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**For Information**

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REPORT TITLE: **2022 Election Period Rules**

FROM: Gary Kent, CPA, CGA, ICD.D, Chief Financial Officer and Commissioner  
of Corporate Services

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**OBJECTIVE**

The purpose of this report is to provide an overview of election period rules regarding the use of Regional resources during an election campaign period, and possible restrictions on Council's authority, under section 275 of the *Municipal Act, 2001*, as amended (i.e., "Lame Duck" restrictions) after Nomination Day and/or Voting Day.

**REPORT HIGHLIGHTS**

- In accordance with the *Municipal Elections Act*, April 30 is the last day by which municipalities and local boards shall establish rules and procedures regarding the use of municipal and/or board resources during the election campaign period.
  - The Region of Peel has previously established policies which meet the requirements of the Act.
  - Under s.275 of the *Municipal Act, 2001*, as amended, restrictions upon the authority of Council may arise after Nomination Day and after Voting Day when election results are finalized.
  - The restrictions take effect when it can be determined that the new Council will include less than three-quarters of the members of the outgoing Council.
  - Adequate delegated authorities exist for The Regional Municipality of Peel to ensure the ongoing operations of the Region while awaiting the formation of the new Council.
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**DISCUSSION**

**1. Background**

Some key 2022 Municipal Election dates are as follows:

- **April 30** – the last day by which municipalities and local boards shall establish rules and procedures regarding the use of municipal and/or board resources during the election campaign period
- **May 2** – nomination and registration period begins
- **August 19** – Nomination Day
- **October 24** – Voting Day
- **November 14** – last day of the current Council term of office
- **November 15** – new term of office commences
- **November 17** – Regional Council Inaugural meeting

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### 2. Rules and Procedures Regarding the Use of Regional Resources During the Election Campaign Period

#### a. The Election Campaign Period

Section 33 (4) of the *Municipal Elections Act, 1996*, as amended (the Act) states that a nomination may be filed on any day on or after May 1 in the year of a regular election that is before nomination day.

Sections 88.24 and 88.28 of the Act define the election campaign period for a candidate and a registered third party, respectively, as beginning on the day on which the clerk receives the candidate's nomination for office, or the individual, corporation or trade union is registered as a third party (the earliest date being the start of the nomination/registration period) and ending on December 31 in the case of a regular election, and 45 days after voting day in the case of a by-election. Certain exceptions are provided for individual candidates or third party advertisers under sections 88.24 and 88.28 of the Act.

The 2022 Election campaign period is May 2, 2022 until December 31, 2022. November 14, 2022 is the last day of the current Council term of office.

#### b. Region of Peel Policies

April 30, 2022 is the last day by which municipalities and local boards shall establish rules and procedures regarding the use of municipal and/or board resources during the election campaign period, as per s.88.18 of the Act.

The Region of Peel has established policies to provide rules and procedures regarding the use of municipal resources during an election campaign period as outlined below.

##### Policy G00-26, Use of Corporate Resources for Elections

Policy G00-26 (Appendix I) was approved on February 8, 2018, by Resolution 2018-82. The purpose of the Policy is to provide consistent information and direction to ensure that the Region of Peel's corporate resources are not provided or used for any election-related purpose. The Policy provides guidelines for members of Council, other candidates, and staff during elections, establishing clear expectations and guidelines for carrying out their duties in an accountable and transparent manner.

Section 1 of the Policy provides general provisions for the Region of Peel during the election campaign period, from May 1 to December 31 of an election year. Section 2 provides specific rules for Regional Councillors and staff from the beginning of the nomination/registration period until the end of the current term of Council.

##### Policy F30-02, Business Expense Accounts – Members of Council

Policy F30-02 (Appendix II) was established by Resolution 97-438 and was last updated by Resolution 2019-1154. Section 7.7 of the Policy provides a summary of ineligible election related expenses and provides that Members of Council will not be allowed to use their Business Expense Accounts for constituent related expenses from May 1 to the end of the Council term (November 14, 2022).

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### Policy B00-18, Use of Regional Facilities for Political Campaign Purposes

Policy B00-18 (Appendix III) was approved by CAO directive C18-03 on February 22, 2018. The policy provides guidance regarding the use of Regional facilities for campaigning and campaign related activities with respect to municipal, provincial, and federal elections and applies to Members of Council and all Regional facilities.

Section 4 of the policy states that, "In an election year, after April 30 until the end of Council's term, Members of Council are not permitted to use Regional facilities, property, and public spaces except for the purpose of Regional business."

### Policy W20-14, Mobile Signs

Policy W20-14 (Appendix IV) was approved by CAO directive C18-03 on April 3, 2018. The policy establishes guidelines for use, placement, and maintenance of mobile signs and the program is available to Members of Council.

Section A states that the Policy is delivered in accordance with Corporate Policies G00-26 – Use of Corporate Resources for Elections and F30-02 – Business Expense Accounts, Members of Council. As such, the mobile sign program may not be used, and any election related expenses may not be claimed, from the period of May 1 to the end of the Council term.

Section 5 d. of the Policy states that, "The respective Sign By-law of the area municipalities must be complied with at all times." Local municipal sign by-laws provide guidance regarding rules associated with signage during a municipal election campaign period.

### **3. Possible Restrictions on Council Authority under Section 275 of the *Municipal Act* after Nomination Day or after Determination of Election Results (Lame Duck Provisions)**

#### **a. How to Determine Restrictions under Section 275 of the *Municipal Act***

The actions of the current Council could be restricted by operation of law after Nomination Day, August 19, 2022, or after Voting Day, October 24, 2022, through to the end of Council's term, upon the organization of the newly elected Council at the 2022 Council inaugural meeting scheduled on November 17, 2022.

The theory behind the provisions is that if the new Council will be substantially the same as the outgoing Council, there is no reason to limit the outgoing Council's permitted activities prior to the installation of the new Council. Conversely, where a new council will have a significantly different composition than the outgoing Council, there should be limits on decisions that are inherited by the new Council.

Section 275 of the *Municipal Act, 2001*, as amended (the *Municipal Act*) takes effect when it can be determined that the new Council will include less than three-quarters of the members of the outgoing Council. This section is designed to apply only when a clear determination can be made taking into consideration the number of acclamations; those Council members not running for re-election; nominations certified; and vacant seat(s).

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The first opportunity for determination to be made is after Nomination Day (August 19, 2022). Nomination Day represents the deadline for both nominations and withdrawals. A determination can be made after all nominations are examined and certified by the local municipal Clerk's offices, by 4:00 p.m. on August 22, 2022. A final determination may be made once the election results are declared after the October 24, 2022, election.

There is a possible scenario under which the first determination would be deferred until August 25, 2022. This would arise only in certain circumstances where for one or more seats no certifiable nominations are in hand on Nomination Day. If this were the case for a sufficient number of seats to make a difference in the determination, the resulting extension of the deadline for such nominations to Wednesday, August 24, 2022, and the possible certification of such nominations under an extended deadline, on Thursday, August 25, 2022, could affect the determination.

### b. Restrictions if "Lame Duck" is determined

If it is determined that the current Council is subject to s.275 of the *Municipal Act* (i.e., Lame Duck), Council shall not take the following actions:

- 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 which has a value exceeding \$50,000 at the time of disposal\*; and
- the making of any expenditures or the incurring of any other liability which exceeds \$50,000\*.

\*Restriction not applicable if the disposition or liability was included in the most recent budget adopted by the Council before Nomination Day.

Section 275 (6) of the *Municipal Act* provides for Council, prior to Nomination Day, to delegate any authority to a person or body and that such delegated authority can be exercised without restriction under s.275.

By-law 15-2020 delegates Council's authority to approve awards of direct negotiation procurements greater than \$100,000.00 to \$250,000.00 requiring an urgent response, to the Interim Period Approvals Committee when there is a period of restricted acts in the year of an election. The Procurement By-law also delegates authority to the Chief Financial Officer to make awards of contracts that would otherwise be required to be made by Council during any periods where Council's actions are restricted under s. 275 of the *Municipal Act*, where the Chief Financial Officer deems the making of the award reasonably necessary to carry on the business of the Region.

By-law 1-2015 authorizes the Chief Administrative Officer to promote, demote, suspend, discipline, and terminate the employment of employees who are not statutory officers, including Commissioners. Statutory officers include the Clerk and Treasurer of the Region.

## CONCLUSION

Section 88.18 of the *Municipal Elections Act, 1996*, as amended (the Act) requires that municipalities and local boards shall establish rules and procedures regarding the use of

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municipal and/or board resources during the election campaign period, by April 30 of an election year. Existing Regional policies satisfy the requirements of the Act.

At the time of writing this report no clear determination can be made under s.275 as to whether less than three-quarters of current Council members will be serving on the newly elected Council. The Regional Clerk will assess the situation after Nomination Day. If a clear determination cannot be made at that time that less than three-quarters of the current Council members will be returning in the new term, s.275 will not apply to limit Council's authority. A final assessment regarding the application of s.275 will be made when the election results are finalized after the October 24, 2022 election.

Adequate delegated authorities exist for The Regional Municipality of Peel to ensure the ongoing operations of the Region while awaiting the formation of the new Council.

## **APPENDICES**

Appendix I – G00-26 Use of Corporate Resources for Elections

Appendix II – F30-02 Business Expense Accounts – Members of Council

Appendix III – B00-18 Use of Facilities for Political Campaign Purposes

Appendix IV – W20-14 Mobile Signs

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*Authored By: Jill Jones, Legislative Specialist*