

## Request for Decision

### Referendum

Presented To: City Council

Presented: Tuesday, Sep 11, 2012

Report Date Friday, Jun 15, 2012

Type: Managers' Reports

### Recommendation

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 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).

### Finance Implications

The cost of including the referendum question as part of the municipal election would be a minimal amount and would be funded within the existing election budget.

## Executive Summary

Council directed that staff prepare a report on the possibility of including a referendum question about the regulation of store hours as part of the 2014 municipal election. This report describes the requirements for a referendum and summarizes referendum experiences in other municipalities. Information is provided regarding the current Store Hours By-Law. Should Council decide to pursue a referendum on this topic, guidance is requested from Council on the general nature of a potential referendum question(s) on this topic.

#### Signed By

**Report Prepared By**

Caroline Hallsworth  
Executive Director, Administrative  
Services/City Clerk  
*Digitally Signed Jun 15, 12*

**Recommended by the Department**

Caroline Hallsworth  
Executive Director, Administrative  
Services/City Clerk  
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**Recommended by the C.A.O.**

Doug Nadorozny  
Chief Administrative Officer  
*Digitally Signed Jun 18, 12*

## Background

On February 14, 2012 Council passed the following motion:

*CC2012-49 Dupuis/Belli: WHEREAS the issue of regulating store hours has been an ongoing and controversial question for the City of Greater Sudbury Council and the community;*

*AND WHEREAS the regulation of store hours has been debated on a number of occasions over the last several years, and has been dealt with once by Council during this term of office;*

*NOW THEREFORE BE IT RESOLVED that the City of Greater Sudbury direct 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 elections, and that the Clerk report to Council no later than the fall of 2012.*

### ***Legislative Requirements Regarding Holding of a Referendum:***

Section 8 of the Municipal Election Act outlines the requirements and processes associated with having Council submit a question(s) to its electors. The question posed to electors must be approved by way of a By-Law which is passed at least six months prior to the date of the vote.

Section 8.1(2) 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".*

The results of a question authorized by By-Law and voted on by way of an election are binding on the municipality when two conditions are met as described in Section 8.2(1):

- 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.*

It is important to note that if the results of a question are binding on the municipality as a result of the two above noted conditions having been met, then if the answer is affirmative, "*the municipality shall do everything in its power to implement the results of the question in a timely manner*". However, if the result is in the negative and the question is declined, then "*the municipality shall not do anything within in its jurisdiction to implement the matter . . . for a period of four years following the voting day*" which effectively precludes action in the next term of office.

Other subsections of this portion of the Municipal Election Act describe notice requirements and the process for appeal of a question to the Chief Electoral Officer of Ontario if any person believes that the question does not comply with the criteria set out above.

Ballot questions are subject to the same campaign financing and other rules that apply to other election matters. Parties or organizations on both sides of the question which wish to campaign or advertise in support of or against the question must register and submit campaign financing reports. Practice in other

municipalities has been not to permit debate or discussion on the by-law question at meetings of Council or Committees nor may municipal resources be used to promote one side or the other. The role of staff during the campaign is only to provide neutral and factual information regarding the by-law question.

### ***Referendum Experiences in Other Municipalities:***

According to a report regarding 2010 Municipal Elections prepared by AMCTO, of the 185 municipalities that responded to the survey thirteen had by-law questions on their ballots in those elections. The majority of those questions related to governance issues, as for example maintaining the existing size of a council, replacing ward based representatives with councillors elected at large or merging two municipalities. In 2006 ten municipalities reported by-law questions similar to those asked in 2010.

Municipalities who have had ballot questions in recent years were contacted and provided valuable insights into their experiences. Where the ballot question was part of the Municipal Election, municipalities advise that costs are comparable. According to the City of Waterloo:

*“Since the questions were added to the regular municipal election ballot, there was minimal additional cost. We did some advertising to let the public know that we had two questions on the ballot, but it was wrapped in with other election advertising . . .”*

The City of Sault Ste Marie wrote that:

*As far as costs go, when done as part of a regular election it becomes a fairly nominal incremental cost, mostly related to increased notices and advertising/communications. If done outside a regular election it would be comparable to having a city-wide special election for the mayor's position. When we did this in 1996 we found the cost to be about 70% of the cost for a regular election.*

Sault Ste Marie has had two by-law questions regarding Store Hours. As described in an email from Malcolm White, City Clerk:

*The first, in 1988, dealt with the opening of retail stores on Sundays. The result was 56% in favour and 44% opposed with a 61.8% turnout. . .*

*The other question was on the ballot in the 2010 election and concerned opening on December 26th (Boxing Day). The wording of the question was "Are you in favour of retail establishments opening on December 26<sup>th</sup>?". The wording was set after an appeal to our original wording from a ratepayers group to the Chief Electoral Officer of Ontario . . . The results were 39.5% in favour and 60.5% opposed.*

In 2010 Voter turnout in Sault Ste Marie was 47.7% which was below the level required to render the vote binding on the municipality.

Some of the municipalities contacted had the proposed election question(s) appealed to the Chief Election Officer of Ontario and those who provided information indicated that this is an interesting process which required some staff time and incurred additional costs in responding to those appeals. One municipality estimated that the appeal cost \$20,000 in staff and out of pocket expenses while another municipality advised that Elections Ontario staff administer much of the process of hearing the appeal and that the role of the municipality is in explaining the development and meaning of the proposed question to the arbitrator.

### ***Implications of a By-Law Question in Greater Sudbury:***

Historically, voter turnout in Greater Sudbury has been comparable to that in other municipalities but slightly lower than the turnout required for a by-law question to be binding on the municipality. However, the addition of a by-law question, particularly if the by-law question is one of broad public interest, can enhance voter interest and lead to increases in voter turnout. Further as one municipality noted when responding to our inquiries, while a by-law question may not be legally binding because the turnout does not meet the threshold established in the legislation, the results of asking that question are “ *politically influential*”.

<b>Municipal Election</b>	<b>Number of Registered Voters</b>	<b>Number of Votes Cast</b>	<b>Percentage of Registered Voters Who Cast a Vote</b>
<b>2010</b>	115,318	57,373	49.75%
<b>2006</b>	137,107	55,963	40.82%
<b>2003</b>	135,754	54,338	40.03%

In Resolution CC2012-49 Council has provided direction that should a by-law question on store hours be considered, that it be voted on as part of the 2014 Municipal Election. As noted above, the experience of other municipalities with regards to a question that is included on a Municipal Election ballot is that typically the costs of the by-law question are minimal as the election machinery is already in place and this simply constitutes an additional item(s) on the ballot. The City of Greater Sudbury has not budgeted for a separate election for the purposes of holding a referendum, but could easily absorb the nominal costs associated with a by-law question(s) on the 2014 Municipal Election ballot, within the costs of the Municipal Election.

**Current By-Laws:**

CGS currently has two different by-laws in force which regulate store hours:

1. 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. These are dates which are not covered by the provincial Retail Business Holidays Act which mandates closings on: New Year’s Day; Good Friday; Easter Sunday; Victoria Day; Canada Day; Labour Day; Thanksgiving Day; and Christmas Day.

2. 2004-204: A By-Law of the City of Greater Sudbury to Require the Closing of Certain Retail Establishments.

This by-law 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 24<sup>th</sup>) and New Year’s Eve (December 31<sup>st</sup>).

**The General Nature of a Potential Referendum Question(s):**

The experience in other municipalities has been that a number of iterations of the question(s) may be required and considered before a question is developed and passed by way of a by-law for inclusion on the ballot. Staff are seeking some guidance from Council as to the general nature of a potential referendum question that might be presented. Is Council seeking to have one question to address all store hours (both existing by-laws) or is Council seeking to separate the two current bylaws, as for example by having only one or the other by-law reviewed or by having two questions, one regarding regulation of store closing hours and one regarding the Boxing Day and August Civic Holidays?

Should Council direct that a Referendum on Store Hours be presented at the next Municipal Election in 2014, then staff will bring back a report with regards to options for the exact and specific wording of the proposed referendum question(s).