




# COMMUNICATION UPDATE

<b>TO:</b>	Mayor and Members of Council
<b>DATE:</b>	April 11, 2022
<b>SUBJECT:</b>	2022 Municipal Election – Council Restricted Acts (City wide)
<b>WARD(S) AFFECTED:</b>	City Wide
<b>PREPARED BY &amp; SUBMITTED BY:</b>	Andrea Holland, City Clerk 

## Information Only

The Office of the City Clerk has received a few questions regarding timelines and decision making, should Council find itself, under the *Municipal Act*, 2001, in a Restricted Acts Period also known as a “Lame Duck Council”.

“Lame Duck” is a term that Council is referred to when it is determined that the new Council will have less than 75 percent of the membership of the former Council. 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.

The implementation of Bill 68 Modernizing Ontario’s Municipal Legislation Act altered the term of office of Council for 2022 to start on November 15, which has shortened any potential Lame Duck period in 2022.

### 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 through a Communications Update and publicly on the City’s Website following August 22, 2022 (deadline for the Clerk to certify nominations, under the *Municipal Elections Act*, 1996) to determine if Council is now in a 'Lame Duck' position.

First Determination After Nomination Day:

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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 with effective dates of August 22, 2022 (Nominations are announced by the City Clerk) to November 14, 2022 (last day of the current term of Council).

### Second Determination After the Election:

The election results are declared by the Municipal Clerk shortly after the municipal election. If the election results in less than 75% of the incumbent Council Members returning to Council, the restrictions set out in the *Municipal Act*, 2001, will apply with effective dates of October 24, 2022 (Election Day) to November 14, 2022 (last day of the current term of Council).

### Restricted Acts:

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

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 do not apply if the disposition or liability was included in the most recent budget adopted by the Council before Nomination Day of the 2022 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 2022 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) there is nothing that prevents a municipality from taking any action in the event of an emergency within the Municipality.

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Delegated Authorities: Existing delegated authority is not impacted. This would include examples such as the City Manager's authority over administration (including hiring and termination), and procurement authority.

While we will not know whether the City of Hamilton will be in a Lame Duck situation until after Nomination Day closes or following Election Day, Staff will work with Legal Services to consider whether there are any matters that may fall into the categories of Restricted Acts that require Council approval between the period of August to November 2022, when the new Council is sworn in.

Key dates to consider:

August 12, 2022 – Last Council Meeting prior to Nomination Day

August 19, 2022 – Nomination Day

September 28, 2022 – Last Council Meeting prior to the Election

October 24, 2022 – Election Day

November 15, 2022 – New Council term begins

For more information, please visit [www.hamilton.ca/elections](http://www.hamilton.ca/elections)

If you have any questions, please contact Aine Leadbetter, Manager, Elections and Print/Mail at ext. 2753 or at [Aine.Leadbetter@hamilton.ca](mailto:Aine.Leadbetter@hamilton.ca)

**APPENDICES AND SCHEDULES ATTACHED – N/A**

Respectfully Submitted,

Andrea Holland  
City Clerk