

Deputy City Manager's Office Report  
Strategic Meeting of Council  
2021 February 1

ISC: UNRESTRICTED  
C2021-0175  
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## **Fiscal Framework – Vote on a Question**

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### **RECOMMENDATION(S):**

That Council consider the information contained in this report when determining whether or not to pursue a Vote of the Electors on a question regarding The City's fiscal relationship with the province.

### **HIGHLIGHTS**

- Members of Council have expressed an interest in posing a "Vote on a Question" regarding The City's fiscal relationship with the province alongside this fall's municipal election.
- Changes to the fiscal framework have been a long-standing advocacy priority for The City of Calgary.
- It is expected that the Government of Alberta may use the municipal ballot to ask its own question of electors on the fairness of the province's relationship with the federal government.
- This report provides comment and advice on the strategic, financial, reputation and legal risks that a fiscal question of the electorate may pose to the corporation.

### **DISCUSSION**

#### *Provincial Political Background:*

Last September, Premier Kenney reiterated his Government's 2019 platform commitment that in conjunction with the upcoming municipal ballot, "Alberta will be holding a referendum to scrap equalization from the Constitution in October 2021." A reference to the Government of Canada program to "equalize" fiscal disparities among the provinces, the Premier has commented that Alberta is treated unfairly in Canada, making a historically net positive financial contribution to Confederation while being simultaneously blocked in efforts to develop the resources that have driven that contribution. The complex operation of the federal equalization program (which draws from general federal revenues and not provincial coffers) and the lack of clarity on the elements to change would suggest that the proposed referendum is a political exercise. As the Government's platform itself states, the ultimately non-binding referendum is meant "as leverage for federal action to complete a coastal pipeline and to demand reforms to the current unfair formula."

#### *Legal Background:*

Under s. 236 of the Municipal Government Act (MGA), Council has the power to put a non-binding question to the electors, but only on a matter over which the municipality has jurisdiction. Although this would prevent a direct question on how the province allocates its financial resources, the courts have taken a somewhat broader view of "municipal jurisdiction" that might allow for such a question to be tackled indirectly. Rejecting the notion that jurisdiction should be construed only as those areas where there is bylaw making power, courts have accepted questions regarding advocacy by a municipality to other orders of government concerning matters that affect the municipality. Though it should be noted that in the leading case on the matter, the province had asked municipalities explicitly to pose such a question. This is not true of the issue at hand.

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In addition to this jurisdictional clarity, the legal commentary also suggests that the question itself be clear, simple and direct, answerable with a simple “yes / no” or “for / against.” It should not refer to considerations which might influence voters, nor should it contain uncertainties, probabilities and possibilities which might be confusing – voters must be able to easily understand the question. Finally, the question should be as neutral and impartial as possible, and not suggest a “correct” or desired outcome. To this end, The City would be expected to provide neutral information to support voters’ decision-making.

Ultimately, if either the jurisdiction or question itself was unclear it could potentially be legally challenged, with the most likely outcome of a successful legal challenge being a court injunction restraining The City from proceeding with the question.

### *Strategic Background:*

The City has a long track-record of advocacy for changes to the fiscal framework, most actively at the provincial level, but also federally. This advocacy is rooted in well-established arguments that the fiscal tools and resources available to municipalities, and big cities in particular, are not commensurate with their level of contemporary responsibility. This fact of municipal life has guided City of Calgary engagement bilaterally and in partnership spanning the City Charter discussions, different iterations of the YYC Matters education campaigns, and most recently our COVID-19 Advocacy Strategy, which calls for “a new deal for cities” (see Attachment 2). Over time, this has been comprised of calls for specific changes (e.g. funding formulas, new fiscal tools) as well as attempts at more wholesale reform (e.g. assessment and tax reform). The City’s advocacy is also informed by the extensive work conducted by the members of the Financial Task Force, whose recommendations include several changes requiring provincial agreement. It is also worth noting that while our advocacy frequently calls for differential treatment for big cities, it does not propose that it come at the financial expense of our smaller neighbours. Alone and in concert with groups like the Big City Mayors’ Caucus, The City has consistently taken the view that it can use its weight to advance the interests of the municipal sector as a whole.

While the success of this advocacy has ebbed and flowed, there are recent signs of a potential for meaningful change. The COVID-19 pandemic has laid bare the fundamental inequities, and for the first time both the federal and provincial governments have acknowledged the nature of the challenge with a considerable contribution of operating support, which has flowed relatively seamlessly to Alberta municipalities. And while the province’s fiscal position is widely seen as having recently deteriorated, there is a unique opportunity to call on the Government of Canada to demonstrate national leadership in forging a new deal for cities.

### *Analysis and Risk*

It is not the role of City Administration to comment on the political wisdom, risks or benefits of posing a question to the voters on the fiscal framework. We offer the political context above only to demonstrate that to do so would be a highly political exercise, a decision that ultimately rests with Council. It is the role of Administration to comment and provide advice on the strategic, financial, reputational and legal risks that such an exercise question would pose to the Corporation.

It is difficult to conceive of an approach to this question that would not expose The City to an unreasonable level of strategic risk, alongside legal, financial and reputational risks.

- Those risks are summarized in the section on “Risk” below.

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- Attachment 1 identifies the specific risks associated with several possible questions, overall that risk can be summarized as follows:

The proposed provincial referendum on equalization (that has precipitated Council's interest in a parallel process) suffers from many of the same challenges, including a lack of clarity of purpose and outcome. Adding a question on The City's fiscal framework may or may not have some political value, but is likely only to compound the lack of clarity on the ballot, while simultaneously posing longer-term strategic and legal risks for The City.

### **STAKEHOLDER ENGAGEMENT AND COMMUNICATION (EXTERNAL)**

- Public Engagement was undertaken
- Public Communication or Engagement was not required
- Public/Stakeholders were informed
- Stakeholder or customer dialogue/relations were undertaken

### **IMPLICATIONS**

#### **Social**

Holding a Vote on a Question on the fiscal framework in alignment with a municipal election has no direct social impacts, though for the risks outlined below, could compromise The City's longer-term ability to finance its social priorities.

#### **Environmental**

Holding a Vote on a Question on the fiscal framework in alignment with a municipal election has no direct environmental impacts, though for the risks outlined below, could compromise The City's longer-term ability to finance its environmental priorities.

#### **Economic**

For the reasons outlined in the section on Risk below, holding a Vote on a Question on the fiscal framework could compromise The City's ability to advocate and/or capitalize on opportunities for change.

#### **Service and Financial Implications**

Existing operating funding - One-time

>/\$50,000

Additional communications will be required to support voter information about the questions (including voter information guides, paid social media, signage/displays and advertisements). The cost of these communications is incidental and can be accommodated within the current draft communications budget for the election. Additional staff time will be required to engage with "yes/no" scrutineers, which can be accommodated within existing resources, provided Council makes a decision on the question(s) by the end of the second quarter.

Should Council wish to include question(s) for a vote of the electors, the Returning Officer recommends \$50,000 as contingency within the election program budget to accommodate

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design and printing of a larger ballot and associated vote tabulator programming and testing support (currently unfunded).

### RISK

Holding a Vote on a Question on the fiscal relationship with the province poses a number of strategic risks, as well as legal and reputational risks for The City.

- **Financial and Legal Risk:** A broadly worded question seeking a “fair deal” for cities, or even to “adopt the recommendations of the Financial Task Force” (something Council has already directed), would be open to legal challenge as being too broad or unclear. A “fair” or “new” deal, or adoption of existing recommendations also suggests a preferred outcome, contrary to the legal direction. In either case, an injunction preventing the question could expose The City to legal costs as well as costs associated with reprinting ballots.
- **Strategic Risk and Financial Risk:** A more narrowly worded question may avoid these same legal concerns, but could effectively, though not legally, tie the hands of The City in future discussions even in the case of a “positive” outcome. A yes vote on a narrow question might provide a mandate for The City to pursue that particular path with the province but could effectively minimize the importance or relevance of opportunities for broader change, including the different recommendations of the Financial Task Force. Furthermore, a mandate to engage the province on a given outcome would require a dedication of limited resources to provincial engagement at a time when the federal government may be the more appropriate partner.
- **Strategic and Financial Risk:** Whether narrow or broad, a “no” vote would effectively preclude further advocacy on the matter of fiscal fairness. Although there is some evidence to suggest that Calgarians’ are open to changes in the fiscal framework (e.g. Chamber of Commerce Citizens’ Assembly, City Charter engagement), the province’s own fiscal situation is understood to be precarious, a context that might not lend itself to openness for change. Although not legally binding, a no vote could validate the current fiscal framework including recent decreases in transfers to The City of Calgary.
- **Reputational Risk:** The question itself and / or the subsequent debate could compromise The City’s reputation as a good neighbour and partner, particularly if the question was framed to mirror the provincial question on equalization. While The City has consistently pursued a fair deal, it has not sought to achieve this at the expense of other municipalities, which is what the provincial question is doing at the national level. A question on “intra-provincial” equalization among Alberta’s municipalities, as well as the subsequent debate and vote could risk The City’s ability to claim the need for enhanced regional cooperation over competition.
- **Reputational and Strategic Risk:** In all cases, posing a question on the fiscal framework alongside the municipal ballot would place Administration in a difficult position. The requirements of such a question carry an expectation that Administration provide a neutral assessment of the issue, but The City has not been neutral on this matter. Even in a presentation of the facts, may be perceived as biased, leading to both legal and reputational risk.

More detail on the risks associated with different questions can be found in Attachment 1

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**ATTACHMENTS**

1. List of Potential Questions on the Fiscal Framework and Associated Risks
2. City of Calgary COVID-19 Advocacy Priorities

Department Circulation

General Manager	Department	Approve/Consult/Inform
Chris Arthurs	Deputy City Manager's Office	Approve
Carla Male	Chief Financial Office	Approve

**List of Potential Questions on the Fiscal Framework and Associated Risks**

The following offers a range of possible questions on The City’s fiscal relationship with the province, arranged from the most narrow or specific to the most general or broad. They are meant only as examples, and there are of course other possible questions that could be considered. As a supplement to the more generalized risks identified in Council Report C2021-0175, this assessment also identifies the specific risks associated with each possible approach.

Given the nature of any question on The City’s fiscal framework and relationship with the province, should Council wish to proceed with one of the approaches to a question on the fiscal framework despite these risks, more detailed would need to be done in conjunction with experts in question-design, particularly to:

- **Ensure clarity** – It is critical to ensure the meaning of the question is well-understood and does not rely on vague terms or undefined descriptions. These issues do not necessarily lend themselves to plain-language, concise wording.
- **Provide adequate context** – These are complex matters, and while there is a need to be as succinct as possible, electors will need information to be able to answer it to the best of their ability. Without any context The City may be leaving itself open to criticism and confusing constituents.
- **Avoid predisposition** – The City of Calgary has a long-standing position that reform of the fiscal framework is required (see “Strategic Context” in the attached Report). The way The City is given to thinking about these issues may generate questions that suggest a correct or preferred answer.

As noted in the cover report it is difficult to design a question on tax policies issues that is free from legal risk, let alone strategic, financial and reputational risks. All the questions below attempt to mitigate risk however none of them completely eliminate the risk of a successful legal challenge

**Approach 1: Yes / No question on a specific change to the fiscal framework**

Example:

- **“Should Council advocate for the provincial government to eliminate its property tax requisition, leaving all property tax dollars with The City of Calgary? Yes or No?”**

Risks:

- A yes vote on such a question could effectively limit the advocacy options available to The City. Although not legally binding, such a vote could generate an expectation that limited resources be focused on the one position, marginalizing the importance of proposals for reform, including the range of options put forward by the Financial Task Force.
- The legitimacy granted by a yes vote on the pursuit of change at the provincial level (on a narrow or broad question) could limit the ability to engage the Government of Canada, where advocacy resources may be better spent in the current context.
- A specific question like the one above is likely to engage other interests that might be affected by a change that is perceived to benefit The City at their expense. In the above example, local

school boards, who are the current beneficiaries of the provincial property tax requisition would likely be opposed, generating reputational damage with key local stakeholders.

- Although arguably clearer than a broadly worded question on “fiscal fairness,” even this question introduces complex issues that are unlikely to boil-down to a “yes/no” decision for electors.

Approach 2: Yes / No question mirroring the provincial referendum on equalization

Example:

- **“Should the City advocate to the province to stop collecting provincial property tax dollars from Calgarians in a way that moves that money outside of Calgary? Yes or No?”**

Risks:

- While this has the benefit of a clear link to the expected provincial question, there is in fact no local analogy to the federal equalization program. Any redistribution that does take place between Alberta municipalities does so through a multitude of different programs and spending. It would therefore be unclear what Calgarians were being asked to vote on and could be open to legal challenge.
- Although over time, Calgarians have provided more into provincial revenues than they have received, because of the complexity of any provincial redistribution, it is difficult to paint a precise picture of that amount and therefore what exactly Calgarians would be asked to vote on.
- Relatedly, The City has tended toward a position of intermunicipal cooperation rather than competition. And while The City has advocated for improved financial support, it has not suggested that this come at the expense of other municipalities. A question asking Council to advocate to keep tax dollars in Calgary at the expense of regional and provincial partners could cause reputational damage for The City.

Approach 3: Yes / No question on the recommendations of the Financial Task Force

Example:

- **“Should The City advocate to the province to implement the recommendations of the Financial Task Force that require provincial cooperation? Yes or No?”**

Risks:

- While this would have the advantage of encompassing several advocacy items, thus not tying The City’s hands as in Approach 1, the Financial Task Force’s recommendations do not cover the full range of City interests in fiscal reform. In addition to this potential limitation on provincial engagement, a yes vote would also put pressure on The City to divert resources from other engagement with the Government of Canada. A no vote, by contrast, could effectively undo the months’ worth of work that the external expert participants on the Financial Task Force put into developing recommendations for change.

- Relatedly, while the question refers to a specific set of proposals, it would be difficult to consider those proposals outside of the context of the full report and associated materials. It is not clear that sufficient information could be provided concisely to voters, opening the question to challenges.
- As the recommendations of the Task Force have already been endorsed by Council, it would be difficult for this question to be perceived as neutral, but rather suggesting a preferable outcome.

Approach 4: Yes / No question on the “fairness” of the fiscal framework

Example:

- **“Should The City advocate for a fair deal for cities?”**

Risks:

- A “yes” vote on such a broad question would preserve The City’s ability to continue long-standing advocacy in pursuit of a “fair” or “new” deal, both independently and in partnership with other cities and organizations. Yet because of this breadth, a “no” vote could have the effect of foreclosing on any such advocacy going forward.
- The use of terms like “fair” or “new” deal also suggests that the current system is “unfair” or “outdated.” A question that suggests a correct or preferred answer would be open to legal challenge and associated costs.
- Furthermore, it might be a lot to ask voters to reach a simple yes or no response to such a broadly stated question. What is meant by a “fair” deal? What are the trade-offs? There are simply too many other considerations.



## City of Calgary COVID-19 Priorities for the Government of Canada and the Government of Alberta



1

**Aid to vulnerable citizens and non-profits that support them**  
Immediate priority for the most vulnerable



2

**Aid to business**  
Direct support to business



3

**Aid to municipalities**  
A backstop for municipalities incurring unrecoverable operating losses



4

**Stimulative infrastructure**  
A major new infrastructure plan to get people working and the economy humming



5

**Long term economic resilience and a new deal for cities**  
A vision to recover and rebuild

