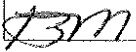
	DATE: January 20, 2010	TITLE: QUESTION ON BALLOT – KITCHENER/WATERLOO MERGER	CAO 												
	REPORT: CS-CLK2010-005														
WARD: CITY-WIDE		PREPARED BY: SUSAN GREATRIX													
FILE:		DEPARTMENT: CLERKS/CORPORATE SECRETARY													
ATTACHMENTS: Appendix 1 Excerpt from draft minutes, January 11/10 Committee of the Whole meeting Appendix 2 O. Reg.425/00 (Provincial Interest) Appendix 3 O. Reg. 561/00 (Ajax & Whitby Questions – 2000 ballot) Appendix 4 O. Reg. 3/03 (Kawartha Lakes Question – 2003 ballot) Appendix 5 Email, January 13, 2010, from Tim Ryall, Municipal Advisor, Ministry of Municipal Affairs and Housing Appendix 6 Staff Report CS-CLK09-058		CLEARANCE: CMT January 20, 2010 Council January 25, 2010													
RECOMMENDATION:															
INFORMATION															
BACKGROUND:															
<p>On January 11, 2010, Tim Jackson, on behalf of a number of citizens, addressed Council at its Committee of the Whole meeting held on January 11, 2010 (Draft minutes attached as Appendix 1 to this report) and requested:</p> <p><i>That the City of Waterloo request the Ontario Minister of Municipal Affairs and housing include a question on the October 2010 municipal election ballot for the City of Waterloo with the following suggested wording:</i></p> <p><i>“Would you support members of Council engaging in a dialogue about the merits of merging the Cities of Kitchener and Waterloo. Yes or No.”</i></p> <p>After hearing a number of delegations on the issue, Council approved the following resolution:</p>															
<table border="0"> <tr> <td colspan="4" data-bbox="159 1612 370 1644">APPROVALS</td> </tr> <tr> <td data-bbox="159 1675 492 1707">General Manager</td> <td data-bbox="548 1675 613 1707">Date</td> <td data-bbox="841 1675 954 1707">Director</td> <td data-bbox="1133 1675 1198 1707">Date</td> </tr> <tr> <td data-bbox="159 1770 492 1801">Finance</td> <td data-bbox="548 1770 613 1801">Date</td> <td data-bbox="841 1770 922 1801">Other</td> <td data-bbox="1133 1770 1198 1801">Date</td> </tr> </table>				APPROVALS				General Manager	Date	Director	Date	Finance	Date	Other	Date
APPROVALS															
General Manager	Date	Director	Date												
Finance	Date	Other	Date												

“That staff:

- 1) report to Council on January 25, 2010 to provide further information on a potential question on the ballot related to the merger of the Cities of Kitchener and Waterloo; and*
- 2) contact the Minister of Municipal Affairs and Housing to request clarification of the potential wording of a question on the ballot, timing for submitting the question to the Minister and details of the process required by the Ministry of Municipal Affairs and Housing.”*

As members are aware, Council does not have authority to place a question on the ballot related to municipal restructuring. Ontario Regulation 425/00 (attached as Appendix 2 to this report) states that:

“ ... the following are matters of provincial interest which respect to which the municipality cannot ask a question:

- 4. ... municipal restructuring, including the consideration, investigation, discussion and negotiation of municipal restructuring.”*

The Provincial Government by Regulation can authorize a question or the Minister can place a question on the ballot. In 2000 and 2003, Provincial Regulations were enacted to do so.

The Clerk of the Town of Whitby advised that in 2000, Whitby Town Council voted to put the following question to a vote in the municipal election:

Do you agree with the position taken by Whitby Town Council that Whitby should remain a separate municipality within a modified two tier system?

The Minister initially declined to approve the question, however, following negotiations Council agreed to the question noted below and it was approved by Regulation.

The Clerk of the Town of Ajax advised that Ajax deliberately worded its question to gain Provincial approval.

O. Reg. 561/00 (attached as Appendix 3), **permitted** Ajax and Whitby to place the following questions on their respective ballots:

Are you in favour of the Town of Ajax initiating negotiations on amalgamation with the City of Pickering? Yes or No

Are you in favour of the Town of Whitby initiating negotiations on amalgamation with other municipalities in The Regional Municipality of Durham? Yes or No

The Clerk of the City of Kawartha Lakes advised that in 2003, the Clerk was directed to place a question on the ballot. It was not a Council initiative. O. Reg. 03/03 (attached as Appendix 4) **required** the City of Kawartha Lakes to place a question on the ballot:

Are you in favour of a return to the previous municipal model of government with an upper-tier municipality and 16 lower-tier municipalities? Yes or No

As directed by Council, staff contacted the Minister of Municipal Affairs and Housing to request further information. Coincidentally, on Tuesday, January 12, 2010, Minister of Municipal Affairs and Housing The Honourable Jim Watson resigned from Cabinet to seek election as Mayor of the City of Ottawa. On January 12, 2010, The Honourable John Gerretsen was appointed Interim Minister. On January 18, 2010, the appointment of The Honourable Jim Bradley as the new Minister of Municipal Affairs and Housing was announced. As of January 20, 2010, staff had not received a response from the Minister's Office.

Tim Ryall, Municipal Advisor, Ministry of Municipal Affairs and Housing, Municipal Services Office – Western, in London responded (email attached as Appendix 5), confirming that Council has no authority to place the question on the ballot, and the results are not binding on the Provincial Government, the Minister or the municipality regardless of the turnout and results. Mr. Ryall also confirmed there is no formal process to request that the Minister put a question on the ballot.

The Municipal Elections Act, as recently revised by the Good Government Act, states that a question by the Minister must be submitted to the municipal clerk by June 1st of an election year.

If a question is placed on the ballot, Council's role during the campaign period is described in Staff Report CS-CLK09-058 (Council's Role During Election Year), attached as Appendix 6.

FINANCIAL IMPLICATIONS

Under \$5,000.

If the question is placed on the ballot, expenses would be limited to the cost of advertising to notify the public of the wording of the question on the ballot and the additional cost of electronic coding to obtain the ballot results.

LEGAL CONSIDERATIONS

The City Solicitor agrees that a question submitted by the Minister or approved by Regulation would not be binding.

Should a merger of Kitchener and Waterloo, or some other form of restructuring in Waterloo Region be formally proposed in the future, the *Municipal Act* requires Council to:

- 1) consult with the public by giving notice of and holding at least one public meeting;

- 2) consult with such persons or bodies as the Minister may prescribe;
- 3) consult with such other persons and bodies as the municipality considers appropriate.

Following that consultation process, the *Municipal Act* requires the following criteria to be met:

- 1) The support of the Councils of a double majority of local municipalities that would have the boundaries changed, would be dissolved or would be amalgamated with another municipality. A “double majority” of local municipalities is a majority of the local municipalities with more than half of the electors in all the local municipalities involved in the restructuring. In the case of a proposed merger of Kitchener and Waterloo, the Councils of both municipalities would have to support the proposal.
- 2) The support of Regional Council.
- 3) The submission of a restructuring proposal pursuant to Section 173 of the *Municipal Act* to the Minister of Municipal Affairs and Housing who either implements, amends or denies the proposal.

Notwithstanding the foregoing *Municipal Act* process, the Province could unilaterally adopt legislation to restructure the municipalities in Waterloo Region. This method was used to create the Regional Government in 1973. In certain situations and pursuant to section 174 of the *Municipal Act*, the Minister may appoint a Commission to deal with a restructuring.

LINK TO STRATEGIC PLAN

Response to Council request for information.

APPENDIX I



EXCERPT – DRAFT MINUTES OF THE COMMITTEE OF THE WHOLE MEETING JANUARY 11, 2010

4. DELEGATIONS

a) Question on Ballot

Tim Jackson requested that the City of Waterloo request the Ontario Minister of Municipal Affairs and housing include a question on the October 2010 municipal election ballot for the City of Waterloo with the following suggested wording:

“Would you support members of council engaging in a dialogue about the merits of merging the Cities of Kitchener and Waterloo. Yes or No.”

Jeff Henry expressed his support to hold a dialogue on amalgamation, but stated that plebiscites are not intended to instigate discussions, but rather to resolve them. Mr. Henry requested that the question on the ballot be about whether the electorate supports amalgamation, rather than about holding discussions on the merits of amalgamation.

Stan Rektor expressed concern regarding the wording of the proposed question on the ballot, citing apprehension regarding the impact of the question on the democratic process and the ability of citizens to provide input on the actual decision regarding a merging of the two Cities. Mr. Rektor requested that the question include the proviso “provided further that the matter would be put to a vote of the citizens by way of a referendum, said vote of the electorate to be no less than 60% of the ballots cast.”

Mike Connolly questioned whether amalgamation was a priority with popular support within the community in comparison to other issues currently facing the City. Mr. Connolly also asked that any question on the ballot specific ask whether the electorate supports amalgamation, rather than supporting a discussion of it.

Franklin Ramsomair recommended that Council be cautious about supporting a question on the ballot, stating that more time was required to consult with various demographics in the City.

Robert Fleming expressed concern that other municipalities within the Region of Waterloo outside of the City of Waterloo and City of Kitchener were not being included in discussions regarding amalgamation.

Victor Hebert cited unease that support for further discussion of amalgamation did extend across most demographics in Waterloo.

John Dietrich stated that despite concerns expressed by some, amalgamation was not likely to be imposed upon local municipalities by the province, and that discussions hindered the ability of the City to conduct day-to-day operations, including the hiring of new senior managers.

Iain Klugman informed Council that the proposed question was suggested in order to solicit input from all members of the community due to the importance of the nature of the question, and enable up to ten months of discussion regarding the value of amalgamation.

David Wellhauser questioned the proposed recommendation, noting that notice was not provided to allow a sufficient level of public consultation prior to instigating a plebiscite.

Peter Davis expressed some concern regarding the impact of direct democracy through referendums where there is insufficient knowledge regarding the issue.

Moved by Councillor McLean, seconded by Councillor Scian:

“That staff

- 1) report to Council on January 25, 2010 to provide further information on a potential question on the ballot related to the merger of the Cities of Kitchener and Waterloo; and
- 2) contact the Minister of Municipal Affairs and Housing to request clarification of the potential wording of a question on the ballot, timing for submitting the question to the Minister, and details of the process required by the Ministry of Municipal Affairs and Housing.”

Carried

6 Voting in Favour

1 Voting in Opposition

(Councillor Vieth)

Municipal Elections Act, 1996
Loi de 1996 sur les élections municipales

ONTARIO REGULATION 425/00

PROVINCIAL INTEREST

Consolidation Period: From December 4, 2003 to the e-Laws currency date.

Last amendment: O.Reg. 410/03.

This Regulation is made in English only.

1. (1) For the purpose of subsection 8.1 (2) of the Act, the following are matters of provincial interest with respect to which the municipality cannot ask a question:

1. Any matter for which the municipality does not have the authority to implement all aspects of the results of the question.
2. Any matter for which the municipality requires an action by the Province of Ontario in order to implement the results of the question.
3. Without limiting paragraphs 1 and 2, casinos and charity casinos as defined in the *Ontario Lottery and Gaming Corporations Act, 1999*.
4. Without limiting paragraphs 1 and 2, municipal restructuring, including the consideration, investigation, discussion and negotiation of municipal restructuring. O. Reg. 425/00, s. 1 (1); O. Reg. 561/00, s. 1 (1).

(2) Despite subsection (1), a municipality may ask a question with respect to casinos and charity casinos as defined in the *Ontario Lottery and Gaming Corporations Act, 1999* if the municipality,

- (a) is eligible to ask a question with respect to casinos or charity casinos under the *Ontario Lottery and Gaming Corporation Act, 1999* and the regulations under that Act; and
- (b) asks the question with respect to casinos or charity casinos in accordance with that Act and the regulations under that Act. O. Reg. 425/00, s. 1 (2).

(3)-(5) Revoked: O. Reg. 410/03, s. 1.

(6) For the purposes of this section,

“municipal restructuring” means,

- (a) annexing part of a municipality to another municipality,
- (b) annexing a geographic area that does not form part of a municipality to a municipality,
- (c) amalgamating a municipality with another municipality,
- (d) separating a local municipality from an upper-tier municipality for municipal purposes,
- (e) joining a local municipality to an upper-tier municipality for municipal purposes,

- (f) dissolving all or part of a municipality,
 - (g) incorporating the inhabitants of a geographic area as a municipality whether or not the area or any part of the area forms part of a municipality before the incorporation.
- O. Reg. 561/00, s. 1 (2).

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ONTARIO REGULATION 561/00
made under the
MUNICIPAL ELECTIONS ACT, 1996
Made: October 12, 2000
Filed: October 12, 2000
Amending O. Reg. 425/00
(Provincial Interest)

1. (1) Subsection 1 (1) of Ontario Regulation 425/00 is amended by adding the following paragraph:

4. Without limiting paragraphs 1 and 2, municipal restructuring, including the consideration, investigation, discussion and negotiation of municipal restructuring.

(2) Section 1 of the Regulation is amended by adding the following subsections:

(4) Despite subsection (1), The Corporation of the Town of Ajax may ask the following question at the 2000 regular election:

Are you in favour of the Town of Ajax initiating negotiations on amalgamation with the City of Pickering?

Yes _____

No _____

(5) Despite subsection (1), The Corporation of the Town of Whitby may ask the following question at the 2000 regular election:

Are you in favour of the Town of Whitby initiating negotiations on amalgamation with other municipalities in The Regional Municipality of Durham?

Yes _____

No _____

(6) For the purposes of this section,

"municipal restructuring" means,

- (a) annexing part of a municipality to another municipality,
- (b) annexing a geographic area that does not form part of a municipality to a municipality,
- (c) amalgamating a municipality with another municipality,
- (d) separating a local municipality from an upper-tier municipality for municipal purposes,
- (e) joining a local municipality to an upper-tier municipality for municipal purposes,
- (f) dissolving all or part of a municipality,
- (g) incorporating the inhabitants of a geographic area as a municipality whether or not the area or any part of the area forms part of a municipality before the incorporation.

APPENDIX 4



Home > Ontario > Statutes and Regulations > O. Reg. 3/03

Canadian Legal Information Institute

Français | English

Municipal Question - Kawartha Lakes, O. Reg. 3/03

Current version: in force since Jan 9, 2003

Link to the latest version : <http://www.canlii.org/en/on/laws/regu/o-reg-3-03/latest/>

Stable link to this version : <http://www.canlii.org/en/on/laws/regu/o-reg-3-03/4577/>

Currency: Last updated from the e-Laws site on 2009-12-18

Municipal Elections Act, 1996 Loi de 1996 sur les élections municipales

ONTARIO REGULATION 3/03

MUNICIPAL QUESTION — KAWARTHA LAKES

Consolidation Period: From January 9, 2003 to the e-Laws currency date.

No amendments.

This Regulation is made in English only.

Mandatory question

1. The clerk of The Corporation of the City of Kawartha Lakes shall submit the following question to the electors of the City at the 2003 regular election:



Are you in favour of a return to the previous municipal model of government with an upper-tier municipality and 16 lower-tier municipalities?

Yes

No

O. Reg. 3/03, s. 1.

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by  for the  Federation of Law Societies of Canada

APPENDIX 5

Susan Greatrix

From: Ryall, Tim (MAH) [Tim.Ryall@ontario.ca]
Sent: Wednesday, January 13, 2010 3:25 PM
To: Susan Greatrix
Subject: RE: Merger Question

Good Afternoon Susan -

Thank you for the opportunity to respond to your questions.

As you are aware, yesterday the Premier announced that John Gerretsen will be the new Minister of Municipal Affairs and Housing. Any formal correspondence from City of Waterloo Council should be addressed to the new Minister. If possible, we would appreciate receiving a copy of any correspondence in this office as well. The copy can be mailed to the Regional Director, Municipal Services Office - Western or simply email me a copy of the documentation.

Ontario Regulation 425/00, as amended, prohibits a municipality from asking a question on the ballot with respect to municipal restructuring, including the consideration, investigation, discussion and negotiation of municipal restructuring. The Minister does not have the authority to permit a municipality or municipalities to put a question on the ballot regarding amalgamation. However, the Minister may put a Minister's question on the ballot. We are only aware of a single time this has occurred, that being in Kawartha Lakes in 2003.

There is no formal process for a municipality (or anyone) to request that the Minister put a question on the ballot. Under section 8(3) of the *Municipal Elections Act* (MEA), the Minister may make an order requiring the clerk to submit a question to the electors of the municipality. At a minimum, it could be expected that any decision of Waterloo Council may wish to convey to the Minister would be expressed by council resolution. The Minister must send that order to the clerk by June 1 of the election year. (This deadline was September 1, but was changed to June 1 as a result of amendments contained in Schedule 21 of the *Good Government Act, 2009*).




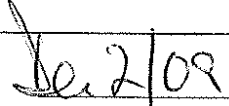

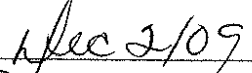
Because the question would be a Minister's question, the results are not binding, regardless of voter turnout or the number of votes for or against. This is quite different from a municipal question. The MEA specifies that for a municipal question, the result is binding if at least 50% of the eligible electors in the municipality vote on the question, and more than 50% of the votes on the question are in favour of the results.

Please contact me directly if you have any further questions,

Tim

Tim Ryall AMCT, MCIP, RPP
Municipal Advisor
Ministry of Municipal Affairs and Housing
659 Exeter Road, London, ON N6E 1L3
(519) 873-4030 or (800) 254-4736
tim.ryall@ontario.ca

APPENDIX 6

	DATE: November 23, 2009 REPORT: CS-CLK09-058	TITLE: ROLE OF COUNCIL DURING ELECTION YEAR	CAO 
WARD: CITY-WIDE	PREPARED BY: SUSAN GREATRIX		
FILE:	DEPARTMENT: CLERKS/CORPORATE SECRETARY		
ATTACHMENTS: Appendix 1 Section 14, Code of Conduct for Councillors	CLEARANCE: CMT December 2, 2009 Council December 7, 2009		
RECOMMENDATION:			
<p style="text-align: center;">INFORMATION</p>			
BACKGROUND:			
<p>On September 28, 2009, Council heard several delegations speak to the issue of water fluoridation and the proposed question for the 2010 municipal election ballot.</p> <p>At that meeting, several members of Council requested clarification of the role of Council in an election year and acceptable actions by the Corporation and Council with regard to the dissemination of information related to a question on the ballot.</p> <p><u>QUESTION ON BALLOT = ELECTION CAMPAIGN</u></p> <p>The Municipal Elections Act treats proponents and opponents of a question on the ballot much the same way it does a candidate campaigning for office.</p> <p>The Yes/No sides of the question are campaign platforms and proponents/opponents should be granted the same privileges and subject to the same restrictions as any candidate for office. Staff believe it would be prudent for Council to follow the rationale established in the Municipal Elections Act and treat proponents or opponents of a question as candidates for office.</p>			
APPROVALS  General Manager	 Date	 Director	 Date
Finance	Date	Other	Date

LEGISLATIVE/POLICY REQUIREMENTS

a) Municipal Elections Act

Proponents and opponents of a question are subject to the rules and regulations set out in the Municipal Elections Act, summarized as follows:

- any individual, corporate or trade union proposing to incur expenses with respect to a question on the ballot:
 - must file a Notice of Registration with the Clerk
 - must comply with campaign finance requirements as set out in Municipal Elections Act, e.g. open a campaign account, record contributions and expenses and file Financial Statements
 - is permitted to spend 50¢ for each elector entitled to vote on the question
 - cannot accept contributions or incur expenses until the Notice of Registration has been filed and certified by the Clerk

The Municipal Elections Act prohibits municipalities from making financial or in-kind contributions to candidates or an individual or organization registered with respect to a question on the ballot and states that:

"...money, goods and services given to and accepted by or on behalf of ... an election campaign are contributions."

The provision by the City of space in City facilities, advertising or refreshments for meetings held for the purpose of advocating a position on a question could be construed as a campaign donation contrary to Section 70(4) of the Municipal Elections Act if such meetings are not organized by an independent, impartial third party, e.g. media or community voter group.

b) Code of Conduct – Election Campaign Work

The recently approved Code of Conduct for Members of Council prohibits the use of municipal resources during an election campaign for municipal office. Those same restrictions apply to any Member of Council campaigning for a Yes or No position with respect to a question on the ballot.

Section 14, Election Campaign Work, of the Code of Conduct for Members of Council is attached as Appendix I to this report.

ELECTION CAMPAIGNING – COUNCIL MEETINGS, CITY FACILITIES

a) Council Meetings

It has not been the practice of Waterloo City Council to allow Council meetings to be used as a venue for an individual to campaign for office or to support the campaign of a registered candidate.

Staff suggest that Council remain consistent with past practice and not permit public Council/Committee meetings to be used as a vehicle for candidates to advance their campaign platforms nor as a campaign opportunity for proponents/opponents of any question on the ballot.

b) **City Facilities**

The cost for the provision of space in City facilities for election purposes has been inconsistent. During the 2006 election campaign, it appears that the media paid facility rental fees for all-candidates debates, but a community group paid no fee.

DISSEMINATION OF INFORMATION

a) **Members of Council**

As detailed in the Code of Conduct for Members of Council, Members of Council are not permitted to use their municipal office or City resources to promote the campaign of a candidate for office or to campaign for the Yes or No side of a question on the ballot.

The City Solicitor has advised that individual Members of Council are free to support or not support a question on the ballot, as long as they do not purport or appear to represent a Council position that has not been formally endorsed by Council.

b) **City Staff**

In past municipal elections, to the best of staff knowledge, any information provided by staff has been limited to the Clerk's Office publishing advertisements notifying the public of the wording of the question on the ballot, e.g.:

1994: Do you support reducing the number of wards from seven to five?

1997: Are you in favour of the operation of a permanent charity gambling casino in the City of Waterloo?

It would be inappropriate for any staff in their capacity as City employees to take a position or provide information that would be other than factual and neutral with respect to a question on the ballot, in the same way it would be inappropriate for a staff member to use his/her position as a City employee to endorse a candidate for office.

c) **Members of City Committees**

Members of City Committees are subject to either the Code of Conduct for Members of Council or the Code of Conduct for Members of Advisory Committees.

The Code of Conduct for Members of Advisory Committees requires Committee members to act in a manner that fulfills the mandate and mission statement of the Committee. No City Committee has a mandate that includes Committee involvement in an election campaign issue.

Individual Committee members have the same freedom as individual members of Council to support or not support a question on the ballot, as long as they do not purport or appear to represent an Advisory Committee position or a Council position that has not been formally endorsed by Council.

QUESTION ON BALLOT – COUNCIL POSITION/PUBLIC INPUT

As noted above, the 1994 and 1997 ballots included questions. Staff have reviewed Council minutes related to those questions and it appears that public input was provided or solicited **prior to formal approval of a question for the ballot.**

On March 24, 1997, Council approved the following resolution:

Based on the information available to date, City Council does not favour the establishment of permanent charity gambling casinos in the City of Waterloo but Council is willing to consider public input and additional information.

A public meeting was held on April 21, 1997 to solicit public input and the issue was discussed at a number of subsequent Council/Committee meetings. On October 6, 1997, the question was approved for the ballot.

Note: Since that time, the requirements under the Municipal Elections Act have changed and a by-law approving and setting out a specific question to the electors must be passed at least 180 days before Election Day.

In both 1994 and 1997, once the by-law was passed placing a question on the ballot, staff could find no reference in Council/Committee minutes to delegations speaking to the issue or Council taking a formal position on the question.

FINANCIAL IMPLICATIONS

None.

LEGAL CONSIDERATIONS

The City Solicitor has reviewed and provided comments with respect to this report.

LINK TO STRATEGIC PLAN

Response to Council request for information.