the Council Procedure By-law to address matters in S. 275(3) should there be a lame-duck council. This delegation of authority will be subject to the restrictions set out in section 23.3 of the Act regarding powers that cannot be delegated by Council.

Delegation of Authority during each Summer Recess and Election Recess

Staff recommend that Council delegate authority to City staff to enter into certain additional agreements and execute certain matters during each summer and election recess to allow staff to continue business operations. The additional delegation of authority, to be added to the Council Procedure By-law, is outlined below:

The Commissioner of Planning and Building, or their designate, be delegated authority to instruct the City Solicitor to attend the Ontario Land Tribunal (“OLT”), along with any necessary staff and/or consultants, to take a position in support of or in opposition to, or to take no position on, appeals before OLT including without limitation any appeals made under the *Planning Act* for non-decision of Council or from decisions of the Committee of Adjustment, where in the opinion of the Commissioner, in consultation with the applicable Ward Councillor, it is appropriate to do so.

Delegation of Authority during 2022 Summer Recess and Election Recess

Staff recommend that City staff be delegated authority to execute the following agreements and/or undertake the following actions in relation to specific projects/initiatives that will be underway during the 2022 Summer and Election Recess:

1. The City Manager be delegated the authority to approve expenditures up to \$2 million in relation to the Hurontario Light Rail Transit Project (“HuLRT”) relating to variations. Such delegation of authority shall be exercised only after:
 - i. The circulation of a summary of the details of the expenditure to the Mayor and all Members of Council 7 days prior to the execution of such authority; and
 - ii. No objection is raised by the Mayor or any Member of Council within such 7 days.
2. The Commissioner of Transportation and Works (or designate) be delegated the authority to approve amendments to MiWay Fares Schedule “B-3” of the User Fees and Charges By-law 0247-2021, to enable the introduction of additional methods to pay transit fares through the Presto Fare Card system. Any applicable amendments as may be required to Schedule B-3 of the User Fees and Charges By-law 0247-2021, as amended, shall be confirmed by Council at the next available Meeting of Council.
3. The Commissioner of Transportation and Works (or designate) be authorized on behalf of the City, to negotiate and execute agreements with utility companies for any works that may be necessary in connection with the Dundas BRT project, and any ancillary documents as may be required, where the value of the City’s cost does not exceed \$5 million per utility company or the parties otherwise agree to a reasonable sharing of costs, all in a form satisfactory to the City Solicitor.
4. The City Manager and the Chief Procurement Officer, or their designates, be delegated the authority to hear and decide Formal Bid Protests in lieu of General Committee and Council.

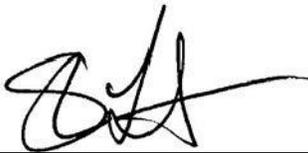
The above delegations will cease once Council reconvenes following the 2022 Summer Recess and Election Recess (including the lame-duck period), as the case may be.

Financial Impact

There is no financial impact.

Conclusion

It is recommended that the definition of an “Election Recess” in the Council Procedure By-law be amended to include the ‘lame-duck’ period as outlined in Section 275 of the Act. In addition, it is recommended that the Council Procedure By-law be amended to grant authority to the City Manager and Chief Administrative Officer, or their designate to perform restricted acts of Council during a lame-duck period. As Council may not have scheduled meetings during each Summer Recess and Election Recess, staff have identified matters that require delegated authority to continue business operations during this time, and also specifically for the 2022 Summer Recess/Election Recess.



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