



Administrative Report

Office of the Director of Council & Community Services/Clerk

To: Warden Tom Bain and Members of County Council

**From: Mary Birch
Director of Council & Community Services/Clerk**

Date: July 18, 2018

Subject: Restricted Acts of Council After Nomination Day

Report #: 2018-0718-CCS-R006-MB

Purpose

To seek delegation of authority for the Chief Administrative Office 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.

In summary, Section 275 states that if the new council will not include three-quarters of the members of the outgoing council, then certain acts of Council are restricted. For Essex County Council, 11 of the 14 existing members are required.

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.

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Restricted Acts of Council After Nomination Day

- 1) After nomination day (July 27, 2018), but before voting day (October 22, 2018), 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 22, 2018), the determination is based on whether an existing member of Essex County Council is elected or acclaimed as either Mayor or Deputy Mayor.

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 had a value exceeding \$50,000 when it was acquired by the municipality; and
- d) making any expenditures or incurring any other liability which exceeds \$50,000.

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.

Discussion

Lame Duck Council

Based on 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 July 28th 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 December 12, 2018.

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 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.

- 1) 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.
- 2) The process for the disposition of County assets is set out in Article 9.0 of the Purchasing Policy 04-002, which delegates that authority to Administration.

Restricted Acts of Council Not Currently Delegated to County Administration

- 1) 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.
- 2) The disposition of real property owned by the County of Essex, in accordance with By-law #26-2009 requires Council approval.
- 3) 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 December 12, 2018, Council may wish to delegate approval authority to the Chief Administrative Officer on a temporary basis.

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Financial Implications

There are no anticipated financial implications to this action. The Chief Administrative Officer would report to County Council any intention of using this delegated authority, prior to doing so.

Recommendation

It is the recommendation of Administration that Essex County Council adopts By-law 30-2018 which, provisional upon Essex County Council being subject to the restricted acts of Council set out in Section 275 (3) of The Municipal Act, 2001, S.O. 2001 c.25, following nomination day, delegates approval authority to the Chief Administrative Officer of the County of Essex for the period July 28 to December 12, 2018, to approve the following acts:

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

And further that the Chief Administrative Officer will report to Essex County Council any intended use of this delegated authority.

Respectfully Submitted

Mary Birch

Originally Signed by

Mary Birch Director of Council & Community Services/Clerk

Concurred With,

Robert Maisonville

Originally Signed by

Robert Maisonville, Chief Administrative Officer