

## Report to Corporate Services Committee

**To:** Chair and Members  
Corporate Services Committee

**From:** Barry R. Card  
Deputy City Manager, Legal Services

**Subject:** Restricted Acts of Council after Nomination Day and  
Voting Day

**Meeting on:** June 20, 2022

## Previous Reports Pertinent to this Matter

None

## Recommendation

That, on the recommendation of the Deputy City Manager, Legal Services, the attached proposed by-law BE INTRODUCED at the Municipal Council meeting of July 5, 2022, to delegate certain authority, should the Municipal Council's actions be restricted after Nomination Day or Voting Day 2022.

## Linkage to the Corporate Strategic Plan

Leading in Public Service.

## Background

There are two primary events that give rise to restrictions on the actions of an outgoing council:

If, after Nomination Day, the Clerk can determine that the incoming council will include less than three quarters of the members of the outgoing council, certain acts of the outgoing council are restricted as of that date. This determination could occur after the close of nominations on August 19, 2022 at 2 p.m.

If restrictions are not applicable before the election, they may become applicable following Election Day (October 24, 2022), if the Clerk determines that the incoming council will include less than three quarters of the members of the outgoing council.

When applicable, subsection 275(3) of the *Municipal Act, 2001*, prevents the following council actions:

- (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 provides some exceptions to the restrictions. For example, a council is not restricted in the event of an emergency, with respect to measures taken to address the emergency.

Subject to subsection 23.1(1) of the Act, councils are permitted to delegate powers to the administration before nomination day. This approach is recognized by subsection 275(6). In this context, and to ensure that the business of the Corporation can continue without interruption, it is

recommended that the Council enact a by-law that will temporarily delegate specific powers to the City Manager.

The Municipal Elections Modernization Act, 2016, amended the start date for a new term of a council to November 15, to shorten the period during which a council may have its powers restricted.

The limitations generally applicable to delegation are accessible at: <https://www.ontario.ca/laws/statute/01m25#BK346>

## Discussion

A list of the specific matters which the Council may be unable to consider after Nomination Day has been prepared on the basis of current information and takes the form of schedules to the draft by-law. The proposed delegation by-law would be in effect during the period when the Council is unable to deal with the restricted matters.

### Dismissal of Officers and Employees

With the exception of certain statutory and senior positions, the hiring and dismissal of officers and employees is currently conducted by the Civic Administration without Council involvement. Accordingly, the recommended by-law does not provide a general delegation with respect to the hiring or dismissal of officers or employees.

### Property Disposition

The disposition of real and personal property of the municipality is currently governed by By-law A-1, being "A by-law for the Execution of Certain Documents", Schedule "A" to Council Policy By-law A.-6151-17 "Sale and Other Disposition of Land Policy," and Schedule "C" to Council Policy By-law A.-6151-17 "Procurement of Goods and Services Policy."

The proposed delegation by-law would permit the City Manager to approve the disposition of real or personal property of the City during the period when Council is prevented from taking such action. For dispositions governed by the Sale and Disposition of Land policy, the recommendation is to substitute the City Manager for City Council with respect to approval of those dispositions. Additionally, several projects have been identified as potentially requiring some form of "disposition" and as a result, are delegated to the City Manager. The anticipated dispositions are listed in Schedule 1 to the by-law.

The approval of the City Manager for each of these items would be done in consultation with the Deputy City Manager, Legal Services.

### Expenditures

The \$50,000 expenditure restriction has the potential to affect every service area. The proposed by-law would allow the City Manager to approve a contract that has been awarded as a result of the process outlined in the Procurement of Goods and Services Policy. While budgeted items are exempt from the Section 275 restriction, the procurement process sometimes results in situations where bids exceed the budgeted amount. For this reason, a delegation to the City Manager is recommended.

The proposed by-law also provides the City Manager with the ability to enter into agreements (examples listed in Schedule 2 to the by-law), in consultation with the Deputy City Manager, Legal Services.

Any property acquisition that would currently require the approval of Council, is recommended to be delegated to the City Manager, as the statutory restrictions would prevent real estate purchases in excess of \$50,000.

## Summary

Unless it can be determined as of Nomination Day, that at least twelve of the outgoing members may be re-elected, the statutory restrictions will come into immediate effect. The restrictions may also come into effect after the election, if it can be determined that fewer than twelve of the outgoing members will be returning.

The restrictions have the potential to disrupt the business of the City. To mitigate the potential impact of these restrictions, it is recommended that the proposed delegation by-law be enacted.

**Prepared and  
Recommended by:**



**Barry R. Card  
Deputy City Manager, Legal Services**

June 13, 2022

Bill No.  
2022

By-law No. A.-

A by-law to authorize the delegation of authority to the City Manager for certain acts of Council after Nomination Day for the 2022 Municipal Election, should the City Clerk determine that the incoming Council will include less than three quarters of the members of the outgoing Council.

WHEREAS Section 275 of the *Municipal Act, 2001*, S.O. 2001, c. 25., as amended (the "*Municipal Act*"), provides for restricted acts of the council of a local municipality after Nomination Day or after Voting Day during an election for a new council, upon the Clerk determining that the incoming council will include less than three quarters of the members of the outgoing council;

AND WHEREAS Section 275(3) of the *Municipal Act, 2001*, S.O. 2001, c. 25 restricts a council's ability to act on the following matters, subject to certain exceptions as provided for in Section 275(4) of the *Municipal Act, 2001*, S.O. 2001, c. 25 and emergencies as provided for in Section 274(4.1) of the *Municipal Act, 2001*, S.O. 2001, c. 25:

- 1) the appointment or removal from office of any officer of the municipality;
- 2) the hiring or dismissal of any employee of the municipality;
- 3) the disposition 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 expenditure or incurring any other liability which exceeds \$50,000;

AND WHEREAS Section 275(6) of the *Municipal Act, 2001*, S.O. 2001, c. 25 provides that notwithstanding the restrictions placed upon the acts of a council, a delegation of authority with respect to those acts may be made in advance of Nomination Day;

AND WHEREAS Section 23.1 of the *Municipal Act, 2001*, S.O. 2001, c. 25 provides that, subject to the limitations found in Sections 23.2 and 23.3 of the *Municipal Act, 2001*, S.O. 2001, c. 25, a council may delegate its authority;

AND WHEREAS Council delegates any authority pursuant to this by-law in accordance with Schedule "G" of By-law A.-6151-17 "Council Policy By-law", as amended from time to time;

AND WHEREAS Council deems it expedient to delegate authority to the City Manager of The Corporation of the City of London for certain acts of Council after Nomination Day or after Voting Day for the 2022 Municipal Election in the event the City Clerk determines that the incoming Council will include less than three quarters of the members of the outgoing Council, and until such time as the incoming Council takes office;

NOW THEREFORE the Council of The Corporation of the City of London enacts as follows:

#### **PART 1 – SHORT TITLE**

1.1 This by-law may be also referred to as the Restricted Acts of Council 2022 By-law.

#### **PART 2 – DEFINITIONS**

2.1 In this by-law:

"City" means The Corporation of the City of London;

"City Manager" means the City Manager for the City;

"Council" means the Municipal Council of the City;

"Municipality" means the City;

**PART 3 - THE DISPOSITION OF ANY REAL OR PERSONAL PROPERTY OF THE MUNICIPALITY WHICH HAS A VALUE EXCEEDING \$50,000 AT THE TIME OF DISPOSITION**

3.1 Those actions identified in:

- a) Schedule A – Sale and Disposition of Land Policy, to Council Policy By-law No. A.-6151-17; or
- b) Schedule C – Procurement of Goods and Services Policy, to Council Policy By-law No. A.-6151-17;

that would otherwise be performed by Council, shall be delegated to the City Manager in those cases where the timely disposition of real or personal property which has a value exceeding \$50,000 at the time of disposition, is adjudged by the City Manager to be necessary or advantageous.

3.2 The City Manager shall be authorized to approve the execution of any agreements or other documents required to give effect to any disposition identified under the authority delegated in Part 4.1, above, and to authorize the Mayor and City Clerk to execute any agreements to effect same, in consultation with the Deputy City Manager, Legal Services, where approval of Council would otherwise be required.

3.3 Without limiting the generality of the foregoing, the City Manager shall be authorized to approve the execution of the agreements listed in Schedule 1 to this By-law, where, in the absence of this By-law, approval would be required by Council.

**PART - 4 MAKING ANY EXPENDITURE OR INCURRING ANY OTHER LIABILITY WHICH EXCEEDS \$50,000**

4.1 Those actions identified in:

- a) Schedule C – Procurement of Goods and Services Policy, to Council Policy By-law No. A.-6151-17; or
- b) By-law No. CPOL.-188-440 being “A by-law to revoke and repeal Council policy related to Real Property Acquisition Policy and replace it with a new Council policy entitled Real Property Acquisition Policy;” or
- c) By-law No. A-1, as amended, being “A by-law for the Execution of Certain Documents,” that would otherwise be performed by Council,

shall be delegated to the City Manager, if:

an expenditure is being made or any other liability is being incurred which exceeds \$50,000 and was not included in the most recent budget adopted by Council prior to Nomination Day; or,

an expenditure or liability which exceeds \$50,000 is included in the most recent budget adopted by Council and is required to exceed the budgeted amount.

4.2 The City Manager shall be authorized to approve the execution of any agreements or other documents required to give effect to any expenditure or liability incurred under the authority delegated, and to authorize the Mayor and City Clerk to execute any agreements to effect same, in consultation with the Deputy City Manager, Legal Services, where approval of Council would otherwise be required.

4.3 Without limiting the generality of the foregoing, the City Manager shall be authorized to approve the execution of the agreements listed in Schedule 2 to this By-law, where, in the absence of this by-law, approval would be required by Council, as well as any property acquisition when the timely acquisition of real or personal property is adjudged by the City Manager to be necessary or advantageous.

**PART 5 - REPORTING**

5.1 The City Manager shall provide a report to Council in the first quarter of 2023 identifying all delegated actions that were taken in accordance with this by-law.

## **PART 6 - GENERAL**

6.1 If any provision or part of this by-law is declared by any court or tribunal of competent jurisdiction to be illegal or inoperative, in whole or in part, or inoperative in particular circumstances, the balance of the by-law, or its application in other circumstances, shall not be affected and shall continue to be in full force and effect.

6.2 To the extent that any provision of this by-law conflicts with any provision of any other City by-law, this by-law shall apply.

## **PART 7 - EFFECTIVE DATE**

7.1 This by-law shall immediately come into force and effect if:

- (a) after Nomination Day on August 19, 2022, but before Voting Day on October 24, 2022 the City Clerk determines, based on the nominations to the new Council that have been certified and any acclamations made to the new Council, that the new Council will include less than three quarters of the members of the outgoing Council, in accordance with subsection 275(2)(a) of the *Municipal Act, 2001*, S.O. 2001, c. 25; or,
- (b) as soon as practicable following the election on October 24, 2022, the City Clerk determines that based on the declaration of the results of the election including declarations of election by acclamation, that the new Council will include less than three quarters of the members of the outgoing Council, in accordance with subsection 275(2)(b) of the *Municipal Act, 2001*, S.O. 2001, c. 25.

7.2 This by-law shall cease to be in force and effect on November 15, 2022.

PASSED in Open Council on July 5, 2022.

Ed Holder  
Mayor

Michael Schulthess  
City Clerk

**Schedule 1  
Restricted Acts of Council 2022 By-law**

**THE DISPOSITION OF ANY REAL OR PERSONAL PROPERTY OF THE MUNICIPALITY  
WHICH HAS A VALUE EXCEEDING \$50,000 AT THE TIME OF DISPOSITION**

Service Area	Projects	Description/ Details
Finance Supports	Disposal of land	Proposals may originate from any service area

**Schedule 2**

**Restricted Acts of Council 2022 By-law**

**MAKING ANY EXPENDITURE OR INCURRING ANY OTHER LIABILITY WHICH EXCEEDS  
\$50,000**

Service Area	Projects	Description/ Details
Finance Supports	Contribution Agreements or Transfer Payment Agreements for funding from other levels of government	Authority to execute agreements that are time-sensitive in all service areas
Finance Supports	Fiscal Agent Contract Extension	Authority to trigger the option provision in the existing contract for fiscal agency services for debenture issuances to extend the current contract for an additional term of 3 years.
Finance Supports	Distribution of COVID-19 Funding Support	Authority to distribute funding previously set aside for COVID-19 impacts to the City's agencies, boards or commissions, (if deemed urgent on the advice of the City Treasurer)
Finance Supports	External Auditor	RFP, Award contract
Finance Supports	Bids, Tenders and Procurement	Authority to execute agreements and grant extensions as needed, in all service areas. May include single source agreements, irregular bids, purchases and other matters that would ordinarily require Council approval for any reason.
Social and Health Development	Canada-Wide Early Learning and Child Care Agreement Implementation	Approval of the CWELCC implementation approach and participation agreement with licensed child care operators.
Social and Health Development	Child Care and Early Childhood Development Reserve Fund	Approval to utilize the child care and early childhood development reserve fund to address emergent issues
Social and Health Development	Service Contracts	Award or extend Short Term service agreements pertaining to Social Services Relief Funding, Homeless Prevention Program, Reaching Home Program, temporary seasonal programming, and/or housing support programs.
Social and Health Development	Core Area Action Plan (CAAP)	Authority to enter into contracts that require renewal/approval under CAAP. Housing Allowances and Housing Stability Bank programs.



Social and Health Development	Dearness	Authority to approve Items related to capital build project for auditorium
Social and Health Development	Dearness – Purchase of Service Agreements and Contracts	Authority to approve agreements and renewals for operations or infrastructure.
Neighbourhood and Community-Wide Services	Acquisition of Fire Department Emergency Vehicles	Authority to approve agreements for the manufacture and delivery of four fire department emergency vehicles.
Neighbourhood and Community-Wide Services	Fire – Purchase vehicle with extrication equipment.	Replacement vehicle that is at the end of its service life.
Neighbourhood and Community-Wide Services	Fire - Bunker gear cleaning	PPE maintenance as required
Environment and Infrastructure	General	Routine Traffic and Parking Bylaw Amendments Acceptance of Environmental Assessments
Environment and Infrastructure	Real Estate	Issue Notice to initiate Land Acquisitions by Expropriation, and other notices that may be required under the Expropriations Act (all service areas)