

Petition to Redivide Ward Boundaries

Date:	July 12, 2013
To:	City Council
From:	City Clerk & City Solicitor
Wards:	All
Reference Number:	

SUMMARY

This report responds to a petition requesting ward boundary changes. The petition in Appendix 1 was received by the City Clerk on June 27, 2013 pursuant to section 129 of the *City of Toronto Act, 2006* ("COTA") and states:

"We, the undersigned electors of the City of Toronto ask City Council to pass a by-law redividing the City of Toronto into wards, in accordance with s. 129 of the City of Toronto Act, SO 2006, c11, Sched A. We further ask that such wards be based on the new boundaries for the federal electoral districts located in Toronto proposed by the 2012 Federal Electoral Boundaries Commission for Ontario in its Report in either its current form or as amended after receiving objections from the House of Commons.

We further request that these new wards be in place for the 2014 Toronto Municipal Election."

The City Solicitor and City Clerk have reviewed the petition and determined it to be both valid and sufficient.

This report outlines the legislative requirements, Council's options and the possible consequences of exercising any of the options.

RECOMMENDATIONS

The City Clerk and City Solicitor recommend that Council,

Either:

- 1A. Adopt the requests set out in the petition and pass a by-law substantially in the form of the draft bill attached as Appendix 2.

OR

- 1B. Not adopt the requests set out in the petition.
2. Regardless of the option selected, if Council's decision is legally challenged by the petitioning electors or any other person, Council authorize the City Solicitor to defend any such legal challenge.
3. If Council does not adopt the requests set out in the petition, and does face a legal challenge by the petitioning electors, Council authorize the City Solicitor to request that the Ontario Municipal Board or court, as the case may be, adjourn the proceeding until completion of the ward boundary review, which Council approved at its June 11, 12, and 13, 2013 meeting.

Financial Impact

Because ward boundaries are fundamental building blocks to an election, any changes to the existing ward boundaries so close to the start of the election year will have significant impact on the cost and administration of the 2014 election. Legislation requires that the City provide the Municipal Property Assessment Corporation (MPAC) with all voting subdivision definitions no later than March 2014. There are also implications for the four school boards as they must provide the City with their final determinations (boundaries and number of trustees) no later than April 3. In order to meet the statutory deadlines and requirements under the Municipal Elections Act, additional resources would be required to make the necessary modifications to various election systems, to realign the 1600+ voting subdivisions, and to ensure that the new ward and subdivision boundaries are accurately reflected in the voters' list.

The exact amount required to implement the ward boundary changes cannot be determined at this time as detailed analysis is required to understand the full impact on the various election systems. The Deputy City Manager and Chief Financial Officer will determine the source of funding.

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

DECISION HISTORY

The petition requesting ward boundary changes was received by the City Clerk on June 27, 2013.

At its meeting held on June 11, 12, and 13, 2013, Council adopted a motion authorizing the City Manager to retain a third party consultant to undertake a ward boundary review for the City of Toronto. This review process is expected to result in changes to ward boundaries for the 2018 municipal election.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.EX32.2>

ISSUE BACKGROUND

COTA Provisions:

The ward boundary sections of COTA are set out in Appendix 3. Section 129 of COTA allows electors in the City to present a petition asking Council to pass a by-law dividing or re-dividing the City into wards or dissolving the existing wards. The petition requires the signatures of 500 electors in the City. Subsection 129(3) defines an elector as a person whose name appears on the voters' list, as amended, up until the close of voting on voting day, for the last regular election preceding a petition being presented to Council.

Subsection 129(4) of COTA provides that if Council does not pass a by-law in accordance with the petition within 90 days after its receipt, any of the electors who signed the petition may apply to the Ontario Municipal Board (OMB) to have the City divided or re-divided into wards or to have the existing wards dissolved.

As the petition was received on June 27, 2013, Council has until September 25, 2013 to pass a by-law in accordance with the petition before a petitioner can apply to the OMB.

Status of Federal Boundary Review:

A brief explanation of the Federal Electoral Boundaries Commission for Ontario (Commission) and its boundary review process is required to put the petition into context. Under the federal *Electoral Boundaries Readjustment Act*, an independent commission is established in every province to revise that province's federal electoral district boundaries. There is an opportunity for public consultation in this process. However, since the commissions are independent bodies, they make all final decisions as to the federal electoral boundaries.

Following the public consultation process, each commission submits a report on what it considered in revising the boundaries and proposes an electoral map to the House of Commons. Each commission then considers any objections and recommendations received from Members of Parliament and prepares a final report, which outlines the final

electoral boundaries for the province. This report may or may not reflect changes from the original report due to the objections and recommendations received.

The boundaries referenced in the petition as "proposed" are those identified in the Commission's first report, a copy of which can be found at: http://www.redecoupage-federal-redistribution.ca/on/nov/proposals/on_proposal_e.pdf.

For Council's convenience, a copy of the Commission's proposed electoral map is attached to this report as Appendix 4.

The "amended" boundaries referenced in the petition, refer to the boundaries as they may be finalized by the Commission after considering any objections.

The Commission's report was tabled in the House of Commons on February 25, 2013. The Standing Committee on Procedure and House Affairs received objections with respect to the following proposed Toronto ridings:

- York Centre,
- Willowdale,
- University-Rosedale,
- Spadina-Fort York,
- Toronto Centre,
- St. Paul's,
- Eglinton-Lawrence,
- York South-Weston,
- Don Valley West,
- All Scarborough ridings.

A copy of the Standing Committee's report can be found at: <http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=6223962&Language=E>. The Standing Committee's report will be referred back to the Commission for further consideration. It is possible that the boundaries proposed may not be the final boundaries adopted by the Commission.

This process is on-going and is expected to be completed by the end of 2013.

COMMENTS

In order for the petition to be subject to the procedural rights conferred on electors under section 129 of COTA, the petition must first be determined to be both sufficient and valid. Sufficiency is assessed in light of the statutory requirements for a petition, i.e. signed by 500 electors, as defined. Validity is assessed in light of common law tests developed by courts for evaluating petitions. However, Council can choose to voluntarily consider the petition whether or not it is legally sufficient and valid.

Sufficiency of Petition:

The City Clerk has reviewed the petition and determined it to be sufficient, meeting the statutory requirement of 500 electors whose names appeared on the voters' list, as amended, for the last regular election.

The petition filed contained 1,041 entries. In accordance with statutory requirements of COTA and the City Clerk's established policies and procedures, staff conducted a detailed entry-by-entry review of the petition. In addition, staff contacted 254 petitioners in instances where the information contained on the petition was illegible or incomplete in order to verify their eligibility. The following chart outlines the outcome of those phone calls:

Classification of phone calls made to petitioners	No. of calls made
Petitioner confirmed to be on the voters' list	114
Petitioner confirmed not to be on voters' list	34
Petitioner called, but no contact was made (i.e. unreturned voicemail)	68
Other – no contact was made with the petitioner (i.e. incorrect phone number listed, no voicemail option, and/or not telephone number provided on the petition)	38

Based on the results of the review it was determined that 510 valid electors as defined under subsection 129(3) of COTA signed the petition. The following chart provides the results of the review:

Original Number of Entries on the Petition	1,041
Number of petitioners excluded and reason:	
• Petitioner did not appear on voters' list at the address provided	463
• Name and/or address of the petitioner incomplete or illegible	47
• Address provided by petitioner for 2010 voters' list was not in Toronto	21
Number of Valid Petitioners (electors)	510

Validity of Petition:

The courts have articulated basic common law tests for assessing the validity of petitions. Essentially, the test for validity requires determining whether the petition is clear and certain. The courts are ultimately concerned with whether the petitioners' intent can be easily and accurately determined. Given the wording of the petition in the present case, identifying two possible sets of electoral boundaries, a question arises as to whether the petitioners' intent is clear.

In the City Solicitor's opinion, the petition is legally valid. The wording of the petition clearly and plainly suggests that the petitioners have no preference as to which version of the boundaries are acceptable. One version of the boundaries is clearly defined in the Commission's first report. It does not seem to matter whether, or how, the federal boundaries will be amended. The petitioners would presumably be satisfied if Council passed a by-law based on the boundaries as identified in the Commission's first report, which are currently ascertainable.

Despite this conclusion, there is a possible contrary argument that the petition is invalid because it is overly vague and ambiguous. The petition asks only that the new wards be *based* on the new federal boundaries, which leaves the actual requested boundaries unclear. As well, the petition may be invalid to the extent that it requires Council to exercise discretion in choosing between the federal boundaries proposed in the Commission's first report or the federal boundaries as they actually may be finalized. This kind of discretion may support the view that the petition is invalid given that it arguably asks Council to speculate or second-guess as to the petitioners' preferred result. In addition, given that the final federal boundaries have not yet been determined, and may not be determined until after the 90 day period to pass a by-law has expired, it is impossible to know what that option may finally entail and, potentially impossible to pass a by-law within the statutorily allotted time.

It must be emphasized that this opinion as to the petition's validity is neither an endorsement of the substance of the petition nor an assessment of its substantive merits. The determination of validity is simply a condition that must be satisfied before Council can determine whether the petition is legally valid and subject to the requirements of section 129 of COTA.

Options:

Council has two options. It can:

1. not pass a by-law in accordance with the petition; or
2. pass a by-law in accordance with the petition.

Possible Consequences of Option 1 – Not passing the By-law

If Council selects the first option, as mentioned above, any of the petitioners may apply to the OMB to consider the matter under subsection 129(4) of COTA. If the OMB issues an order prior to January 1, 2014, by virtue of subsection 129(6) of COTA, the ward boundaries would apply for the 2014 election. The issuance of an order subsequent to that date and prior to January 1, 2018 would make the new boundaries applicable for the 2018 election.

Adopting this option would allow Council's recent approval of the ward boundaries review to stand with the benefit of considerable consultation and analysis on suitable boundaries.

Possible Consequences of Option 2 – Passing a By-law

First, it should be noted that if Council selects the second option, in our view this would not constitute a reopening of Council's earlier decision regarding the ward boundaries review made at its meeting held on June 11, 12, and 13, 2013. By voting to enact the attached by-law, Council would simply be acting consistent with the terms of section 129 of COTA, which it is statutorily authorized to do. The receipt of the petition also constitutes a change in circumstances which does not trigger the reopening requirement. As well, the adoption of the by-law would not preclude the continuation of the ongoing ward review, which would still allow for possible future revision of the ward boundaries after completion of the review.

Nonetheless, adopting this approach tends to undermine Council's recent determination to undertake a comprehensive review of the matter and results in wholesale adoption of ward boundaries without any public input.

It should be noted that, even if Council approved the by-law, there could still be legal action taken to challenge the by-law by any person. Should Council elect to pass a by-law pursuant to the petition presented under section 129 of COTA, Council would effectively be passing the by-law pursuant to its powers under section 128 of the statute, which allow Council to make changes to ward boundaries. When a by-law is passed under section 128, anyone may appeal the matter to the OMB within 45 days of its passing.

Thus, the prospect of an appeal exists regardless of the option selected. However, Council would be in a better position to defend its decision to change ward boundaries if that decision was made following a process that allowed for a broad, meaningful and comprehensive review of its various options. The ward boundary review process already approved by Council is intended to include "broad engagement and consultation with the Toronto public, communities, key stakeholders, the Mayor and Councillors" as indicated in the City Manager's report to Executive Committee, dated May 13, 2013. There is no similar opportunity for comparable input or involvement from a broad selection of members of the public with the petition process. This abbreviated process would not benefit from the greater transparency and thoroughness of the ongoing ward boundary review already approved.

CONCLUSION

This report responds to the June 27, 2013 petition requesting ward boundary changes. The petition has been determined to be both sufficient and valid. This determination does not speak to the substantive merits of the petition. It simply means that the petition is now subject to the procedural protections set out in section 129 of COTA which include the right for the petitioners to challenge a Council decision not to adopt a by-law in accordance with the petition.

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SIGNATURES

Ulli S. Watkiss
City Clerk

Anna Kinastowski
City Solicitor

ATTACHMENTS

Appendix 1 - Copy of Petition received on June 27, 2013-07-12
Appendix 2 - By-law to Re-divide the City of Toronto into Wards
Appendix 3- Ward Boundary Provisions, City of Toronto Act, 2006, s. 128 and 129
Appendix 4 - Map of Proposed Federal Electoral Boundaries within the City of Toronto