



Corporation of the Municipality of South Bruce

Report Title: Submitting a Question to the Electorate
Prepared By: Leanne Martin, CAO/Clerk
Department: Administration
Date: March 23, 2021
Report Number: CAO/Clerk-03-03-2021
Attachments: Patrick G. Duffy Memo Re: Process and Requirements for Submitting a Question to the Electorate

RECOMMENDATION

That Report #A-03-03-2021 is received for information purposes, being a report to provide Council with information related to the process and requirements for placing a question to the Electorate.

REPORT Origin

To provide council with information regarding the process and requirements for submitting a question to the electorate.

Analysis

Council have requested information to be brought forward related to the process and requirements to submit a question to the electorate. This process falls under the Municipal Elections Act, 1996. To provide a comprehensive overview of the legislations specific to the request by council and the interest of members of the public to understand the process CAO/Clerk requested the municipal solicitor provide a report describing the process and requirements. Attached to this report you will find the memo outlining this process for information purposes.

Submitted by:

Leanne Martin, CAO/Clerk

Memorandum

To: Leanne Martin, CAO/Clerk, Municipality of South Bruce
From: Patrick G. Duffy / 416.869.5257
Re: Process and Requirements for Submitting a Question to the Electorate
Date: March 18, 2021

You have requested that we prepare a memorandum detailing the process and legal requirements for submitting a question to the electorate under the *Municipal Elections Act, 1996* ("MEA").

1. What questions can be submitted to the electorate of a municipality?

Subsection 8(1) of the MEA permits the following two types of questions to be submitted to an electorate of a municipality:

- a question not otherwise authorized by law but within the council's jurisdiction; and
- a question, the wording of which is established by provincial legislation or regulation.

If the wording of the question is not established by provincial legislation or regulation, it must comply with the following four requirements listed in subsection 8.1(2); specifically, the question shall:

- concern a matter within the jurisdiction of the municipality;
- not concern a matter which has been prescribed by the Minister of Municipal Affairs and Housing (the "**Minister**") as a matter of provincial interest;
- be clear, concise and neutral; and
- be capable of being answered in the affirmative or the negative and the only permitted answers to the question are "yes" or "no".

2. What matters have been prescribed as matters of provincial interest?

The following matters have been prescribed by the Minister as matters of provincial interest under Regulation 425/00, enacted under the MEA:

- any matter for which the municipality does not have the authority to implement all aspects of the results of the question;
- any matter for which the municipality requires an action by the provincial government in order to implement the results of the question;
- the designation of gaming sites; and
- municipal restructuring, including the consideration, investigation, discussion and negotiation of municipal restructuring.

3. Who can submit a question to the electorate of a municipality?

The following parties have the ability to submit a question to the electorate of a municipality under section 8 of the MEA:

- the council of a municipality by way of a by-law;
- a local board on matters within the jurisdiction of the local board; and
- the Minister.

There is no provision in the MEA for the direct submission of citizen-initiated questions to the electorate.

4. *When can the municipality hold a vote on a question that is submitted to the electorate?*

Subsection 4(2) of the MEA provides a municipality with two options with respect to the timing of the vote on a question submitted to the electorate. The vote may be held:

- at the time of the next regular election (currently scheduled for October 24, 2022); or
- at another time by way of a by-election.

Under both options, before submitting a question to the electorate, the municipal council must pass a by-law with the wording of the question that complies with both the substantive and procedural requirements of the MEA. These requirements are discussed in more detail below.

5. *What is the deadline for submission of question to the electorate as part of a regular election?*

The rules for the submission of a question at the time of a regular election are contained in subsection 8.1(1) of the MEA.

If a question is to be submitted to the electorate as part of a regular election, the MEA requires that the by-law with the wording of the question be passed by council on or before March 1 of that year (for the next regular election that date would be March 1, 2022).

The by-law cannot be amended after that date so as to allow for the operation of the appeal process discussed below. However, the by-law can be revoked by council on or before the date for the close of nominations (which would be August 19, 2022 for the next regular election).

6. *When can a question be submitted to the electorate outside of a regular election?*

The rules for a by-election on a question are contained in subsections 65(2) and (5) of the MEA.

If a question is to be submitted to the electorate by way of a by-election, the by-election cannot be held after March 31 in the year of a regular election unless it is held in conjunction with a by-election for an office. This means that a by-election on a question could not be held between April 1 and December 31, 2022 unless a vacancy of a municipal office arises in the interim and council decides to fill that position prior to the 2022 regular election.

In addition to these restrictions, the voting day on a question submitted by way of a by-election must be at least 180 days after the day the submission by-law is passed.

Paragraph 8.1(1)(c) also applies, which means that once a by-law is passed to submit a question to the electors as part of a by-election not including an election for office, it cannot be amended, but can be revoked on or before the 31st day before voting day. An appeals process with respect to the wording of the question (discussed below) would also operate.

7. *What procedural requirements must be followed when a municipal council passes a by-law submitting a question to the electorate?*

The procedural requirements for the passage of a by-law (whether as part of a regular election or a by-election) to submit a question to the electorate are set out in sections 8 and 8.1 of the MEA and are as follows:

- before passing the by-law, the clerk shall give at least 10 days' notice of the intention to pass the by-law to the public and the Minister, and hold at least one public meeting to consider the matter; and

- within 15 days after the by-law passes, the clerk shall give notice of the passage of the by-law to the public and the Minister.

Both of the required notices must include the following information:

- the wording of the question being submitted to the electorate;
- a clear, concise and neutral description of the consequences of the question if it is approved and the consequences if it is rejected, including an estimate of the costs, if any, that the municipality may incur in implementing the results of the question; and
- a description of the right to appeal the wording of the question.

8. *What is the appeal process for a question submitted to the electorate?*

Subsection 8.1(6) of the MEA provides that, within 20 days after the clerk gives notice of the passage of the by-law, the Minister or any other person or entity may appeal the wording of the question to the Chief Electoral Officer of the Province of Ontario.

The MEA provides two potential grounds for an appeal:

- the question is not clear, concise and neutral; and/or
- the question is not capable of being answered in the affirmative or the negative.

The substance of a question cannot be the subject of an appeal provided the municipality is acting within its jurisdiction and has complied with the requirements of the MEA.

To commence an appeal, the appellant must file a notice of appeal with the clerk setting out their objections and the reasons in support of the objections. The clerk must forward any notices of appeal to the Chief Electoral Officer within 15 days after the last day for filing a notice of appeal.

The Chief Electoral Officer shall, within 60 days of receiving notices, hold a hearing and dismiss the appeal or allow the appeal in whole or in part. If the appeal is allowed in whole or in part, the Chief Electoral Officer may make an order amending the by-law or directing the municipality to amend the by-law in the manner ordered.

9. *Who is entitled to vote on question submitted to the electorate?*

Only persons entitled to be an elector of the municipality on the voting day of the election are entitled to vote when a question is submitted to the electorate.

Under subsection 17(2) of the MEA, a person is entitled to be an elector if, on the voting day, they are:

- a resident of the local municipality or is the owner or tenant of land there, or the spouse of such owner or tenant;
- a Canadian citizen;
- at least 18 years old; and
- not prohibited from voting.

Section 2 of the MEA sets out rules for determining a person's residence for the purposes of the MEA. As a general rule, a person may only have one residence at a time subject to specific exceptions for students and persons with no permanent lodging place.

The process for preparation of a voters' list by the clerk for a regular election is set out in sections 17 to 28 of the MEA.

In the event that a question is submitted to the electorate by way of a by-election, the clerk is responsible for preparing a voters' list in accordance with the rules in subsection 65(5) of the MEA. A person is not eligible to vote in a by-election relating to a question if the person could not vote with respect to that question if a regular election was held on the day of the by-election.

10. Do third party advertising rules apply when questions are submitted to the electorate?

Under the MEA, a "third party advertisement" is defined to include advertisements relating to questions submitted to the electorate.

As a result, the requirements and rules contained in the MEA surrounding third party advertising may be applicable when a question is submitted to the electorate, whether it is done through a regular election or by way of a by-election. For example, any individual, corporation or trade union that seeks to advertise to promote or oppose a "yes" or "no" answer to the question would be required to register and comply with the content requirements, expense limits, and other rules for registered third parties under the MEA.

11. What is the threshold for approval of a question submitted to the electorate?

The MEA requires a special majority to answer the question in the affirmative for the results to be binding on the municipality.

Subsection 8.2(1) of the MEA establishes the following conditions to achieve a special majority for questions submitted to the electorate:

- at least 50 per cent of the eligible electors in the municipality vote on the question; and
- more than 50 per cent of the votes on the question are in favour of those results.

12. What happens if a question is answered in the affirmative by the required special majority?

If a question is answered in the affirmative by the required special majority, the municipality is obligated by paragraph 8.3(1)(a) of the MEA to "do everything in its power to implement the results of the question in a timely manner".

In addition to this general direction, subsection 8.3(2) of the MEA requires the municipality to take the following steps between 14 and 180 days after voting day:

- if a by-law or resolution is required to implement the results of the question, ensure that it is prepared and placed before council or, if a series of by-laws are required to implement the results, ensure that the first of the series is prepared and placed before council;
- if passage of a by-law or resolution required to implement the results of the question is subject to a condition precedent under a regulation or statute (such as giving notice or holding a public hearing), ensure the initial steps have been taken to comply with the condition; and/or
- if administrative action to change a policy or practice is required to implement the results of the question, instruct municipal staff to take that action.

13. Are there any exceptions to the implementation of a binding affirmative vote?

A binding affirmative vote does not permit the municipality to eliminate or override any substantive or procedural legal right of any person or entity who is or may be affected by the implementation of the results of the question.

Subsection 8.3(3) of the MEA provides two illustrative examples of this limitation:

- if a zoning change under the *Planning Act* is necessary to implement the results, the binding effect of the question is subject to the *Planning Act* and the discretion of the municipality under that *Act* is not constrained; and
- if the results of the question require the passage of a by-law which requires notice to be given and at least one public meeting to be held, the binding effect of the question is subject to these requirements and the discretion of the municipality to proceed following the public meeting is not constrained.

14. How long do the results of an affirmative answer bind a municipality?

Subject to the exceptions noted below, a municipality is effectively bound by an affirmative answer for a period of four years. Subsection 8.3(5) of the MEA provides that, once the municipality has passed a by-law or resolution or taken any other action to implement the results of the question, it shall not “do anything within its jurisdiction to reverse or substantially change the action for a period of four years following the day the action took effect.”

This obligation is subject to subsection 8.3(6), which provides that a municipality is not required to do anything or prevented from doing anything if:

- a subsequent binding question authorizes such action or inaction; or
- the council is of the opinion, reasonably held, that there has been a material change in circumstances since the time it passed the by-law to put the binding question to the electors.

15. What happens if a question is answered in the negative by the required special majority?

Paragraph 8.3(1)(b) states that, if a 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.”

16. What happens if 50 per cent or less of the eligible electors in a municipality vote on the question?

In the event that 50 per cent or less of the eligible electors in a municipality vote on the question, the results of the question (whether affirmative or negative) would not be legally binding upon the municipality under the MEA. A municipal council would legally be free to pursue either the affirmative or negative course of action in that event.

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We trust that you will find the foregoing analysis to be of assistance. If necessary, we are available to respond to any questions at your convenience.