



The Regional Municipality of Durham
To: Finance and Administration Committee
From: Regional Clerk
Report No.: 2010-A-7
Date: March 24, 2010

Subject:

QUESTION ON THE BALLOT REGARDING THE DIRECT ELECTION OF THE REGIONAL CHAIR

Recommendations:

THAT the Finance and Administration Committee recommend to Regional Council:

- a) THAT a Public Meeting of Regional Council be held on April 21, 2010 in the Regional Council Chambers at the beginning of the regular Regional Council meeting to consider placing the following question on the October 25, 2010 municipal election ballot in all lower-tier municipalities in the Regional Municipality of Durham:

"Are you in favour of the Council of the Regional Municipality of Durham passing the necessary resolutions and by-laws to change the method of selecting its Chair from appointment by the members of Regional Council to election by general vote of all electors in the Region?"

YES

NO

- b) THAT the Regional Solicitor be requested to prepare the appropriate by-law; and
c) THAT a copy of this report be forwarded to the Ministry of Municipal Affairs and Housing, and the area municipalities.
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REPORT:

1.0 BACKGROUND

1.1 At the March 10, 2010 Regional Council meeting the following resolution was passed:

- "a) *WHEREAS, the Municipal Act, 2001, as amended, states the head of an upper-tier municipality "shall be elected by general vote, in accordance with the Municipal Elections Act, 1996, or shall be appointed by the members of council", and*

WHEREAS electors in the Regional Municipality of Halton and Waterloo are able to choose their Regional Chair by general vote; and

WHEREAS the Municipal Elections Act, 1996, states that the council of a municipality may pass a by-law to submit to its electors a question not otherwise authorized by law but within the council's jurisdiction; and

WHEREAS the November 2006 ballots in the Town of Ajax and the Cities of Pickering and Oshawa each contained a question asking electors if they wished their local councils to approve a resolution to request that the Government of Ontario make a regulation requiring that the method of selecting the Chair of the Regional Municipality of Durham be changed to election by general vote; and

WHEREAS electors responded to the ballot question as follows:

	"YES"	"NO"
AJAX	12,176(89.39%)	1,445 (10.61%)
PICKERING	14,917 (89.24%)	1,798 (10.76%)
OSHAWA	<u>21,799 (86.31%)</u>	<u>3,457 (13.69%)</u>
TOTAL	48,892 (87.95%)	6,700 (12.05%)

AND WHEREAS the 2006 ballot question results indicate overwhelming public support for changing the method of selecting the Regional Chair to election by general vote; and

WHEREAS determining the method of electing the Regional Chair rightfully belongs to all the electors within the Region;

NOW THEREFORE BE IT RESOLVED that Council consider passing a by-law to submit the following question to electors in all lower-tier municipalities in the Regional Municipality of Durham on October 25, 2010 regular election ballot:

"Are you in favour of the Council of the Regional Municipality of Durham passing the necessary resolutions and by-laws to change the method of selecting its Chair from appointment by the members of Regional Council to election by general vote of all electors in the Region."

YES

NO

AND that the Regional Clerk and Solicitor undertake all measures required and necessary to give effect to this resolution; and

- b) That Staff report back by June 2010 with an analysis of issues relating to the direct election of the Regional Chair, including, but not limited to, the following:
- a) projected costs to campaign based on current mayoral municipal practices;
 - b) financing of the campaign costs, including anticipated sources of financing;
 - c) the potential introduction of party politics at the municipal level in Durham and the risks/benefits associated with that;
 - d) opportunities to reduce campaign costs and ensure accessibility to candidates of all financial means through innovative reform of the current election process;
 - e) analysis of current processes in Halton and Waterloo for direct election;
 - f) consecutive term limits;
 - g) analysis of any additional powers required by or appropriate to an elected Chair to ensure that future Councils remain effective and responsive;
 - h) recognition of the strong rural and agricultural fabric in Durham, the limitations on population growth in the northern municipalities and the need to ensure that effective representation of rural Durham will not be compromised by a shift to direct election; and
 - i) That in addition to the foregoing issues, the local municipalities of Durham Region submit any further questions regarding the direct election of the Regional Chair to the Regional Clerk for the next Regional Council meeting scheduled for March 31, 2010."

2.0 PLACING A QUESTION ON THE BALLOT

2.1 The *Municipal Elections Act, 1996*, as amended, outlines the requirements for placing a question on the ballot. Regional Council may pass a by-law to submit a question to its electors. A by-law to submit a question to the electors must be passed at least 180 days prior to the election. For the question to be on the ballot for the 2010 municipal election it is required that the by-law be passed on or before April 28, 2010.

2.2 In order to place a question on the ballot the following process is required to be followed:

- i) Regional Council would first prepare a by-law to authorize the question and include the exact wording of the question. The question must be within the jurisdiction of the municipality, not a matter of provincial interest, must be clear, concise and neutral, and must be answered in a yes or no format.
 - ii) At least 10 days prior to the passing of the by-law the Regional Clerk must give notice of Council's intention to pass the by-law to the public and the Minister of Municipal Affairs and Housing and hold one public meeting to consider the matter.
 - iii) Within 15 days of the passing of the by-law the Regional Clerk must give notice of the passing of the by-law to the public and the Minister of Municipal Affairs and Housing.
 - iv) Within 20 days after the Regional Clerk gives notice of the passing of the by-law, the Minister of Municipal Affairs and Housing or any other person or entity may file an appeal on the grounds that the question is not clear, concise and neutral and/or on the grounds that the question is not capable of being answered by a "yes" or "no".
 - v) On or before June 1st the Regional Clerk must transmit a copy of the by-law with the proposed question to the Clerks of the lower-tier municipalities.
 - vi) The Clerks of the lower-tier municipalities are then required to submit the question to the electors.
- 2.3 Subsection 8(7) of the *Municipal Elections Act* requires that the Region pay the local municipalities reasonable costs of giving notice of the question upon receipt of a certificate verifying the amount to be paid signed by the local Clerk(s).
- 2.4 The results of the vote on the question are binding if at least 50 percent of all eligible electors vote on the question and if more than 50 percent of these votes are in favour of the results.
- 2.5 If it is an affirmative answer and the results are binding, Regional Council must do everything in its power to implement the results of the question in a timely manner. If a negative answer is received and the results are binding, Regional Council shall not do anything to implement the matter for a period of four years following voting day.

3.0 CHANGING THE METHOD OF SELECTING THE REGIONAL CHAIR

3.1 Should Regional Council wish to proceed with changing the method of selecting the Regional Chair, the process stipulated in the *Municipal Act, 2001*, as amended, would have to be followed in order to make the change for the 2014 municipal election.

3.2 Subsection 218(2) of the *Municipal Act, 2001*, as amended, provides as follows:

"The power to change the composition of council includes the power to:

- (a) change the size of council;*
- (b) change the method of selecting members of the council, including having members directly elected to the upper-tier council and not to the council of a lower-tier municipality, members elected to serve on both the upper-tier and lower-tier councils or members elected to the lower-tier councils and appointed to the upper-tier council by the lower-tier municipalities, or a combination of methods of election;*
- (c) have a member representing more than one lower-tier municipality;*
- (d) require that if a member of council is appointed by the members of council as the head of the upper-tier council, the member is no longer entitled to hold office on the council of a lower-tier municipality or any other office on the council of the upper-tier municipality or both; and*
- (e) require that if a member of council is appointed by the members of council as the head of the upper-tier council, the appointed member must hold office on the council of a lower-tier municipality."*

3.2 Subsection 218(5) of the *Municipal Act, 2001*, as amended, states "A regional municipality shall not pass a by-law described in this section until the Minister has, by regulation, authorized the regional municipality to exercise the powers described in this section."

3.3 In order to change the method for selection the Regional Chair, Regional Council is required to adhere to the following process:

- i) Regional Council would pass a resolution requesting the Minister of Municipal Affairs and Housing to enact a regulation authorizing the Regional Municipality of Durham to exercise its powers under Section 218.
- ii) The Minister of Municipal Affairs and Housing makes a regulation authorizing the Region to exercise its powers under Section 218.
- iii) Regional Council drafts a by-law to exercise its powers to change the composition of Regional Council pursuant to the provisions of the regulation and subject to the rules set out in subsection 218(1).

- iv) The Regional Clerk gives notice of Council's intention to pass a by-law under Section 218 and holds at least one public meeting to consider the matter.
 - v) The by-law must pass a "triple majority". A "triple majority" is achieved when:
 - a. the by-law receives the support of a majority of all votes of Regional Council;
 - b. a majority of the councils of all lower-tier municipalities pass resolutions consenting to the by-law; and
 - c. the total number of electors in the lower-tier municipalities that have passed resolutions consenting to the by-law form a majority of all the electors in the Region.
 - vi) The by-law would then come into force on the day the new council is organized following the first regular election after the passing of the by-law.
 - vii) The first regular election after the passing of the by-law will be conducted as if the by-law was already in force.
- 3.4 A change to selection of the Regional Chair by direct election will require that the provisions of the *Municipal Act, 2001* be carried out and that the procedural by-law be amended accordingly.
- 4.0 CONCLUSION
- 4.1 Notice of Council's intention to pass the by-law will be published in all local newspapers on April 8, 2010 and posted on the Regional website.
- 4.2 The Regional Solicitor has reviewed this report and is in concurrence with the recommendations.

Respectfully submitted,

P.M. Madill, A.M.C.T., CMM III
Regional Clerk

RECOMMENDED FOR PRESENTATION TO COMMITTEE

 Garry H. Cubitt, M.S.W.
Chief Administrative Officer

Attachment No. 1 Proposed Notice of Intention to Pass a By-law

**NOTICE OF INTENTION TO PASS A BY-LAW
TO SUBMIT A QUESTION TO THE ELECTORS**

TAKE NOTICE that the Council of The Regional Municipality of Durham will consider a by-law at the April 21, 2010 Council meeting that if approved, will place the following question on the October 25, 2010 municipal election ballot:

Are you in favour of the Council of the Regional Municipality of Durham passing the necessary resolutions and by-laws to change the method of selecting its Chair from appointment by the members of Regional Council to election by general vote of all electors in the Region?

YES

NO

Under the provisions of the *Municipal Elections Act, 1996*, as amended, referendum results will be binding on the municipality, subject to some exceptions, if at least 50 per cent of all eligible electors vote on the question.

If this question receives a binding "yes" result, Regional Council will undertake all measures required to give effect to changing the method of selecting the Chair of the Regional Municipality of Durham.

If this question receives a binding "no" result, Regional Council will not do anything to change the method of selecting the Chair of the Regional Municipality of Durham during the 2010-2014 term of Council.

The costs of implementing the results of the question would be modest if the result is in the affirmative and are considered to be negligible if the result is in the negative.

Appeal Process

Should the Council of The Regional Municipality of Durham approve the by-law authorizing the placement of the question on the ballot, the Minister of Municipal Affairs and Housing and any other person or entity may appeal to the Chief Electoral Officer of the Province of Ontario on the grounds that the question:

- a) is not clear, concise or neutral; and/or
- b) is not capable of being answered by either the "YES" or "NO" options provided.

The Clerk shall give notice of the passage of the by-law to the public and the Minister. Such notice will provide further instructions with respect to the appeal process. A Notice of Appeal must set out the objections to the by-law and questions and the reasons in support of the objections.

Dated at Whitby, Ontario, this 8th day of April, 2010.

P.M. Madill, A.M.C.T., CMM III
Regional Clerk