



Staff Report

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Report To:	General Government Committee	
Date of Meeting:	March 21, 2022	Report Number: LGS-005-22
Submitted By:	Rob Maciver, Director of Legislative Services	
Reviewed By:	Mary-Anne Dempster, CAO	By-law Number:
File Number:		Resolution#: GG-164-22
Report Subject:	2022 Municipal Election – Procedures and Legislative Update	

Recommendation:

1. That Report LGS-005-22, and any related communication items, be received for information.

Report Overview

This report is intended to provide Council, and the public, with a broad overview of how different aspects of Clarington's 2022 Municipal Elections will be conducted.

1. Background

- 1.1 Members of Council had requested information about how the Clarington 2022 Municipal Elections will be conducted. The Municipal Elections Act (MEA) provides that the Municipal Clerk shall make all decisions, except for specific items (such as the method of election) and details are in the process of finalization. However, this report provides some of the known details and changes for the 2022 Clarington Municipal Elections.
- 1.2 In January 2019, arising out of [Report CLD-020-18](#) on the accessibility of the 2018 elections, Committee referred a motion to set the method of election as internet and telephone voting to the January 14, 2019, Council meeting and asked Staff for more information. Arising out of consideration of [Report CLD-005-19](#), Council passed the following Resolution #C-020-19 and subsequently passed [By-law 2019-003](#) to establish internet and telephone voting for Clarington municipal elections:
 - That Report CLD-005-19 be received;
 - That the Council of the Municipality of Clarington endorse Internet and Telephone Voting for Advance Polls and Voting Day as the preferred method of voting for the Municipality of Clarington, beginning with the 2022 Municipal Elections; and
 - That Attachment 1 to Report CLD-005-19, the draft by-law to authorize the use of internet and telephone voting, and to repeal By-law 2013-038 (which authorizes the use of vote tabulators, special ballots, and accessible equipment for Municipal Elections), be approved.
- 1.3 Voting Day is Monday, October 24, 2022, however, the voting period begins at 10:00 am on Tuesday, October 18, 2022.

2. Recent Changes to the Municipal Elections Act (MEA)

2.1 The following legislation made changes to the [MEA](#) affecting the 2022 municipal elections:

- Bill 68, Modernizing Ontario's Municipal Legislation Act, 2017;
- Bill 218, Supporting Ontario's Recovery and Municipal Elections Act, 2020; and
- Bill 254, Protecting Ontario Elections Act, 2021.

The following summarizes the changes that apply to Clarington.

Term of Council

2.2 The current term of Council began on December 1, 2018, and will end on November 14, 2022. With the following term of Council beginning on November 15, 2022, instead of December 1, 2022.

Nomination Day

2.3 Changes were made to move Nomination Day in a regular election from the fourth Friday in July to the third Friday in August (August 19, 2022).

Clerk's Procedures Deadline

2.4 Previously, the Clerk's Procedures (i.e., how the election will be run) needed to be completed prior to December 31st in the year prior to a regular election. With the recent change, the deadline is June 1st of the election year. However, Staff plan to have this completed prior to May 1st, which is the first day for nominations.

Electronic Filing

2.5 Clerks may put conditions in place that would allow candidates and third party advertisers to submit their nomination and registration forms electronically. Endorsements of a nomination that are filed electronically must still be collected as original signatures.

- 2.6 In Clarington, electronic filing¹ (e-filing) will only be permitted if all the following conditions have been met:
1. A state of emergency has been declared by the federal or provincial government or the Municipality of Clarington; and
 2. The Clerk's Office is closed due to the emergency, and in-person attendance is not permitted for three contiguous business days, which will include Nomination Day.

If the conditions above have been met, e-filing is permitted, and the details are outlined in the Candidates' Manual and the Clerk's Procedures.

Ranked Ballots

- 2.7 The Province made changes to remove the option to hold ranked ballot elections in Ontario municipalities by revoking Ontario Regulation 310/16 (Ranked Ballot Elections) in its entirety, and by repealing Subsections 41.1 and 41.2 of the MEA.

Third Party Advertiser's Withdrawal of Registration

- 2.8 A registered third party advertiser may withdraw their registration by filing a written withdrawal with the Clerk during the time for filing a notice of registration (no later than the Friday before Voting day, at a time when the Clerk's office is open).
- 2.9 If a registered third party advertiser files a nomination to run for office, their third party advertiser registration is deemed to be withdrawn and their advertising campaign automatically closes.

¹ NOTE: A candidate may also submit their nomination papers, including fee, and copies of identification, using the drop-box at the main door of the Municipal Administrative Centre (MAC) only when all the conditions for e-filing have been met.

3. Election Assistance Centres (EACs)

- 3.1 Voters do not need to attend a voting location. However, if they need assistance, Election Assistance Centres (EACs) will be available. Based on the experience of other municipalities, Clarington is planning that between 15% and 30% of eligible Voters may need assistance.
- 3.2 Wherever possible, only municipally-owned facilities will be used for EAC locations during a municipal election and no schools are being used. This provides greater control and less risk. We have established 10 EACs for Voting Day, across the four wards in addition to the Clarington Libraries (a new addition in 2022) and the Special Voting Locations (i.e., long-term care facilities, hospital, etc.). All EAC locations have been inspected and staffing decisions were made with the assumption that social distancing requirements will be necessary.

4. COVID-19 Planning

- 4.1 Although decisions and planning are still underway, Staff are planning for the election as if we are under a certain amount of public health restrictions (i.e. cleaning protocol, masks, and social distancing). These plans may be modified as we get closer to the Voting Period.

5. Advance Voting Period

- 5.1 The Voting Period will begin at 10:00 am on Tuesday, October 18, 2022, and end at 8:00 pm on October 24th. The length of the Advanced Voting Period is consistent with previous Clarington elections. Advanced EACs will be operating on various days, in various locations throughout the Advanced Voting Period, except Sunday (which will have the election support hotline available). Residents will also be able to vote at Clarington libraries during regular library hours, during the Advanced Voting Period.

6. Special Voting Locations

- 6.1 Section 45(7) of the MEA requires that voting must be provided on the premises for institutions with 20 or more beds occupied by persons who are disabled, chronically ill, or infirm and for retirement homes in which 50 or more beds are occupied. These locations are commonly referred to as “special voting locations”.

- 6.2 The Act dictates that voting places be open for voters between the hours of 10:00 AM and 8:00 PM but also provides that the Clerk may establish that specified voting places shall be open on voting day at a specified time before 10:00 AM on Voting Day and provides that the Clerk may establish reduced voting hours of special voting locations, provided that the location is only for the use of the respective residents. Prior to the changes to the Act, these would have been established by by-law, but now it is established by the Clerk.
- 6.3 Election Officials assigned to these special voting locations will conduct the vote during the specified hours.
- 6.4 The following are Clarington’s special voting locations, which will have reduced hours on Voting Day:

Ward	Location	Address	Community
01	White Cliffe Terrace Retirement Residence	1460 Highway 2	Courtice
02	Seasons Clarington Retirement Community	65 Clarington Blvd	Bowmanville
02	Bowmanville Creek Retirement Community	105 Queen Street	Bowmanville
03	Lakeridge Health Bowmanville	47 Liberty Street S.	Bowmanville
03	Glen Hill Strathaven - Long Term Care	264 King Street East	Bowmanville
04	Fosterbrooke Long Term Care	330 King Avenue West	Newcastle

- 6.5 Each of these voting locations will mainly be for the respective resident voters – but since they are EACs by the nature of internet/telephone voting, non-residents can be assisted and can vote using the technology provided, depending on the restrictions of the specific facility. Voting hours per location are based on the analysis of the time required to process voters at each location and have been established in co-operation with the administration staff of each facility.

7. Internet and Telephone Voting

Commitment to Principles

- 7.1 The Clerk's Division is working to establish policies, procedures, and training that reflect industry best practices. The guiding principles for these policies, procedures, and training are as follows²:
1. Secrecy - The association between a voter's identity and vote is secret;
 2. Equality - A voter shall not be able to cast more votes than another, nor be prevented from casting a ballot;
 3. Accessibility - The election shall be accessible to voters. Each voter must have the means and opportunity to participate;
 4. Fairness - Voters and candidates shall be treated fairly and consistently;
 5. Dependability - The election shall deliver an outcome in a reliable and timely manner;
 6. Accuracy - A cast vote must accurately reflect the voter's intended preference;
 7. Correctness - The election outcome must reflect the correct combination of valid cast votes;
 8. Confidence - Voters and candidates must be confident in the correctness of the election outcome; and,
 9. Transparency - The election is to be conducted in a manner that is transparent and accountable to voters and candidates.

² "Protecting Electoral Integrity in the Digital Age: Developing E-Voting Regulations in Canada", Alexander Essex and Nicole Goodman. Election Law Journal, Volume 19, November 2, 2020, Page 173. Accessed from:
<https://www.liebertpub.com/doi/10.1089/elj.2019.0568>

Software Vendor

- 7.2 As noted in [Report CLD-005-19](#), Staff conducted a competitive procurement to obtain an internet/telephone voting vendor. The RFP submissions were reviewed by seven members of Staff including IT, Finance, Clerk's, and the Director of Legislative Services/Municipal Solicitor. The vendor selected was Simply Voting, and staff have begun to implement the project with the vendor. In the 2018 Ontario Municipal Elections, Simply Voting had 28 Ontario municipalities as customers. In 2022, they will have 50 Ontario municipalities as customers.

Voting Information Letter (VIL)

- 7.3 The VIL to be mailed to each voter will contain the telephone number for telephone voting; the website for internet voting; instructions for both types of voting; the unique voter Personal Identification Number (PIN); and contact information to seek help. It is anticipated that the VILs will be mailed out in late September, and should arrive in early October, to every voter on the Voters' List.

Pop-Ups on Computers

- 7.4 Some Members of Council expressed concern about ensuring that there were no "pop-ups" on the voting screens that would be marketing or influencing the vote. This was a requirement that was built into the Request for Proposal document for the software vendor and Staff have confirmed that Simply Voting does not allow pop-ups.

Online Voting & Devices

- 7.5 Voters will be able to vote online from any internet-enabled device or desktop computer.
- 7.6 Devices at the EACs will be set up for use by voters who do not have access to the internet or require assistance. They will log out each voter automatically after they vote, for quick and efficient turnover.
- 7.7 The voter will enter the website name into any browser, enter their PIN number and personal credentials. The user will enter their selection for each race, the system will confirm their selection, record the votes, and provide a receipt code.

Telephone Voting

- 7.8 When the voter dials the telephone number, the system will prompt voters for their credentials, read out the candidate names, record the votes, and provide a receipt code. Voting instructions and the wording of the ballot will be professionally recorded in a human voice. The voting system ensures that no one can vote twice.

Senior's and Internet Use

7.9 Members of Council had expressed concern about internet/telephone voting and the senior population. It should be noted that anyone without internet can vote by telephone or at an Election Assistance Centre (EAC) during the Voting Period. However, it is interesting to note that Statistics Canada, on their most recent (2018) Canadian Internet Use Survey, reports that 71 % of seniors are frequent Internet users (Statistics Canada, 2019). This is significant increase from the previous survey (2012) where only 48% of seniors used the Internet. Although it is frequently assumed that seniors are not technology savvy, there is no data to support this claim. In fact, the major Ontario internet voting municipalities (Markham, Newmarket, and Aurora) stated in an interview that they had not reported complaints or criticism from senior voters claiming to be disenfranchised by online voting.

Security

7.10 Members of Council have asked about the security of internet/telephone voting. Staff were very clear in the RFP that the software had to meet a high level of specific security measures. The Simply Voting software uses a variety of security features, certifications, testing, and encryption techniques and Staff have a high degree of confidence in the integrity of the system.

7.11 These security features include:

- Secret Ballot - Whether you use the internet or telephone to vote, your vote is instantly encrypted and stored with no possibility of your vote being traced back to your identity, just like a traditional paper ballot. It is impossible for municipal staff, Simply Voting employees, or any other person, to see how you have voted. Election Officials will only be able to see that you cast your vote, the time you voted, and the IP address or telephone number you voted from.
- One Person, One Vote - Only registered voters on the municipal list of voters will be authorized to access a ballot. Once you vote, using either internet or telephone, you are "crossed off" the list and cannot vote again. Even if you switch between the internet and telephone, even if you try to vote using several devices at the same time, the system will only accept one single ballot from each voter.
- Protection Against Computer Hackers - Simply Voting is an expert in internet security and goes to great lengths to protect the voting system. All communications between the voters' computer and the voting website are encrypted to ensure confidentiality. The internet ballot is tamperproof and there are multiple layers of security to protect the servers against attacks. Simply Voting software has been independently certified with several common security certifications.

- Protection Against Imposters - To vote, you will need to enter a PIN that will be mailed to each voter in a Voter Information Letter prior to the "Voting Period". These PINs are randomly generated by Simply Voting and are printed, machine folded in security-tinted envelopes, and mailed directly to voters. As an added security measure, voters will also be required to enter personal information to complete the voting procedure. Therefore, if a Voter Information Letter ends up in the wrong hands, another person will not be able to cast the vote without your PIN and the personal information.

8. Voters' List

- 8.1 Staff noted, and share, Council's concerns about the accuracy of the voters' list, including concerns about transient populations. As a result, Staff have contacted MPAC to inquire how they plan to address the problem of expired tenancies and absent post-secondary students remaining on the list, and they responded by stating "our planned Municipal Toolkits will include targeted messaging for post-secondary students that municipalities can leverage locally as needed. In addition, we will be engaging post-secondary student groups as contacts to share MPAC materials. We acknowledge that this elector group poses challenges in respect to enumeration."
- 8.2 The "Municipal Toolkit" is a set of communications tools that MPAC shares with municipalities to have a common approach/branding to the message about updating the list. It is meant to drive all voters to MPAC's www.voterlookup.ca to check that they are on the Voters' List and that their information is correct.
- 8.3 Unfortunately, the problems associated with outdated tenancies may not have a great improvement until Elections Ontario takes over the voters' list on January 1, 2024, when we expect there will be a greater focus on accuracy as it is more of their core job. To that end, Staff have reached out to Elections Ontario as they prepare to take over the voters' list, and Gene Genin, from the Provincial Election Register has responded by stating that "Elections Ontario currently has a comprehensive outreach program for provincial elections. An objective of the transition program is to make sure that EO's outreach activities and other elector communications are enhanced and synched with municipal messaging."
- 8.4 For Clarington's part, we will be starting earlier to get the word out that everyone should check the voters' list and make sure their information is accurately recorded. For instance, anyone can check MPAC's www.voterlookup.ca from now until the summer when it will switch over to Clarington's voter lookup tool. This has been linked with a button from our election website, www.clarington.net/votes. However, to avoid confusion with the June 2, 2022, Provincial election, the majority of the Clarington advertising campaign will not start until after June 2nd.

- 8.5 Additionally, Clarington will undertake a review of the voters' list from MPAC at an earlier date than previous elections, to provide more time for the many hours of data cleansing required to make the list as accurate as possible.

9. Family Voting

- 9.1 Members of Council asked about possible voting coercion with internet/telephone elections. The phrase "family voting" is commonly cited as a concern with remote voting. This refers to a situation where some families "vote collectively in ways that uphold the clan-style biraderi ('brotherhood') relationships that govern a range of their social relationships, including marriages" (Smith, 2013). Additionally, pressure from a head of household can occur in situations where a dominant family member wishes to influence and control the vote. Also, concerns about campaign workers going door-to-door with iPads and possibilities for undue influence, notably for groups that may be more susceptible (e.g., residents of old age homes), has been raised at the municipal level in Canada (e.g., City of Toronto online voting debate)."³
- 9.2 No voting approach can guarantee prevention against coercion in unsupervised voting, including vote-by-mail. One approach would be to have a system that encourages voters to vote as many times as they like until voting day – but only the last one counts. Staff have considered this approach but have determined it is not advisable, especially in the face of the new voting method. Another approach is that the voter can choose not to vote at home and rather vote at an EAC.
- 9.3 Regarding campaign workers, the Candidates' Manual, and the Clerk's Procedures (which the candidates receive) will contain wording that makes it clear that "door-to-door with iPads" is not allowed.
- 9.4 Education of voters regarding the penalties is the other recommended approach, which is the approach that Clarington will be taking.

³ "Online Voting: A Path Forward for Federal Elections", Nicole Goodman, Director of the Centre for e-Democracy, for the Privy Council Office, January 2017. Page 28. Accessed from: <https://www.canada.ca/en/democratic-institutions/services/reports/online-voting-path-forward-federal-elections.html#toc14>

10. Role of Scrutineers

- 10.1 Prior to the Voting Period, the following are the election activities that a scrutineer may observe:
- Election assistance provided by Election Officials
 - Transportation of Equipment;
 - Demonstration of technology; and
 - Mock Election(s).
- 10.2 In addition to the activities identified above, during the Voting Period candidates/scrutineers may observe activities in the following election areas:
- Opening of Voting – Candidates and scrutineers will be invited to attend the “Opening of the Vote” at the Municipal Administrative Centre (MAC) (located at 40 Temperance Street, Bowmanville) on the morning that the Voting Period commences. Opening of the vote procedures will demonstrate, among other things, that the vote tally is at zero prior to the opening of the vote, that the Voting System is inaccessible prior to the official start time, and the voting system is accessible after the official start time.
 - EACs - Candidates and Scrutineers may attend any EAC offered throughout the Voting Period, during hours of operation, to observe the process. In addition, Scrutineers may enter the EAC 15 minutes before it opens to inspect election equipment, forms, and documents relating to the vote (but not to delay the timely opening of the EAC). They may use the chairs assigned to candidates/scrutineers for observing. Upon leaving, the appropriate sanitation protocol shall be followed (which may include sanitizing the chairs).
 - Voters’ List - Candidates and Scrutineers may object to a person being added to the Voters’ List (Note: A record will be made of all objections, however, the final decision on whether to add a voter to the Voters’ List, make a revision, or issue a voting PIN will be made by an Election Official).

- Auditing Process – Candidates and Scrutineers may request to receive, and review, documentation associated with the Municipality’s Voting System auditing program and activities. The Municipality will make the records available as promptly as possible when requested. However, Candidates and Scrutineers should be aware that such documentation may not be available on an immediate basis, during the Voting Period, due to ongoing auditing activities.
- Activities in the public areas of the Election Return Headquarters – including close of voting. Candidates and Scrutineers may observe the close of voting procedures which will demonstrate, among other things, that the voting system is inaccessible after the official voting period end time.
- Results Release – Candidates and Scrutineers are entitled to be present at the time and place where results are announced.
- Recount Event (where applicable, following Voting Day).

10.3 Details about the role of scrutineers will be contained in the Candidates’ Manual.

11. Report of Voters Who Have Voted at Advanced Voting

- 11.1 Members of Council had asked about candidates obtaining a list of voters who have voted. Subsection 43(6) of the MEA states that the Clerk shall, on the request of a scrutineer or certified candidate, give them a copy of the list showing the name of each person who has voted on that Advanced Voting Day and identifying their voting place. This will be done through an online Candidate Portal.
- 11.2 The online Candidate Portal will be used to communicate information and voters’ lists to all registered candidates who request a copy of the voters’ list. The Portal will allow candidates access to the portions of the voters’ list that they are entitled to, through a self-serve mechanism (replacing the manual export, formatting, verification, and distribution of an Excel document). Candidates will be able to filter the results, download an Excel document, format, and print as they choose.

12. Results Reporting

- 12.1 Members of Council had asked about the results report. One of the advantages of internet/telephone voting is the expectation that the results will be ready earlier than through tabulators or manual counting. Although the perception is that the results will be available at 8:01 pm, it is important to set appropriate expectations. To comply with subsection 46(3) of the MEA, where it states that “an elector who is in a voting place at the time for closing under subsection (1) or (3) and has not yet voted is still entitled to vote” – there will be a five minute “grace period” for voters who entered the voting process prior to the close of voting to finish voting and voting devices at EACs will not be closed until we receive confirmation that all voters have left the location. Therefore, an exact time cannot be determined as it will largely depend on voters in these locations, and the time it takes to communicate the closure of each EAC back to headquarters.

13. Recount Policy

- 13.1 The Act provides that a municipality may adopt a policy, by May 1st, with respect to the circumstances in which the municipality requires the Clerk to hold a recount of the votes cast in an election. The MEA requires a recount if the votes for two, or more, candidates receive the same number of votes and cannot both or all be declared elected.
- 13.2 It should be noted that, in accordance with Section 60 of the MEA, the recount shall be conducted in the same manner in which the votes were originally counted. Only a judge, who orders a recount under Section 58 of the MEA, may order that the recount be held in a different manner.
- 13.3 Regardless of any recount policy, Council may also require a recount by passing a resolution under Section 57 of the MEA within 30 days after the declaration of the results.
- 13.4 A recount policy could conceivably authorize a recount in the event the totals for two candidates were separated by a defined value (i.e., “separated by 5 votes” or “separated by less or 1% of the total number of votes cast for the office”).
- 13.5 However, because it’s impossible to determine what the correct number should be, because everyone will have a different opinion, and because the recount will be conducted by producing the same electronic report of the votes cast, Staff do not recommend establishing a recount policy. As stated above, this does not take away Council’s ability to order a recount, should they see fit. If Council would like to proceed with implementing a recount policy, the direction would need to be given to staff well before May 1, 2022.

14. Restricted Acts after Nomination Day (aka “Lame Duck Period”)

- 14.1 The question of whether a Council is in a “lame duck” period often arises as we approach a municipal election. “Lame Duck” refers to time period when municipal councils are restricted from doing certain acts, as outlined in Section 275 of the Municipal Act:
- the appointment or removal from office of any officer of the municipality;
 - the hiring or dismissal of any employee of the municipality;
 - the disposition of any real or personal property of the municipality that has a value exceeding \$50,000 at the time of disposal; and
 - making any expenditures or incurring any other liability that exceeds \$50,000.
- 14.2 Subsection 275(3) states that the third and fourth bullets 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.”
- 14.3 Similarly, Subsection 275(4.1) states that “nothing in this section prevents a municipality taking any action in the event of an emergency.”

Determining whether the Restricted Acts apply to Clarington

- 14.4 There is no guarantee that there will be a lame duck situation. The Clerk must perform an analysis after the beginning of each of the following periods. A Council can become lame duck in one, or both, of two separate time periods. First, the period from Nomination Day (August 19, 2022, at 2:00 PM) to Voting Day (October 24, 2022) when official results are known. The second period runs from Voting Day (October 24, 2022) to the end of the term of the outgoing Council (November 15, 2022).
- 14.5 In determining the “lame duck” period, Council is in “lame duck” where it can be determined, with certainty, that less than 75% of the Members of the old council are not returning to the new council.
- 14.6 For a more detailed explanation of “lame duck” and the restrictions placed on Council during the “lame duck” period, please see Attachment 1.

- 14.7 The Municipal Clerk will notify Members of Council, Department Heads, and Administrative Assistants following Nomination Day (August 19th) and Voting Day (October 24th) of the determination of whether the Municipality of Clarington is in a lame duck position.

Mitigation

- 14.8 The restriction on the appointment of municipal officers during a lame duck period is mitigated by the appointment of a Deputy Clerk and Deputy Treasurer in the event that there might be a sudden vacancy that occurs during the lame duck period.
- 14.9 If there are large contracts (where the expenditure exceeds \$50,000) the [Purchasing By-law](#) addresses this situation in Section 61, Council Recess Procedures, as follows:
61. (1) Notwithstanding section 60 [regarding approval limits and reporting], where a matter which would have otherwise been submitted to Committee requires approval during any of Council's recesses, **including elections**, the CAO shall be authorized to award the Contract if the Treasurer is of the opinion that the price is reasonably reflective of the approved budget allocation and/or is part of the normal operating responsibility of the Department.
- (2) The Purchasing Manager shall report all Contracts awarded under subsection (1) to Committee as soon as possible after the conclusion of the recess.
- (3) Council shall not vary any action or decision of the Contract awards made in accordance with this section.
- 14.10 Regarding any other matter that could foreseeably arise, in which Council would be restricted from acting during a lame duck period, Staff will seek delegated authority from Council prior to Nomination Day.

15. Communication Plan

- 15.1 Staff have developed a comprehensive, multi-channel communication plan. As part of the plan, dedicated web pages have been developed to provide information regarding the municipal elections. The information will continually be updated as the election progresses.
- 15.2 The main webpage, www.clarington.net/votes and the direct election support hotline number, 905-697-4747, are both currently operational.

16. Key Dates

The following are key election dates:

- May 2 = Nomination period begins (Reminder: Nomination form requires signatures of 25 persons.)
- August 19 at 2:00 PM = Nomination Day (i.e., nomination period ends, unless an extension is required due to lack of candidates in a race.)
- September 3 = Election signs may be displayed starting on this date.
- September 19 = Last regular Council meeting prior to the election
- October 1 = Deadline to establish the new Compliance Audit Committee (a separate report will be presented to Committee in the Spring of 2022)
- October 18 to 24 inclusive = Voting Period
- **October 24 = Voting Day**
- November 21 = Inaugural meeting of Clarington Council
- December 31 = End of Campaign financial reporting period
- March 29 = Deadline for filing financial statements.

17. Concurrence

The Director of Financial Services/Treasurer has reviewed the report and concurs with the recommendations.

18. Conclusion

It is respectfully recommended that this report be received for information.

Staff Contact: June Gallagher, Municipal Clerk, jgallagher@clarington.net or 905-623-3379 ext. 2102.

Attachments:

Attachment 1 – Article by Fred Dean regarding Lame Duck Council, from the October 2013 publication of Municipal World

Interested Parties:

There are no interested parties to be notified of Council's decision.

- ▶ five members of the old council are elected and two are defeated;
- ▶ four members are acclaimed to their old office and one of the three members running for mayor is elected, thus two are defeated; or
- ▶ five members are acclaimed and two have retired.

In these examples, it can be determined *with certainty* that less than 75 percent of the current members of council will be returning to sit on the new council. Thus, the test in paragraph 1 of subsection 275 (1) – that the new council *will* include less than 75 percent of the outgoing council – is satisfied. Thus, in these examples, the old council is a lame duck council from the date of the election to the end of the term, and its powers are therefore restricted.

Restricted Acts

Once the determination has been made with certainty that the council is lame duck for either or both time frames, then the four restrictions in subsection (3) will apply. These 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 that has a value exceeding \$50,000 at the time of disposal; and
- (d) making any expenditures or incurring any other liability that exceeds \$50,000.

This is the complete list. There are no other restrictions on a council's ability to make decisions or exercise powers.

The restriction on the hiring or firing of staff could cause real difficulties for a municipality, particularly as many will be

hiring for winter maintenance. Subsection 275 (6) provides that nothing in this section prevents a person or body from exercising authority delegated by council. Thus, if the power to hire employees has been delegated to staff, then the fact that council's powers are restricted during the lame duck period will not restrict staff from being hired or fired. Large municipalities have delegated to staff this authority to hire and fire, but it is important for smaller municipalities where councils often maintain control of the hiring process.

It is important to note that council cannot delegate during the election period. The delegation by council must be made before nomination day. Any delegation will require that council's delegation policy be amended. This could require special notice in accordance with council's notice policy.

There is another provision that lessens the impact of the restrictions on a lame duck council. Subsection 275 (4) provides that restrictions in clauses (c) and (d) do not apply if the disposition or liability was approved by council in the annual budget. The one condition is that council must have approved the budget before nomination day.

Thus, a contract could be awarded by a lame duck council for an amount in excess of \$50,000, so long as the amount was included in the annual budget. The lame duck council would not be able to award the contract, however, if the amount of the tenders or bids exceeded the amount included in the budget.

A frequently asked question is whether the municipality can close a real estate transaction during the lame duck period. The answer is "yes" – assuming that council passed a by-law approving the execution of the agreement of purchase

and sale in advance of the lame duck period.

In 2006, the province added a new subsection (4.1), which provides that nothing in section 275 prevents a municipality taking action in the event of an emergency. What constitutes an emergency? It does not mean merely urgent or inconvenient. The best definition for a council to apply is found in the *Emergency Management and Civil Protection Act*, in which "emergency" is defined to mean "a situation or an impending situation that constitutes a danger of major proportions that could result in serious harm to persons or substantial damage to property and that is caused by the forces of nature, a disease or other health risk, an accident or an act whether intentional or otherwise."

Conclusion

Council and staff should begin planning well in advance for the eventuality of a council whose powers are restricted during the election period.

Once nomination day arrives, the first step is for the clerk to do the 75 percent calculation; don't round up or down. Determine whether the council's powers will be limited during both the period between nomination and election day, and then again between election day and the end of the term of the old council. If it is a lame duck council, there are only four powers of council that are restricted.

The impact of these restrictions is reduced by the ability of council to exercise powers in those matters that have been previously approved in the annual budget. Also, council may delegate its powers before nomination day and the person to whom they have been delegated will be able to act. **MW**

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