

## **Bill 62 - Direct Democracy through Municipal Referendums Act**

*(City Council on May 9, 10 and 11, 2000, amended this Clause by adding thereto the following:*

*“It is further recommended that:*

- (a) a delegation of Council, led by the Mayor or his designate, be sent to the Public Hearing(s) on Bill 62 to present City Council’s concerns and the City Solicitor and the appropriate staff from Legal Services be requested to assist in the preparation of City Council’s brief;*
- (b) the date(s) of the Public Hearing(s) on Bill 62, City Council’s concerns and City Council’s brief be posted on the City’s web site; and*
- (c) the joint report dated May 8, 2000, from the Chief Administrative Officer, the City Solicitor and the City Clerk, embodying the following recommendations, be adopted:*

*‘It is recommended that:*

- (1) the Minister of Municipal Affairs and Housing be urged to move forward with a comprehensive approach to municipal-provincial relations, rather than the ad hoc approach represented by recent legislative changes, such as Bill 62;*
- (2) the Minister of Municipal Affairs and Housing be requested to amend Bill 62 to delete the provision in the proposed new section 8.1 of the Municipal Elections Act, 1996, which allows the Minister to override a municipal question by declaring a provincial interest;*
- (3) the Minister of Municipal Affairs and Housing be requested to amend Bill 62 to include the ability of a campaign period to recommence if a candidate incurs recount or controverted election expenses after his or her campaign has ended under the proposed paragraph 2 of subsection 68(1) of the Municipal Elections Act, 1996; and*
- (4) the Minister of Municipal Affairs and Housing be requested to amend Bill 62 to provide for corresponding delays in the Clerk’s duties under subsection 23(2) of the Municipal Elections Act, 1996, to reproduce and make available the voters’ list by September 1st, if the Minister extends the date by which the Ontario Property Assessment Corporation must deliver the list to municipalities beyond July 31st.’ “)*

**The Toronto Community Council recommends that:**

- (1) in view of the serious constraints the proposed legislation will have on the tradition of representative democracy at the municipal level of government, City Council state its unequivocal opposition to Bill 62, the Direct Democracy through Municipal Referendums Act; and**
- (2) this matter be forwarded as an emergency item to the meeting of the Federation of Canadian Municipalities to be held in London, Ontario on June 1, 2000.**

The Toronto Community Council reports, for the information of Council, having:

- (1) instructed its Chair, and other interested Councillors, to meet immediately with the Mayor to inform him of concerns with Bill 62, to encourage him to take immediate action and to publicly outline concerns with the Bill;
- (2) requested the Mayor to initiate one or more of the following actions:
  - (a) convene an emergency meeting of Council to hear the public's concerns regarding the bill; or
  - (b) convene an emergency meeting of the Policy and Finance Committee for the same purposes;
  - (c) publicize these meetings with a full explanation to the public of the concerns regarding the restrictions on representative democracy;
- (3) directed its Chair to write to the Premier of Ontario, the Minister of Municipal Affairs, the Speaker of the House and the Legislative Assembly, stating the Toronto Community Council's unequivocal opposition to Bill 62, in view of the serious constraints the proposed legislation will have on the tradition of representative democracy at the municipal level of government;
- (4) directed its Chair to write to the Premier of Ontario, the Minister of Municipal Affairs, the Speaker of the House and the Legislative Assembly to request public committee hearings on Bill 62; and
- (5) directed its Chair to request the Association of Municipalities of Ontario, in particular the Large Urban Mayor's Caucus of the A.M.O., to take immediate action and endorse the actions of the Toronto Community Council.

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**The Toronto Community Council submits the following communication (May 2, 2000) from Mr. John Sewell:**

To protect downtown neighbourhoods, it is imperative that the Toronto Community Council take strong and immediate action to inform the public about Bill 62, to demand public hearings on the Bill, and to oppose some of its key sections.

Bill 62 (An Act to enact, amend and repeal various Acts in order to encourage direct democracy through municipal; referendums, to provide additional tools to assist restructuring municipalities and to deal with other municipal matters) was given First Reading on April 13. Yesterday the government introduced a time allocation motion to severely limit debate in the Legislature and to prevent public hearings on this bill.

The bill is a hodge-podge of legislative proposals, many of which have nothing to do with each other. I have counted a total of 28 different pieces of legislation which the Act tries to amend, and in some cases tries to fix errors in legislation rushed through late in 1999.

Part III of the Bill introduces the idea of binding municipal referendums, which the legislation calls 'direct democracy'. The Bill requires that any referendum question put to the voters by a municipality needs the approval of the Minister of Municipal Affairs, and will be binding on council only if more than 50 per cent of electors vote, and if 50 per cent or more who vote, vote yes.

As all of you know, getting fifty per cent of those on the list to show up is unheard of in municipal elections. The usual turn out is more like 30 per cent, mainly because many names on the voters list have moved or died and the province refuses to prepare an accurate voters list.

So under this legislation a referendum will never approve anything. It sounds innocent and useless. But there's a trick.

Once Bill 62 is law, Minister of Municipal Affairs Tony Clement will undoubtedly legislate that municipal councils are prohibited from increasing property taxes or borrowing money for new construction unless those decisions are approved by referendum. This will put the city and other municipalities in a financial straight-jacket. Our neighbourhoods will suffer grievously.

I'm not about to argue that constant property tax increases are a good thing. They are no more welcome than increases in the cost of telephone calls, milk, bicycles, beer, rent, internet service, or gasoline. But prices do tend to increase over time and sometimes a tax increase is the best way to go – better, for example, than an increase in transit fares, or child care fees, and better than chopping services. It's better to have a tax increase than litter on every street – litter Toronto Life has all too clearly photographed in its last issue. Apparently the Harris government wants to prevent this tax option, which is why Part III of Bill 62 is being rushed through.

I believe that the ability of the public to review legislation, discuss it, and then speak directly to the Legislative Committee is a critical part of democracy, although one the Harris government has contravened in its desire to sever any kind of public control on what it does.

I would ask you to do the following:

- (a) Immediately inform the Premier, the Speaker and the Legislative Clerk that the Toronto Community Council requests that:
- committee hearings be scheduled allowing all those who wish to speak to the Bill to do so, and that wide notification be given to the Bill and the hearings, and that
  - the Council be permitted to make a presentation.
- (b) Immediately place advertisements in the Toronto newspapers indicating Council's concern with the paralytic impact Bill 62 will have on downtown neighbourhoods if, as appears likely, the government decides to require property tax increases and capital borrowing to be approved by Bill 62, and asking residents to immediately write the Premier and MPPs about these concerns.
- (c) Immediately notify all other large Ontario municipalities and request that they take similar actions.

**The Toronto Community Council also submits the communication (undated) from Mr. John Sewell:**

I wish to speak to the Toronto Community Council when it next meets on Tuesday May 2 to discuss an issue which directly affects the well-being of my neighbourhood, as well as other downtown neighbourhoods. The issue is Bill 62 regarding direct democracy through municipal referendums, a bill which I believe will prevent the city from raising the tax revenue necessary to pay for services needed in our neighbourhoods. I wish to inform the Community Council on this issue and to ask them to take action on behalf of downtown neighbourhoods.

Please let me know what further I should do in support of this request to speak.

*(City Council on May 9, 10 and 11, 2000, had before it, during consideration of the foregoing Clause, the following joint report (May 8, 2000) from the Chief Administrative Officer, the City Solicitor and the City Clerk:*

*Purpose:*

*The purpose of this report is to apprise City Council of the introduction of Bill 62, the Direct Democracy through Municipal Referendums Act, 2000 which received first reading on April 13, 2000. The proposed legislation was considered by the Toronto Community Council at its meeting of May 2, 2000. This report sets out provisions of the proposed legislation that impact on the City of Toronto including the introduction of rules respecting questions on the ballot, and referendum campaign registration requirements and changes to the financial filing requirements for candidates in municipal elections that are being proposed.*

*Financial Implications and Impact Statement:*

N/A

Recommendations:

*It is recommended that:*

- 1. The Minister of Municipal Affairs and Housing be urged to move forward with a comprehensive approach to municipal-provincial relations rather than the ad hoc approach represented by recent legislative changes, such as Bill 62.*
- 2. The Minister of Municipal Affairs and Housing be requested to amend Bill 62 to delete the provision in the proposed new section 8.1 of the Municipal Elections Act, 1996 which allows the Minister to override a municipal question by declaring a provincial interest.*
- 3. The Minister of Municipal Affairs and Housing be requested to amend Bill 62 to include the ability of a campaign period to recommence if a candidate incurs recount or controverted election expenses after his or her campaign has ended under the proposed paragraph 2 of subsection 68(1) of the Municipal Elections Act, 1996.*
- 4. The Minister of Municipal Affairs and Housing be requested to amend Bill 62 to provide for corresponding delays in the Clerk's duties under subsection 23(2) of the Municipal Elections Act, 1996 to reproduce and make available the voters' list by September 1<sup>st</sup>, if the Minister extends the date by which the Ontario Property Assessment Corporation must deliver the list to municipalities beyond July 31<sup>st</sup>*

Background:

*On April 13, 2000 the Province introduced The Direct Democracy Through Municipal Referendums Act, 2000. The Bill is scheduled for second reading during the week of May 8. There is no official information as to whether public hearings will be held on the Bill.*

*At its meeting of May 2, 2000 the Toronto Community Council considered a communication from Mr. John Sewell respecting Bill 62. At that time, the Toronto Community Council made several recommendations concerning actions that could be taken on this proposed legislation.*

Comments:

*Bill 62 is another example of an incremental or patch work approach to municipal/provincial legislative reform. Although the government has had the introduction of a new Municipal Act on its agenda for some time, it has instead relied on a series of legislative enactments, for example the Fewer Municipal Politicians Act, 1999 now proposed Direct Democracy Through Municipal Referendums Act, 2000 and an increasing number of regulations, to define its relationship with the municipal sector. Both the City of Toronto and AMO have urged the government in the past to move forward with comprehensive reforms to the Municipal Act and associated legislation that set out areas of municipal jurisdiction and autonomy to act within them.*

*Bill 62 is divided into five parts, of which Part III amends the Municipal Elections Act, 1996 to provide for binding municipal questions on the ballot. The remaining four parts to Bill 62 relate*

*substantially to municipal restructuring. Almost half of the bill relates to amendments to the Fewer Municipal Politicians Act, 1999 which legislated municipal restructuring creating the new cities of Sudbury, Hamilton, Norfolk, Ottawa and the town of Haldimand. Part II of Bill 62 contains amendments to the Municipal Act including an amendment to section 6 of the Municipal Act which is intended to clarify when the Municipal Act will and will not take priority over a Special Act, or over more recent legislation. Municipal Act provisions respecting wards, Council composition, service migration, and the dissolution of local boards are specifically referenced as overriding special Acts, even when they are more specific and more recently enacted. The conflict provisions in the City of Toronto Act, 1997 (No. 1) and (No. 2) are among those expressly referenced in this respect.*

*Part III of Bill 62 amends the Municipal Elections Act, 1996 in three significant ways. It amends the process and establishes rules for placing questions on a municipal ballot, and establishes a threshold to make the results of municipal referendums binding on municipal council. Secondly, a referendum campaign registration system is also established, which includes a regulated system for donations to referendum campaigns. Part III also makes changes to the financial reporting process for municipal election campaigns and other changes more fully described below.*

### *Referendums*

*Bill 62 proposes a series of rules that must be complied with before municipalities can place questions on the ballot, as follows:*

- *Questions must concern a matter within the jurisdiction of the municipality;*
- *Where the Minister of Municipal Affairs and Housing has prescribed a provincial interest, even questions within the jurisdiction of the municipality cannot be placed on the ballot;*
- *Questions must be clear, concise and neutral;*
- *Question must be capable of being answered only by “yes” or “no.”*

*Bill 62 contains a requirement for the Clerk to give at least ten days notice of the intention to pass a by-law to place a question on the ballot to the public and to the Minister, and requires the municipality to hold at least one public meeting to consider the matter. Any by-law must be passed at least 180 days prior to voting day. The Clerk is also required to give notice of the passing of a by-law to the public and to the Minister within 15 days of the passing of a by-law. These notices must contain the wording of the question, as well as a clear, concise and neutral description of the consequences of the question if it is approved and if it is rejected (which includes an estimate of any costs that could be incurred in implementing the results of the question), and advise of the last day for filing a notice of appeal.*

*The Minister and any other person will have 20 days after the notice of the passing of a by-law is given by the Clerk to file an appeal to the Chief Election Officer of the Province of Ontario.*

*Such an appeal is restricted to the grounds that the question is not clear, concise and neutral or that the question is not capable of being answered by “yes” or “no.” The Chief Election Officer has 60 days after receiving notice of an appeal to hold a hearing and is empowered to allow the appeal or dismiss it.*

*The results of the referendum are proposed to be binding if at least 50% of the eligible electors in the municipality vote on a question and more than 50% of the votes are in favour of the results. The number of the eligible electors is determined by the voters’ list at the close of voting. Where there is a binding “yes” vote, Bill 62 requires council to do everything within its powers to implement the results of the question within 6 months after the vote is held. Where the result is a binding “no” answer, council is prohibited from implementing the subject matter of the question for a period of 3 years following voting day. Despite the forgoing, Bill 62 contains an exception whereby the City is not required or prevented from doing anything if council is of the opinion, reasonably held, that there has been a material change in circumstances since it passed the by-law putting the binding question to the voter, or if an amendment was authorized by another binding question.*

*The proposed legislation does not address what happens if less than 50% of the eligible electors fail to vote on the question and consequently it does not have the level of voting required to make it binding. Presumably, in such a circumstance the municipality would be free to act in any way it sees fit when it receives the results on the referendum question. Of note in this respect, is that the average voter turn-out in a municipal election in the City has traditionally been 30-35%. In 1997, even with amalgamation at the fore front voter turn-out was only 45.65%. Voter turn-out on the 1997 amalgamation referendum varied from municipality to municipality, between 19.1% and 41.1%. In these circumstances, it is difficult to predict the impact that Bill 62 will have in making referendums binding on the City.*

#### *Referendum Campaign Registration*

*Bill 62 introduces a system for registration for the purposes of campaigning for or against a question on the ballot. Registrations must be filed no earlier than the day the by-law to submit the question to the electors is passed and no later than nomination day or, if the question is to be put outside of an election for office, no later than 31 days before voting day.*

*Bill 62 amends the Municipal Elections Act, 1996 to allow qualified individuals, corporations or trade unions to register and campaign either for or against a question on the ballot. Municipalities, all local boards, and federal and provincial political parties are prohibited from registering. The proposed Act allows municipalities to only incur expenses in respect of the question which are required or authorized to be incurred under the Act. A municipality is therefore prohibited from spending money to promote one particular position on a question.*

*Bill 62 generally extends the financial rules relating to campaigns for Municipal office to campaigns respecting questions on the ballot. Maximum campaign contributions are limited to \$750 per person, corporation or trade union. A proposed new section 82.1 allows municipalities to pass by-laws regarding contribution rebates for such campaigns. The proposed legislation does not limit the number of campaigns that can be registered respecting a question on a ballot.*

*Also, the proposed legislation does not address whether an individual councillor or, in the case of a regular election a registered candidate, can also register a campaign regarding a question on the ballot.*

### *Financial Rules*

*Bill 62 makes amendments to section 68 of the Municipal Elections Act, 1996 respecting campaign periods generally. Election campaign periods would end on December 31 instead of December 1<sup>st</sup> in the case of a regular election however, in the case of a by-election the period, would be extended from 15 days after voting day to 45 days after voting day. The provisions of sub-section 68 (1), paragraph 4 respecting a deficit are also amended so that the campaign period, where a candidate has notified the Clerk in writing of a deficit, would no longer end “when further contributions eliminate the deficit” but would end by June 30 in the case of a regular election or 6 months following the 45<sup>th</sup> day after voting day in the case of a by-election. Where a candidate fails to notify the Clerk, regardless of whether or not the candidate has a deficit, the campaign period will end on December 31<sup>st</sup>.*

*Bill 62 would also amend the provisions of the Act respecting filing dates and reporting periods. Under the proposed legislation, the cut-off period for filing financial statements and auditors reports is extended from December 1 in the case of a regular election to December 31, and in the case of a by-election from 15 days after voting day to 45 days.*

*Under the existing legislation, if a candidate’s campaign period has ended and the candidate subsequently incurs expenses related to a recount or a controverted election, the campaign is deemed to have recommenced to permit the candidate to raise funds to pay these expenses. The proposed legislation repeals this ability for a campaign to recommence. If, for example, a candidate had a surplus on December 31, and therefore his/her campaign period has ended, but later incurred recount or controverted election expenses, the candidate would have to personally pay for these expenses.*

### *Comments – Other Issues*

*Bill 62 provides the Minister with flexibility to allow for the preliminary list of electors to be delivered to municipalities by the Ontario Property Assessment Corporation at a date later than July 31 in the year of a regular election. The Municipal Elections Act, 1996 requires the Clerk to have the voters’ list printed and available for public review by September 1<sup>st</sup> and allows for revisions, starting on September 5<sup>th</sup>. The time available to complete this task is already very onerous and, if this time was reduced by delaying the delivery of the preliminary list of voters to the City, this task could become impossible. Consequently, if this proposal is enacted, it is recommended that Section 23 (2) of the Municipal Elections Act, 1996 be also amended accordingly so that the Clerk continues to have 30 days in which to copy and distribute the list of voters throughout the City.*

*Bill 62 extends the Minister’s powers under the Municipal Elections Act, 1996 to make regulations. New regulatory powers include the powers to prescribe matters of provincial interest for purposes of municipal referendums, governing, clarifying and varying the*

*application of the provisions of the Act respecting time conditions for submitting referendum questions, amendments to and the repeal of referendum questions, and transitional matters. Also, the power of the Minister to make regulations respecting all matters in Section 95, (at present these matters include fixing fees: prescribing forms and rules for various issues relating to municipal elections), can be made general or particular in their application.*

Conclusions:

*Bill 62, the Direct Democracy through Municipal Referendums Act, 2000 received first reading on April 13, 2000. Part III of Bill 62 amends the Municipal Elections Act, 1996 to provide for binding municipal questions on the ballot and to limit questions to matters within the jurisdiction of the municipality. Referendums will be binding on municipalities if at least 50% of the eligible electors in the municipality vote on the question and if more than 50% of the votes on the question are in favour of those results. Where the required number of voters vote on the question and the result is more than 50% of the votes opposed, then the municipality is prohibited from acting on a subject matter of the question for 3 years following voting day. The proposed legislation is silent on the matter of less than 50% of the eligible electors voting on the question and, presumably in such circumstances the municipality will continue to be free to act or not act on a referendum question as it sees fit. Consequently, given traditional voter turn-outs, there is a real issue as to whether questions will receive the level of support necessary to become binding on Council. The proposed legislation also introduces a referendum campaign registration including rules for campaign contributions and amends the financial rules applicable to municipal elections generally.*

*The referendum provisions of the Bill limit City Council's authority to set questions to be placed on a municipal ballot by permitting the Minister of Municipal Affairs and Housing to prohibit a municipal referendum on a matter which he judges to be in the provincial interest, even if the matter would normally be deemed to be within municipal jurisdiction. Moreover, the Province has reserved the right to make regulations clarifying the application of the legislation at a future date. Clearly, this provision is at odds with Council's established position that municipalities should be given more autonomy over their affairs.*

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