



*The Corporation of the Municipality of Wawa
Staff Report*

CAO

Prepared For: Council	Report No.: CC 2022-03
Agenda Date: April 19, 2022	File No.: C07

Subject

The purpose of this report is to provide Council with an update on the Restricted Acts (formerly known as the Lame Duck Period) in relation to the 2022 Municipal Election and to seek Council direction respecting the preparation of the necessary By-law prior to Nomination Day (August 19, 2022 at 2:00 pm).

List of Stakeholders



The list of Stakeholders includes:

Electors, Municipality of Wawa
Mayor and Council

Summary of Recommendation

RESOLVED THAT it is recommended to Council that it:

1. Receive Staff Report CC 2022-03: Council Restricted Acts (formerly known as the “Lame Duck” period) for information purposes; and
2. Direct the Clerk to prepare a by-law to delegate authority to the Chief Administrative Officer from August 19, 2022 (2:00 p.m.) to November 14, 2022 the following:
 - (a) Be the financial signing authority for expenditures, outside the current budget, exceeding \$50,000 and/or for the disposition of any real or personal property of the municipality which has a value exceeding \$50,000 at the time of disposal;
 - (b) Be the authority to hire or remove any officer from/to employment with the Municipality of Wawa.

Respectfully Submitted By: Cathy Cyr	Reviewed By: Maury O’Neill, CAO
Name/Signature/Title 	Supervisor’s Name/Signature/Title 

3. It is understood that the by-law shall come into force only in the event where the Municipal Clerk with certainty that less than 75% of the current council will be returning to sit on the new Council after Nomination Day of the 2022 Municipal Elections.

Background

The “Lame Duck” term was used to refer to Council when it is determined that the new Council will have less than 75 percent of the membership of the former Council running for office. This term is now referred to as the “Restricted Acts of Council” during the municipal election period.

The determination of whether a Municipal Council is in a “restricted acts” position pursuant to section 275 of the Municipal Act, 2001, also known as a ‘Lame Duck’ Council occurs twice during the Municipal Election process.

Bill 68 Modernizing Ontario’s Municipal Legislation Act implemented a change to the term of office of Council. For the 2018 Municipal Election the amendment includes a transitional rule under Section 1.1 of the Act which keeps the start date for the 2018 Council term to begin on December 3 (s.6 MEA), and the next Municipal Election in 2022 would start on November 15, thus shortening the ‘Lame Duck’ period for 2022. Council amended its Procedural by-law to reflect this change in term of Council.

There are two periods when Council can fall under the “restricted acts” period and it is noted as follows:

- 1. First Period August 19, 2022 (Nomination Day) to October 24th, 2022 (Election Day).**

The determination shall be based on the 2022 Candidates election nominations that have been certified by the Municipal Clerk on August 22, 2022. If less than three-quarters of the existing Council Members are not running for Municipal Council (4 members of the current council), the restrictions set out in the Municipal Act, 2001, will apply; and

- 2. Second Period October 24, 2022 (Election Day) to November 14, 2022 (last day of the current term of Council)**

The election results are declared by the Municipal Clerk shortly after the municipal election. If the election result is less than 75% of the incumbent Council Members returning to Council, the restrictions set out in the Municipal Act, 2001, will apply.

The following is a brief summary of the provisions as provided pursuant to Section 275 of the Municipal Act, 2001, Restricted Acts Provision:

Restrictions:

If a Council is in a 'lame duck' position, the Council shall not take on the following 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.

Exceptions to clauses 'C' and 'D' above to not apply if the disposition or liability was included in the most recent budget adopted by the Council before Nomination Day of the 2022 Municipal Election.

Land Matters:

Pursuant to Section 275(3)(c), a municipality can close a real estate transaction during the 'Lame Duck' period only if the Council passed a By-law approving the execution of the agreement of purchase and sale in advance of the 'lame duck' period.

Expenditures:

A contract could be awarded by a 'Lame Duck' Council in excess of \$50,000 so long as the amount was included in the approved 2022 annual budget. However, the 'Lame Duck' Council would not be able to award a contract, if the amount of the tender or bid exceeds the amount included in the budget.

Emergencies:

Pursuant to Section 275(4)(4.1) which states that nothing in this section 275 of a 'lame duck' Council under the restrictions, there is nothing that prevents a municipality from taking any action in the event of an emergency within the Municipality.

Delegation of Authority:

Section 275(6) provides that the authority of a municipality can be delegated to a person or body prior to Nomination Day for the election of the new Council.

Determination of Restricted Act of Council- Lame Duck Position:

In order to determine if Council is in a 'Lame Duck' position, the Municipal Clerk will follow Section 275 of the Municipal Act, 2001, and advise Municipal Council at the first Corporate Planning Meeting following August 22, 2022. (deadline for the Clerk to certify nominations) to determine if Council is now in a 'Lame Duck' position. The Clerk would report the information to Council at its September 6, 2022 Corporate Planning Meeting.

After Election Day, on October 24, 2022, if necessary, the Municipal Clerk will report on the Wawa Municipal Election results to determine if Council is in a 'Lame Duck' position.

If there is a 'Lame Duck Council' declared, pursuant to Section 6 of the MEA, 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. The Inaugural Meeting of Council will take place on November 15, 2022.

At the Inaugural Meeting of Council, the By-law Delegating authority to the Chief Administrative Officer pursuant to Section 275 of the Municipal Act, 2001 in regards to Restricted Acts will expire and the newly elected Council will be sworn in for the Municipality of Wawa.

Analysis**Option 1:**

THAT Council receive the Council Restricted Acts, (most commonly known as the 'Lame Duck Periods') staff report for information purposes; and

FURTHER THAT the Municipal Clerk be directed to prepare the necessary By-law prior to Nomination Day (August 19, 2022), delegating authority to the Chief Administrative Officer from August 19, 2022 to November 14, 2022 to:

BE the financial signing authority for expenditures, outside the current budget, exceeding \$50,000 and/or for the disposition of any real or personal property of the municipality which has a value exceeding \$50,000 at the time of disposal;

BE the authority to hire or remove any officer from/to employment with the Municipality of Wawa; and

FURTHER THAT the By-law shall come into force only in the event when determined by the Municipal Clerk with certainty that less than 75% percent of the current members of Council will be returning to sit on the new Council after Nomination Day of the 2022 Municipal Elections. **Recommended.**

Option 2: Maintain status quo. **Not Recommended.**

Policies Affecting the Matter

Budget/Financial Implications:

There are no Financial/Budget implications as a result of this report; however staff will endeavour to initiate as many capital projects as practical prior to the Nomination Day deadline.

Consultations:

- **Municipal Elections Act, 1996**, as amended Municipal Act, 2001, as amended
- **Strategic Plan:** N/A.
- **Existing Policies:** There is Legislative Authority in Section 12 of the Municipal Elections Act, 1996 – a Clerk who is responsible for conducting an election may provide for any matter or procedures that is not otherwise provided for in an Act or regulation, and, in the Clerk's opinion, necessary or desirable for conducting the election.
- In 2018 (By-Law No 3140-18), Council delegated authority to the former Chief Administrative Officer/Clerk-Treasurer, and/or or the Deputy Clerk to take action, where necessary on certain restrictions listed in the Municipal Act, 2001 between Nomination Day and November 30, 2018.

Recommendation

It is therefore recommended that Council receive the Council Restricted Acts, (most commonly known as the 'Lame Duck Periods') staff report for information purposes.

It is further recommended that Council direct the Municipal Clerk to prepare the necessary By-law prior to Nomination Day (August 19, 2022), delegating authority to the Chief Administrative Officer and/or Clerk from August 19, 2022 to November 14, 2022 to:

1. Be the financial signing authority for expenditures, outside the current budget, exceeding \$50,000 and/or for the disposition of any real or personal property of the municipality which has a value exceeding \$50,000 at the time of disposal;
2. Be the authority to hire or remove any officer from/to employment with the Municipality of Wawa.

The By-law would come into force only in the event when determined by the Municipal Clerk with certainty that less than 75% percent of the current members of Council will be returning to sit on the new Council after Nomination Day of the 2022 Municipal Elections and the new Council takes office.