

TO:	CHAIR AND MEMBERS CORPORATE SERVICES COMMITTEE MEETING ON MARCH 4, 2014
FROM:	CATHY SAUNDERS CITY CLERK
SUBJECT:	RESTRICTED ACTS OF COUNCIL AFTER NOMINATION DAY AND VOTING DAY "LAME DUCK" COUNCIL

RECOMMENDATION

That, on the recommendation of the City Clerk, this report BE RECEIVED for information.

PREVIOUS REPORTS PERTINENT TO THIS MATTER

Item #19 – Board of Control – May 12, 2010

BACKGROUND

The purpose of this report is to provide information to members of Municipal Council with respect to the regulations set out in Section 275 of the *Municipal Act, 2001* concerning restricted actions of Municipal Council after Nomination Day and Voting Day, should the Municipal Council be in a "lame duck" position.

A Municipal Council can become "lame duck" between the period from Nomination Day (September 12, 2014) to Voting Day (October 27, 2014); and again between Voting Day (October 27, 2014) and the end of the outgoing Municipal Council Term (November 30, 2014).

Section 275 (1) of the *Municipal Act, 2001* states as follows:

"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."

As Municipal Council is comprised of fifteen (15) members, at least twelve (12) of the candidates nominated on Nomination Day, would need to be members of the outgoing Municipal Council.

At present, we are aware that at least four (4) members of the outgoing council have indicated that they will not be seeking office for the next term of Council. In addition, a current Member of Council is seeking office in a different position than that which they currently hold. As a result, there is the potential that at least five (5) of the positions for the next term of Council will be filled by new members, leaving us in a "lame duck" position after Nomination Day (September 12, 2014) and again after Voting Day (October 27, 2014).

Section 275(3) of the *Municipal Act, 2001* outlines the restrictions that would be in place for a "lame duck" Municipal Council:

- "(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."

Section 275 (4) of the *Municipal Act, 2001* sets out the following exceptions to clause (3):

“(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.”

As a result, Municipal Council may continue, if in a “lame duck” situation, to award contracts in an amount exceeding \$50,000, if the amount was included in the adopted annual budget. If however, the contract amount exceeds the amount included in the annual budget, Municipal Council would not be able to award the contract, if the Municipal Council has been determined to be “lame duck”.

In addition, a municipality may take any action necessary in the event of an emergency.

Section 275(6) of the *Municipal Act, 2001* provides that nothing in section 275 prevents a person or body from exercising authority delegated by council. Therefore, if the power to hire employees has been delegated to administration, administration may continue to hire and terminate employees, in a “lame duck” situation.

In order to determine “lame duck” status, the clerk must be certain that less than three-quarters of the members of the incoming council (less than 11.25) will be comprised of members of the outgoing council.

Conclusion

The City Clerk will review the status of Municipal Council in the context of Section 275 of the *Municipal Act, 2001* after Nomination Day (September 12, 2014) and again after Voting Day (October 27, 2014). If it is determined that Municipal Council is restricted from carrying out certain activities as outlined in Section 275 of the *Municipal Act, 2001*, the City Clerk will advise Municipal Council of this at the next available Council meeting.

RECOMMENDED BY:
CATHY SAUNDERS CITY CLERK