

CITY OF VAUGHAN

EXTRACT FROM COUNCIL MEETING MINUTES OF OCTOBER 9, 2007

Item 1, Report No. 43, of the Committee of the Whole (Working Session), which was adopted without amendment by the Council of the City of Vaughan on October 9, 2007.

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JUDICIAL RECOUNT

(Referred from the Council meeting of June 25, 2007)

The Committee of the Whole (Working Session) recommends:

- 1) **That staff bring forward within the next 60 days a comprehensive report to a Committee of the Whole (Working Session) meeting addressing issues around the 2006 municipal election, including analysis and recommendations;**
- 2) **That the following report of the City Clerk, dated June 18, 2007, be received; and**
- 3) **That the memorandum from the Commissioner of Legal and Administrative Services/City Solicitor, dated September 21, 2007, be received.**

Council, at its meeting of June 25, 2007, adopted the following:

That this matter be referred to a Committee of the Whole (Working Session) meeting in the Fall 2007, and that staff provide additional information on the matter.

Report of the City Clerk, dated June 18, 2007

Recommendation

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

That this report be received; and

That the following resolution be adopted:

Whereas a Court-ordered partial manual recount was recently conducted in the City of Vaughan, and

WHEREAS the primary reason for the recount was the Court's disagreement with the method in which poll count vote tabulating machines were programmed, and

WHEREAS the decision as to programming is a matter within the purview of the Clerk pursuant to the Municipal Elections Act; and

WHEREAS it would be desirable to avoid such costly and time-consuming recounts in future; and

WHEREAS the Municipal Elections Act and Regulations pursuant thereto are silent in this regard; and

WHEREAS it would be desirable to have legislation or regulations in place to set out whether poll count vote tabulating machines should or should not be programmed to return "over" and "under" voted ballots to the elector;

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THEREFORE be it resolved that the Minister of Municipal Affairs and Housing be requested to bring forward legislation for implementation prior to the 2010 Municipal Election that would address whether poll count vote tabulators, where used, must be programmed to return “over” and “under” voted ballots to the elector for review; and

THAT this resolution be circulated to all municipalities over 100,000 population requesting that they endorse the resolution and forward it to the Minister of Municipal Affairs and Housing.

Economic Impact

N/A

Communications Plan

N/A

Purpose

The purpose of this report is to provide information to Council on the Court-ordered judicial recount following the November 13, 2006 Municipal Election.

Background - Analysis and Options

Following the November 13, 2006 Municipal Election, former Mayor Michael Di Biase lost to challenger Linda Jackson. Mr. Di Biase submitted a request to Council for a recount which was granted. The recount was conducted on the 27th, 28th and 29th days of November 2006.

The Council-ordered recount which pertained only to Di Biase and Jackson, and was conducted in the same manner as the original election (as a machine count), did not change the outcome but changed the total votes for each of the two candidates in issue, resulting in an increased margin of 4.

Subsequently Di Biase made application to the Superior Court for various orders including an application to declare that he had been elected, an application to declare the election invalid and controverted and an application for a manual recount. In application, it was alleged that the election had been fraught with irregularities. With the exception of the programming of the vote tabulating machines (VTM) Mr. Justice Howden dismissed all the alleged irregularities and found “no breach or inconsistency in the conduct of the election which is inconsistent with the principles of the Act or which affected the result”.

With respect to the programming of the VTM's, Mr. Justice Howden took exception with the manner in which the Clerk executed his discretion in this regard and as a result ordered a partial manual recount of some 1656 ballots that had been either “over” or “under” voted and had not been counted. In his decision he indicated that, “There is no issue in this case as to the accuracy of the vote tabulating machines, and their memory cards”. In fact he directed that the VTM's be used to isolate the “under” and “over” voted ballots for manual review. This was done at the second machine recount conducted on April 26, 2007 followed by a hand recount of the isolated ballots. The result of the recount was the same 90 vote spread between the two candidates that had been reported on election night. During the second recount 49 ballots were disputed and ruled upon by the Clerk. The Clerk's ruling was subject to appeal to the Superior Court of Justice. No appeal was made and the appeal period expired on May 14, 2007.

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A concern now exists with respect to programming of the VTM's. There is no doubt that Clerks have the authority under the Municipal Elections Act (the Act), to program the machines and that procedures so established "prevail over anything in this Act and the Regulations". However, Mr. Justice Howden's decision overturns the Clerk's proper exercise of authority in this instance. At issue here is whether the VTM's should be programmed to return ballots that have been overvoted (the elector voted for more candidates than the number to be elected to the particular office) or, undervoted (the elector votes for less than the number of candidates to be elected to the particular office), so that the elector can be advised accordingly and provided with the opportunity to vote again, or, if the "under" or "over" vote is intentional, request that the ballot be processed as is. In Vaughan's 2006 election, the VTM's were not programmed to return such ballots. Some municipalities programmed "overs" and "unders" to be returned and some did not. It is important to note that there is no requirement under the Act or any regulation or guideline whatsoever to go by in this regard.

Mr. Justice Howden in short indicated in his decision that to program the VTM's not to return over and under voted ballots to the voter, often referred to as "second chance voting" offended the principles of the Act. Specifically he quoted the Court of Appeal case of Montgomery vs. Balkissoon: "...the principle that the proper majority votes decide the election. That principle is achieved by ensuring, so far as is reasonably possible, that valid votes be counted and invalid votes be rejected."

In other words, where possible, voters should be given a second chance, a chance to correct a ballot that has been "under" or "over" voted. Also to be considered is the principle of the secrecy of the vote. When a ballot is returned to a voter that had been "under" or "over" voted, whether deliberately or otherwise, and the voter is confronted with this, the secrecy of the vote is compromised. The challenge is to balance the principle of "majority vote" and the principle of voter secrecy.

Also to be considered is the principle of consistency and equality of the franchise. Relatively few municipalities utilize poll count equipment that can be programmed to return "under" and "over" voted ballots, the vast majority of municipalities still conduct hand count elections where "second chance" voting is not an option. The Legislature amended the Act some time ago to permit municipalities to use vote tabulating equipment. It is submitted that where such equipment is used, a decision as to "second chance" voting is a decision to be made by the Legislature and stipulated in the Act or Regulation, not to be left to a Clerk's discretion.

It is desirable to have this matter addressed and any legislative amendments made prior to the 2010 Municipal Election. It is suggested that a request should be submitted to the Ministry of Municipal Affairs and Housing to bring forward appropriate clarification to the Municipal Elections Act and a resolution sent to municipalities using poll count vote tabulator equipment for endorsement.

Relationship to Vaughan Vision 2007

This report is consistent with the objective of demonstrating leadership and promoting effective governance.

Regional Implications

N/A

Conclusion

The Superior Court of Ontario ordered a partial manual recount because he disagreed with the

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manner in which the vote tabulating machines were programmed. This decision raises an issue that ought to be addressed by the Legislature. Therefore, it would be appropriate to request the Minister of Municipal Affairs and Housing to bring forward Legislation for implementation prior to the 2010 Municipal Election to clarify how poll count vote tabulators, where used, should be programmed.

Attachments

None

Report prepared by:

John D. Leach, City Clerk and Returning Officer

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The 2007 Council Corporate Advertising schedule is attached.

Council Corporate Advertising is a Council budget item, administered by the Clerks Department. Ad production and placement is coordinated by the Corporate Communications Department. Each year, a series of “holiday greeting ads” are placed in local papers on behalf of the City of Vaughan and Vaughan Council. The 2007 Council Corporate Advertising schedule is based on the placement frequency and selection of local newspapers used in 2006.

Currently, the 2007 advertising placement schedule (attached) recognizes five significant events (Passover, Easter, Jewish New Year, Chanukah, Season’s Greetings). Advertisements are placed in eight newspapers (Vaughan Citizen/Liberal; Vaughan Weekly; Canadian Jewish News; Jewish Magazine; Jewish Tribune, Corriere Canadese; Tandem/Vaughan Today; and Lo Specchio). The total cost of the Holiday Greeting ads in 2007 is \$12,524.73. An additional \$5,078.98 was charged to this account in March 2007 for advertising the Public Meetings on the City’s Budget. The total expenditures of \$17,603.71 in 2007 exceed the budgeted amount of \$7,840. If the 2007 Holiday Greetings schedule is followed in 2008, an additional \$4,685 is needed to cover actual costs.

Proposed Options

The following options are provided for discussion purposes.

OPTION #1

Expand the number of significant events recognized (10 events proposed) and, where appropriate, publish greetings in the same eight newspapers used in 2007.

- List of significant events would be expanded to include faith days important to Islam, Sikhism, Hinduism, Buddhism and other religious groups with a Vaughan presence.
- Advertising placement budget would need to be increased to \$25,000 for 2008.

OPTION #2

Expand the number of significant events recognized (10 events proposed) and, where appropriate, publish greetings in a larger selection of newspapers.

- List of significant events would be expanded to include faith days important to Islam, Sikhism, Hinduism, Buddhism and other religious groups with a Vaughan presence.
- Advertising placement budget would need to be increased to \$25,000 for 2008.
- Any publications added to the placement schedule would be qualified by providing vendor information to the Purchasing department, as per the procedure for “City Page” advertising (Newspaper Advertising Application, 2007) to evaluate key criteria such as circulation numbers and placement costs.

OPTION #3

Use the “City Page” to publish Council greetings (discontinue separate placements) and expand the number of significant events recognized (10+ events).

- The City Page in 2007 is published in the Vaughan Citizen/Liberal, Vaughan Weekly, Vaughan Today, and Lo Specchio. These publications have been qualified by the Purchasing department and provide the widest circulation to key stakeholders.
- List of significant events would be expanded to include faith days important to Islam, Sikhism, Hinduism, Buddhism and other religious groups with a Vaughan presence.
- Advertising placement budget would no longer be required for Council greetings, as the costs would be covered by the City Page advertising budget.
- Consideration should be made for space limitations on the “City Page” in terms of budget flexibility – approximately twice a year the City Page is expanded onto a second page, at an additional cost, to accommodate all statutory ads.

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- In addition, the Mayor, on behalf of Council, could extend greetings on significant faith days at the beginning of a Council meeting. Councillors could also provide information about community events relating to the day being recognized.

Discussion of Options

All options presented above can be supported by postings to the City's website.

Options 3, which uses the existing City Page, does provide the most flexibility in terms of expanding the number of significant events recognized without incurring additional costs.

Extending Council greetings at Council and/or Committee meetings, as noted in Option 3, could result in increased media coverage. In addition, there is no cost associated with this approach. It could be adopted in conjunction with all options presented above.

It is important to note that the City statistics relating to religion, ethnic origin and mother tongue (see attachments) are based on the latest information available, that is, the 2001 census. The 2006 census information relating to these categories will not be released until the spring of 2008, as is the practice of Statistics Canada. Certain groups have probably increased their presence in Vaughan over the five-year period between 2001 and 2006. Consideration should be given to these new statistics when they are released next year.

Revisions to the Corporate Advertising Policy

The following two articles in the Corporate Advertising Policy, approved by Council June 15, 2005, relate to Council Corporate Advertising.

Article 7.3 has not been implemented, being superseded at the direction of the Mayor's Office during the 2003-2006 term of Council.

7.3 Vaughan Council recognition for religious holidays of major faiths in the City will be limited to one general newspaper message per year per faith, when and where deemed appropriate by the Office of the Mayor.

In addition, article 7.4 should be updated:

7.4 To ensure that City information is made available to all its residents, and in recognition that the ethnic diversity of our community is a source of social, cultural and economic enrichment and strength, City advertising can be placed in ethno-specific community newspapers that publish in languages other than English. Corporate Communications arranges for the translation of advertising, where required. The office of the Commissioner of Economic/Technology Development and Communications is responsible for advertising placements in ethno-specific community newspapers upon determining that mainstream publishers do not reach the target audience for a specific message.

Article 7.3 and 7.4 in the Corporate Advertising Policy could be replaced with the following statement:

"As a multicultural community with a diverse ethnic and religious heritage, the City of Vaughan and City Council recognize major faith days and other dates significant to the Vaughan community through the Council Corporate Advertising program. The placement of City advertising in support of this program is approved as part of the City's annual operating budget."

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Relationship to Vaughan Vision 2007

This report is consistent with the priorities previously set by Council and the necessary resources have not been allocated and approved.

Regional Implications

Not applicable.

Conclusion

By recognizing major faith days and other significant dates, the Council Corporate Advertising program will celebrate Vaughan as a multicultural community with a diverse ethnic and religious heritage.

Attachments

1. Advertising Placement Schedule & Costs for Council Corporate Advertising (2007)
2. Sample advertisement
3. Vaughan Statistics – Mother Tongue by community
4. Vaughan Statistics – Ethnic Origin by community
5. Vaughan Statistics – Religion
6. York Region guidelines for significant faith dates
7. List of local newspapers and ethnic newspapers distributed in the Greater Toronto Area
8. City Page sample

Report prepared by:

Madeline Zito, Director of Corporate Communications
Ted Hallas, Manager of Corporate Communications

(A copy of the attachments referred to in the foregoing have been forwarded to each Member of Council and a copy thereof is also on file in the office of the City Clerk.)