



REPORT

Report Date: April 1, 2022
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Meeting Date: April 12, 2022
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TO: Vancouver City Council
FROM: Chief Election Officer
SUBJECT: Proposed Amendments to the Election By-law No. 9070

RECOMMENDATION

- A. THAT Council approve, in principle, the proposed amendments to the Election By-law, generally as set out in Appendix A of this Report.
- B. THAT Council direct staff to seek approval from the Minister of Municipal Affairs for the proposed amendments to the Election By-law in accordance with section 74(4) the *Vancouver Charter*.
- C. THAT Council direct staff to report back with the decision made by the Minister of Municipal Affairs, and if approved, bring forward the proposed by-law amendments for enactment.

REPORT SUMMARY

The purpose of this report is to seek Council approval for proposed amendments to the Election By-law to be incorporated into the 2022 municipal election implementation.

The Province reduced the requirements for mail ballots under the *Vancouver Charter* in 2021, and now all voters may vote by mail. As a result of this change and the ongoing COVID-19 pandemic, staff anticipate a much higher number of mail ballots being requested during the 2022 Vancouver election. Staff are therefore proposing amendments to the Election By-law to provide more time for election administrators to open and process mail ballots.

With the anticipated increase in mail ballot requests, staff are also proposing the introduction of an adjudication process for ballots processed in the absence of a voter (mail ballots or ballots left at a voting place) for the rare occasions when voter intentions are clear but the ballot

tabulator cannot read a ballot due to a tear in the ballot or other markings outside of the normal marking area on the ballot. Approval of the Minister of Municipal Affairs is required to enable the process in the Election By-law, in accordance with section 74(4) of the *Vancouver Charter*.

An additional amendment will address rare occurrences when a voter might leave their marked ballot with an election official at the voting place before it has been inserted into a tabulator. This amendment will allow election officials to store completed ballots in the auxiliary compartment of the ballot box until the close of voting, at which time the ballots can be inserted into the ballot tabulator to be counted without the voter being present.

Finally, based on feedback from the City's Persons with Disabilities Advisory Committee and a jurisdictional scan of the service offerings of other municipalities in Canada, staff are also recommending the introduction of a Home-Bound voting program, which would allow voters who are unable to leave their home to arrange a time for election officials to come to their home to allow them to vote. This program would be introduced as a pilot program for the 2022 Vancouver election, and an anticipated 100 electors would be served as part of the program.

COUNCIL AUTHORITY/PREVIOUS DECISIONS

The authority for conducting an election in the City of Vancouver is set out in the *Vancouver Charter* and the Election By-law. The Province regulates campaign financing through the Local Elections Campaign Financing Act.

CITY MANAGER'S/GENERAL MANAGER'S COMMENTS

The City Manager recommends approval of the foregoing.

REPORT

Strategic Analysis

1. Amendment: Allow staff to process mail ballots earlier

Section 4.10 of the Election By-law provides that election staff are not permitted to open and insert returned mail ballots into a ballot tabulator until the close of voting (8 pm on the night of General Voting Day). In 2018, processing the approximate 1,300 mail ballots that were returned by mail to the Election Office took over four hours and required several staff and multiple ballot tabulators to complete the task.

The Province recently reduced the requirements in the *Vancouver Charter* concerning mail ballots, which used to restrict eligibility for a mail ballot to those who were physically unable to get to a voting place and/or who were away during all advance voting opportunities. An amendment to the *Vancouver Charter* in 2021 now allows all eligible voters to vote by mail.

As a result of the COVID-19 pandemic, other jurisdictions who have recently held elections have seen a significant uptake in the number of mail ballot requests as many voters do not feel comfortable attending busy voting places.

Based on these changes, staff anticipate a significant increase in mail ballot applications for 2022, which could reach 20,000 to 45,000 mail ballot requests (approximately 5-10% of registered voters). In order to manage these higher volumes, staff will need more time to process mail ballots in order to meet the legislative deadline for final election results as set out in section 108 of the *Vancouver Charter*, which is 4 pm on the fourth day following close of general voting. Staff are recommending amendments to the Election By-law that would allow staff to begin opening and inserting mail ballots into designated mail ballot tabulators during the advance voting period. The processing of mail ballots by the ballot tabulator would be open for observation by scrutineers and results would not be tallied until 8 pm on election night, similar to how advance voting results are tabulated. All mail ballot tabulators, similar to advance voting tabulators, would be safely secured during that period.

The sections of the Election By-law affected are as follows:

Current Bylaw Section	Proposed Bylaw Section
<p>Opening of certification envelope 4.10 Each unopened certification envelope accepted under section 4.7 must remain in the custody of the Chief Election Official until 8:00 p.m. on general voting day, after which time the Chief Election Official must open the certification envelope containing the secrecy envelope in the presence of at least one other person.</p>	<p>4.10 Each unopened certification envelope accepted under section 4.7 may be opened at any time after it has been received at the election office, but may only be opened by the presiding election official in the presence of at least one other person.</p>

2. Amendment: Adjudication Process for Mail Ballots

Related to this new mail ballot process, staff is recommending Council introduce an adjudication process for ballots that are processed in the absence of the voter. There are rare times when the ballot tabulator machine is unable to read a ballot (e.g. the ballot has been torn, has ink smudges or damage); however, the intent of the voter is clear. The following amendments will be reflected in section 6 of the by-law.

In order to ensure as many ballots and votes can be counted as possible, staff are proposing that an adjudication process be introduced to count these ballots by creating a replacement ballot and having an adjudication team re-mark the ballot to replicate the original ballot. In the past, if the ballot tabulator was unable to read the ballot, the ballot would be marked as spoiled and not counted towards the final election results tally. The adjudication process will include developing clear guidelines for the adjudication team (designated by the Chief Election Officer) to determine when and how to mark a new ballot, and will also allow scrutineers and candidate representatives to observe the process and object to any interpretations of voter intent by the adjudication team. This process would not apply to ballots that include over votes (too many candidates selected in one or more races) as voter intent would not be clear, and the current By-law already addresses this issue.

The proposed adjudication process is similar to those developed by other jurisdictions, such as Elections BC and the City of Toronto. In absence of these amendments, these ballots that would have been set aside for the adjudication process would be considered spoiled ballots and not counted in the final results.

There are also infrequent times when a voter abandons their ballot by giving it to a ballot box attendant at a voting place. For example the voter may be frustrated by the wait to use the ballot tabulator, and simply leaves their ballot. Staff are proposing an amendment to clarify what to do in these circumstances. The proposed amendment is intended to ensure that as many ballots are counted (rather than spoiled and not counted) by allowing a voting place election official to insert the ballot into a tabulator after the close of voting (8 pm) as if the ballot was a mail ballot.

3. Amendment: Special Voting Opportunities - Home-Bound Voting

The home-bound voting program would allow home-bound electors to vote from their residence. The program would be provided to electors who are unable to attend a voting place or vote by mail, without unreasonable difficulty due to illness, injury, disability or limited mobility. A resident caregiver for any such elector could also use the proposed program.

The eligibility criteria for the home-bound program would include an honour system approach, whereby the elector must affirm that they cannot attend a voting place, vote by mail or vote independently due to a disability, illness or other constraints.

A request for home-bound voting would be completed by the elector (or on their behalf by a relative or caregiver) and sent to the Election Office. An appointment would be scheduled and election officials would then attend the elector's residence to facilitate the voting process. The home-bound voting program is planned as a pilot project for the 2022 election, after which it will be evaluated. This program is supported by the Persons with Disabilities Advisory Committee as included in an approved resolution at the Committee's March 10, 2022 meeting. This amendment will be added to section 3 of the by-law.

Implications/Related Issues/Risk

Financial

There are no financial implications.

Legal

These proposed changes require amendments to the Election By-Law as outlined in Appendix A.

The amendment to include an adjudication process requires the Minister of Municipal Affairs to approve the proposed by-law. This is set out in section 74 (4) of the *Vancouver Charter*, which is attached as Appendix B. Section 74 of the *Vancouver Charter* allows Council to enact by-laws concerning the use of automated voting machines that govern in place of the ordinary rules in the *Vancouver Charter*, if the by-law is confined to:

- (a) procedures for how to vote, to be used in place of those established by section 91;
- (b) the form of ballot, if this is to be different from the form of ballot otherwise required by this Act;
- (c) procedures, rules and requirements regarding the counting of votes, if these are to be different from those established by Division (13).

Staff are proposing rules that fall outside of these limits. In particular, the adjudication process staff are proposing falls outside of the rule set out in section 90 of the *Vancouver Charter* regarding replacement ballots for spoiled ballots. The proposed rules therefore require the approval of the Minister of Municipal Affairs pursuant to section 74(4) of the *Vancouver Charter*. If Council approves the by-laws in principle, Legal Services will seek Ministerial approval and report back on the outcome.

CONCLUSION

Building on the success of the 2018 municipal election, the proposed Election By-law amendments will continue to support our goals of maintaining the integrity of elections processes, increasing administrative efficiency and making voting more accessible for voters.

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BY-LAW NO.

**A By-law to amend Election By-law No. 9070
regarding mail ballots and special voting**

THE COUNCIL OF THE CITY OF VANCOUVER, in a public meeting, enacts as follows:

1. This By-law amends the indicated provisions of or adds provisions to the Election By-law.

2. Council strikes the definition of “spoiled ballot” from section 1.2 and replaces it as follows:

““spoiled ballot” means a ballot:

- (a) on which an elector has not correctly marked a choice of candidate,
- (b) on which an elector has not correctly marked an answer to a question,
- (c) to which damage has occurred so as to prevent the vote counting unit from reading the ballot; or
- (d) in the case of a mail ballot, a ballot that is determined to be spoiled in accordance with the adjudication system established in section 6A of this By-law;”.

3. Council strikes sections 3.5 and 3.6 and replace them as follows:

“Voting at special voting opportunities

3.5 Electors may only vote at a special voting opportunity if they:

- (a) have a disability, illness or injury that significantly affects their ability to vote at another voting opportunity, or the elector is largely confined to their residence, or the elector is a resident caregiver to such an elector; or
- (b) are users of an emergency shelter or social service centre, or
- (c) are residents or patients of a hospital, care facility or similar facility or institution located in the City that has beds for 30 or more persons who qualify as electors.

Special voting opportunity procedures

3.6 The procedures for voting and counting the vote at a special voting opportunity include the following exceptions:

- (a) an elector who is unable to proceed to a voting compartment because of impaired mobility may request to vote elsewhere in the facility and, after receiving the request, the presiding election official or a person

designated by the presiding election official must attend to the elector for the purpose of allowing the elector to receive and mark a ballot;

- (b) instead of signing the list of registered electors or voters book, an elector who wishes a ballot may complete a form prescribed by the chief election officer, and the completion and signing of the form is deemed to meet the requirements of section 87(l)(c) of the Vancouver Charter; and
- (c) if the special voting opportunity is conducted at a place where no vote counting unit is made available, then the ballot is to be sealed and transported securely to the election office and inserted into a vote counting unit in accordance with the mail ballot provisions of this By-law.”.

4. Council strikes section 4.3 and replaces it with the following:

“Mail ballot package

4.3 Upon receipt of an application for a mail ballot during the period that begins on the 18th day before general voting day and ends at noon on the fourth day before general voting day, the chief election officer must:

- (a) make available to the applicant, a mail ballot package that must be picked up no later than noon the day before general voting day; and
- (b) immediately record, and, upon request in person by an election official, candidate representative or elector, make available for inspection by any such person:
 - (i) the name and address of the person to whom the chief election officer issued the mail ballot package, and
 - (ii) the number of the voting division, if any, in which such person is registered as an elector or as a “new elector” if that person is not on the register of electors.”.

5. Council adds a new section 4.3A as follows:

“Early mail ballot package

4.3A If the chief election official authorizes applications for mail ballots to be submitted prior to the 18th day before general voting day in accordance with section 4.2, all applications received prior to the 18th day are not to be processed in accordance with section 4.3 until the form of ballot has been finally determined in accordance with this By-law and the Vancouver Charter.”.

6. Council strikes section 4.10 and replaces it as follows:

“Opening of certification envelope

4.10 Each unopened certification envelope accepted under section 4.7 may be opened at any time after it has been received at the election office, but may only be opened by the presiding election official in the presence of at least one other person.”.

7. Council strikes section 6.21 and replaces it as follows:

“Validity of ballot

6.21 Subject to the result of a judicial recount, and the adjudication of ballots under section 6A, any ballot accepted by a vote counting unit is valid and any acceptable marks contained in such ballot must count in the election.”.

8. Council inserts new sections 6.23A and 6.23B as follows:

“If elector leaves

6.23A If an elector tells an election official they intend to leave a polling place before their ballot is inserted into a vote counting machine, the elector may give the ballot to an election official who must insert the ballot into the emergency ballot compartment.

6.23B Any ballot inserted into an emergency ballot compartment for any reason is to be counted in accordance with section 6A as if the ballot was a mail ballot.”.

9. Council strikes sections 6.24 and 6.30, and replaces them with “DELETED”.

10. Council inserts a new section 6A as follows:

**“SECTION 6A
COUNTING MAIL BALLOTS**

Counting mail ballots

6A.1 Mail ballots are to be counted in the same manner as in person ballots, except as otherwise provided in this By-law.

6A.2 If a mail ballot is returned by a vote counting unit only because the ballot is not marked in any way or the ballot includes an over-vote for any elected office or for any ballot question, then the presiding election official must use the ballot return over-ride procedure.

6A.3 If a mail ballot is returned by a vote counting unit because it is unreadable or if the mail ballot cannot be inserted into a vote counting unit, the ballot should be placed in a “For Adjudication” box.

6A.4 Only a presiding election official may remove a mail ballot from a “For Adjudication” box, and may only do so in the presence of another person.

6A.5 A presiding election official may inspect any mail ballot in a “For Adjudication” box, but may only do so in the presence of another person.

Voter intention

6A.6 Following an inspection of a mail ballot that had been placed in a “For Adjudication” box, if the presiding election official determines that the intention of the voter is unclear for every elected office and every ballot question, then the presiding election official must allow a present scrutineer or present candidate representative to view the ballot.

6A.7 If a present scrutineer or a present candidate representative agrees with the presiding election official’s determination that the intention of the voter is unclear for every elected office and every ballot question, then the presiding election official must place the ballot in the “Spoiled Ballots” box.

6A.8 If a present scrutineer or a present candidate representative disagrees with the presiding election official’s determination that the intention of the voter is unclear for every elected office and every ballot question, then the presiding election official must mark a replacement ballot representing the voter intention upon which there is agreement, unless there is no agreement in which case then the presiding election official must place the ballot in the “Spoiled Ballots” box.

6A.9 Following an inspection of a mail ballot that had been placed in a “For Adjudication” box, if the presiding election official determines that the intention of the voter is clear for every elected office and for every ballot question, then the presiding election official must allow a present scrutineer or present candidate representative to view the ballot.

6A.10 If a present scrutineer or a present candidate representative agrees with the presiding election official’s determination that the intention of the voter is clear for every elected office and every ballot question, then the presiding election official must mark a replacement ballot representing the voter intention upon which there is agreement.

6A.11 If a present scrutineer or a present candidate representative disagrees with the presiding election official’s determination that the intention of the voter is clear for every elected office and every ballot question, then the presiding election official must mark a replacement ballot representing the voter intention upon which there is agreement.

6A.12 Following an inspection of a mail ballot that had been placed in a “For Adjudication” box, if the presiding election official determines that the intention of the voter is clear for any elected office or for any ballot question, then the presiding election official must allow a present scrutineer or present candidate representative to view the ballot.

6A.13 If a present scrutineer or a present candidate representative agrees with the presiding election official’s determination that the intention of the voter is clear for any elected office or any ballot question, then the presiding election official must mark a replacement ballot representing the voter intention upon which there is agreement.

6A.14 If a present scrutineer or a present candidate representative disagrees with the presiding election official's determination that the intention of the voter is clear for any elected office or any ballot question, then the presiding election official must mark a replacement ballot representing the voter intention upon which there is agreement, unless there is no agreement in which case then the presiding election official must place the ballot in the "Spoiled Ballots" box.

6A.15 Before inserting a replacement ballot into a vote counting unit, a presiding election official must allow a present scrutineer or a present candidate representative to view the replacement ballot and compare it to the original ballot.

6A.16 If the presiding election official confirms that the voter intention on the replacement ballot replicates the voter intention on the original ballot, then the original ballot is to be placed in the "Adjudicated Ballots – Originals" Box, and the replacement ballot is to be inserted into a vote counting unit.

6A.17 If a present scrutineer or a present candidate representative disputes that the replacement ballot is a replica, then the ballot is to be reviewed by the presiding election official, and the presiding election official may create another replacement ballot or affirm the disputed replacement ballot is a replica.

6A.18 If the presiding election official marks a replacement ballot pursuant to sections 6A.8, 6A.10, 6A.11, 6A.13 and 6A.14 they must then:

- (a) log the replacement ballot in the Statement of Adjudicated Ballot Account;
- (b) initial the replacement ballot outside the registration marks;
- (c) stamp "replaced" on the front of the original ballot;
- (d) place the original in the "Adjudicated Ballots - Originals" box.

6A.19 The "Adjudicated Ballots – Originals" Box must be kept secure at all times."

- 11. A decision by a court that any part of this By-law is illegal, void, or unenforceable severs that part from this By-law, and is not to affect the balance of this By-law.
- 12. This By-law is to come into force and take effect on the date of its enactment.

ENACTED by Council this day of , 2022

Mayor

City Clerk

Use of voting machines

A. 74. (1)The Council may, by by-law, provide for the use of automated voting machines, voting recorders or other devices for voting in an election, subject to any requirements, limits and conditions established by regulation under section 128.

(2)A by-law under subsection (1) must include the following:

1. (a)procedures for how to vote, to be used in place of those established by section 91;
2. (b)the form of ballot, if this is to be different from the form of ballot otherwise required by this Act;
3. (c)procedures, rules and requirements regarding the counting of votes, if these are to be different from those established by Division (13).

(3)If a by-law under subsection (1) includes only provisions referred to in subsection (2), to the extent there is an inconsistency between the procedures, rules and requirements established by the by-law and the procedures, rules and requirements established under this Part, the by-law prevails.

(4)If a by-law under subsection (1) includes provisions other than those referred to in subsection (2) and is approved by the minister, to the extent that there is an inconsistency between the procedures, rules and requirements established by the by-law and the procedures, rules and requirements established under this Part, the by-law prevails.