

Request for Decision

2014 Municipal Election Ballot Questions

Presented To:	City Council
Presented:	Tuesday, Oct 30, 2012
Report Date	Wednesday, Oct 17, 2012
Type:	Managers' Reports

Recommendation

WHEREAS Council, by way of Resolution CC2012-305 determined to add referendum questions on store hours to the 2014 Municipal Election Ballot;

And WHEREAS Council has considered the wording of those questions in a Council meeting open to the public;

Now THEREFORE be it resolved that staff be directed to prepare a By-Law to submit these questions to the electors in the 2014 municipal election which By-Law is to appear on the Council Meeting agenda of December 11, 2012;

And THAT the Council report from the Executive Director, Administrative Services and passage of this resolution constitutes public notice of the intention of Council to pass the by-law as described in the Municipal Elections Act, 1996;

And THAT once the By-Law has been passed, no further debate or discussion on the topics related to the referendum question be permitted, that no delegations may address Council or its Committees on topics related to the referendum question, that no Municipal resources may be used to promote or support either side of the referendum question and that the City will only communicate regarding the referendum question as is required for the proper conduct of the election which includes providing electors with notice of the by-laws and questions.

BACKGROUND:

On September 11, 2012 Council passed the following resolution:

CC2012-305 Dupuis/Rivest: WHEREAS on February 14, 2012 Council passed Resolution CC2012-49 which directed the Clerk to prepare a report on the possibility of including a referendum question about the regulation of store hours as part of the 2014 Municipal Election;

AND WHEREAS the report from the Executive Director, Administrative Services/City Clerk dated June 15, 2012 has been received;

NOW THEREFORE BE IT RESOLVED THAT the Council of the City of Greater Sudbury direct that

Signed By

Report Prepared By

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Executive Director, Administrative
Services/City Clerk
Digitally Signed Oct 17, 12

Recommended by the Department

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Recommended by the C.A.O.

Doug Nadorozny
Chief Administrative Officer
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a referendum question or questions about the regulation of store hours be included on the ballot as part of the 2014 Municipal Election and that the Executive Director, Administrative Services/City Clerk, having heard any discussion and guidance provided at the meeting regarding the construction of that question(s), be directed to return to Council with a report regarding the specific wording of that question(s).

The Proposed Questions

Through the course of the discussion at the September 11, 2012 meeting, Councillors indicated that they wish to have the question split into its component parts, being store hours, Boxing Day and the August Civic Holiday.

Section 8.1(2) of the Municipal Elections Act, 1996 establishes the criteria for the question(s) which include:

- 1. It shall concern a matter within the jurisdiction of the municipality*
- 2. Despite rule 1, it shall not concern a matter which has been prescribed by the Minister as a matter of provincial interest*
- 3. It shall be clear, concise and neutral*
- 4. It shall be capable of being answered in the affirmative or the negative and the only permitted answers to the questions are "yes" or "no".*

In developing questions for Council consideration, questions related to retail or store hours in other jurisdictions were considered. Two examples of retail or store hour questions reflect that this topic is one which spans time and place.

In 2004, the Province of Nova Scotia held a plebiscite question which read:

"Should there be Sunday shopping (in retail businesses not now permitted to be open on Sunday)?"

Many years ago the City of Edmonton asked a referendum question which read:

"Do you want shop hours in the City of Edmonton to be controlled by City Council?"

The most recent and Northern Ontario examples of store or retail hours questions come from Sault Ste Marie which has had two questions on this matter. The first question, in 1988 dealt with the opening of retail stores on Sundays and was worded as follows:

"Are you in favour of City Council passing a by-law which would allow stores to remain open on Sundays?"

The wording of the second question, which appeared on the 2010 Municipal Election Ballot related to opening on December 26th, or Boxing Day. In that's instance, the wording of the question was set by way of an appeal to the Chief Electoral Officer of Ontario. The original question proposed for Sault Ste Marie was:

"Are you in favour of retail establishments (stores) opening on December 26th (Boxing Day)?"

The Northern Retail Professionals Association (NRPA) which appealed the Sault Ste Marie question wrote that the question was neither clear, nor neutral nor concise and that the items in brackets unnecessarily elongated the question. Further the group suggested that the question should not ask if people are in favour of stores being open but instead ask if people are in favour of certain retail businesses being closed. The Sault Ste Marie question that was constructed by way of an order under the Municipal Elections Act, 1996 read:

"Are you in favour of retail establishments opening on December 26th?"

This wording is an excellent model for the City of Greater Sudbury to consider as it relates to By-Law 2007-143: A By-Law of the City of Greater Sudbury to Require Certain Retail Business Establishments to be

Closed on the August Civic Holiday and on Boxing Day (as amended by 2008-178). This by-law requires the majority of retail establishments to close on “December 26th in any year” and on the “first Monday in August in any year”, which dates are Boxing Day and the August Civic Holiday.

Council may wish to add the word "business" to the term "establishments" to provide greater clarity and more citizen friendly language. These two terms are defined differently under the Retail Business Holidays Act and the Municipal Act, 2001 and so both elements would be covered if this wording is used.

Furthermore, "retail business establishment" is more appropriate because the word "establishment" refers to the physical retail premise itself which is closed to the public, not the actual carrying on of the retail business and may be important to those businesses which provide online shopping or around the clock access to services as for example customer service.

With that change, the questions recommended to Council for the 2014 Referendum, and modeled on the question as ordered for Sault Ste Marie on this topic would read:

"Are you in favour of retail business establishments opening on December 26th?"

And

"Are you in favour of retail business establishments opening on the first Monday in August?"

By-Law 2004-204: A By-Law of the City of Greater Sudbury to Require the Closing of Certain Retail Establishments regulates store hours on usual business days, mandating at what time stores must close in the evening. Currently most stores are required to close on Mondays through Saturdays from 10:00 p.m. until 5:00 a.m. on the following day and on Sundays from 6:00 p.m. until 5:00 a.m. on the following day. The By-Law also requires most stores to close at 6:00 p.m. on both Christmas Eve (December 24th) and New Year's Eve (December 31st).

The question proposed to Council for the Council for the 2014 Municipal Election Ballot follows the same pattern and uses similar language to the questions proposed above and would read:

"Are you in favour of allowing retail business establishments to set their opening hours?"

Public Input into the Questions and the Right to Appeal

The Municipal Elections Act, 1996 makes provisions for the Council to hold one public meeting to consider the matter of the question to be posed in the referendum. Council is considering the question at its meeting of October 30, 2012 which meeting is open to the public and for which extensive media coverage is provided. Between October 30, 2012 and November 27, 2012 the Clerk will receive written comments on the construction of the questions and provide that information to Council when the By-Law is presented for approval on December 11, 2012.

As described in the Municipal Elections Act, 1996, section 8.1(6):

Within 20 days after the clerk gives notice of the passage of a by-law under clause 8 (1) (b), the Minister or any other person or entity may appeal to the Chief Electoral Officer of the Province of Ontario on the grounds the question does not comply with paragraph 3 or 4 of subsection (2) by filing with the clerk a notice of appeal setting out the objections and the reasons in support of the objections.

The last day for filing a notice of appeal, assuming that Council passes the By-Law on December 11, 2012 will be December 31, 2012.

Description of the Consequence of the Questions if Approved /or Rejected

The Municipal Act, 2001 requires that as part of the notice of the intent of the City to pass a by-law in regards to a referendum question, that a clear, concise and neutral description of the consequences of the question(s) if either approved or rejected is provided to the public, as well as an estimate of the costs to the municipality of implementing the results of the question(s).

As described in the Municipal Elections Act, 1996, the results of the questions above would be binding on the municipality if:

- 1. At least 50 percent of the eligible electors in the municipality vote on the question: and*
- 2. More than 50 per cent of the votes on the question are in favour of those results.*

For each question, if it is answered in the affirmative, then retail business establishments, such as stores would be permitted to be open for business as stated in the question. For each question answered in the negative, the current business establishment hours specific to that question would remain in effect during the next term of Council.

There is no direct cost to the municipality for implementation of the results of the questions. Staff time would be required to prepare the necessary by-laws to implement questions answered in the affirmative.