



# Municipality of Port Hope

## Staff Report

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### Report Title: 2022 Municipal Election – Restricted Acts (Lame Duck)

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**Report to:** Corporate Services Committee

**Date of meeting:** April 5, 2022

**Report Author:**

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**Department responsible:**

Corporate Services

**Report Number:** CS-05-22

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### Recommendation:

That a by-law be presented to Council to approve the temporary delegation of limited authority to the Chief Administrative Officer with the ability to conduct certain business in the event that Council is restricted in authority pursuant to the provisions set out in Section 275 of the Municipal Act.

### Highlights:

- This report provides Council with information regarding the “Restricted Acts” provisions contained in Section 275 of the Municipal Act, 2001, S.O. 2001, c. 25 (“Municipal Act”).
- A by-law (see Attachment #1) to delegate certain authorities of Council to the Chief Administrative Officer (CAO) when Council is restricted in authority pursuant to Section 275 of the Municipal Act (Lame Duck) is recommended to ensure that there are no gaps in the continuity of business during the 2022 Municipal Election.

### Background:

Section 275 of the Municipal Act 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, in either

or both of the aforementioned time periods it can be determined with certainty that the new Council will include less than three-quarters of the outgoing Council Members (i.e. fewer 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 including:

- a) Appointing or removing from office of any officer of the Municipality;
- b) The hiring or dismissal of any employee of the Municipality of Port Hope;
- c) Disposing 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.

**Discussion:**

Staff suggest that limited authority be temporarily delegated to the Chief Administrative Officer (CAO) in the event that Council is restricted in authority pursuant to the provisions set out in the Municipal Act. This is a standard practice that most municipalities undertake in order to safeguard against potential gaps in authority and is supported by the Municipal Act. The Municipal Clerk determines whether the provisions of the Restricted Acts section of the Municipal Act apply and communicates that information to Council accordingly. Following the election, if the CAO has to use the temporary authority delegated to him by Council, he reports back with an overview of why that authority was used, and the outcome.

It is important to note that in past election years, Council provided similar temporary delegation of authority to the CAO or another body. For example, in 2018, in the absence of the CAO, the Clerk was delegated this authority, with staffing decisions being delegated to the Labour Relations Committee.

It is also important to note that section 275(6) provides that even if the Restricted Acts section is engaged, it does not affect any delegation of authority which has been properly granted prior to Nomination Day, including the passage of the proposed by-law. Council's existing delegations under the Appointment of the CAO By-law, the Delegation of Authority By-law and the Procurement By-law are not impacted by the aforementioned restrictions. In addition, Item (b) has been delegated to the CAO as part of his role. Item (c) noted above is also not applicable if the disposal of real or personal property of the municipality has already been included in the municipal budget.

If the Restricted Acts section is engaged and Council is in “Lame Duck”, then pursuant to Section 275(4)(4.1), nothing prevents a Municipality from taking any action in the event of an emergency within the Municipality.

Further, if a “Lame Duck” situation is determined by the Clerk, pursuant to the Municipal Elections Act, the term of office commences for the newly elected Council on November 15, 2022 and the new council is deemed organized when quorum of members have

taken declaration of Office pursuant to section 232 of the Municipal Act, 2001. This will be done at the Inaugural Meeting of Council to take place in November 2022.

**Financial Considerations:**

There are no noted financial considerations for this report.

**Communication and Public Engagement:**

Not applicable.

**Conclusion:**

To ensure the continuity of operations and prevent any gaps in authority, it is recommended that the proposed by-law delegating limited authority to the CAO for certain matters be approved. The need for delegation will only be in effect if Council enters "Lame Duck" throughout the balance of the current term of Council.

**Attachments:**

Attachment 1 – Draft By-law