

Presented To:	City Council
Presented:	Tuesday, Apr 10, 2018
Report Date	Monday, Mar 19, 2018
Type:	By-Laws
By-Law:	2018-54

For Information Only

By-law Delegating Authority to CAO During Election Period

Resolution

For Information Only

Relationship to the Strategic Plan / Health Impact Assessment

This report refers to operational matters.

Report Summary

This report provides information regarding Section 275 of the *Municipal Act, 2001* which restricts the actions of Council in certain circumstances during an election.

Financial Implications

There are no financial implications associated with this report.

Signed By

Report Prepared By

Eric Labelle
City Solicitor and Clerk
Digitally Signed Mar 19, 18

Financial Implications

Jim Lister
Manager of Financial Planning and
Budgeting
Digitally Signed Mar 20, 18

Recommended by the Department

Kevin Fowke
General Manager of Corporate
Services
Digitally Signed Mar 26, 18

Recommended by the C.A.O.

Ed Archer
Chief Administrative Officer
Digitally Signed Mar 26, 18

BACKGROUND

Municipal Councils obtain and exercise their decision making powers pursuant to the *Municipal Act, 2001* (the 'Act'). In general, Councils have broad decision making abilities regarding matters within their jurisdiction. Section 275 of Act, which is attached hereto as Schedule "A", however, provides that the actions of Councils are restricted during a municipal election in certain circumstances. Specifically, the section provides that the actions of Council will be restricted where the new Council will include less than three quarters of the members of the outgoing Council. For the City of Greater Sudbury there would have to be less than nine members of Council potentially returning for a new term.

This determination is made at two specific points in time:

- 1) After nomination day based on the certified nominations and any acclamations made to the new Council. Nomination day is the last day, pursuant to the *Municipal Elections Act, 1996*, during which a person may file a nomination for the Municipal and School Board Election. For the 2018 Municipal and School Board Election nomination day is Friday July 27th, 2018.
- 2) After voting day based on the declaration of the results and any acclamations.

In other words, if less than 9 members of the current Council are certified as candidates or if less than 9 members of the current Council are elected the actions of Council will be restricted until the new Council's term begins on December 1st, 2018.

Where a determination is made pursuant to the above that the actions of Council are restricted Council may not:

- a) Appoint or remove from office any officer of the municipality;
- b) Hire or dismiss any employee of the municipality;
- c) Dispose of any real or personal property of the municipality which has a value exceeding \$50,000 at the time of disposal unless the disposition was included in the most recent budget adopted by the Council before July 27th, 2018; and,
- d) Make any expenditures or incur any other liability which exceeds \$50,000 unless the liability was included in the most recent budget adopted by the Council before July 27th, 2018.

The Act does provide that nothing prevents Council from taking any action in the event of an emergency nor does it prevent persons or bodies from exercising authority that has been delegated prior to nomination day. Numerous by-laws such as the Purchasing By-law or the Delegation By-law already delegate authority to staff and the delegated authority is not affected should the actions of Council be restricted.

The restrictions could, however, prevent the current Council from completing or moving forward with outstanding matters. As a precaution, it has been a practice in this municipality, like in many others, to pass a by-law delegating additional authority to the Chief Administrative Officer during the period where the actions of Council are restricted. For clarity, the delegated authority to the Chief Administrative Officer would only take effect where the Clerk makes a determination that the criteria in section 275 of the Act applies to the current Council. A by-law to delegate authority to the Chief Administrative Officer as stated herein appears on the current agenda for passage.

The proposed by-law would authorize the Chief Administrative Officer to incur any liability (including the award of a contract) or authorize any expenditure, not included in the previously approved budgets and which would otherwise require Council approval, provided that :

1. The Treasurer advised the Chief Administrative Officer that such expenditure or liability is not detrimental to the financial interests of the municipality;
2. The term of any contract does not exceed 12 months; and,
3. The Purchasing By-law is complied with in all other respects.

The Chief Administrative Officer will be required to report to the new Council at the earliest opportunity any actions taken under the authority of this by-law.

SCHEDULE “A”

MUNICIPAL ACT, 2001

S.O. 2001, CHAPTER 25

RESTRICTED ACTS AFTER NOMINATION DAY

Restricted acts

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.
2. If the new council will have more members than the outgoing council, the new council will include less than three-quarters of the members of the outgoing council or, if the new council will include at least three-quarters of the members of the outgoing council, three-quarters of the members of the outgoing council will not constitute, at a minimum, a majority of the members of the new council.
3. If the new council will have fewer members than the outgoing council, less than three-quarters of the members of the new council will have been members of the outgoing council or, if at least three-quarters of the members of the new council will have been members of the outgoing council, three-quarters of the members of the new council will not constitute, at a minimum, a majority of the members of the outgoing council. 2001, c. 25, s. 275 (1).

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. 2001, c. 25, s. 275 (2).

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. 2001, c. 25, s. 275 (3); 2006, c. 32, Sched. A, s. 114 (1).

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. 2001, c. 25, s. 275 (4).

Emergencies

- (4.1) Nothing in this section prevents a municipality taking any action in the event of an emergency. 2006, c. 32, Sched. A, s. 114 (2).

Upper-tier council

- (5) This section applies with necessary modifications to the council of an upper-tier municipality. 2001, c. 25, s. 275 (5).

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. 2006, c. 32, Sched. A, s. 114 (3).

Section Amendments with date in force (d/m/y)

2006, c. 32, Sched. A, s. 114 (1-3) - 01/01/2007

By-Law 2018-54

**A By-Law of the City of Greater Sudbury to Delegate Certain Authority
to the Chief Administrative Officer During the Election Period**

Whereas Section 275 of the *Municipal Act, 2001*, S.O. 2001 C. 25, provides that certain actions of Council may be restricted after nomination day or election day in an election year;

And Whereas such actions are not restricted if those actions have been delegated by Council prior to nomination day or election day, as the case may be;

And Whereas Council of the City of Greater Sudbury deems it to be in the interest of the efficient administration of the City that certain actions not be delayed during the election period;

**Now Therefore the Council of the City of Greater Sudbury Hereby Enacts as
Follows:**

Delegation

- 1.- The Chief Administrative Officer is hereby delegated the authority to incur any liability, award any contract, or authorize any expenditure, not included in the previously approved budgets, that would, but for this By-law, require Council approval, provided:
- (a) the Executive Director of Finance, Assets and Fleet advises the Chief Administrative Officer that such expenditure or liability is not detrimental to the financial interest of the City;
 - (b) the term of any contract does not exceed twelve months; and
 - (c) the Purchasing By-law is complied with in all other respects.

Effective Date

2. (1) This By-law shall come into effect:
- (a) after 2:00 p.m. on July 27, 2018 if the Clerk has determined that the criteria in Section 275(1) of the *Municipal Act, 2001*, applies to this Council; or
 - (b) such later date as the Clerk has determined that the criteria in Section 275(1) of the *Municipal Act, 2001*, applies to this Council.
- (2) This By-law shall not come into effect if the Clerk does not make a determination that the criteria in Section 275(1) of the *Municipal Act, 2001*, applies to this Council.

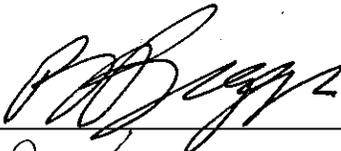
Expiry

3. The authority under this By-law expires at 11:59 p.m. on November 30th, 2018.

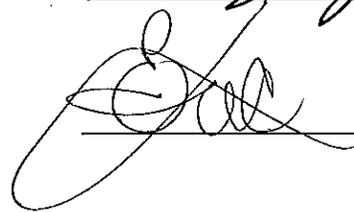
Reporting

4. After the commencement of the new term of Council, the Chief Administrative Officer shall report to Council in a timely manner to advise of any action taken pursuant to the authority delegated under section 1. The obligation to report shall survive the expiry of this By-law.

Read and Passed in Open Council this 10th day of April, 2018



Mayor



Clerk