CHANGES TO MUNICIPAL ELECTIONS ACT

BACKGROUND
The Municipal Elections Act (MEA) sets out rules for electors and candidates and the role of the municipal clerk and council in municipal and school board elections in Ontario. The next municipal election takes place on October 22, 2018 and there are a number of issues and options that the Clerk and Council must consider prior to that in order to meet the timelines stipulated in the legislation.

After each municipal election, the Ministry of Municipal Affairs reviews the MEA to determine if it meets the needs of Ontario municipalities. The review that took place after the 2014 election included consultation with the public, municipal councils and staff across Ontario. As a result on June 9, 2016 the Municipal Elections Modernization Act, 2016 received Royal Assent, making significant changes to the MEA for the 2018 municipal election.

This report highlights those changes and discusses decisions to be considered by Council prior to the next election.

ANALYSIS

Significant Changes in the Municipal Elections Act

1. Election calendar

NOTE: Election Day is **October 22, 2018**.

A number of key dates and timelines in the election calendar have been changed, affecting everything from the nomination period for candidates to dates for the voters’ list availability. A few affect the Clerk’s calendar only. These changes are identified in the chart below.
# Changes to the Election Calendar

<table>
<thead>
<tr>
<th>Change</th>
<th>Date (if no changes to the MEA)</th>
<th>New Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>By-law – use of alternative voting methods</td>
<td>June 1, 2018</td>
<td>May 1, 2017</td>
</tr>
<tr>
<td>By-law – use of ranked ballots</td>
<td>n/a</td>
<td>May 1, 2017</td>
</tr>
<tr>
<td>** Development of forms, policies and procedures for voting, vote counting equipment and alternative voting methods**</td>
<td>June 1, 2018</td>
<td>December 31, 2017</td>
</tr>
<tr>
<td>Authorization of a ballot question</td>
<td>180 days prior</td>
<td>March 1, 2018</td>
</tr>
<tr>
<td>- Approved by Council by-law</td>
<td>June 1, 2018</td>
<td>May 1, 2018</td>
</tr>
<tr>
<td>- Ordered by upper tier/Minister</td>
<td></td>
<td></td>
</tr>
<tr>
<td>** Authorization of a recount policy</td>
<td>n/a</td>
<td>May 1, 2018</td>
</tr>
<tr>
<td>** Authorization of a “Use of Corporate Resources” policy</td>
<td>n/a</td>
<td>May 1, 2018</td>
</tr>
<tr>
<td>Opening of nomination period (and third party advertiser registration)</td>
<td>January 2, 2018</td>
<td>May 1, 2018</td>
</tr>
<tr>
<td>** Compilation of interim list of changes to the voters’ list</td>
<td>10 days following nomination day</td>
<td>Starts Sept. 15, 2018 and ends Sept. 25, 2018</td>
</tr>
<tr>
<td>Close of third party advertising registrations</td>
<td>n/a</td>
<td>October 19, 2018</td>
</tr>
</tbody>
</table>

*These are the responsibility of the Clerk*
2. **Nomination period and process**

The nomination period will be reduced from 37 weeks to 13 weeks with the opening of nominations occurring on May 1, 2018 and ending on the fourth Friday in July (July 27, 2018).

Candidates will be required to obtain 25 endorsement signatures from eligible electors, with the following stipulations.

- The 25 endorsement signatures must be provided at the time a candidate files his/her nomination paper.
- A person providing an endorsement must be eligible to vote for the office the candidate is seeking on the day that the person endorses the nomination.
- Individuals may endorse more than one nominee.
- Endorsements will be in the form of a prescribed declaration (not developed yet).
- The nominee may file for a different office on the same council (withdrawing the previous nomination) without pursuing further endorsements.

The MEA has also been amended to clearly state that a candidate is eligible to be nominated for an office in any ward of the municipality, not just the ward in which they reside or own property. While this is not a change, there have been many inquiries to the Ministry on this over the years and so the MEA was amended to provide clarification.

3. **Greater independence and discretion for the Clerk**

Changes to the MEA provide greater administrative discretion and independence to the Clerk. Some matters which previously required Council approval now come under the purview of the Clerk. They include:

- Setting of advance voting dates, locations and hours (a by-law was required in the past).
- Reducing voting hours for voting locations such as long term care facilities.
- 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, deletions or amendments are completed.
- Determine whether electronic filing of financial statements will be permitted and any associated conditions.
• Review financial statements and identify and report on contributions made to candidates and third party registrants in excess of established limits and refer that report to the Compliance Audit Committee.

4. **Campaign finances**

Some changes include:

• Banning contributions by corporations and trade unions.
• Candidates will be required to inform contributors of contribution limits.
• After the 2018 election, campaign deficits will not be carried forward from a previous campaign.
• Provision of regulations to set out new spending limits for fund-raising parties and expressions of appreciation after voting day.
• Removing the requirement for a candidate to open a bank account if they do not raise or spend money.
• Allowing candidates to resubmit a financial statement up until the filing deadline in order to correct an error.
• Refund of the nomination fee to a candidate *only* if their financial statement has been filed by the deadline.
• A new 30-day “grace period” for filing financial statements, with a $500 late filing fee charged (no refund of nomination fee).
• The Clerk must make public a list of candidates who filed their financial statements and those who did not.

5. **Election advertising**

Candidates will be required to include specific information on their election advertising in order to make it clear who is responsible for the message. This applies to all advertising regardless of format or method.

Candidates, or those acting on their behalf, will need to provide broadcasters and publishers with information that includes the name of the candidate, name of individual or organization taking out the advertisement as well as the address and telephone number of the individual interacting with the broadcaster or publisher on behalf of the candidate. The broadcaster or publisher is responsible for retaining this information along with a copy of the ad and invoice for a period of two years and making this information available to the public for inspection within that time period.

Tenants in apartments/condos, etc. now have the right to display campaign signs, subject to the landlord’s/condo corporation’s right to limit size.
Municipalities (the Clerk) have the authority to remove advertisements or discontinue advertising if it contravenes the provisions of the MEA.

6. **Third-party advertising**

Amendments to the MEA address third-party advertising for the first time. A third-party advertisement is a message in any medium that supports or opposes a candidate or takes a position on an issue related to the election. Advertising that does not cost money to post or broadcast, such as comments made on social media, will not be considered to be third party advertising.

Individuals, corporations and unions can register as third party advertisers and make contributions to third party advertisers. Third party advertisers will need to register with the municipality where they want to advertise. If they want to advertise in more than one municipality, they will have to register in each municipality.

Third part advertising must be done independently of candidates who are not able to direct a third party advertiser. Candidates are not able to register as third party advertisers.

Rules for registration of third party advertisers, handling contributions, spending and contribution limits and financial reporting are similar to those for candidates, with the exception that third party advertisers may accept contributions from corporations and trade unions.

The MEA outlines registration requirements and eligibility of third party advertisers as well restrictions on this type of advertising.

7. **Accessibility Plan and reporting**

Clerks will be required to prepare accessibility plans to identify, remove and prevent barriers that could affect voters and candidates with disabilities. The plan must be available to the public before voting day. The Clerk’s report to council after voting day about the identification, removal and prevention of barriers (not a new requirement) must also be made available to the public.

8. **Recount policies**

Previously, recounts following a municipal election could only be conducted under limited circumstances including:
• Where the counting of ballots resulted in a tie vote
• Where a municipality or the Minister of Municipal Affairs and Housing passed a resolution to order a recount
• Where an electors’ request for a recount was granted by the Superior Court of Justice.

The amended MEA gives Council the authority to establish a policy prior to the election to define additional circumstances under which a recount would be conducted.

9. Ranked ballot voting

Ontario Regulation 310/16 authorizes ranked ballot elections in Ontario, beginning with the 2018 municipal election, for those municipalities that choose this option and sets the rules governing ballots, voting procedures, the counting of votes, recounts and reporting results. This option is not available for the election of school board trustees.

Traditionally, elections in Ontario have been run using the “first past the post” system, whereby the candidate receiving the highest number of votes is elected.

The ranked ballot method of voting and counting allows electors to vote by ranking candidates for an office in order of the elector’s preference. Voters select candidates in order of preference instead of choosing just one candidate. If one candidate wins a majority in the initial tally, that candidate is the winner. If no candidate wins a majority, candidates are eliminated from the bottom up, with each eliminated candidate’s votes going to those voters’ next-ranked choice for the following round. This continues until one candidate has more than half of the votes. This method helps to ensure that the winning candidate(s) receive support from a majority of voters more often that with the traditional voting/counting method.

A discussion on the ranked ballot method continues later in the report under “Decisions for Council’s consideration”.

10. Other

Other proposed changes are still under review, such as:
• Start of the new council term (November 15, 2018);
• A shortened lame duck period;
• A change of the individual contribution limit from $750 to $1,200 (this will place it in-line with the provincial limit)
Decisions for Council’s consideration

<table>
<thead>
<tr>
<th>Subject</th>
<th>Deadline</th>
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<tbody>
<tr>
<td>1 Changes to size and composition of Council</td>
<td>December 31, 2017</td>
</tr>
<tr>
<td>2 Approval of a question on the ballot</td>
<td>March 1, 2018</td>
</tr>
<tr>
<td>3 Alternative voting method</td>
<td>May 1, 2017</td>
</tr>
<tr>
<td>4 Use of ranked ballots</td>
<td>May 1, 2017</td>
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</tbody>
</table>

1. Changes to size and composition of Council
   
   Since amalgamation in 2001, Southwest Middlesex Council has had eight members, a Mayor and Deputy elected at large and six councillors elected by ward. Ward 3 and 4 were combined prior to a previous election but no other changes have been brought forward for consideration.

   There are provisions in the Municipal Act whereby a local municipality, subject to certain rules, can alter the composition of its council, including changes to the size of council, members’ titles and certain methods of election or selection of members. If a change is desired or required, a by-law must be enacted prior to the year of an election (2017 in this case). A public meeting, with notice, is also required so discussion should begin either in late 2016 or early 2017.

   If Council wishes to have a discussion on the merits of changing the current composition of Council, staff will be pleased to prepare a report that evaluates various options.

2. Changes to Ward boundaries

   As noted above, the current ward boundaries were established at the time of amalgamation. They reflected those of the former four municipalities rather than population – the more common criteria. The wards were:

   Ward 1 – Ekfrid. Population approximately 2,200
   Ward 2 – Glencoe. Population approximately 2,000
   Ward 3 – Mosa. Population approximately 1,300
   Ward 4 – Wardsville. Population approximately 425
The Municipal Act does not stipulate how ward boundaries are to be established; rather leaving it up to the individual municipalities. It’s generally accepted that they should have reasonably similar populations to ensure equality of elector voice.

The Ontario Municipal Board has heard appeals on the matter and has noted that “...size of variance from the average is up to council but closer to equal is always better.” The Board goes on to discuss reasons to have them less than equal, such as:

- Preserve communities of interest
- Recognition of areas of growth/decline
- Recognition of natural (rivers, lakes, swamps) or manmade (highways, railways) barriers/dividers
- Recognition of density (ward with a few people over a large geographic area equals ward with large population in a small geographic area)
- Accessibility/communication.

If Council wishes to have a discussion on the merits of changing the ward boundaries, staff will be pleased to prepare a report that evaluates various options.

The public must be involved in the process and there is always the potential for an appeal to the OMB. Therefore, any discussion should begin very soon. Watson & Associates prepared an excellent information sheet on the subject prior to the 2014 municipal election. It’s attached here for your information.

3. Approval of a question on the ballot

Section 8 of the MEA allows the Council of a municipality to pass a by-law to submit a question within Council’s sphere of jurisdiction or a by-law requiring their assent to its electors on the municipal election ballot.

Questions about the licensing of establishments to permit the sale and serving of liquor were common on election ballots some 30-35 years ago. Municipalities have also used this provision to gauge public support for other controversial and/or expensive projects. Southwest Middlesex has never put a question on the ballot.

I am not aware of any question that Council may wish to consider for the 2018 election ballot. The deadline for passing a by-law to do so is over a year away so members have plenty of time to consider whether this option.
4. Alternative voting method

Council has already approved the use of internet and telephone voting for the 2018 municipal election.

5. Use of ranked ballots

Council may pass a by-law authorizing the use of ranked ballots. The by-law must be passed by May 1\textsuperscript{st} in the year before an election (May 1, 2017).

Prior to passing the by-law, interested municipalities must also hold an open house to provide information on how this method of voting would work, including a description of this voting method, vote counting and estimated costs. At least fifteen days after the open house, the municipality must hold a public meeting for public feedback. The open house and public meeting would have to be scheduled for early in 2017 in order to meet the May 1\textsuperscript{st} by-law deadline.

If ranked ballots are authorized for a regular election, ranked ballots must also be used in any subsequent by-elections.

To date, ranked ballot elections have not been implemented in any municipal, provincial or federal election in Canada. In the 2016 general U.S. election, Maine was the first U.S. state to approve ranked ballots for future elections. I understand that only a few large municipalities in Ontario are currently considering it for the 2018 municipal election though no decisions have been made to date.

The regulations related to the use of ranked ballots have not been made available at the time of the preparation of this staff report. Therefore, neither staff nor voting equipment vendors have a full understanding of the requirements or related expense. It’s anticipated that considerable time and funding would have to be dedicated to the development of policies, public education and changes to election software.

I understand that all of the other clerks in Middlesex County will be recommending that their municipalities maintain the “first past the post” voting model for the 2018 election. I concur with that recommendation. However, if Council is interested in discussing this option further, a more detailed staff report will be prepared.

**RECOMMENDATIONS**

1. That no changes be made to the size and composition of Council or to the ward boundaries for the 2018 municipal election.
2. That no action be taken on the option to use ranked ballots for voting and counting in the 2018 municipal election.

3. That the staff report on *Municipal Elections Act* changes be received.
September 2012: Newsletter 7

Is A Ward Boundary Review Overdue?

Did you know . . .

that the Canadian Constitution formally requires (in section 51) that representation in the House of Commons be reviewed every ten years to accommodate changes to the national population distribution as revealed in the Census? The boundaries of the 107 seats in the Ontario legislature are tied to the regular federal redistribution.

Do you realize . . .

that any obligation on municipal councils to initiate a review of electoral arrangements such as wards is absent from provincial legislation in Ontario? Even in response to petitions submitted by residents, ward boundary reviews in Ontario are, in a word, discretionary.

However, communities continue to change: the distribution of population in a municipality in 2012 is not the same as in the same municipality 20 years ago or as it will be in the future. As the community changes, so should its electoral arrangements.

1. Is a ward boundary review appropriate now?

   • If your population has changed by more than ten percent since the present ward boundaries were set, it is probably time to review them.

   • If the present ward boundaries were set as part of an amalgamation, it is probably time to examine their continuing relevance as the new municipality matures.

   • If the population of at least one of the wards varies by more than twenty-five percent from the average population of all wards, it is probably time to review the present ward boundaries.

2. What would a ward boundary review look like?

   • The Municipal Act is silent on the process and criteria for a review; the arrangements for a ward boundary are, hence, left to the municipality to define.

   • A credible ward boundary review requires a public consultation process consistent with present municipal practices.

   • An open ward boundary review requires clear and workable guiding principles to evaluate alternative ward designs.

   • An acceptable ward boundary review requires a high degree of independence to objectively balance the needs of the municipality.

3. What would be required to conduct a ward boundary review?

   • Reliable data on present and future population trends across the municipality.

   • Expertise to develop, guide and manage a public consultation process and to provide cogent written reports on the process and alternative designs.

   • Expertise to develop and map alternative designs.

   • Expertise on municipal electoral systems.
4. Why can’t we just refer to provincial legislation or regulations to conduct a ward boundary review?
   - Contrary to popular belief, neither the Ministry of Municipal Affairs nor the OMB has ever established criteria for conducting a review.
   - Although many challenges have been before the OMB, the case law is specific to the application being heard and is not subject to precedent.

5. Where is the expertise to ensure a successful ward boundary review?
   - Clerks frequently turn to colleagues in other municipalities to obtain guiding principles or terms of reference for ward boundary reviews.
   - Unique local circumstances may mean that guiding principles from other municipalities are not necessarily applicable to your municipality.
   - Ward boundary review experts are limited in number in Ontario.

6. Where to start?
   - Watson & Associates in conjunction with Dr. Robert Williams have the expertise available to deliver a comprehensive and cost-effective review of ward boundaries in your municipality.
   - We can offer a cost-effective preliminary assessment of your present ward design to help determine whether a full-scale ward boundary review is appropriate.

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**Ward Boundary Review Process Time Line**

(19-32 weeks)

<table>
<thead>
<tr>
<th>Time Frame</th>
<th>Description</th>
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<tbody>
<tr>
<td>3-4 Weeks</td>
<td>Preliminary evaluation of adequacy of present ward boundaries (if requested).</td>
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<tr>
<td>6-8 Weeks</td>
<td>Establish process, guiding principles, terms of reference; obtain council consent; identify staff team, begin research.</td>
</tr>
<tr>
<td>10-12 Weeks</td>
<td>Public consultation, preliminary and final reports to Council, approval of by-law.</td>
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<tr>
<td>8 Weeks</td>
<td>Potential OMB appeal (45 day appeal period, hearing). Process needs to be completed by: January 1, 2014 – Electoral arrangements come into effect. March 31, 2014 – Polling Subdivision boundaries to MPAC.</td>
</tr>
</tbody>
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**Our Consulting Team**

Watson & Associates Economists Ltd. is a firm of economists, planners and accountants which has operated in Ontario for 30 years. With a client base of more than 250 municipalities, utility commissions and school boards, many of which are long-term repeat clients, the firm is recognized as a leader in the municipal finance/local government field. Over this time, the firm has undertaken municipal growth analysis studies, land need studies, and economic and financial impact assessments, for more than 150 municipalities.

Watson and Associates has partnered with Dr. Robert Williams, a leading authority in the area of municipal government and electoral systems, to undertake ward boundary review studies. To-date the Team has successfully completed a number of ward boundary studies. Dr. Williams has conducted ward boundary reviews independently in another half dozen Ontario municipalities and has appeared as an expert witness at numerous OMB hearings on municipal electoral arrangements.

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