



Administrative Report

Office of the Director, Legislative and Community Services/Clerk

To: Warden McNamara and Members of Essex County Council

From: Mary Birch, B.A., CMO
Director, Legislative and Community Services/Clerk

Date: Wednesday, August 10, 2022

Subject: Restricted Acts of Council – Election Cycle 2022

Report #: 2022-0810-LCS-R018-MB

Purpose

To seek delegation of authority to the Chief Administrative Officer (CAO), to undertake certain acts of Essex County Council after Nomination Day, which may be restricted by Section 275 of the Municipal Act, 2001, c.25 S.O. 2001, as amended.

Background

Section 275 of The Municipal Act, 2001, as amended stipulates circumstances upon which acts of Council may be restricted after Nomination Day for a municipal election. Nomination Day this cycle is August 19, 2022.

The determination of whether there is a possibility for 75% of the existing council to return to Essex County Council is determined at two different points in time.

- 1) After Nomination Day (August 19, 2022), but before Voting Day (October 24, 2022); the determination is based on whether existing members of Essex County Council have filed nomination papers for either the Mayor or Deputy Mayor position at the local municipality.
- 2) After Voting Day (October 24, 2022), until the end of the term of the existing Council (November 14, 2022), the determination is based on whether an existing member of Essex County Council is elected or acclaimed as either Mayor or Deputy Mayor.

Discussion

Legal and Legislated Requirements

Restricted Acts After Nomination Day are found in Section 275 of the Municipal Act, 2001 as amended. County Council would be in a 'restricted acts' or 'lame duck' position if it can be determined with certainty that at least 4 current members will not be returning after the election.

The acts of Council which are restricted under Section 275 are as follows:

- 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 (does not apply if this was included in the most recent budget adopted by the council before nomination day)
- d) making any expenditures or incurring any other liability which exceeds \$50,000 (does not apply if this was included in the most recent budget adopted by the council before nomination day)

Municipal Councils are not restricted in any other ways, other than those listed above.

Despite these, nothing in Section 275 prevents a municipality from taking action in an emergency.

There are, however, exceptions to the restricted acts which are also set out in Section 275. The exceptions are as follows:

- (c) and (d) do not apply if the disposition or liability was included in the current budget adopted by Council before nomination day in the election year.

There is also a provision in this section which allows Council to delegate authority for these restricted acts to any person or body.

Current Situation for the County of Essex Council

Based on the announcements of existing members of Essex County Council retiring and the nominations filed to date for positions of Mayor and Deputy Mayor at Essex County municipalities, it appears that Essex County Council will be a 'Lame Duck' Council beginning August 19, 2022 and will be subject to the restrictions listed above under Section 275(3) of the Municipal Act, as amended, until the newly elected Essex County Council is sworn in on November 23, 2022.

Restricted Acts Already Delegated to County Administration

As noted in the Background section, the restricted acts of Council do not extend to persons or bodies who have had authority delegated to them by Council prior to becoming lame duck. Therefore, if responsibility for one of the restricted actions under Section 275(3) has previously been delegated by Essex County Council to an appointed officer of the Corporation, the lame duck provisions no longer apply to that action. Two of the restricted acts have already been delegated by Essex County Council to Administration.

- Authority to hire (existing positions) and dismiss employees, with the exception of Department Heads and the CAO, is delegated to Administration in Hiring Policy #91-001.
- The process for the disposition of County assets is set out in Article 18.0 of the Purchasing Policy 19-003, with the exception of addressing the disposition of Real Property

Restricted Acts of Council Not Currently Delegated to County Administration

Approval for the appointment or removal of any officer of the municipality, referred to as 'Department Heads' at the County of Essex, is not currently a delegated authority, therefore, Essex County Council approval is required.

The disposition of real property owned by the County of Essex, in accordance with By-law #26-2009 requires Council approval.

Approval of unbudgeted expenditures or liabilities requires approval by Essex County Council.

Continuity of Business

County Administration does not foresee that there will be a need to take any action on the above three restricted acts of Essex County Council not currently delegated, however, to ensure the continuity of all County of Essex business up until the new Essex County Council members are sworn in on November 23, 2022, Council may wish to delegate approval authority to the Chief Administrative Officer on a temporary basis, by way of adopting a delegation of authority by-law.

To ensure that a member of Administration is available to carry out the approvals of the restricted act during times of vacation or absence due to illness, etc., it is proposed that the delegation of authority be granted to the Chief Administrative Officer, or an Acting Chief Administrative Officer, in his absence.

Sun Parlor Home (SPH) Committee of Management

All members of Essex County Council are appointed as members of the Sun Parlor Home Committee of Management, and while the role of Council is separate and apart from the Committee of Management for SPH, and the Fixing Long-Term Care Act does not reference any 'restricted acts' under a lame duck Committee, Administration is recommending including the delegation of the Committee of Management's authority to the CAO as a precaution – should additional Regulations under that legislation be enacted.

Reporting to Council

Despite the delegated authority being granted, an information report outlining the intentions of the CAO to act upon that authority will be brought before Council. Further, at the first regular meeting of the new Council term, a summary of acts performed under this authority will be brought before County Council.

Financial Implications

There are no anticipated financial implications to this action. The CAO will consult with appropriate members of the County Senior Leadership Team, as appropriate, prior to approving any acts under this delegated authority.

Consultations

The County Solicitor, Administrator of the Sun Parlor Home and Director of Financial Services/Treasurer were consulted on this report.

Recommendation

That, provisional upon Essex County Council being subject to the restricted acts of Council set out in Section 275 (3) of The Municipal Act, 2001 as amended, following nomination day, Essex County Council delegates approval authority for the period August 19, 2022 to November 23, 2022 to the Chief Administrative Officer, or in his absence the Acting Chief Administrative Officer in approving the following acts:

- 1) appointment or removal of any Officer (Department Head) of the County of Essex
- 2) disposition of real property owned by the County of Essex
- 3) unbudgeted expenditures or liabilities of the County of Essex exceeding \$50,000.

And further that Administration will report to Essex County Council any use of this delegated authority at the first regular County Council meeting of the new term.

Approvals

Respectfully Submitted,

Mary Birch

Mary Birch, B.A., CMO, Director, Legislative and Community Services/Clerk

Concurred With,

Mike Galloway

Mike Galloway, MBA, CMO, Chief Administrative Officer