

## **Status Update – Municipal Election Legislation Consultations with Staff from the Ministry of Municipal Affairs and Housing**

<b>Date:</b>	April 17, 2008
<b>To:</b>	Executive Committee
<b>From:</b>	City Clerk
<b>Wards:</b>	All
<b>Reference Number:</b>	

### **SUMMARY**

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In November 2007, Council authorized the City Clerk's Office to enter into consultations with the Ministry of Municipal Affairs and Housing (the Ministry) for Toronto-specific election legislation. This report outlines the work done to date and provides a timeline of the next steps in the process.

While the provincial government has not yet made any commitment to providing Toronto with its own election legislation, representatives from the Ministry of Municipal Affairs and Housing have had numerous in-depth meetings with City staff to discuss the problems with the *Municipal Elections Act, 1996* (the Act) and potential solutions.

### **FINANCIAL IMPACT**

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This report has no financial implications.

The Deputy City Manager and Chief Financial Officer has reviewed this report and agrees with the financial impact information.

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### **DECISION HISTORY**

At its November 19 and 20, 2007 meeting, City Council requested that the City Clerk's Office consult with the Province on enacting Toronto-specific election legislation that meets the unique needs of Toronto's electors and candidates.

## **ISSUE BACKGROUND**

The City Clerk's Office has been to Council five times in the last seven years requesting legislative amendments to the *Municipal Elections Act, 1996*. The *Act* does not reflect the realities of the size and complexity of Toronto's municipal election. The 2006 election demonstrated the need for amendments to the *Act* in three broad subject areas: enforcement, election finance, and the preparation of the voters' list.

## **COMMENTS**

### **Candidate Consultations**

At its October 29, 2007 meeting, the Executive Committee requested that the City Clerk's Office consult with the Members of Council regarding their concerns about and recommendations for changes to the *Municipal Elections Act, 1996*.

Staff began consultations with the Members of Council the week of November 26, 2007 and met with most Members of Council.

The City Clerk's Office also sent a survey to 82 candidates from the 2006 municipal election, including all sitting trustees and some non-elected councillor and mayoralty candidates, to solicit their perspective on the areas in which the *Act* could be improved.

In addition, staff consulted with the Executive Directors of the four school boards to inform them of Council's request for Toronto-specific election legislation and to seek input on their recommended changes to the municipal election legislation.

The responses from the consultations with these three groups were compiled and formed part of the foundation that guided staff's discussions with the Ministry representatives.

### **Ministry Staff and City Staff Consultations**

On December 17, 2007, the City Clerk and the Director of the Ministry of Municipal Affairs and Housing's Local Government Policy Branch agreed to Terms of Reference to discuss the framework for the development process and timelines for new Toronto-specific election legislation.

The Ministry staff held a number of meetings with City staff to consider changes to the municipal election legislation. Ministry staff indicated from the outset that after these meetings they would need to undertake additional research and consultations to prepare options and recommendations for the Minister.

From December, 2007 to March, 2008 Ministry and City staff had seven half-day, intensive meetings. At times, other Ministries (e.g. Ministry of Finance, Ministry of Education and the Democratic Renewal Secretariat) and stakeholders (such the Municipal

Property Assessment Corporation and Elections Ontario) attended and contributed to the discussions.

Many of the topics raised by Members of Council such as those regarding voter turnout, voting place processes, the voters' list, the nomination process, candidate issues and campaign financing were addressed in staff's consultations with the Ministry staff.

All of the issues referred to the City Clerk, including the motions referring to the following topics, were included in staff's discussions with the Ministry's staff:

- changing the municipal election day
- increasing the nomination filing fee
- examining what to do should a mayoralty candidate die during the period between nomination day and election day
- including the TCHC in the development of the voters' list
- making the municipal voter identification requirements consistent with provincial and federal requirements
- increasing the safeguards for how proxies are distributed and oaths are administered
- exploring methods to increase voter turnout
- investigating alternative voting methods for eligible incarcerated electors
- calculating campaign expense limits by population instead of eligible elector
- including an automatic adjustment for inflation in the expense limit calculation formula
- making it mandatory for campaign surpluses to be turned over to the City
- limiting a candidate's ability to throw lavish parties
- holding back funds for candidates to access should they be subject to a compliance audit
- establishing candidate spending limits at the opening of nomination period.

There was one other motion requesting that the City Clerk provide additional information to the Executive Committee on procedural issues which is addressed in Appendix 1.

In preparation for each meeting, City staff conducted research on the best practices in other jurisdictions and the available academic literature. At each meeting, City staff provided the following information to the Ministry staff:

- Overview of Toronto's experience,
- Council's outstanding recommendations for legislative amendments,
- Issues arising from the consultation process, and
- Administrative recommendations for changes.

The Ministry staff in turn reviewed the information, discussed possible solutions with City staff, examined the implications of the potential solutions and inquired about the operational or administrative impacts of the prospective solutions.

Although City staff have had extensive discussions with their bureaucratic counterparts at the Ministry of Municipal Affairs and Housing, at this time, provincial politicians have not

committed to either the concept of Toronto-specific election legislation nor to implementing any of the City's suggested amendments.

## **Next Steps**

The City Clerk's Office would like to extend their sincere thanks to the staff at the Ministry of Municipal Affairs and Housing for the time, research and resources that they dedicated to the consultation process. The discussions were thorough, purposeful and City staff believe that the Ministry representatives now have a better understanding of the complexities of municipal elections in Toronto and are more aware of the challenges the legislation poses for the City.

Even though the formal meetings with the Ministry staff have been completed, the City Clerk's Office will continue to discuss the need for Toronto-specific election legislation with representatives from the Ministry of Municipal Affairs and Housing.

Ministry representatives have indicated that they will continue to work with other provincial ministries, municipal associations and Elections Ontario to review the *Municipal Elections Act, 1996*. Ministry staff are also closely following court cases that stem from the 2006 municipal election and will incorporate the rulings from these pending cases into any changes to the *Act*.

After their internal consultation and research process, Ministry staff will then prepare options and recommendations for the provincial government's consideration.

Traditionally, the provincial government has always enacted municipal legislative amendments in the year before the election. Given this tradition, staff anticipate amending legislation would potentially be introduced either late Fall 2008 or early Spring 2009. These dates are not official and are dependent upon the provincial government's priorities.

## **CONTACT**

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## **SIGNATURE**

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Ulli S. Watkiss, City Clerk

## **ATTACHMENTS**

Appendix 1: City Clerk's Response to Other Motions

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### **Preparation of the City's Voters' List**

At the October 2007 Executive Committee meeting, there was a motion that requested the City Clerk to report on "how the City currently interprets the *Municipal Elections Act* as it relates to the production of the voters' list."

Section 19(1) of the *Municipal Elections Act, 1996*, states that "on or before July 31 in the year of a regular election, or such later deadline as the Minister may prescribe either before or after the July 31 deadline has passed, the Municipal Property Assessment Corporation (MPAC) shall prepare a preliminary list for each local municipality and deliver it to the clerk".

In accordance with s. 22 of the *Act* the City Clerk corrects the preliminary list of electors for any obvious errors and it is then considered to be the voters' list. The voters' list is made available for public inspection and is then used in the voting locations.

Currently, the law prohibits the City Clerk from employing any other source for the list than MPAC. This was one of the topics raised with the Province during the consultations and staff discussed the need for the City to have greater flexibility in accessing alternative data sources for use in the compilation of the voters' list.

### **Proxy Policy**

The City Clerk was also requested to report on how proxies are distributed to electors.

In accordance with s. 44(1) of the *Act*, if an elector is unable, for any reason, to vote on any of the available voting days, they may appoint a proxy to vote on their behalf by completing a proxy certificate.

Proxies must be eligible electors in the City of Toronto and must vote as the elector wishes.

Section 44 (3) of the *Act* stipulates that an individual may act as a voting proxy for one person who is not a family member or for any of their immediate family members. Immediate family members include a spouse, sibling(s), parent(s), child(ren), grandparent(s) and grandchild(ren).

For the 2006 municipal election, proxy certificates were available for pick up at the City Clerk's Offices during regular business hours or by calling 416-338-1111 to receive a proxy by mail.

Before proxy certificates were issued, staff wrote the name and address of the elector on the form. In addition, staff recorded the name of the elector and the serial number of the proxy in a tracking sheet.

Once an elector received the proxy certificate they were required to complete all the information on the form and sign it and then tell their proxy who they wanted to vote for. Then the person acting as the proxy was required to take the certificate and at least one piece of personal identification to the Clerk's office during regular business hours for certification by the Clerk or designate. Once the proxy was certified by designated staff, the certification date was added to the tracking sheet. The proxy was then eligible to vote on the elector's behalf at the location where they would vote. Since original signatures are required to certify the proxy certificate, faxes and photocopies were not accepted.

For the 2006 election, a total of 1,221 proxies were issued and 490 (40 percent) were certified by the City Clerk's Office.

### **Administration of Oaths**

The City Clerk was asked to report on how oaths were administered in the 2006 municipal election.

Oaths are administered in accordance with the law which sets out the circumstances under which they are to be used. Legal has reviewed the wording of the oaths used in the City's municipal election and has advised procedurally how the oaths should be administered.

The *Act* establishes provisions for four oaths to be available to individuals in the voting place:

- Oath of Qualification
- Voter Needs Assistance
- Oath of Interpreter
- Oath of a Friend.

The deputy returning officers and ballot officers were appointed and responsible for administering the oral oaths.

#### Oath of Qualification

Before an elector received a ballot in the voting place, they were asked to show proof of name and qualifying address within the City of Toronto. If the elector did not have identification with them, they were required to take an oral oath of qualification prior to receiving a ballot:

If an elector failed to produce identification and refused to take the oath, they were refused a ballot.

#### Use of an Interpreter

If an elector required an interpreter to assist them in understanding the voting process, they were able to ask anyone who was not a candidate or a scrutineer to act as an interpreter for them. The elector must swear an oath that they require assistance (Voter Needs Assistance Oath) and the interpreter must swear an oath before providing assistance (Oath of

Interpreter). The interpreter was not allowed to go behind the voting screen with the elector.

#### Assistance from a Friend

If a voter, for some physical reason, could not mark a ballot themselves and needed assistance they were able to ask a friend to assist them in marking their ballot. The person acting as a friend was allowed to go to the voting screen area with the voter. A person was only able to act as a friend for one elector, except in nursing homes.