



# SMITHS FALLS

RISE AT THE FALLS

## Report # 2017-225

To: Mayor & Council  
 From: Kerry Costello, Director of Corporate Services/Clerk  
 Date: November 29, 2017  
 Committee of the Whole Date: December 4, 2017  
 Title: Restricted Acts of Council (Lame Duck Periods)  
 1) From July 27, 2018 to October 22, 2018 and;  
 2) from October 22, 2018 to November 30, 2018

- For Direction
- For Information
- For Adoption
- Attachment

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*Recommendation: THAT Council receive the Council Restricted Acts, (most commonly known as the 'Lame Duck Periods') staff report for information purposes; and FURTHER THAT the Municipal Clerk be directed to prepare the necessary by-law prior to Nomination Day (July 27, 2018), delegating authority to the Chief Administrative Officer from July 27, 2018 to December 3, 2018 to:*

- a) Be the financial signing authority for expenditures, outside the current budget, exceeding \$50,000 and/or for the disposition of any real or personal property of the municipality which has a value exceeding \$50,000 at the time of disposal;*
- b) Be the authority to hire or remove any officer from/to employment with the Town of Smiths Falls; and*

*FURTHER THAT the by-law shall come into force only in the event when determined by the Municipal Clerk with certainty that less than 75% percent of the current members of Council will be returning to sit on the new Council after Nomination Day of the 2018 Municipal Elections*

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**Purpose:** On April 4, 2016, the Ontario Minister of Municipal Affairs and Housing introduced Bill 181, the *Municipal Elections Modernization Act, 2016* (MEMA). The MEMA received Royal Assent on June 9, 2016. Bill 181 and the changes that the MEMA contains, constitutes the most significant updates to the *Municipal Election Act, 1996* and the conduct of Municipal Elections in Ontario within the last 20 years.

This report was prepared as part of the review of changes in legislation resulting from the passing of Bill 181. This report represents one component of many changes that will come into effect during the 2018 Municipal Election.

**Background:** A specific change to the *Municipal Elections Act* through Bill 181 impacts the change in the Nomination Period for candidates for the 2018 Municipal Election from January 1 to **May 1, 2018**. The Nomination Day (deadline) is now **July 27, 2018 from 9:00 AM to 2:00 PM** rather than the former September deadline time period. This amendment means that Council could be in a 'Lame Duck' position longer than in previous elections.

Another amending piece of provincial legislation being Bill 68 *Modernizing Ontario's Municipal Legislation Act* implements a change to the term of office of Council. This amendment provides a new start date for a new term of Council from December 1 following the regular election, to a new date of November 15. This amendment was implemented to shorten the potential 'Lame Duck' period between when the existing Council is still sitting and the new Council takes Office.

For the 2018 Municipal Election the amendment includes a transitional rule under Section 1.1 of the Act which keeps the start date for the 2018 Council term to begin on December 3 (s.6 MEA), and the next Municipal Election in 2022 will start on November 15, thus shortening the 'Lame Duck' period for the next Municipal Election.

In summary of the above information, the 2018 Municipal Election could have a longer 'Lame Duck Period' than in the past, which provides the importance of preparing a by-law delegating certain powers to the Chief Administrative Officer pursuant to Section 275 of the *Municipal Act, 2001*.

The determination of whether a Municipal Council is in a restricted position pursuant to section 275 of the *Municipal Act, 2001*, also known as a 'Lame Duck' Council occurs twice during the Municipal Election process.

- a) **Between July 27th, 2018 to October 22, 2018-** The determination shall be based on the 2018 Candidates election nominations that have been certified by the Municipal Clerk on July 27, 2018. If less than three-quarters of the existing Council Members are not running for Municipal Council, the restrictions set out in the *Municipal Act, 2001*, will apply; and
- b) **Between October 22nd 2018 to November 30th, 2018-** The election results are declared by the Municipal Clerk shortly after the municipal election. If the elections result in less than 75% of the incumbent Council Members returning to Council, the restrictions set out in the *Municipal Act, 2001*, will apply.

The following is a brief summary of the provisions as provided pursuant to Section 275 of the *Municipal Act, 2001*, Restricted Acts Provision:

### **Restrictions**

If a Council is in a 'lame duck' position, the Council shall not take on 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 to clauses 'C' and 'D' above to not apply if the disposition or liability was included in the most recent budget adopted by the Council before Nomination Day of the 2018 Municipal Election.

**Land Matters:**

Pursuant to Section 275(3)(c), 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.

**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 approved 2018 annual budget. However, the 'Lame Duck' Council would not be able to award a contract, if the amount of the tender or bid exceeds the amount included in the budget.

**Emergencies:**

Pursuant to Section 275(4)(4.1) which states that nothing in this section 275 of a 'lame duck' Council under the restrictions, there is nothing that prevents a municipality from taking any action in the event of an emergency within the Municipality.

**Delegation of Authority:**

Section 275(6) provides that the authority of a municipality can be delegated to a person or body prior to Nomination Day for the election of the new Council.

**Determination of Restricted Act of Council- Lame Duck Position**

In order to determine if Council is in a 'Lame Duck' position, the Municipal Clerk will follow Section 275 of the *Municipal Act, 2001* and advise Municipal Council at the first Committee of the Whole Meeting in August 2018 after Nomination Day to determine if Council is now in a 'Lame Duck' position.

After Election Day, on October 22 2018, if necessary, the Municipal Clerk will report on the Town of Smiths Falls Election results to determine if Council is in a 'Lame Duck' position.

If there is a 'Lame Duck Council' declared, pursuant to Section 6 of the MEA, the Term of Office Commences for the newly elected Council on **December 3, 2018** and the New Council is deemed organized when quorum of members have taken declaration of Office pursuant to section 232 of the *Municipal Act, 2001*, this will be done at the Inaugural Meeting of Council to take place in mid-December of 2018.

At the Inaugural Council Meeting of Council in December 2018 the By-law Delegating authority to the Chief Administrative Officer pursuant to Section 275 of the *Municipal Act, 2001* in regards to Restricted Acts will expire a newly elected Council will be sworn in for the Town of Smiths Falls.

**Analysis and Options:**

Option 1: THAT Council receive the Council Restricted Acts, *Municipal Act, 2001* provision (most commonly known as the 'Lame Duck Periods') staff report for information purposes; and FURTHER THAT the Municipal Clerk be directed to prepare the necessary by-law prior to Nomination Day (July 27, 2018), delegating authority to the Chief Administrative Officer from July 27, 2018 to December 3, 2018 to:

- a) Be the financial signing authority for expenditures, outside the current budget, exceeding \$50,000 and/or for the disposition of any real or personal property of the municipality which has a value exceeding \$50,000 at the time of disposal;
- b) Be the authority to hire or remove any officer from/to employment with the Town of Smiths Falls; and

FURTHER THAT the by-law shall come into force and effect only in the event that less than 75% percent of the current Members of Council will be returning to sit on the new Council after Nomination Day of the 2018 Municipal Election as determined by the Municipal Clerk. (Recommended).

Option 2: Maintain status quo (Not Recommended)

**Budget/Financial Implications:** There are no Financial/Budget implications as a result of this report, however staff will endeavour to initiate as many capital projects as practical prior to the Nomination Day deadline.

**Consultation:** Municipal Elections Act, 1996, as amended  
Bill 181, the *Municipal Elections Modernization Act, 2016* (MEMA)  
Lanark County Clerk's Working Group

**Link to Strategic Plan:** N/A.

**Existing Policy:** There is Legislative Authority in Section 12 of the Municipal Elections Act, 1996 - a Clerk who is responsible for conducting an election may provide for any matter or procedures that is not otherwise provided for in an Act or regulation, and, in the Clerk's opinion, necessary or desirable for conducting the election.

This was done in 2014 via By-law 8731-2014. Council delegated authority to the Chief Administrative Officer, Malcolm Morris to take action, where necessary on certain restrictions listed in the Municipal Act, 2001 between Nomination Day and November 30, 2014.

Respectfully Submitted:



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Kerry Costello,  
Director of Corporate Services/Clerk

Reviewed by:



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Malcolm Morris, CMO  
Chief Administrative Officer