

THE CORPORATION OF THE TOWN OF GEORGINA

REPORT NO. CS-2017-0063

**FOR THE CONSIDERATION OF
COUNCIL
DECEMBER 6, 2017**

SUBJECT: Bill 181, the *Municipal Elections Modernization Act*, and Bill 68, the *Modernizing Ontario's Municipal Legislation Act*, 2017

1. RECOMMENDATIONS:

1. That Council receive Report No. CS-2017-0063 prepared by the Clerk's Division, Corporate Services Department dated December 6, 2017 with respect to Bill 181, *Municipal Elections Modernization Act*, and Bill 68, the *Modernizing Ontario's Municipal Legislation Act*, 2017.
2. That, in order to comply with provincial legislation, Council amend Section 5(2) of the Town of Georgina Procedural By-Law No. 2016-0014 (COU-2) with respect to meetings that may be closed to the public by adding the following provisions to that section, effective January 1, 2018:
 - (ix) information explicitly supplied in confidence to the municipality or local board by Canada, a province or territory or a Crown agency of any of them;
 - (x) a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence to the municipality or local board, which, if disclosed, could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
 - (xi) a trade secret or scientific, technical, commercial or financial information that belongs to the municipality or local board and has monetary value or potential monetary value; or
 - (xii) a position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board.

3. That Council receive information relating to recent amendments to the following legislation as a result of the passage of Bills 181 and 68, the *Modernizing Ontario's Municipal Legislation Act, 2017*: the *Municipal Elections Act, 1996*, the *Municipal Act, 2001*, and the *Municipal Conflict of Interest Act, 1996*.

2. **PURPOSE:**

The purpose of this report is to seek Council approval to amend the Town of Georgina Procedural By-Law No 2016-0014 (COU-2), effective January 1, 2018 in order to comply with new provincial legislation and to provide information related to legislative changes as a result of Bill 181, the *Municipal Elections Modernization Act*, and Bill 68, the *Modernizing Ontario's Municipal Legislation Act, 2017*

3. **BACKGROUND:**

Bill 181, the *Municipal Elections Modernization Act, 2017* received Royal Assent on June 19, 1996. Bill 68, *Modernizing Ontario's Municipal Legislation Act, 2017* received Royal Assent on May 30, 2017. Both bills contain numerous and substantial changes to the *Municipal Elections Act, 1996*, the *Municipal Act, 2001*, and the *Municipal Conflict of Interest Act, 1996*.

4. **ANALYSIS:**

1. **Bill 181: the *Municipal Elections Modernization Act, 2017***

Bill 181, the *Municipal Elections Modernization Act, 2017* ("MEA") alters the conduct and method of municipal elections in Ontario. Some of the amendments to the *Municipal Elections Act, 1996* have already been discussed in Report No. AD-2017-0017 (Attachment 1). However, in order to provide a full and comprehensive view of the scope of Bill 81 and Bill 168, some information is repeated here.

A. Changes to the Municipal Election Calendar:

Recent amendments to the election calendar can be found at Attachment 2. The following summarizes those changes.¹

1) Election Policies and Procedures

Previously the Municipal Clerk had until June 1st of the election year to establish procedures for voting and the use of vote counting equipment

¹ A summary list of new election dates will be available to the public via the Town's webpage and social media accounts and published in local newspapers in the coming weeks.

and alternative voting methods authorized by Council. Any policies, procedures and forms used to support voting, vote counting equipment and alternative voting methods must now be established by the Clerk before January 1, of an election year.

2) Approval/Authorization of Ballot Question

In the current version of the of the MEA, should Council or a local board deem it appropriate to place a question on the ballot, the by-law authorizing the question must be passed on or before June 1st in the election year, the amendment sets a new deadline of March 1st in the election year.

3) Authorization of Alternative Voting Methods

The option to employ vote counting equipment and alternative voting methods remains within the legislation; however the deadline to adopt a by-law authorizing the use of such methods and technologies has been moved from June 1st to May 1st in the year prior to the election year. Under the Municipal Election Modernization Act amendments, the policies, procedures and forms for use when voting, or in the use of alternative voting methods or vote counting equipment must be in place prior to January 1.²

4) Opening of Nomination Period- May 1st

In response to complaints concerning the length of municipal campaigns in Ontario, the legislation moves the first opportunity to register from January 1st in the year of the election, to May 1st.

5) End of Nomination Period- Fourth Friday in July (July 27th)

The new amendments also include to move the final day a candidate may register to run for office, from the second Friday in September to the fourth Friday in July.

6) Availability of Voters' List- September 1st

In order to provide greater clarity to candidates around the availability of the Voter's list, the Municipal Elections Modernization Act, sets September 1st as the first day that the Voters' list may be released.

² Council authorized utilization of vote counting equipment for the 2018 municipal election on April 17, 2017

B. Amendments Affecting Candidates:

1) Nomination Timelines and Candidate Process Update

In addition amendments to the nomination registration and campaign period, a further change has been made to the MEA. All municipal election candidates seeking office will have to have their nomination paper endorsed by at least 25 individuals who certify that they are eligible to vote within the municipality. The nomination paper may only be accepted by the Municipal Clerk if it contains the specified amount of signatures as required. This new amendment will not impose the requirement of the Municipal Clerk to verify that the individuals endorsing the nomination paper are qualified electors.

2) Advertising

Candidates will now be required to include specific information within their election advertising in order to make it clear who is responsible for the messages provided. These new requirements apply to all of the different methods of advertising by the candidate. Additionally, candidates must provide publishers and broadcasters with information including the name of the candidate and the name, business address and telephone number of the individual interacting with the broadcaster or publisher on behalf of the candidate. This information, along with a copy of the ad and the invoice provided for its appearance will need to be retained and made available for public inspection for a period of at least two (2) years.

3) Financial Statement Updates

Amendments to the MEA now require the Municipal Clerk to review and report on campaign contributions made to candidates running for the position of Municipal Council. The report would identify any candidates who appeared to exceed the campaign contribution limits. This same report would be also created for registered third party contributors. These reports would be referred to the Compliance Audit Committee to determine if any further action is to be taken. Another new requirement under Financial statements is for the Municipal Clerk to publicly identify in a report the candidates and third parties who have failed to comply with the requirement to file a financial statement and who are prohibited from running or registering in the next election as a result.

4) Refund of Filing Fee

In order to improve compliance with the requirement to file financial statements, a MEA amendment specifies that a candidate is only entitled to a refund if they file their financial statement on or before the deadline established by the Act. This would mean that before a candidate receives a refund, they must file their financial statements to the Municipal Clerk. T

This amendment came into effect during the 2017 York Region District School Board By-election.

5) Late Filing Fee

If a candidate files a financial statement after the filing deadline pursuant to section 34 of the MEA, that candidate is automatically prohibited from being elected or appointed to any office to which the Act applies until after the next regular election is completed. No changes are proposed to the penalties; however a candidate could avoid the automatic imposition of the penalties if they were to file their financial statement within a thirty (30) day period after the deadline, accompanied with a \$500 late filing fee to be paid to the Municipal Clerk.

6) Candidate Access to Residential Properties

In previous elections, candidates have highlighted challenges associated with campaigning in apartment buildings, condominiums, housing cooperatives and gated communities. New amendments to the MEA provides candidates with the right to access residential properties for campaign purposes between 9 a.m. and 9 p.m.

7) Candidate Spending Limits

New amendments set out a formula for determining the amount that a candidate and his or her spouse may contribute to the candidate's own campaign. The formula for a candidate for the office of Head of Council, would be the lessor of \$7,500 plus 20 cents per eligible elector or \$25,000. For a candidate running for any other office the spending limits will be the lessor of \$5,000 plus 20 cents per eligible elector or \$25,000.

8) Contributions to a Candidate

Bill 68 increases the maximum campaign contribution limits to a single candidate \$750 to \$1,200. The same limits apply to donations to a third party advertiser.

C. Summary of Significant Changes for Municipal Clerks, Election Staff and Others:

1) Greater Independence and Discretion for the Municipal Clerk

Amendments to the MEA provide for greater discretion and independence to the Municipal Clerk when dealing with some election-related issues. The following matters, some of which previously required Council authorization or approval, will now be entirely within the purview of the Clerk:

- The establishment of advance voting dates, locations and hours;
- The establishment of reduced voting hours for voting places at long-term care facilities, hospitals and retirement homes; and,
- The management of the Voters' List, including the removal of deceased persons, additions of new electors and amendments to existing electors, as well as the method by which additions, amendments and deletions may be completed.

2) Elections Accessibility Plans and Post- Election Reporting

The MEA will now require each Municipal Clerk to prepare an Elections Accessibility Plan and make it available to the public before Voting Day. The current Act requires the Clerk to report to Council on the identification, removal and prevention of barriers after the completion of the election. The requirement now directs the Municipal Clerk to make the report available to the public, rather than ordering that it be submitted to Council.

3) Third Party Involvement in Municipal Elections

Another significant change to the MEA is the introduction of a regulatory framework for the management of third party involvement in the election process. While the current Act includes provisions respecting the involvement of third parties respecting ballot questions, new provision expand the definition of a third party to include individuals who normally

reside in Ontario, corporations who carry on business in Ontario or trade unions who hold bargaining rights for employees in Ontario and who wish to incur expenses promoting, supporting or opposing a candidate or issue in relation to an election in a municipality. Third party advertisements will only be permitted once a third party registers with the Municipal Clerk and will be prohibited after the close of voting on Voting Day.

A third party advertisement is a message in any medium (billboard, newspaper, radio, etc.) that supports or opposes a candidate or a “yes” or “no” vote on a question on the ballot. Third party advertising does not include issues-based advertising so groups that do public outreach can continue their issued-based advocacy work throughout the municipal election period.

Contributions by corporations and trade unions to Council candidates are banned under the new amendments. However, corporations and trade unions can contribute to third party advertisers. In addition, individuals, corporations and unions can register as third party advertisers and can also make contributions to third party advertisers.

Third party advertisers must register with the municipality where they want to advertise. If they want to advertise in more than one municipality, they have to register in each municipality.

Registration allows a third party advertiser to promote or oppose any candidate that the electors in the municipality can vote for (local council, school board trustee positions and regional or county council offices). Finally, third party advertising must be done independently of candidates, who are not able to direct a third party advertiser and candidates are not able to register as third party advertisers.

Under the MEA, third party advertisers will be subject to a spending limit that varies by the number of electors in the municipality in which the third party advertiser is registered. The proposed formula consists of a base amount plus a per elector amount to a predetermined maximum. Changes proposed to O. Reg. 101/97 include the following formula for calculating third party spending limits: \$5,000 plus \$0.05 per elector, to a maximum of \$25,000. The rules regarding third party advertisers will come into effect on April 1, 2018 so that they can be implemented beginning May 1, 2018 but have not been finalized. The Ministry of Municipal Affairs is accepting comments until January 9, 2018 on the following proposals.

Because final regulations regarding third party advertisers have not been promulgated, staff will have to be ready to receive applicable forms from the Ministry of Municipal Affairs and communicate them to the public prior to May 1, 2018.

4) Recount Policies

In the current MEA, election recounts could only be conducted under the following circumstances: where the counting of ballots resulted in a tie vote; where a municipality, local board or Minister of Municipal Affairs and Housing has passed a resolution to order a recount; or where an electors' request for a recount has been granted by the Superior Court of Justice. Amendments now provide Council the authority to adopt a policy by May 1st of the election year to define circumstances under which a recount would be conducted other than those listed above. The Municipal Clerk now has the authority to hold a recount in accordance with a Council Approved Policy.

5) Ranked Ballot Municipal Election Option

One of the most significant changes to the MEA is the establishment of a framework to allow for a ranked ballot election in Ontario for the first time. This change can be made based on a Council decision and the passing of a By-law. The By-law may specify the maximum number of rankings that an elector may make. The maximum number of rankings may be different for each office being elected. If the By-law does not specify the maximum number of rankings, the default maximum is three. Before passing a By-law, the municipality must hold an Open House to provide the public with information regarding:

- How elections would be conducted, including a description of vote counting;
- Estimated costs of conducting the election;
- Any voting and vote-counting equipment that is being considered for use in the election;
- Any alternative voting method being considered for use in the election. The Town must hold a public meeting to allow members of the public to speak to council about the proposed by-law at least 15 days after the open house is held and the By-law must be passed no later than May 1 in the year before the year of the

election. (e.g. May 1, 2017 for the 2018 election).³

If a Council chooses to conduct an election utilizing a ranked ballot method, the MEA exempts school board elections from such methods.

2. Bill 68, *Modernizing Ontario's Municipal Legislation Act*, 2017

Bill 68, *Modernizing Ontario's Municipal Legislation Act*, 2017 received Royal Assent on May 30, 2017 and contains 43 pages of amendments to various legislation, including the *Municipal Act*, 2001, the *Municipal Elections Act*, 1996, the *Municipal Act*, 2001, and the *Municipal Conflict of Interest Act*, 1996.

A. Municipal Act, 2001, Bill 68 Amendments

Bill 68 has introduced a number of significant and far-reaching changes to the *Municipal Act*, 2001, many of which come into effect on March 1, 2019. Among these significant changes are:

1) Council Codes of Conduct-

Amendments to the MA requires that all municipalities have a Code of Conduct in place for its Council and members of its advisory committees and local boards. In addition, the Minister of Municipal Affairs is given the authority to prescribe by regulation what subject matter(s) must be included in the Code of Conduct. Currently municipalities have the authority to determine the contents of the Code of Conduct. The Town would be required to amend the Code of Conduct to include those members of advisory committees and local boards. Section 201(2.1) of the *Municipal Act*, 2001 defines a Business Improvement Area Board of Management ("BIA") as a local board of the municipality. These amendments mean that a Code of Conduct would include BIAs and members of those boards would be subject to the same provisions regarding a Code of Conduct and an Integrity Commissioner.

The Town of Georgina currently has a Code of Conduct but in light of the amendments, staff will review it and present recommendations to Council prior to the March 1, 2019 deadline.

2) Integrity Commissioner

With the passage of Bill 68, municipalities will be required to hire an Integrity Commissioner prior to March 1, 2019. If a municipality does not have a Integrity Commissioner, it would be required to make arrangements for the functions to be performed on a retainer basis or by an Integrity

³ Council did not choose to conduct the 2018 Municipal Election via a ranked ballot process.

Commissioner of another municipality. The amendments to the MA and *Municipal Conflicts of Interest Act* ("MCIA") provides that the role of the Integrity Commissioner include an increased scope of powers and involves the following:

- The application of the Code of Conduct to Members of Council and members of local boards;
- The application of any procedures, rules, policies of the municipality and local boards governing the ethical governing the ethical behavior of members of Council and local boards;
- The application of sections 5, 5.1 and 5.2 of the MCAI to members of Council and of Local Boards;
- Requests from members of Council and of local boards for advice respecting their obligations under the Code of Conduct applicable to the member;
- Requests from members of Council and of local boards for advice respecting their obligations under a procedure, rule, or policy of the municipality or of the local board, as the case may be, governing the ethical behavior of members;
- Requests from members of Council and of local boards for advice respecting their obligations under the MCAI;
- The provision of educational information to members of Council, Members of local boards, the municipality and the public about the municipality's codes of conduct for members of Council and members of local boards.

3) Contravention Application (Integrity Commissioner)

Amendments to the Municipal Conflict of Interest Act which come into effect on March 1, 2019 detail the process that any person must follow to apply to a judge for a determination as to whether a member has contravened the MCAI. It also adds the ability for an Integrity Commissioner, upon completion of their investigation into an alleged conflict of interest, to apply to a judge for a determination as to whether a contravention has taken place. These provisions provide clarity to the process of reviewing an alleged conflict of interest and provides a means for review by the Integrity Commissioner. Review of an alleged contravention will be reviewed by a judge and if a member is found in contravention to have a penalty imposed by the court. Significantly, the costs of an application to a judge by the Integrity Commissioner are to be paid by the Council of a municipality.

4) Powers of a Judge Pursuant to the Municipal Conflict of Interest Act

Amendments to the MCAI, effective March 1, 2019 also expand the range of penalties available to a judge if a contravention of the Act has occurred. At present, the only penalties for contravention of the MCIA are:

- to declare the seat vacant;
- disqualify the member or former member from being a member during a period thereafter of not more than seven years; and
- where the contravention has resulted in personal financial gain, require the member or former member to make restitution to the party suffering the loss, or, where such party is not readily ascertainable, to the municipality or local board of which he or she is a member or former member.

Amendments now provide for the following possible additional penalties:

- a reprimand; and
- a suspension of remuneration paid to the member for up to 90 days.

5) Contravention of the Municipal Conflict of Interest Acts

A new provision of the MCIA stipulates that effective March 1, 2019, where a member, found to have contravened the MCIA, may participate during the discussion at Council regarding the proposed suspension of the remuneration paid to the member. The amendment allows the member to take part in the discussion of the matter, including making submissions to Council, and allows attempts to influence the voting on any question in respect of the matter, whether before, during or after the meeting. However, the member is not permitted to vote on any question with respect to the matter. If the matter is being discussed during a closed session, the member may attend that portion of the meeting.

6) Written Statement of Disclosure under the Municipal Conflict of Interests Act

Bill 68 amendments, effective March 1, 2019, include the added responsibility for members of Council to submit a written disclosure of interest statement when declaring a conflict of interest at a meeting. This disclosure statement would set out the interest and its general nature and be filed with the Municipal Clerk. The statement would need to be filed as soon as possible after disclosing the interest at the meeting. Every municipality would be required to establish and maintain a registry with a copy of each statement filed for the meeting

record. The registry would be available for public inspection in the manner and during the time as determined by the municipality.

7) Council/Municipal Staff Relations Policy

The MA now requires that prior to March 1, 2019, municipal councils adopt a policy on Council-employee relations that address the responsibilities of the municipal staff and their interaction with Council.

8) Meeting Provisions

a) Definition of “meeting”

Under a new section of the MA, the definition of “meeting” is provided for the first time. Effective January 1, 2018, the definition of “meeting” is as follows:

“Meeting” means any regular, special, or other meeting of a Council, of a Local Board or of a committee of either of them, where:

- (a) a quorum is present, and
- (b) members discuss or otherwise deal with any matter in a way that materially advances the business or decision-making of the Council, Local Board or Committee.

b) Electronic Participation

A new provision presented through Bill 68 provides Councils with permissive authority to allow for electronic participation in meetings as defined by the municipality's Procedural By-law. It would be the decision of Municipal Council to decide whether electronic participation would be permitted for meetings. It is important to mention that electronic participation would not count towards quorum and the electronic participant is not allowed to be a part of a closed meeting.

c) Closed Meetings

Bill 68 amends the MA, effective January 1, 2018 with respect to the expansion of discretionary matters that Council may consider in a Closed Session to include:

- (h) information explicitly supplied in confidence to the municipality or local board by Canada, a province or territory or a Crown agency of any of them;

(i) a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence to the municipality or local board, which, if disclosed, could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;

(j) a trade secret or scientific, technical, commercial, or financial information that belongs to the municipality or local board and has a monetary value or potential monetary value; or

(k) a position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board.

9) Council Appointment of an Alternate to Regional Council

Amendments to the MA also allow a lower-tier Council to temporarily appoint an alternate member of the lower-tier Council to attend Regional Council meetings when the appointed/elected member is unable to attend a meeting. The present legislation only allows for a lower-tier municipality to appoint an alternate if the member has been unable to attend for more than one month. This new change in legislation would have to be considered and incorporated within the Procedural By-law in order to appoint a member of Council to be appointed as the alternate. The new provision would provide Council greater opportunity for adequate representation of the local municipality during consideration of Regional matters when the regular member is unable to attend meetings. The alternate would be required to maintain a reasonable level of knowledge and interest in upper-tier matters in the event the alternate member would be required to step in.

10) Establishment of Community Councils

Amendments to the MA allows Council to establish one or more community councils who are responsible for:

(a) exercising the powers and duties that have been delegated to the community council by the municipality with respect to matters relating to all or part of the municipality; and

(b) performing the functions assigned to the community council by the municipality with respect to matters relating to all or part of the municipality, which may include the function of making recommendations to council on any matter, such as the budget.

Community councils may be composed of a council committee or a body having at least two members that is composed of one or more members of council and individuals appointed by Council.

11) Policy for Pregnancy and Paternal Leaves for Members of Council

A new section of the MA provides that a member's seat does not become vacant if the member is absent as a result of the member's pregnancy, the birth of the member's child or the adoption of a child by the member. The offices of members of council and school boards would be protected during an absence related to pregnancy, birth or the adoption of a member's child for up to 20 consecutive weeks.

12) Composition of Regional Councils

As discussed in a previous report, the MA now requires that following the regular election in 2018 and following every second regular election after that, a regional municipality shall review, for each of its lower-tier municipalities, the number of members of its council that represent the lower-tier municipality. In addition, the Minister may make a regulation changing the composition of a council of a regional municipality if the regional municipality does not, in the period of time that starts on the day the new council is organized following a regular election and ends on the day two years after that day, either:

- (a) pass a by-law to change, for one or more of its lower-tier municipalities, the number of the members of its council that represent the lower-tier municipality; or
- (b) pass a resolution to affirm, for each of its lower-tier municipalities, the number of the members of its council that represent the lower-tier municipality.

When considering whether to make a regulation, the Minister shall, in addition to anything else the Minister wishes to consider, have regard to the principle of representation by population.

B. Amendments Affecting Municipal Powers and Duties

In addition to the amendments detailed above, Bill 68 amended other legislation and granted new powers to municipalities including:

- Introduced and expands municipal authority to apply Administrative Monetary Penalties (AMP's) to all municipal by-laws.
- permits a municipality that meets certain requirements to invest money that it does not immediately require in any security, in accordance with the section and the

regulations. A municipality that invests money under the section must exercise the care, skill diligence and judgment that a prudent investor would exercise in making such an investment.

- New provisions of the MA authorize a treasurer of a local municipality, in certain circumstances, to cancel, reduce or refund all or part of a payment in lieu of taxes. In addition, a treasurer is also authorized to reduce the time that property taxes have to be in arrears before a municipality can start a tax sale and to make other changes to the process. Expedited timelines are provided for the sale of corporate property that has escheated or forfeited to the Crown.
- municipalities are now provided with the permissive authority to pass by-laws to mandate green standards respecting the construction of buildings, such as 'green roofs' or alternative roof surfaces, once an appropriate technical standard has been established in the Building Code. There are certain circumstances under which municipalities can require such standards to be defined. The Bill now defines a green roof as "a roof surface that supports the growth of vegetation over a substantial portion of the area for the purpose of water conservation or energy conservation."
- Expanded powers to regulate and enact bylaws related to 'economic, social and environmental well-being of the municipality including respecting climate change.'
- Requires municipalities to adopt, by March 1, 2019, a policy which sets out the manner in which it will protect and enhance the tree canopy and natural vegetation in the municipality.
- A municipality will be able to enter on land adjoining land owned or occupied by the municipality, at any reasonable time, for the purpose of maintaining or making repairs or alterations to the land owned or occupied by the municipality but only to the extent necessary to carry out the maintenance, repairs or alterations. This does not authorize a municipality to enter into a building.

5. RELATIONSHIP TO STRATEGIC PLAN

This Report supports the following Strategic Goals:

GOAL 3: "Engage Our Community & Build Partnerships" – COMMUNICATION, ENGAGEMENT, COLLABORATION & PARTNERSHIPS.

GOAL 4: "Provide Exceptional Municipal Service" – ORGANIZATIONAL & OPERATIONAL EXCELLENCE through adherence with the Ontario Municipal Act.

6. FINANCIAL AND BUDGETARY IMPACT:

Due to the many and extensive amendments to legislation affecting municipalities, costs to implement the mandatory changes cannot be calculated at this time. However, it is safe to say that the potential costs for an integrity commissioner could be substantial depending on the type or number of complaints regarding violations of the Town's Code of Conduct or the *Municipal Conflicts of Interest Act*. Because many of these provisions or requirements will not come into effect until early 2019, staff will be in a position to provide realistic budgetary impact scenarios in mid-2018.

7. PUBLIC CONSULTATION AND NOTICE REQUIREMENTS

With respect to those matters normally under the purview of the Clerk's Division (elections, code of conduct drafting), it is anticipated that although many of the notice requirements are not mandated, a significant amount of stakeholder engagement is likely.

8. CONCLUSION:

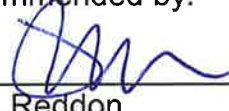
Due to recent amendments to various statutes affecting the municipality brought about through the passage of Bills 68 and 81, significant amounts of staff time and resources will be required to meet the legislative requirements. Among these are the development of procedures, protocols and procurement of an Integrity Commissioner, liaising with stakeholders (including board and committee members) regarding a Code of Conduct, review of election procedures and processes, development of procedures related to appointment of an alternate Regional Councillor, policies related to relationships between Councillors and Town employees and maternity/paternity leave for Council members. As the legislatively-mandated work continues, consideration of any of these items may require additional clarification or legal interpretation.

Prepared by:



John Espinosa, B.A., J.D.
Town Clerk

Recommended by:



Dave Reddon
Acting Deputy CAO/Director of
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Approved by:

Winanne Grant, BA, CEMC, AMCTO
Chief Administrative Officer

THE CORPORATION OF THE TOWN OF GEORGINA

REPORT NO. AD-2017-0017

**FOR THE CONSIDERATION OF
COUNCIL
APRIL 19, 2017**

**SUBJECT: AUTHORIZATION TO UTILIZE OPTICAL SCANNING VOTE
TABULATORS AND REPORT ON AMENDMENTS TO THE MUNICIPAL
ELECTIONS ACT, 1996**

1. RECOMMENDATIONS:

- 1. That Report No. AD-2016-0017 prepared by the Clerk's Division, Administrative Services Department dated April 19, 2017, respecting amendments to the Municipal Elections Act, 1996, be received for information purposes.**
- 2. That Council declare that, consistent with the practice during the 2014 Municipal Election, the 2018 Town of Georgina Municipal Elections be conducted using Optical Scanning Vote Tabulators.**
- 3. That a by-law authorizing the use of Optical Scanning Vote Tabulators for the 2018 Municipal Elections be enacted.**
- 4. That the source of funding the Optical Scanning Vote Tabulators be from the Elections Reserve Account.**
- 5. That the Mayor and Clerk be authorized to execute the necessary agreement(s) with respect to the Optical Scanning Vote Tabulators.**

2. PURPOSE:

The purpose of this report is to provide Council with a summary report outlining the most substantive amendments to the *Municipal Elections Act*, 1996 ("Act") and to authorize the utilization of Optical Scanning Vote Tabulators during the 2018 Municipal Election.

3. BACKGROUND:

On May 11, 2016, Report No. DAS-2016-0029 regarding proposed amendments to the Act was received by Council. On June 9, 2016, Bill 181 received Royal Assent .

Some provisions of the Act came into effect on July 1, 2016 and the remaining provisions will become effective April 1, 2018. For purposes of this Report, all discussion of new provisions within the Act will be discussed as having come into effect.

4. ANALYSIS

Revisions of that Act significantly alter the conduct of municipal elections in Ontario. Changes and their effect are discussed below.

4.1 Revision to the Election Calendar

Nomination Period- May 1 [Section 33(4)(a)]

Responding to comments regarding the length of municipal campaigns, the nomination period for a regular election has been changed from January 1 to May 1 in an election year.

Close of Nomination Period- Fourth Friday in July [Section 31]

The final day a candidate may register has been changed from the second Friday in September to the fourth Friday in July. For the 2018 municipal election, Nomination Day will be July 27, 2018. The result is that the nomination period has been shortened from 37 weeks to 13 weeks.

Election Policies and Procedures- December 31 [Section 42(4)]

Under the previous provisions of the Act, the Clerk was responsible for establishing procedures and forms for the use of any voting and vote-counting equipment authorized by by-law, and any alternate voting method authorized by by-law. This must now be completed by December 31 in the year before the regular election (December 31, 2017).

Approval of Ballot Questions- March 1 [Section 8.1(1)]

The deadline for council enacting a by-law authorizing the placing of a question on the ballot is now March 1 of an election year. The previous version of the Act required such action to be done by June 1 of an election year.

Availability of the Voters' List – September 1 [Section 23(5)]

The voters' list will be available to candidates on September 1, 2018 for the 2018 municipal elections.

Compilation of the Interim List of Changes- September 15 to September 25
[Section 27]

During the period beginning on September 15 and ending on September 25 in the year of a regular election the Clerk will prepare an interim list to the changes to the voters' list approved under the Act on or before September 15 and provide the list to each person who received a copy of the voters' list under section 23 and to each certified candidates. The prior Act provisions provided for a 10 day timeframe from Nomination day.

4.2 Election Administration

Amendments to the Act provide the Clerk with greater independence and discretion with respect to the administration of elections. While the previous version of the Act required Council authorization or approval, the Clerk now has the authority to:

- Establish advance voting days and locations. [Section 43]
- Establish reduced voting hours for voting places at long-term care facilities, hospitals, and retirement homes. [Section 46(3)]
- More authoritatively manage the voters' list, including the removal of deceased persons [Section 25], addition of new electors and amendments to the existing electors as well as the method by which additions, amendments and deletions may be compiled [Section 24]

Clerks will also be required to publicly identify in a report to the public the names of candidates and third parties who fail to comply with the requirement to file a financial statement and are prohibited from running or registering as a third party in the next election [Section 88.23(3)]. The clerk must prepare the report and make it available as soon as possible after April 30 in the year following the election [Section 88.23(4)]

4.3 Accessibility

Previously, the clerk was required to provide a post-election accessibility report outlining steps taken to ensure the accessibility of the election. The Act now requires the clerk to prepare a pre-election Accessibility Plan to identify, remove and prevent barriers that could affect electors and candidates with disabilities, and make the plan available to the public prior to voting day. [Section 12.1 (2)] The clerk is also required to prepare a report within 90 days following the election on the identification, removal and prevention of barriers that affect electors and candidates with disabilities and make this report available to the public. [Section 12.1 (3)]

4.4 Eligibility to Run for Office

Effective April 1, 2018, anyone wishing to run for a municipal council office must submit the signatures of 25 voters supporting their nomination. A person may endorse more than one nomination. [Section 33(1)(1.1)] The individual providing the signatures will each have to sign a declaration stating that they are eligible to vote in the municipality on the day that they signed the endorsement. [Section 33(2)(a.1)] The 25 signature requirement does not apply to candidates for School Board positions.

4.5 Advertising by Candidates During an Election

Candidates are required to identify themselves in their election campaign advertisements [Section 88.3(2)] Municipalities are authorized to remove election campaign advertisements in the event of contravention of the Act. [Section 88.7)]

4.6 Contribution to Candidates

Contributions by corporations and trade unions are banned. [Section 88.8] However, corporations and trade unions are not prohibited from donating to a registered third party advertiser registered in a municipality. [88.12(1))]

Candidates for municipal offices will be responsible for informing contributors of contribution limits. [Section 88.22(1)(r)]. Contribution limits will remain \$750 to any one candidate in an election and a maximum combined total of \$45,000 to two or more candidates for office on the same council or local board [88.9(1), (4)] Anonymous and cash contributions up to \$25 can be received (the current limit is \$10). [88.(8)]

4.7 Third Parties

The Act now included a framework for the registration and financial filing of third party advertisers. A third party advertisement is defined as a message in any medium (billboard, print, electronic, radio, etc.) that supports or opposes a candidate or a position on a question on the ballot. [Section 1(1)] Only individuals, corporations and trade unions who are registered third parties in a municipality can incur expenses for third party advertisements that appear during the restricted period for such advertisements. [Section 88.5] Third party advertisers will be required to register with the municipalities with which they intend to advertise. [Section 88.6(6)].

Most campaign finance rules applicable to candidates will apply to third party advertisers (i.e. expense [Section 88.21] and contribution limits [Section 88.12]) for those who make contributions to third party advertisers. As previously stated,

corporations and unions will be permitted to make contributions to third party advertisers (but not candidates). [Section 88.8(4)]. Finally registered third parties will be required to identify themselves on advertisements and municipalities will be authorized to remove such advertisements if they contravene the Act [Section 88.5, 88.7].

In light of the new provisions of the Act, questions regarding the enforcement and monitoring of third party activities and campaign financing will require staff to engage the Town Solicitor and report back to Council at a future time.

4.8 Financial Statement Filing and Reporting

The Act requires the clerk to review and report on campaign contributions made to candidates running for a position on Council. [Section 88.34] The report would identify any candidates who appear to exceed the campaign contribution limits and a similar report would be required for registered third parties [Section 88.36]. These reports would be referred to the Compliance Audit Committee to determine if any further action is to be taken. The Nomination fee will be refunded to candidates who file timely Financial Statements. [Section 34]

4.9 Recounts [Sections 56-64]

Previously, a recount of election results was limited to three circumstances:

1. Where the counting of ballots has resulted in a tie vote;
2. Where the council or Minister of Municipal Affairs decides a recount is required; or
3. Where an elector's request for a recount has been granted by the courts.

Council now have the option of adopting a policy where an automatic recount will be conducted in circumstances other than those already contained in the Act. [Section 56(3)]. A by-law adopting the policy must be passed on or before May 1 in the year of the election.

4.10 Ranked Ballot Option [Section 41.1]

Under new provisions in the Act, municipal councils may consider ranked ballot options. On May 11, 2016, Council was provided a presentation regarding ranked ballots. At this time, staff is not recommending that Council consider ranked balloting for the 2018 municipal election for the following reasons:

1. The Clerk's Division is not aware of any other municipality in Ontario that has chosen to adopt ranked balloting for the 2018 municipal election.

2. Significant time, funding, and effort will be required to develop a public education program. Clerks Division staff are currently not in a position to allocate resource to such an effort as a result of conducting a current by-election and a Ward Boundary Review.
3. If a ranked ballot election were chosen, under the current provisions of the Act, it would be limited only to Council positions. Because of this limitation, school board elections would necessarily have to be conducted differently, and, in effect, require that a single election be conducted in different ways. This has the potential to lead to public confusion and may have a negative effect on voter turnout.

Staff will continue to monitor events related to ranked balloting and report to Council after the 2018 elections.

4.11 Contribution Rebate Program

The Act continues to provide municipalities with the option of considering rebates for individuals who make contributions to candidates. Such rebates must be specified by by-law and may provide for the payment of different amounts to different individuals on any basis. Contributions include money, goods and services. [Sections 88.11(1), 88.15(1)] and, unlike federal and provincial candidate contributions, are not tax-deductible. Therefore, a municipal rebate program most likely would be funded from municipal property taxes.

Should council wish to consider a municipal rebate program, staff will undertake to perform the significant research required to develop appropriate by-laws and procedures.

4.12 Corporate Resources Policy – May 1

All municipalities must adopt a policy regarding the use of corporate resources by May 1 in an election year. [Section 88.18] The Town adopted the Use of Corporate and Communications Resources For Elections policy (DAS-CL-032) on March 29, 2010. Attachment 1. Staff will undertake to review the policy in light of changes to the Act and bring forward any recommended amendments to Council prior to the May 1, 2018 deadline.

4.13 Authorization of Alternate Voting Methods (Optical Scanning Vote Tabulators)

The option to utilize alternate voting methods remains in the Act. [Section 42(1)] The deadline to adopt a by-law authorizing the use of such methods has been moved from June 1 to May 1 in the year before the election, that being May 1, 2017. On February 15, 2014, Council approved the use of optical scan

tabulators to be used for the purposes of counting votes during the 2014 Municipal Elections for the first time. Due to the success of the optical scan tabulators in the 2014 municipal election, staff is recommending Council's approval to utilize this equipment during the 2018 municipal election.

5. CORPORATE STRATEGIC PLAN

This Report supports the following Strategic Goals:

GOAL 3: "Engage Our Community & Build Partnerships" – COMMUNICATION, ENGAGEMENT, COLLABORATION & PARTNERSHIPS.

GOAL 4: "Provide Exceptional Municipal Service" – OPEN, ACCOUNTABLE AND RESPONSIVE GOVERNMENT.

6. FINANCIAL AND BUDGETARY IMPACT:

The cost of the 2014 municipal election was approximately \$300,000. The same amount is anticipated to be included in the Election Reserve account at the conclusion of the 2018 budget process. The costs related to the use of Optical Scanning Vote Tabulators was \$68,868.12. The plan for 2018 Municipal Election includes consideration of lessons learned from the 2014 municipal election, embracing technology, and implementing new best practices and a focus on continuous improvement. As the 2014 municipal election was the Town's first use of Optical Scanning Vote Tabulators, staff believe that additional efficiencies and cost reductions can be achieved.


7. PUBLIC CONSULTATION AND NOTICE REQUIREMENTS:

This Report provides information with respect to Act amendments and seeks authorization to utilize Optical Scanning Vote Tabulators. No public consultation or specific notice provision is required for either of these purposes.

8. CONCLUSION:

Numerous amendments to the Municipal Elections Act, 1996, will result in additional planning and coordination and require staff to review current policies in anticipation of the 2018 municipal election. Due to the successful use of Optical Scanning Vote Tabulators, staff is recommending that Council authorize the same technology while conducting the 2018 municipal election.


Prepared by:


John Espinosa, B.A., J.D.
Town Clerk

Recommended by:


Rebecca Mathewson, CPA, CGA
Director of Administrative
Services/Treasurer

Approved by:


Winanne Grant, B.A., AMCT, CEMC
Chief Administrative Officer

Attachment 1: Town of Georgina Policy No. DAS-CL-032 (Use of Corporate and Communication Resources for Election Purposes)

TOWN OF GEORGINA – CLERK'S DEPARTMENT
POLICY No. DAS-CL-032

Subject: USE OF CORPORATE AND COMMUNICATION RESOURCES FOR ELECTION PURPOSES	Authority, Ref. & Sec. Council		
Policy Classification: Clerk's Division	Pages: 1 of 4	Year 2010	Month 03
		Day 29	
Recommended/Approved by: Council	Contact Position for Inf. Town Clerk		

1. Policy Statement:

The purpose of this policy is to clarify that all election candidates, including Members of Council, are required to follow the provisions of the Municipal Elections Act, 1996 and

- 1) No candidate shall use the facilities, equipment, supplies, services, staff or other resources of the Town (including Councillor newsletters and Councillor budgets) for any election campaign or campaign related activities.
- 2) No candidate shall undertake campaign-related activities on *any* municipal property during regular working hours ***other than under the circumstances outlined in Item No. 4 below.***
- 3) No candidate, including Members of Council, shall use the services of persons during hours in which those persons receive any compensation from the municipality, and in the case of a Town employee unless they are on a leave of absence without pay, lieu time, float day or vacation leave, for any election campaign or campaign related activity.
- 4) Notwithstanding Clause 1 above, candidates, including Members of Council, may use municipally provided facilities for campaign related meetings subject to the usual rental charges and permit procedures for such use. "All Candidates" meetings may be held in a municipal facility; however, neither campaign-related signs nor any other election/campaign-related materials will be displayed in any municipally provided facility.

This provision excludes the use of facilities in the Municipal Office Building at 26557 Civic Centre Road, which shall not be used by any candidates or Members of Council for any election-related purpose.

TOWN OF GEORGINA – CLERK'S DIVISION
POLICY No. DAS-CL-032

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2. Application:

This policy is applicable to all candidates, including Members of Council.

Specific Policy:

- 1) That, in order to ensure compliance with Section 70(4) of the *Municipal Elections Act* 1996:
 - (a) Corporate resources, assets and funding may not be used for any election-related campaign purposes;
 - (b) Staff may not canvass or actively work in support of a municipal candidate or party during normal working hours unless they are on a leave of absence without pay, lieu time, float day, or vacation leave;
 - (c) Candidates, including Members of Council, may not display materials in municipally-provided facilities for any election-related campaign purposes, which includes displaying of any campaign related signs in the window or on the premises, as well as displaying any election-related material in the office;
 - (d) The Budgets for Members of Council for the period January 1st to Election Day in a municipal election year be restricted to 1/12ths of the approved annual budget amount with the provision that subsequent to election day:
 - i) New Members of Council be allocated a budget equal to 1/12th of the approved budget amount for the month of December; and
 - ii) Re-elected Members of Council have available to them the balance of funds remaining as of Election Day;
 - (e) The following be discontinued for Members of Council from the day prior to Nomination day in a municipal election year to Election Day:
 - (i) all forms of advertising, including in municipal publications;
 - (ii) all printing, high speed photocopying and distribution, including printing and general distribution of newsletters unless so directed and approved by Council;

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- (iii) the ordering of office furniture and furnishings, except those of an emergency nature, as well as no movement of furniture and furnishings; and
 - (iv) the ordering of stationery
- (f) Members of Council may not deliver any unsolicited material outside their existing ward where the printing and/or distribution costs are paid by the municipality. Care should be taken to ensure that the mailing of newsletters be restricted to the member's ward only (with accommodation made for the normal spillage associated with Canada Post postal walks). This recommendation to be effective not only during an election year but at all times;
- (g) Members of Council may not:
 - (i) print or distribute any material paid by municipal funds that illustrates that a Member of Council or any other individual is registered in any election or where they will be running for office;
 - (ii) profile (name or photograph) or make reference to, in any material paid by municipal funds, any individual who is registered as a candidate in any election;
 - (iii) print or distribute any material using municipal funds that makes reference to, or contains the names or photographs, or identifies registered candidate, for municipal elections; and that Minutes of municipal Council and Committee meetings be exempt from this policy; and
 - (iv) enter into joint ventures using municipal funds outside their existing wards from September 10th to Election Day, in the year of the municipal election, unless specifically approved by Council. At all other times a signed agreement between Ward Councillors is required;
- (h) Members of Council are responsible to ensure that the content of any communications material, including printed material such as newsletters, advertising, etc. funded by the Town for the operation of each Councillor's Office, is not election-related;
- (i) Web sites or domain names that are funded by the municipality may not include any election-related campaign material;

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- (j) Members of Council may not use the municipality's voice mail system to record election related messages; **and the computer network (including the Town's e-mail system) may not be used to distribute election-related correspondence;**
 - (k) **cell phones and Personal Digital Assistants (PDA's) that are funded by the Town may not be used for any election-related campaign purposes, unless the Town is reimbursed;**
 - (l) The above rules also apply to an acclaimed Member or a Member not seeking re-election; and
- 2) That the Municipal Clerk be authorized and directed to take the necessary action to give effect to this policy.

Limitation:

Nothing in this Policy shall preclude a Member of Council from performing their job as a Councillor nor inhibit them from representing the interests of the constituents who elected them.

Implementation:

This policy shall become effective immediately upon approval by municipal Council.

Date Approved by Council:

Rationale and Legislative Authority:

It is necessary to establish guidelines on the appropriate use of corporate resources during an election period to protect the interests of both the Members of Council and the Corporation. The *Municipal Elections Act, 1996* prohibits a municipality from making a contribution to a candidate. The Act also prohibits a candidate, or someone acting on the candidate's behalf, from accepting a contribution from a person who is not entitled to make a contribution.

As a contribution may take the form of money, goods or services, any use by a Member of Council of the Corporation's resources for his or her election campaign would be viewed as a contribution by the Town to the Member, which is a violation of the Act.

Changes to the Municipal Elections Calendar

Item	Previous Date	New Date
Establishment of forms, policies and procedures for vote counting equipment and alternative voting methods	June 1 in the year of election	December 31 in the year prior to the election
Authorization of Ballot Question	June 1 in year of election	March 1 in year of election
Opening of Nomination Period	January 1 in year of election	May 1 in year of election
Close of Nomination Period	Second Friday in September	Fourth Friday in July
Establishment of Voting Subdivision	Minsters' Letter	March 31 in year of election
Authorization of Alternative Voting Methods	June 1 in year of election	May 1 in year before election
Availability of Voters List	First Tuesday in September	September 1
Compilation of Interim List of Changes to the Voters List	10 Days Following Nomination Day	Starts September 15 and Ends September 25
Authorization of Recount Policy	N/A	May 1 in year of election
Authorize the Use of Corporate Resource Policy	N/A	May 1 in year of election
Report of Candidates in Default	N/A	April 30 in year after election