

Proposed Letter to Minister of Municipal Affairs

Honourable Ric McIver
Minister of Municipal Affairs
Office of the Minister
Municipal Affairs
320 Legislature Building
10800 - 97 Avenue
Edmonton, AB
T5K 2B6

Dear Minister McIver

In 2022 March, Calgary City Council approved [Council's Strategic Direction](#) for 2023-2026. Within this Strategic Direction, Council identified "Modernizing Government" as one of Council's Focus Areas, and states "Calgary requires an updated ... Local Authorities Election Act, to remedy changes of the past which have caused confusion, and unintended consequences." Council also has a related interest in ensuring Code of Conduct legislation is suitable to ensure the integrity and high standard of conduct for our Council members, and when this fails, to meet Council's need to take action.

We were initially pleased to hear that the Ministry was conducting engagement on the Local Authorities Election Act (LAEA) and the Code of Conduct provisions within the Municipal Government Act (MGA). The topic of election reform is both important to local democracy and local governance. We were hopeful that these consultations would provide the opportunity for thoughtful discussion about these serious topics, and result in meaningful change where it is needed, however, we are disappointed on a number of fronts.

Firstly, the LAEA topics that the Ministry is consulting on at this time are limited and narrow in scope. Although our Council does have opinions on these items (Attachment), making amendments related to these questions only will not lead to meaningful legislative change. These are simply not the right questions to be asking. Further, making small amendments to the LAEA without considering the larger topic of election reform, will once again only lead us deeper in the direction of "confusion and unintended consequences" which we have noted in our Council Focus Area statement.

Secondly, the time to engage on this important topic is far too short. These issues are complex, and Council has much to say, but it takes time to delve into these topics in detail, not to mention the time needed to schedule these conversations so they can take place in a manner that is open and transparent to our citizens, such as at Committee or Council meeting.

Thirdly, in addition to the narrow list of items in this consultation, there are numerous other topics that our Council members, and likely other Councils in this province, would like to see addressed. These include, but are not limited to:

- The difficulty for candidates to open a bank account

- Privacy – names and addresses of candidates and donors continue to be accessible at the elections office. Despite the recent amendments in Bill 21 to address the potential for personal information to be disclosed, there still appear to be gaps
- The rules for third party advertisers are different than for candidates; the rules should be equivalent for both
- Making sure legislative provisions are all connected and work together so the legislation is easy to use, interpret and understand
- Vetting process for candidates, which could include a police check and a vulnerable persons check

These are only a sampling of the challenges our members of Council have identified with the LAEA.

In terms of Code of Conduct, it is critical that we have the legislation to ensure that our Council works well and holds itself to the highest standards as public elected officials. When problems arise – as they do – we need supportive legislation that provides Council the tools to effectively deal with these matters. All Councils will find themselves in difficult spots from time to time, and it can erode public trust if these situations are not addressed.

In short, Calgary City Council requests both more time for this engagement and a broader scope of discussion. This may ultimately require a deep dive into the legislation to ensure that it is effective for citizens, candidates, Councils, and Administrators, and works in conjunction with Code of Conduct provision of the MGA.

I would further suggest that the Ministry consider hosting regional events to engage with Councils and Councillors directly on these matters.

I urge you to dedicate adequate time and resources into exploring these issues. Let's get this right for all Albertans.

Jyoti Gondek
Mayor
City of Calgary

Attachment

LAEA / Code of Conduct Engagement: What We Heard So Far

Context of What We Heard:

The answers below contain the compiled responses of some members of Council to the discussion, plus highlights from the discussion at IGA committee on 2022 June 15. Overall, IGA committee stated that:

- 1) The time allotted to respond to Municipal Affairs’ engagement was inadequate, given the depth and complexity of the issues at hand
- 2) Many of the questions being asked are not the right questions to lead to electoral reform
- 3) More time and engagement are needed on these and other items related to the Local Authorities Election Act (LAEA) and the Code of Conduct.

Given IGA Committee’s concerns over this engagement, the answers below should not be taken as Calgary City Council’s full or complete stance on the questions asked, or other related topics arising.

LOCAL AUTHORITIES ELECTION ACT (LAEA)

Enhanced Councillor Accountability

Current State

The LAEA sets out eligibility requirements to run for council. There is no opportunity to challenge eligibility of candidates under the LAEA. Eligibility Criteria (LAEA Section 21)

- Must be eligible to vote in that election.
- Must be a resident of jurisdiction for the previous six months.
- Cannot owe \$50 in taxes to the local authority or have owed over \$500 in the previous 90 days.
- Must not have been convicted of election finance violations in the past 10 years.
- Must file appropriate finance disclosure forms in the previous eight or three years, depending on type of disclosure.

| # | Question | Comment / Response |
|---|--|--|
| 1 | Are the eligibility criteria for an individual to be nominated as a municipal candidate adequate? a. If not, please provide your suggestions for improvement. | <p><i>Note: Given the ties to the Code of Conduct, please also refer to the Code of Conduct consultation questions (below).</i></p> <p><i>Overall IGA committee felt that not enough time has been given to weigh in on these questions adequately</i></p> <ul style="list-style-type: none"> ▪ Adequate is hard to define ▪ There was concern raised that limiting who can run for office might infringe on someone’s right to do so. ▪ LAEA and Code of Conduct need to be consistent and connected in terms of qualification and eligibility to run. Eligibility and disqualification are essentially the reverse of each other and should be consistent. ▪ Police Check and Vulnerable Persons Check should be conducted as part of eligibility requirements |

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| 2. | <p>Are the criteria and process for disqualifying a councillor appropriate?</p> <p>a. If not, please provide your suggestions for improvement.</p> | <p><i>Note: Refer to related question above, as well as the Code of Conduct discussion (below)</i></p> <ul style="list-style-type: none">▪ Some additional rigor in who can run may be helpful▪ It may be difficult to define what would constitute a disqualification.▪ Concern that disqualification could also be used as a political tool to prevent someone from running.▪ There is a big distinction between criteria and process |
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Protecting Voters

Current State

If the returning officer believes a person is not eligible to be an elector, they must make a note in the elector register that includes the rationale. The elector is still permitted to vote.

Under Section 49 of the LAEA a municipality may, by bylaw, prepare a permanent electors register.

- The permanent electors register may contain electors' name, residential address, phone number, gender, and birthdate.
- The register is not distributed to candidates; it is intended to assist the municipality in running the election.
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Section 50 of the LAEA also allows a municipality to, by bylaw, direct the returning officer to prepare a list of electors who are entitled to vote in the municipal election. This list must be provided to a candidate upon request after the close of nomination day.

- The candidate must only use the list of electors for the purpose of campaigning for the election.
- Misuse of the information on the list is an offence under Section 158. A person found guilty is liable to a fine of not more than \$100,000, or imprisonment for one year, or both

| # | Question | Comment / Response |
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| 1. | Should candidates, their scrutineers, or their official agent continue to have the opportunity to object to an individual who has shown up to vote? | <ul style="list-style-type: none">▪ Yes. There needs to be mechanisms in place to ensure that voters are eligible to vote and a means to object to those who show up to vote but are not eligible. |
| 2. | Should candidates be able to request access to the list of electors? | <ul style="list-style-type: none">▪ Should a list of electors be used, measures to safeguard access to personal information and rigor in the qualification of candidacy are required |

Strengthening Democracy

Current State

Elections that use alternative voting equipment, such as voting machines or tabulators, are not eligible for judicial recount.

The LAEA regulates third-party advertising for or against a candidate during the election advertising period. Third-party advertisers who address an issue, and do not state support or opposition to a candidate, are not subject to any provisions in the LAEA.

Registration as a third party advertiser will mean that the provisions of the Local Authorities Election Act apply, including donations to that organization are limited to Alberta residents as well as corporations and trade unions that ordinarily do business in Alberta.

| # | Question | Comment/ Response |
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| 1. | Should elections conducted with electronic voting equipment be eligible for judicial recount, where the judge can order the votes be recounted by hand or run through the electronic tabulator again? | <ul style="list-style-type: none"> ▪ Yes, elections conducted with electronic voting equipment should be eligible by judicial recount with criteria in place to stipulate in what cases a recount should occur and the mechanism of how this should occur. ▪ <i>Note: Discussion at IGA committee focused on clarifying the current legislation and the differences between counting outcomes using the same method of voting (ex. tabulating machine for both vote and recount) vs. using a different method for a recount (ex. vote by tabulator, recount by hand)</i> |
| 2. | Should third parties advertising for or against an issue that is the subject of a vote (e.g., municipal referendum question) be required to register? | <ul style="list-style-type: none"> ▪ Yes, they should be required to register to bring more transparency and accountability into the election process. ▪ The rules for third parties differ significantly than for candidates. This is an inequity that should be remedied. The same rules should apply to both. ▪ Third parties should be required to release donor lists |
| 3. | Should third parties advertising any issues that have been raised by candidates in a municipal election be required to register? | <ul style="list-style-type: none"> ▪ Yes, they should be required to register to bring more transparency and accountability into the election process. ▪ The rules for third parties differ significantly than for candidates. This is an inequity that should be remedied. The same rules should apply to both. ▪ Third parties should be required to release donor lists |

CODE OF CONDUCT

1. Has your municipality experienced challenges related to enforcing its Code of Conduct?

a. If so, what were those challenges?

- Four reports have been made to Council to date.
- In two cases, the Councillor did not fully comply with the sanctions imposed by Council. The challenge under the current system is enforcing a sanction.
- Enforcement measures are required as the current system lacks 'teeth'.

2. Do you think the current legislation on Code of Conduct is sufficient and meets the requirement of municipalities to provide fair and accountable governance? a. If no, please provide your suggestions.

As a general statement, no, the current legislation is not sufficient because it is difficult to enforce. There should be consequences for those who breach the Code and do not respond to sanctions. This could include possible financial penalties, and to make this change requires an amendment to the MGA.

Committee had a lengthy discussion on the Code of Conduct item that revealed how serious it is overall. The three main themes of the discussion were: the sanctions available under the legislation may not be sufficient, enforcement is difficult, and the grounds for disqualification may need to be expanded.

Committee further noted that this survey style question is not sufficient to address the complexities of this issue. More time and engagement are needed to do this issue justice. "In our opinion, (it is) too serious of an issue to respond in the timeframe given."

Other thoughts:

- The current legislation concerning codes of conduct is not sufficient
- Enforcement measures should be strengthened
- The grounds for disqualification are not broad enough and should consider the following:
 - Disqualification for immoral behaviour
 - Previous criminal record, but noted issues that a blanket approach may not be appropriate due to the nature of some offenses
 - Holding Council members to a higher standard than what is presently required
- Sanctions
 - It is difficult to enforce sanctions; the system needs an enforcement mechanism.