

COMMITTEE OF THE WHOLE - FEBRUARY 2, 2010

FORM OF POTENTIAL QUESTION ON 2010 GENERAL MUNICIPAL ELECTION BALLOT

Recommendation

The City Clerk, in consultation with the Commissioner of Legal and Administrative Services and City Solicitor, recommends that:

- 1) This report, including the confidential memorandum of the Commissioner of Legal and Administrative Services and City Solicitor, set out as a confidential attachment, be received for information.

Contribution to Sustainability

N/A

Economic Impact

It is anticipated that additional processing requirements associated with the inclusion of a question on the ballot for the 2010 municipal election, aside from additional staff costs and potential legal expenses, could be accommodated within the processing and notices associated with the cost of administering the general election itself.

Communications Plan

Statutory notice requirements are established in the *Municipal Elections Act, 1996*, as amended. Should a ballot question be introduced, additional information will be included within the City Clerk's election promotion activities.

Purpose

The purpose of this report is to set out the requirements for placing a question on the ballot, and to respond to Council's direction.

Background - Analysis and Options

At its meeting of May 5, 2009, Council when making its decision on a preferred configuration for ward boundaries for the 2010 general municipal election also directed staff to prepare a report on a clear, concise and neutral question that could be placed on the ballot for the 2010 general municipal election, seeking the opinion of the electors on whether the City of Vaughan should increase its number of wards to six for the 2014 general municipal election.

Council also directed staff to identify the statutory requirements for placing such a question on the ballot, including any requirements for the giving of public notice or the holding of a public meeting prior to adoption of the relevant by-law and whether any such question will be binding on the municipality.

Statutory Authority

The authority for a municipal Council to place a question on a ballot comes from the *Municipal Elections Act, 1996* (the "Act"). In particular, Section 8(1) of the Act states:

- "8.(1) The council of a municipality may pass a by-law to submit to its electors,
 - (a) a proposed by-law requiring their assent;

- (b) subject to section 8.1, a question not otherwise authorized by law but within the council's jurisdiction;
- (c) subject to section 8.1, a question, the wording of which is established by an Act or a regulation under an Act."

This section grants authority for a Council to pass a by-law to submit to the electors one of three items: a by-law requiring assent of the electors, a question regarding an issue within the Council's jurisdiction or, thirdly, a question established by another Act or regulation.

Conditions

The Act outlines conditions that must be met in order to place such a question to the electors. Section 8.1(1) of the Act states:

- "8.1(1) A by-law to submit a question to the electors under clause 8 (1) (b) or (c),
- (a) shall be passed at least 180 days before voting day in the election at which it is intended to submit the question to the electors;
 - (b) cannot be amended after the last date referred to in clause (a); and
 - (c) despite clause (b), can be repealed on or before nomination day and, if the election does not include an election for an office, on or before the 31st day before voting day."

The conditions require that Council pass a by-law (as noted in Section 8.1 of the Act) a minimum of 180 days prior to the election (April 28, 2010). The conditions also state that the question can not be amended after 180 days prior to the election.

Should Council choose to repeal the by-law, it can do so on or before Nomination Day, being September 10th, 2010.

Draft Sample Question

The following draft sample question is clear, concise and neutral: "Commencing with the 2014 general municipal election, should the number of wards in the City of Vaughan be increased from five wards to six wards?"

Rules

The Act outlines the rules around the questions being put to the electors. Those rules are outlined in Section 8.1(2) of the Act, which states:

- "8.1(2) A question authorized by by-law under clause 8 (1) (b) shall comply with the following rules:
1. It shall concern a matter within the jurisdiction of the municipality.
 2. Despite rule 1, it shall not concern a matter which has been prescribed by the Minister as a matter of provincial interest.
 3. It shall be clear, concise and neutral.
 4. It shall be capable of being answered in the affirmative or the negative and the only permitted answers to the question are "yes" or "no"."

Number of wards is a matter within the jurisdiction of the City. Additionally, the issue is not of provincial interest.

The third rule requires that the question be “clear, concise and neutral”. The draft sample question set out in this report in the opinion of staff satisfies this requirement.

Finally, the question can only be one that requires a “Yes” or “No” answer. The question set out in this report may satisfy this requirement. The confidential memorandum of the Commissioner of Legal and Administrative Services and City Solicitor and the City Clerk also addresses this requirement.

If it is determined that a question will be on the ballot, an individual, corporation or trade union who proposes to incur expenses is required to register and make financial filings (in fact, the requirements in this regard mirror the stringent obligations of candidates). The inclusion of a question on the ballot may also affect the number of scrutineers permitted at the polls.

Notice and Meeting Requirements

Prior to passing such a by-law, the City Clerk must provide at least 10 days notice of Council's intention to pass the by-law. In addition to the notice, one public meeting to consider the by-law must also be held. Notice of passing of the by-law must be given within 15 days of the passing.

The notices are required to include the following information:

- i) wording of the question;
- ii) a clear, concise and neutral description of the consequences of the question if it is approved and the consequences, if it is rejected with the special majority, including an estimate of the costs, if any, that the City may incur in implementing the results of the question; and
- iii) a description of the right to appeal including the last day for filing a notice of appeal

Appeals

Within 20 days of the notice of passing of the by-law, any person may appeal to the Chief Electoral Officer of the Province of Ontario on the grounds that the question does not comply with the requirements that the question be “clear, concise and neutral” or can be answered with a “Yes” or “No” response. The appeal must be in the form of a notice of appeal to the Clerk setting out the objections and reasons in support of the objections.

The Clerk then must forward appeals to the Chief Electoral Officer within 15 days of the last day to appeal, along with any information the Chief Electoral Officer may require. The Chief Electoral Officer will then hold a hearing within 60 days to dismiss the appeal or allow the appeal in whole or in part.

Results and Implementation – Binding Effect

The results of the question may be binding on the City, if certain conditions are met. Those conditions are outlined in Section 8.2(1) of the Act and states:

- “8.2(1) The results of a question authorized by a by-law under clause 8 (1) (b) are binding on the municipality which passed the by-law if,
- (a) at least 50 per cent of the eligible electors in the municipality vote on the question; and

(b) more than 50 per cent of the votes on the question are in favour of those results.”

Should more than 50% of the eligible electors vote on the question, and are in favour of the question, the results will be binding (subject to the comments below) on the City. The Act requires that “if an affirmative answer received the majority of the votes, the municipality shall do everything in its power to implement the results of the question in a timely manner”. The Act goes on to outline timelines with respect to the passing of by-laws or resolutions, the initial steps of satisfying other requirements, or directing staff to implement the results.

The Act further states that if the negative answer received the majority of the votes, “the municipality shall not do anything within its jurisdiction to implement the matter which was the subject of the question for a period of four years following voting day.” Therefore, should the results of a question on wards be negative, and more than 50% of the eligible voters voted on the question, the City may be prevented from doing anything toward revising its ward boundaries for a period of 4 years.

The Act does provide some limits, however, on the binding nature of the results. For example, if the results of the question require the passing of a by-law and at least one public meeting, Council could decide not to implement the results of the question after the public meeting is held. Also, if Council “is of the opinion, reasonably held, that there has been a material change in circumstances” since the by-law to put the question to the electors was passed, then Council is not prevented from doing anything or required to do anything.

Relationship to Vaughan Vision 2020/Strategic Plan

This report is consistent with the priorities previously set by Council, in particular “Demonstrate Leadership and Promote Effective Governance.”

Regional Implications

N/A

Conclusion

Should Council resolve to place a question on the ballot for the 2010 general municipal election that relates to the establishment of an additional ward for implementation with the 2014 general municipal election, the draft sample question set out in this report could be used, subject to the statutory processes set out in the *Municipal Elections Act, 1996*.

Inclusion of the question on the ballot may limit Council’s ability to conduct a ward boundary review prior to the 2014 general municipal election. Other relevant considerations are set out in the confidential attachment of the Commissioner of Administrative Services and City Solicitor and the City Clerk.

Attachments

Attachment 1 Confidential Memorandum of the Commissioner of Legal and Administrative Services and City Solicitor to Members of Council only (*under separate cover*)

Report prepared by:

Jeffrey A. Abrams, City Clerk

Respectfully submitted,

Jeffrey A. Abrams
City Clerk