



DATE: February 4, 2022  
TO: Administration and Finance Executive Committee  
FROM: Municipal Clerk  
SUBJECT: For your decision: Lame Duck Council

## Issue

For Council to receive information pertaining to a potential Lame Duck Council.

## Facts

- Under *Section 275 of the Municipal Act, S.O. 2001, c.25* Council is prohibited from performing certain actions in a municipal election year where it is determined that there will be a material change in its membership during the next term of office, this is referred to as "Lame Duck Council".
- A municipal Council can be in a lame duck situation if it is determined there is the potential that three-quarters (75%) of the existing Council members will not be returning to office.
- A lame duck position occurs twice during the municipal election period:
  - a) Between Nomination Day to the end of the current term (August 19, 2022 – November 14, 2022) - if less than 6 of the 7 (75%) existing members are not running for Council, then Council will be restricted in its actions and be deemed lame duck.
  - b) From Voting Day to the end of the current term (October 24, 2022 to November 14, 2022) – to determine if a lame duck happens after voting day the question will be: will the new Council be composed of 6 of the 7 (75%) of the incumbent (Old) Council and if the answer is "yes" then there is no lame duck. If the answer is "no" then council will be restricted in its actions and be lame duck.

## Restrictions (section 275 of the Municipal Act, 2001):

If a Council is in lame duck, the Council shall not take any of 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:**

Clause (b) as listed above is covered in part by the provision of the Personnel Selection Policy with respect to the hiring process whereas the dismissal of employees is not addressed in the policy. This does not apply to statutory appointments (Clerk, Treasurer, CAO) which Council is not permitted to delegate per the provision of 23.3 (1) 1 of the Municipal Act.

Clauses (c) and (d) above 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.

**Delegated Authority:**

- Section 270 (1) 6. Requires municipalities to adopt certain policies including a policy respecting the delegation of its powers and duties. Fort Frances does not have a specific policy regarding delegation of powers and duties where typically you would find language relating to Lame Duck Councils. This item was identified and should form part of an overall policy review and audit for the incoming Council.
- Council is permitted to delegate certain authority of the duties listed within Section 275(2) to maintain operations during established Lame Duck Council periods. However, this delegation is required prior to the periods coming into effect.

**Analysis**

- Land Matters - With respect to Section 275(3)(c) (land matters), 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 or if the CAO has been delegated the authority to do so.
- 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 annual budget. However, the lame duck council would not be able to award the contract, if the amount of the tenders or bids exceeded the amount included in the budget.
- Emergencies – The Act provides per Section 275(4.1) that nothing in this section prevents a municipality taking any action in the event of an emergency.
- Planning ahead can help ensure the municipality doesn't run into problems during these restricted periods. Therefore it is being recommended that Council enact a By-Law to delegate the authority to the CAO in the event that Council is lame duck. This delegation shall only come into effect if the present Council is subject to the "Lame Duck" per section 275 of the *Municipal Act* and shall not extend beyond the swearing in of the incoming Council.

## RECOMMENDATION

**THAT** Council receive the report from the Municipal Clerk / Returning Officer dated January 28, 2022 re: Information Lame Duck Council

**AND THAT** a By-Law be prepared to provide for the delegation of authority to the CAO in the event that Council is lame duck to address matters relating to:

1. the hiring or dismissal of any employee of the municipality;
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. making expenditures or incurring any other liability which exceeds \$50,000

**AND THAT** the Municipal Clerk / Returning Officer advise Council following Nomination Day or Final Voting Day in the 2022 Municipal Election if it is determined that the restricted acts clause of the *Municipal Act* has been engaged.