

Excerpt from Municipal Elections Act

Submission of by-laws and questions

8. (1) The council of a municipality may pass a by-law to submit to its electors,

- (a) a proposed by-law requiring their assent;
- (b) subject to section 8.1, a question not otherwise authorized by law but within the council's jurisdiction;
- (c) subject to section 8.1, a question, the wording of which is established by an Act or a regulation under an Act. 1996, c. 32, Sched., s. 8 (1); 2000, c. 5, s. 27 (1).

Submission of question, local board

(2) A local board described in subparagraph iii of paragraph 1 of section 3 may pass a resolution to submit to its electors a question not otherwise authorized by law but within the local board's jurisdiction. 1996, c. 32, Sched., s. 8 (2).

(2.1) Repealed: 2000, c. 5, s. 27 (2).

Question by Minister

(3) The Minister may make an order requiring the clerk of a local municipality to submit a question to the electors of his or her municipality. 1996, c. 32, Sched., s. 8 (3).

Transmission to clerk

(4) When an upper-tier municipality acts under subsection (1), its clerk shall transmit to the clerk who is responsible for conducting the election a copy of the by-law and the proposed by-law or question. 1996, c. 32, Sched., s. 8 (4).

Same

(5) When a local board acts under subsection (2), its secretary shall transmit to the clerk who is responsible for conducting the election a copy of the resolution and question. 1996, c. 32, Sched., s. 8 (5).

Restriction

(5.1) For the purposes of a regular election, the clerk who is responsible for conducting the election is not required to submit a by-law or question to the electors unless on or before June 1 of the election year,

- (a) in the case of a question of the Minister, the order under subsection (3) is transmitted to the clerk;
- (b) in the case of a by-law or question of an upper-tier municipality, subsection (4) is complied with;
- (c) in the case of a question of a local board, subsection (5) is complied with; or

(d) despite the *Fluoridation Act*, in the case of a petition under the *Fluoridation Act*, the petition is transmitted to the clerk. 2002, c. 17, Sched. D, s. 3; 2009, c. 33, Sched. 21, s. 8 (5).

Deemed transmission of petition

(5.2) Despite the *Fluoridation Act*, if a petition under the *Fluoridation Act* is submitted in the election year of a regular election after June 1, the petition is deemed to have been transmitted to the clerk on February 1 of the following year. 2002, c. 17, Sched. D, s. 3; 2009, c. 33, Sched. 21, s. 8 (6).

Notice to electors

(6) The clerk who is responsible for conducting the election shall give the electors notice of by-laws and questions referred to in this section. 1996, c. 32, Sched., s. 8 (6).

Cost of giving notice

(7) The upper-tier municipality or local board or the Minister, as the case may be, shall pay the local municipality's reasonable costs of giving notice under subsection (6), as soon as possible after receiving a certificate verifying the amount and signed by the clerk of the local municipality. 1996, c. 32, Sched., s. 8 (7).

Assent to by-law

(8) A by-law is assented to,

- (a) in the case of a local municipality, if a majority of the votes cast in the municipality are in favour of the by-law;
- (b) in the case of an upper-tier municipality, if a majority of the votes cast in all the local municipalities are in favour of the by-law. 1996, c. 32, Sched., s. 8 (8).

Result of vote

(9) When the time for applying for a recount has expired without an application being made, or when any application for a recount has been finally disposed of, the clerk shall certify the result of the vote in his or her municipality to the clerk of the upper-tier municipality, the secretary of the local board or the Minister, as the case may be. 1996, c. 32, Sched., s. 8 (9).

Waiting period

(10) A council shall not consider a proposed by-law to which the electors' assent has been obtained until the 14th day after the result of the vote is certified. 1996, c. 32, Sched., s. 8 (10).

Conflicts

(11) In cases of conflict, the Act or regulation establishing the wording of a question under clause (1) (c) or the Act authorizing the regulation establishing the wording of the question prevails over this Act or a regulation under this Act. 2000, c. 5, s. 27 (3).

Conditions re: submitting a question

8.1(1) A by-law to submit a question to the electors under clause 8 (1) (b) or (c),

- (a) shall be passed at least 180 days before voting day in the election at which it is intended to submit the question to the electors;
- (b) cannot be amended after the last date referred to in clause (a);
and
- (c) despite clause (b), can be repealed on or before nomination day and, if the election does not include an election for an office, on or before the 31st day before voting day. 2000, c. 5, s. 28.

Rules

(2) A question authorized by by-law under clause 8 (1) (b) shall comply with the following rules:

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 question are "yes" or "no". 2000, c. 5, s. 28.

Notice of intent

(3) Before passing a by-law under clause 8 (1) (b) or (c), 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. 2000, c. 5, s. 28.

Notice of by-law

(4) Within 15 days after a municipality passes a by-law under clause 8 (1) (b) or (c), the clerk shall give notice of the passage of the by-law to the public and the Minister. 2000, c. 5, s. 28.

Contents

(5) A notice under subsections (3) and (4) shall include,

- (a) the wording of the question;
- (b) in the case of a by-law under clause 8 (1) (b), a clear, concise and neutral description of the consequences of the question if it is approved and the consequences if it is rejected with the special majority under section 8.2, including an estimate of the costs, if any, that the municipality may incur in implementing the results of the question; and
- (c) in the case of a by-law under clause 8 (1) (b), a description of the right to appeal under subsection (6) including, in the case of a notice under subsection (4), the last day for filing a notice of appeal. 2000, c. 5, s. 28.

Appeal

(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. 2000, c. 5, s. 28; 2007, c. 15, s. 40 (1).

Notices to be forwarded

(7) The clerk shall, within 15 days after the last day for filing a notice of appeal under subsection (6), forward any notices of appeal received to the Chief Electoral Officer. 2000, c. 5, s. 28; 2007, c. 15, s. 40 (1).

Other information

(8) The clerk shall provide any other information or material to the Chief Electoral Officer that the Chief Electoral Officer requires in connection with the appeal. 2000, c. 5, s. 28; 2007, c. 15, s. 40 (1).

Hearing

(9) The Chief Electoral Officer or his or her designate shall, within 60 days of receiving notices under subsection (7), hold a hearing and dismiss the appeal or allow the appeal in whole or in part. 2000, c. 5, s. 28; 2007, c. 15, s. 40 (1).

Order

(10) If the Chief Electoral Officer allows the appeal 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. 2000, c. 5, s. 28; 2007, c. 15, s. 40 (1).

Non-application

(11) Subsections (1) and (3) to (9) do not apply to anything done pursuant to an order under subsection (10). 2000, c. 5, s. 28.

Results

8.2(1) The results of a question authorized by a by-law under clause 8 (1) (b) are binding on the municipality which passed the by-law if,

- (a) at least 50 per cent of the eligible electors in the municipality vote on the question; and
- (b) more than 50 per cent of the votes on the question are in favour of those results. 2000, c. 5, s. 28.

Determination of number of votes

(2) For the purpose of clause (1) (a), the number of eligible electors shall be determined from the voters' lists as they exist at the close of voting. 2000, c. 5, s. 28.

Implementation

8.3 (1) If the results of a question authorized by a by-law under clause 8 (1) (b) are binding on a municipality,

- (a) if an affirmative answer received the majority of the votes, the municipality shall do everything in its power to implement the results of the question in a timely manner; and

- (b) 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. 2000, c. 5, s. 28; 2006, c. 9, Sched. H, s. 3 (1).

Same

(2) Without limiting subsection (1), the municipality shall, between 14 and 180 days after voting day,

- (a) 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;
- (b) despite clause (a), 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;
- (c) 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. 2000, c. 5, s. 28.

Limitation

(3) For the purpose of clause (1) (a), it is not within the jurisdiction of 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 as illustrated by the following examples:

1. 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. If the zoning change is approved, the municipality is bound to implement the results; if it is not approved, the municipality is not bound.
2. 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 to consider the matter before the by-law is passed, the binding effect of the question is subject to these procedural requirements and the discretion of the municipality to proceed following the public meeting is not constrained. If, after the public meeting, the municipality decides not to implement the results of the question, it is not required to do so. 2000, c. 5, s. 28.

Order

(4) A court presiding over a proceeding in respect of a recount, an offence under this Act or a proceeding under section 83 (controversed elections) may make an order temporarily staying the requirement of a

municipality to implement the results of a question under this Act if satisfied that the requirement may be directly or indirectly affected by the proceeding. 2000, c. 5, s. 28.

Time restriction

(5) A municipality that has passed a by-law or resolution or taken any other action to implement the results of the question 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. 2000, c. 5, s. 28; 2006, c. 9, Sched. H, s. 3 (2).

Exception

(6) Nothing in this section requires a municipality to do anything or prevents a municipality from doing anything if,

- (a) a subsequent binding question authorizes such action or inaction;
or
- (b) 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 under clause 8 (1) (b) to put the binding question to the electors. 2000, c. 5, s. 28.