

## Staff Report 2022-0118

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Meeting Date: March 22, 2022

Subject: Proposed Policy Updates and the Use of Alternative Languages for the 2022 Municipal and School Board Election

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### RECOMMENDATION

That the Proposed Policy for the Use of Corporate Resources for Election Campaign Purposes attached as Schedule A to Staff Report 2022-0118, be approved; and

That the Proposed Accessible Election Policy attached as Schedule C to Staff Report 2022-0118, be approved; and

That a By-law be enacted to permit the translation of election information for voters and to delegate the authority to the Town Clerk to determine the languages to be used in addition to French and English.

### REPORT HIGHLIGHTS

- On October 24, 2022, the next Municipal and School Board election will be held and the *Municipal Elections Act, 1996* (MEA) requires certain policies to be in place by May 1 in the year of the election.
- The Town's Use of Corporate Resources for Election Campaign Purposes Policy from the 2018 election was reviewed and updates were included such as adding definitions, regulating registered third parties and clarifying social media usage.
- The MEA permits municipalities to pass a By-law to allow the translation of voting information in alternative languages.
- In 2018, staff faced challenges in translating voting information to electors that primarily spoke Italian and Punjabi. This report recommends that for the 2022 Municipal and School Board election, the Town Clerk be delegated the authority to make information available in languages other than English including Italian and Punjabi as these two languages represent 12.5% of the Caledon population.
- Staff completed updates to the existing Accessible Election Policy which was subsequently provided to Members of the Town's Accessibility Advisory Committee for review and feedback.
- Although the MEA permits the development of a more extensive vote Recount Policy, staff believe that the existing rules in the legislation provide a clear and unambiguous framework for conducting a fair recount.

### DISCUSSION

#### Background

The next Municipal and School Board election will take place on Monday, October 24, 2022 to elect Members of Council and Trustees for the 2022-2026 term. At the February 22, 2022

Town Council Meeting, the recommendation to conduct an in-person paper ballot election was ratified and a By-law was enacted to authorize the use of voting equipment. The MEA requires several policies to be in place by May 1 in the year of the election, some which require approval of Council or enactment of a By-law. Therefore, the purpose of this report is to provide Members of Council with updated election policies for consideration to further advance the planning process.

### **Legislative Requirements**

Prior to May 1, 2022, the MEA requires that rules and procedures for candidates regarding the use of municipal resources during the campaign period must be established. Attached as Schedule A for Council's consideration is an updated policy that addresses this important aspect of the election. Further, a municipality may, through a By-law, adopt a policy setting out the circumstances in which the Clerk is required to hold a recount of votes cast. This By-law must be enacted by May 1. Similarly, the MEA requires that a By-law be passed to provide information to voters in languages other than English. A proposed By-law for this purpose is attached as Schedule B.

It is crucial to the democratic process that all eligible individuals have an opportunity to cast a ballot or run for office. Therefore, it is essential that the Municipal and School Board election is accessible for those with disabilities. The MEA includes provisions to achieve this such as Section 12.1 which provides that the Clerk shall have regard to the needs of electors and candidates with disabilities. Further, this Section requires the preparation of a plan to identify, remove and prevent barriers that may affect electors and candidates with disabilities. Finally, the Clerk must ensure that voting places used are accessible to electors with disabilities. To ensure that these important requirements are achieved, staff completed updates to the Town's Accessible Election Policy, attached as Schedule C to this report. Each of the updated policies which address the legislated requirements are discussed in detail below.

### **Use of Corporate Town Resources by Candidates**

Maintaining fairness in an election process is integral to preserving public trust in the outcome. In addition to being a requirement of the MEA, establishing a policy on the use of Town corporate resources sets rules to create an equitable election. Further, the policy ensures that the expectations are clear for both candidates and Town staff. Although such a policy was in place for the Town's 2018 Municipal and School Board election, staff have completed a review of other municipalities, such as Guelph and Oakville, to ensure the rules continue to reflect common best practices. As a result, updates have been made which are included in the proposed attached version.

A key update to the Use of Corporate Resources for Election Campaign Purposes Policy is the addition of definitions. In contrast to the 2018 version, definitions have been added for several terms such as campaign contribution, campaign materials, campaign related activities, corporate resources as well as Town property and/or facilities. This will improve clarity around these important terms and the related rules. Further, the policy was expanded to apply to

registered third parties, being individuals, corporations or trade unions advertising to support or oppose a candidate. As rules were set out in the MEA for registered third parties prior to 2018, this update addresses a gap in the previous policy.

### Social Media

The use of social media has become more prevalent and grown in importance as a tool to engage a community. Social media accounts for Members of Council do not belong to the municipality in the sense that when a Member leaves office they are not returned back to the Town such as a computer, cell phone, email address etc. With that said, certain content and profile information published can be perceived and considered as a corporate resource. Therefore, a clear differentiation is necessary between an account used for campaign purposes and one used for official business as a Member of Council. The rules for social media usage are currently set out in the Town's "Code of Conduct for Members of Council and Designated Boards". The updated policy aligns with the Code of Conduct and presents two approaches for incumbent Members of Council:

1. Maintain Separate Election Accounts During a Campaign Period.

Establish separate and distinct social media accounts for election purposes that are clearly labelled as election accounts, do not use publicly-funded resources that are not identified as a Member of Council's account.

2. Maintain a Single Account Subject to Restricted Use During a Campaign Period.

Members of Council who choose not to maintain separate and distinct election accounts and who intend to use social media accounts that have been identified as their personal social media account must (as applicable):

- a) during the campaign period cease producing and distributing any publication related to the role as a Member of Council which contains social media account information (i.e. usernames, handle names);
- b) ensure any reference to the Town of Caledon, Town logos, or images proprietary to the Town of Caledon, and reference to the Member's title from the account handle name, the username, the profile description are not used;
- c) ensure that the account's information does not use any caledon.ca email addresses or Town of Caledon contact information; and
- d) not make references to the account from a Member's website; expressly notify followers or friends on the social media platform that the account will be used for purposes related to re-election, provide an alternative source of information for followers interested in constituency services, and label the account appropriately.

For greater clarification, the above approaches apply to social media accounts from the point at which a nomination is filed and not prior.

Finally, while the updated policy remains comprehensive by addressing the use of technology resources, Town property/facilities, Town services and staff, it has been simplified as compared to the 2018 version. Complaints received regarding the use of corporate resources during an election are managed by the Town Clerk; including the interpretation and decisions on whether a breach of the policy has occurred. It is recommended that Council approve the updated Use of Corporate Resources for Election Campaign Purposes Policy, to be implemented for the 2022 Municipal and School Board election.

### **Use of English and Other Languages for Voting Information**

Section 9(2)(b) of the MEA requires that a By-law be passed to provide information to voters in languages other than English, unless such information pertains to the election of a French School Board candidate, in which case the information must also be provided in French. During the 2018 Municipal and School Board election, staff faced challenges in communicating voting related information to residents due to English not being a first language. Staff working in the election found that both Italian and Punjabi were the two languages where electors needed translation assistance. Therefore, certain voting locations were staffed with linguistic resources to assist.

Based on the experience in the 2018 election, staff reviewed the 2016 Census data and found that in addition to English, Italian and Punjabi are the primary languages (mother tongue) for up to 12.5% of the population of Caledon. *The 2021 Census linguistic information is anticipated to be released in the late summer of 2022.* Therefore, staff intend to provide election information in these two languages in addition to French and English.

For the upcoming 2022 Municipal Election, recognizing Caledon's diversity, and in keeping with the spirit of inclusive customer service, the Town is continuing to build on its efforts to assist voters whose first language is not English and are therefore recommending that a By-law be enacted to allow, if needed, staff to make election information available in alternate languages. To ensure the flexibility to serve a diverse electorate, staff further recommend that the Town Clerk be delegated the authority to determine the alternate languages which may be used.

It must be noted that the MEA prohibits prescribed forms (i.e. nomination form, appointment for voting proxy, etc.) from being permanently altered in any language other than English or French.

The proposed By-law is to permit the translation of voter information and is attached as Schedule B to this report.

### **Accessible Election Policy**

The Town previously established an Accessible Election Procedure for the 2018 election. Although this procedure was successfully applied with no significant issues identified, staff completed a full review to ensure it remains compliant with legislation and reflects best

practices. The Accessibility for Ontarians with Disabilities Act (AODA) was carefully considered with particular focus on the Information and Communications Standards, Design of Public Spaces Standards and Customer Service Standards. It was verified that the document includes key necessary sections on staff training, provision of accessible formats, feedback processes, use of service animals and support persons, accessible parking and notice of service disruptions. While the existing procedure was largely consistent with the requirements, updates were made to ensure that it more accurately reflects the language of the AODA.

Several other minor but important adjustments were made based on examples from other municipalities. For example, the legislative requirements for accessibility in the MEA are now set out directly in the Accessible Election Policy. Further, it was clarified that the document constitutes the plan required by Section 12.1 of the MEA to identify, remove and prevent barriers to those with disabilities. These changes ensure that both the legislative requirements and actions the Town will take to achieve them are consolidated in one document that will be posted on the Town's website, creating easy access for the public. Finally, the scope of the policy was adjusted to make clear that it applies to facilities in addition to staff as many of the requirements set out relate to voting places.

On February 7, 2022 the updated version of the Accessible Election Policy was presented to Members of the Town's Accessibility Advisory Committee (AAC) for consideration and feedback. Comments and suggestions were made to ensure that chairs are available for the public at voting locations while waiting in line and tables for voting booths should be at low heights to be accessible to those in wheelchairs. Similarly, signage for the election should be posted at low heights for visibility. It was further expressed that election staff should be able to attend a person's vehicle to facilitate curbside voting if an individual is unable to enter a location. Finally, concern was voiced regarding multi-level buildings to prevent barriers to voting which could be created such as by stairs. The proposed Accessible Election Policy was reviewed and amended to ensure that it addresses the points raised by the AAC. It is recommended that Council approve the updated Accessible Election Policy to be implemented for the 2022 Municipal and School Board election.

### **Recount Policy**

The MEA requires the Clerk to hold a recount of votes in certain circumstances. For example, Section 56 provides that a recount must be held if two or more candidates receive the same number of votes and they cannot both be declared elected to an office.

Sections 57 and 58 further permit a recount to be triggered within 30 days after the declaration of the election results if a resolution is passed by Council or an eligible elector applies to the Superior Court of Justice. The MEA sets out clear rules that apply to the recount process. This includes the timeframe in which a recount must occur, who may be present when it is conducted, the right to examine and dispute ballots and the duties of the Clerk. Finally, Section 60 requires that a recount is conducted in the same manner as the original count, whether manually or by vote counting equipment.

In addition to the above statutory triggers, Subsection 56 (3) permits a municipality, through a By-law, to adopt a policy setting out other circumstances in which the Clerk is required to hold a recount. For example, a policy could stipulate that a recount must be held if candidates for an office are within a certain number of votes of each other, thereby setting a new threshold in addition to when the same number of votes are received. However, beyond the same number of votes, determining what constitutes a fair threshold is unclear and therefore may be problematic. Further, Sections 57 and 58 provide alternatives should a recount be sought.

The existing statutory rules within the MEA have been in place for many elections and staff believe that they provide a clear and unambiguous framework for conducting a fair recount. Vote counting tabulators have been authorized for use in the 2022 election which are carefully tested and, unlike a manual count, provide accurate and consistent results. This is consistent with the approach for the 2018 election where no additional policy was established. Finally, this will be consistent across Peel Region as staff have confirmed that neither Brampton nor Mississauga intend to implement a Recount Policy.

### **FINANCIAL IMPLICATIONS**

There are no immediate financial implications associated with this report. Any translation services would be funded from the Election Reserve.

### **COUNCIL WORK PLAN**

Subject matter is not relevant to the Council Workplan.

### **ATTACHMENTS**

Schedule A: Proposed Policy for the Use of Corporate Resources for Election Campaign Purposes

Schedule B: Proposed By-law for Alternative Languages for Election Purposes

Schedule C: Proposed Accessible Election Policy