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Date June 14, 2022 **Report No.** 2022-334

To Chair and Members
Committee of the Whole – Planning and Administration

From Tanya Daniels
City Clerk / Director of Clerk's Services

1.0 Type of Report

Consent Item ☐
Item For Consideration ☒

2.0 Topic **Restricted Acts in an Election Year and Temporary Delegated Authority (Lame Duck) [Financial Impact: None]**

3.0 Recommendation

- A. THAT report 2022-334 titled Restricted Acts in an Election Year and Temporary Delegated Authority BE RECEIVED; and
- B. THAT, in order to ensure the efficient and effective management of the Organization if the Council for The City of Brantford is in a restricted position (Lame Duck) pursuant to section 275 of The Municipal Act, 2001, Council DELEGATES authority the Chief Administrative Officer (CAO) as follows:
 - i. The CAO shall consult with and receive professional advice from internal staff including but not limited to the City Solicitor, General Managers, City Treasurer, Manager of Real Estate, when evaluating exercising the delegated authority; and
 - ii. The following actions are included in the delegation:
 - 1. The hiring or dismissal of any employee of the Municipality that is not an officer of the Municipality as per The Municipal Act, 2001; and

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2. The making of any expenditures or incurring any other liability which exceeds \$50,000 that has not already received budgeted approval for; and
 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
- iii. The delegation shall expire on December 1, 2022; and
- C. THAT a By-law BE PRESENTED to Council for consideration providing for the delegated authority to the CAO; and
- D. THAT the CAO BE DIRECTED to provide a report directly to Council outlining any actions taken under the restriction period in December of 2022.

4.0 Executive Summary

Section 275 of the Municipal Act, 2001, prohibits municipal Councils from making certain actions after Nomination Day (August 19 2022) in an election year and after election day up to the commencement of the new term of office. The restriction on actions commences based on the number of returning current members that could be on the next term Council. The legislative restriction is referred to as “Restricted Acts” but is more commonly known to be a “Lame Duck” Council/period.

For the City of Brantford, the lame duck position would be in effect if it is apparent that less than 9 of the current council members are eligible to be within the next term either on nomination day or voting day. As the restricted acts can impact certain decisions making practices in an election year, staff recommend a temporary delegation of authority to the CAO through an adopted by-law that provides for the following three provisions contained within section 275:

1. The hiring or dismissal of any employee of the municipality; and
2. The disposition of any real or personal property of the municipality which has a value exceeding \$50,000 at the time of disposal; and
3. The making of any expenditures or incurring any other liability which exceeds \$50,000 that has not already received budgeted approval for.

5.0 Purpose and Overview

The purpose of this report is to seek Council’s approval for temporary delegated authority for certain actions prescribed within *The Municipal Act, 2001 Section 275 - Restricted Acts* to select staff members for items as they relate to the 2022

Municipal Election. The temporary delegation of additional authority is intended to cover actions that may be needed during an election year while the Council may be in a restricted action capacity.

6.0 Background

6.1 Legislation

The following are the applicable excerpts from *The Municipal Act, 2001 Section 275 - Restricted Acts* that relate to The City of Brantford Council.

Restricted Acts in an Election Year

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 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.

Basis for determination

(2) If a determination under subsection (1) is made,

- (a) after nomination day but before voting day, the determination shall be based on the nominations to the new council that have been certified and any acclamations made to the new council; or
- (b) after voting day, the determination shall be based on the declaration of the results of the election including declarations of election by acclamation.

Restrictions

(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.

Exception

(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.

Emergencies

(4.1) Nothing in this section prevents a municipality taking any action in the event of an emergency.

Delegated authority unaffected

(6) Nothing in this section prevents any person or body exercising any authority of a municipality that is delegated to the person or body prior to nomination day for the election of the new council.

6.2 Historical Direction

Delegation of authority during the Restricted Acts period was arranged in both elections years of 2014 and 2018. The process for those election years included direction to the CAO.

While not contained in the recommendation in previous terms, the associated reports outlined consultation with the City Solicitor or City Treasurer prior to exercising the authority and completing an update to Council.

7.0 Corporate Policy Context

The recommendation provides for business continuity in the two areas should Council be in a “Lame Duck” position during the Restricted Acts timeframe.

8.0 Input From Other Sources

Legal Services.

Senior Leadership Team.

AMCTO Resources.

9.0 Analysis

9.1 “Lame Duck” Determination

A restricted acts position can be determined at two key date intervals in an election year as follows:

First Potential:

The earliest point in time that it can be determined that the Council will include less than three-quarters of the outgoing Council (75% or less than 9) will be as of the close of nominations **(August 19, 2022)** noting that nominations will be certified by the Clerk responsible for the conduct of the election on August 22, 2022.

Second Potential:

If not in a lame duck position after nomination day during the first potential timeframe, Council could then be after voting day **(October 24, 2022)** based on the declaration of the results of the election including declarations of election by acclamation which has less than three-quarters of the outgoing Council returning.

9.2 Delegated Authority Recommendation

To assist with the continuation of the municipal business during a lame duck period, staff propose the temporary delegated authority to the CAO in order to safeguard against any potential gaps that may occur as a result of a Lame Duck Council. The temporary authority, which would be included within a by-law to be presented to Council for consideration, would only commence if a lame duck council has occurred and would include a termination (sunset clause) for the temporary authority would end.

Even though the authority would be in place it does not mean the authority would be used as the approval for many actions that ensure continuation of the municipality's services and programs have already been obtained. Staff have been advised of the potential lame duck period and have reviewed the authorities they may need to ensure adequate coverage for their respective areas. It is important to note that previously executed delegated authority,

including those outlined within the Purchasing Policy and the Delegated Authority By-Law adopted by Council are not impacted as a result of the Restricted Acts period as those delegations are already in place. Further, there is an ability for actions to be executed in the event of an Emergency (Section 275(4.1) and are not impacted, in this case, by a restricted act period.

It is a best practice to arrange for delegated authority coverage in an Election year but it is rare for the use of said delegation given all other efforts and previously granted authorities being in place. Since it is still a possibility, staff recommend that in the event any action would be taken that utilizes this temporary authority the agreement to the action would require the CAO to consult and receive professional advice with internal support staff, such as the City Solicitor, a General Manager, the City Treasurer, prior to executing the authority. This review and consultation with internal staff would support the CAO in the determination of the recommended course of action.

The chart below outlines the restricted action and a recommendation as it relates to delegated authority:

| Action | Recommendation for Delegated Authority |
|--|---|
| The appointment or removal from office of any officer of the municipality; | <p>This delegation is not applicable as The Municipal Act Section 23.3 states that you cannot delegate the following powers and duties:</p> <p>“The power to appoint or remove from office an officer of the municipality whose appointment is required by this Act.”</p> <p>Positions included would be the Chief Administrative Officer, City Treasurer, and the City Clerk.</p> |
| The hiring or dismissal of any employee of the municipality; | <ul style="list-style-type: none">• Does not impact the existing delegated authority for hiring or dismissal of any employee.• Delegated Authority is required and recommended for positions that are contained within “Hiring Policy for General Manager and Other Identified Positions” (Policy 016) that are not Officers of the Municipality in accordance with The Municipal Act, 2001. Those positions are:<ol style="list-style-type: none">1. General Manager(s)2. Fire Chief3. City Solicitor |

| | |
|--|---|
| | <div>4. Chief Building Official</div> <div>5. Indigenous Affairs Advisor</div> |
| The disposition of any real or personal property of the municipality which has a value exceeding \$50,000 at the time of disposal; | <ul style="list-style-type: none">• Only applies to items not included within the most recent budget or already having received approval.• If the required by-law or authority is granted to staff to conduct the action prior to being in a lame duck position, the final step may be done after nomination day or election day regardless of the restricted act period. This only applies if the authority is obtained prior to. |
| Making any expenditures or incurring any other liability which exceeds \$50,000. | <ul style="list-style-type: none">• Only applies to items not included within the most recent budget or already having received approval. |

10.0 Financial Implications

There are no Financial Implications known in association with the delegation of authority.

11.0 Climate and Environmental Implications

N/A

12.0 Conclusion

With 2022 being an election year, a review of applicable decision making abilities that may be impacted has been undertaken as it relates to section 275 of The Municipal Act, 2001 which places restrictions on actions that can be approved and executed as a result of a possible material change to the incoming Council. Much of the corporate approval activity that ensures the ongoing business and services of the Municipality is maintained within the Delegated Authority By-Law / Policy or previously granted authority to staff. To ensure adequate coverage for extenuating circumstances as it relates to the restricted actions, staff recommend additional temporary delegated authority to the CAO relating to hiring and dismissal of certain roles and the disposition of property and expenditures/liability that exceeds \$50,000 where prior budget or approval has not been granted by Council in advance of Nomination Day.



T. Daniels, City Clerk/Director of Clerk's Services

In adopting this report, is a by-law or agreement required? If so, it should be referenced in the recommendation section.

By-law required ☒ yes ☐ no

Agreement(s) or other documents to be signed by Mayor and/or City Clerk ☐ yes ☒ no

Is the necessary by-law or agreement being sent concurrently to Council? ☒ yes ☐ no