



TO: CITY MANAGER **DATE:** 2021 January 29

FROM: CITY CLERK

SUBJECT: MAIL BALLOT VOTING AND SPECIAL VOTING OPPORTUNITIES FOR THE 2021 BY-ELECTION

PURPOSE: To inform Council on the advisability and feasibility to offer mail ballot voting and special voting opportunities in the 2021 local by-election, and seek authorization to amend *Burnaby Voting Opportunities Bylaw 2020* to provide for special voting opportunities.

RECOMMENDATIONS:

1. **THAT** Council postpone potential implementation of mail ballot voting until the 2022 general local election.
2. **THAT** Council authorize the City Solicitor to bring forward amendments to *Burnaby Voting Opportunities Bylaw 2020* to provide for special voting opportunities, as outlined in Section 9.1 of the report.

REPORT

1.0 INTRODUCTION

At the 2020 October 26 Open Council meeting, Council received the “City Of Burnaby By-Election” report providing an update on preparations for the 2021 local by-election to fill two Councillor vacancies. In the report, staff advised Council they will examine the advisability and feasibility of special voting opportunities (SVOs). Arising from discussion, Council adopted a motion directing staff to also report on the advisability and feasibility of mail ballot voting.

The City has provided SVOs in seniors’ care facilities and Burnaby General Hospital during previous general local elections. The City does not currently provide mail ballot voting for its local elections. For Council’s information, the City received approximately 50 requests for this type of voting opportunity in the 2018 election. At that time, staff indicated they will review provision of mail ballot voting prior to the 2022 general local election.

2.0 POLICY SECTION

Initiatives outlined in the report are aligned with the City of Burnaby's Corporate Strategic Plan by supporting the following goals and sub-goals of the Plan:

- A Safe Community
 - Emergency preparedness – Enhance plans, procedures and services so that we are better prepared to respond to emergencies and are able to maintain City services
- A Connected Community
 - Partnership – Work collaboratively with businesses, educational institutions, associations, other communities and governments
- An Inclusive Community
 - Serve a diverse community – Ensure City services fully meet the needs of our dynamic community
- A Thriving Organization
 - Organizational culture – Ensure that our core values are reflected in our policies, programs and service delivery
 - Communication – Practice open and transparent communication among staff, Council and the community

3.0 LEGISLATION

3.1 Mail Ballot Voting

The *Local Government Act (LGA)* outlines provisions for mail ballot voting.

Section 110(1) of the *LGA* authorizes the City, by bylaw, to permit mail ballot voting and voter registration in conjunction with this voting, for voters who:

- have a physical disability, illness or injury that affects their ability to vote at another voting opportunity; or
- expect to be absent from the municipality on General Voting Day and during all advance voting opportunities.

The bylaw may set out procedures for voting and registration that differ from those established under other provisions of the *LGA*, and establish, or authorize the Chief Election Officer (CEO) to establish, time limits in relation to mail ballot voting.

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The LGA specifies items that must be included in a mail ballot package, including the following:

- the ballot or ballots to which an voter is entitled;
- a secrecy envelope that has no identifying marks, in which the ballots are to be returned;
- a certification envelope printed with the information required under the LGA for completion by voter and in which the secrecy envelope is to be placed;
- an outer envelope on which is printed the address of the CEO and in which the secrecy and certification envelopes, and if applicable, the new voter registration application, are to be returned;
- if permitted by bylaw, an application for registration as a new voter; and
- instructions as to how to vote by mail ballot.

Voters are responsible for ensuring the CEO receives their mail ballot by the close of voting on General Voting Day in order to be counted.

3.2 Special Voting Opportunities

The City, in accordance with Section 109(1) of the LGA, may provide SVOs but is not obligated to do so. SVOs may be held in any location to provide voters who may not otherwise be able to attend a voting place an opportunity to vote. There is flexibility in the types of circumstances for which SVOs can be established, but the circumstances need to be set out in a bylaw adopted by Council.

The bylaw establishing SVOs may:

- establish restrictions on who may vote at the SVOs;
- establish different procedures for voting and conducting the voting proceedings at SVOs;
- limit, or authorize the CEO to limit, the number of candidate representatives who may be present; and/or
- establish, or authorize the CEO to establish, the date and voting hours when and the place where the SVOs are to be conducted.

If SVOs are established, the CEO must give reasonable notice to electors who may be entitled to vote at the SVOs and include in the notice the date, location and voting hours for the SVOs, any relevant restrictions on who may vote at the SVOs and any special procedures involved.

4.0 IMPACT OF THE COVID-19 PANDEMIC ON VOTING OPPORTUNITIES

In addressing impacts of the COVID-19 pandemic on voting opportunities, staff have considered guidelines provided by the BC Ministry of Municipal Affairs and Housing and the BC Ministry of Health.

4.1 Mail Ballot Voting

In 2020, the Ministry of Municipal Affairs and Housing issued a guidance document for [Conducting By-elections and Assent Voting During COVID-19](#) that encourages the provision of mail ballot voting, and discussions with Ministry staff for expanded access to mail ballot voting to allow all voters to vote by mail through exceptions implemented by way of a Ministerial Order.

A formal request to the Minister of Municipal Affairs is required to facilitate exceptions to the LGA to provide expanded mail ballot voting. The CEO must be appointed before a formal request for a Minister's Order can be made, and Council must endorse the Minister's Order once it has been received. These requirements need to be factored into the implementation timelines for mail ballot voting.

4.2 Special Voting Opportunities

COVID-19 has disproportionately affected seniors' care facilities, and resulted in restricted access to these facilities. In order to mitigate health risks, the Ministry of Health has developed strict [Visitor Guidance for Long-Term Care and Seniors' Assisted Living](#) facilities. During an active outbreak visits are not permitted.

The Provincial Government's COVID-19 by-election guidelines recommend the following measures be considered in relation to SVOs:

- limiting the number of candidate representatives to one, and outlining precautions they must take for the safety of voters;
- checking with SVOs regarding any required safety protocols; and
- if available, suggesting mail ballot voting to voters who are usually served by SVOs.

5.0 ADVANTAGES AND CHALLENGES OF MAIL BALLOT VOTING AND SPECIAL VOTING OPPORTUNITIES

5.1 Mail Ballot Voting

Outside of the pandemic period, mail ballots allow those unable to attend a voting place, due to circumstances noted in Section 110 of the LGA, to vote. During a pandemic, expanded access to mail ballot voting allows voters who may be required to self-isolate, quarantine, or do not feel comfortable voting in person to participate in the election. Mail ballot voting may reduce the number of voters in voting places, and may result in more efficient processing of in-person voters.

The administration of mail ballots is not without its challenges. Many voters are familiar with the recent Provincial election mail ballot process, and expect similar procedures for

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local government elections. However, the Provincial elections are governed by the *Elections Act*, whereas local government elections are governed by the *LGA*, and the procedures and legislative timelines also differ.

The provision of mail ballot voting for local government elections is subject to an approximate three-week timeframe to distribute mail ballot packages and for their return by the legislated deadline. This is primarily because of the *LGA* timelines associated with the nomination period, deadline for a challenge to nominations, candidate or elector organization endorsement withdrawal, as well as ballot finalization and printing. Typically, there are a larger number of candidates on a single ballot for a local government election than a provincial or federal election.

Automated voting counting systems (i.e. vote tabulators) have historically not been used for provincial and federal elections, whereas they are common in local government elections and have been in use since 1996 in the City's local elections. While efficient in processing ballots, the use of vote tabulators requires a special ballot with markings to be read by the tabulator, and precludes the use of 'write-in' ballots used in provincial and federal elections.

Lastly, a proportion of mail ballots may be flagged, returned or rejected by vote tabulators. If a vote tabulator identifies a mail ballot as a blank ballot, overvoted/undervoted ballot, misread ballot, or ballot with ambiguous markings, there is no opportunity for the voter to correct the issue or obtain a replacement ballot as they would with in-person voting. As a result, a blank, overvoted, or undervoted ballot would be processed "as is"; however, overvoted ballots would not be counted as the voter's intent is not clear. Valid votes on an undervoted ballot would be counted for the candidate that a voter voted for. Misread and ambiguous ballots repeatedly returned by a vote tabulator are required to be rejected. Rejected ballots are marked as spoiled, and retained by the Election Office in accordance with the *LGA* provisions.

5.2 Special Voting Opportunities

SVOs increase voting accessibility and convenience for long-term care facility residents and patients in a hospital, the two circumstances for which the City has historically provided SVOs in local elections. During SVOs, facility staff and election officials provide additional assistance to residents and patients wishing to vote.

Administration of SVOs is more challenging during the pandemic. Due to restricted access, long-term care facility staff (if they are amenable to doing so) would need to be trained as election officials to administer on-site voting using equipment provided by the City. The equipment would need to be disinfected in accordance with both facilities' and

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equipment vendors' guidelines, which may pose logistical challenges. Due to COVID-19 precautions, voting would likely take longer if conducted room-to-room or bed-to-bed. Although facility staff's assistance is required with both mail ballot voting and special voting opportunities, special voting opportunities are more time restrictive. Administration of SVOs would further be complicated by a potential COVID-19 outbreak since facilities would need to prioritize containing the spread of the virus, and pre-scheduled SVOs may need to be postponed.

Majority of the City's seniors' care facilities where SVOs have taken place in previous local elections have indicated they prefer mail ballot voting to SVOs. The City surveyed the facilities prior to full implementation of the four-phase [BC COVID-19 Immunization Plan](#). Phase 1 (December 2020 – February 2021) of the Plan prioritizes immunization of residents, staff and essential visitors in long-term care facilities and assisted living residences. Considering that residents and staff are expected to be immunized prior to the by-election, the facilities may be more comfortable with administration of SVOs.

6.0 EXPERIENCES WITH MAIL BALLOT VOTING PROVINCIALY AND IN OTHER MUNICIPALITIES

6.1 2020 Provincial Election

In the 2020 October 24 Provincial election, approximately 31% of BC residents (16% of Burnaby residents) voted by mail. Expansion of mail ballot voting during the pandemic has resulted in greater number of voters using this voting opportunity compared to the 2017 Provincial election when 0.3% of votes were cast by mail ballot. In the 2020 election, the return rate for mail ballots was 82% both provincially and in Burnaby. According to Election BC's Interim Statement of Votes, 1% of returned mail ballots in Burnaby were rejected upon inspection.

6.2 2020 City of Victoria By-Election

The City of Victoria held a by-election on 2020 December 12 to fill a single vacancy on its Council. The City received a Ministerial Order approving expanded use of mail ballot voting. Voter turnout overall, for in-person and mail ballots, was approximately 18% (12,327 voters). While 5% (3,759) of registered voters requested mail ballots, 3% (2,331) cast their vote using a mail ballot (62% return rate). Of note, approximately 38% of issued mail ballots were not counted as they were:

- not picked-up from the Election Office or were returned unopened (5%);
- received by the Election Office after the General Voting Day deadline (16%); or
- not returned to the Election Office (17%).

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Of the mail ballots that were returned, approximately 2% (44 ballots) were rejected and not counted.

6.3 Lower Mainland Municipalities

Approximately 70% of the Lower Mainland municipalities, including Delta, Richmond, Surrey, and Vancouver, have bylaws that allow for mail ballot voting in all local elections, i.e. general elections and by-elections. Historically, a small percentage of voters in these municipalities have voted using mail ballots due to the restrictive eligibility criteria under the LGA. In Vancouver’s 2017 by-election and 2018 general election, less than 1% of votes were cast through mail ballots.

The City of Chilliwack (on behalf of the School District 33), Township of Langley (on behalf of the School District 35), and the Village of Belcarra have recently or are currently administering by-elections. All three municipalities have received a Ministerial Order approving expanded use of mail ballots.

7.0 VOTING OPPORTUNITIES IN SENIORS’ CARE FACILITIES IN RECENT ELECTIONS

In the 2020 Provincial election, Elections BC administered on-site voting at seniors’ care facilities that requested this service and delivered mail ballots to other facilities. For seniors’ care facilities locked-down under a COVID-19 outbreak, Elections BC offered to train facility staff to administer voting, or to provide assisted telephone voting (an option not available to local governments).

In its 2020 by-election, the City of Victoria did not establish any SVOs in seniors’ care facilities. Instead, mail ballots were delivered to facilities after they provided information on eligible voters.

In its 2017 by-election, the City of Vancouver also encouraged mail ballot voting for eligible voters in seniors’ care facilities rather than establishing on site SVOs.

8.0 CONSIDERATIONS FOR THE PROVISION OF MAIL BALLOTS IN BURNABY

There are a significant administrative procedures, including technical requirements, involved in implementing mail ballot voting for the first time.

8.1 Requirements and Implementation Plan

8.1.1 Application Process

The City of Burnaby uses the electronic Voters List provided by Elections BC for its resident voters, and to administer elections. The list is uploaded in VoterView software developed by DataFix; a vendor that the City has extensively worked with

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in previous elections. Approximately 160,000 registered voters are currently on the Voters List for Burnaby. If the City were to implement mail ballot voting and the eligibility criteria are expanded to all voters for the 2021 by-election, it is anticipated that 5 to 10% of the voters would request a mail ballot package, requiring approximately 8,000 to 16,000 mail ballots.

DataFix offers a Mail in Ballot VoterView module that was recently piloted during the City of Victoria by-election. The module allowed the City of Victoria staff to efficiently manage the mail ballot application, distribution, and return processes. As part of the application process, voters were required to upload at least one piece of identification with the application. Voters were able to request and obtain a mail ballot up to and including General Voting Day.

Based on Victoria's 2020 by-election timeline, it is anticipated that an online application system would be live on the City's website approximately five weeks prior to the General Voting Day. Upon receipt of mail ballot applications, at least one dedicated staff person would review each application, and follow-up with the applicant as required. While applications may be received five weeks in advance of General Voting Day, it is not possible to begin distributing mail ballot packages until three weeks prior to the General Voting Day due to legislated election deadlines under the LGA.

8.1.2 Mail Ballot Package Assembly and Mail Out

DataFix provides assembly of mail ballot packages, and each package has an individual bar code for adjudication purposes. Contracting mail ballot package preparation and mail out would allow the Election Office staff to focus on the application process, assisting voters, and administering other election processes. Additional staff resources may be required to respond to voters' enquiries, and prepare mail ballot packages for voters who request a package in-person.

DataFix has advised that approximately two months may be required to coordinate mail out of packages with a mail service provider.

8.1.3 Return and Count of Mail Ballots

Mail ballots must be received by the Chief Election Officer by close of voting on General Voting Day in order to be counted. Voters may mail their ballot, or drop it off at a voting place or at the Election Office. The City of Victoria in its by-election recommended that voters drop-off rather than mail any ballots in the last 10 days prior to General Voting Day.

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To ensure mail ballots are timely processed, ballots received prior to General Voting Day may be processed on one or more occasion prior to General Voting Day. Scrutineers would be able to observe the process. Result tapes on vote tabulators used for mail ballots would not be generated until all mail ballots received by 8 p.m. on General Voting Day are processed following the close of voting.

8.1.4 Resources

The table below summarizes anticipated and approximate costs for providing mail ballot voting to 16,000 voters. The costs are not necessarily proportional to the number of mail ballot packages requested and mailed out as certain baseline costs are incurred regardless of the number of packages.

Approximate Cost of Mail Ballot Voting (for 16,000 packages)	
Election Office Staff	\$25,000
DataFix Services	\$68,000
Mail-out of Ballot Packages and -paid Return Postage	\$31,000
TOTAL COST	\$124,000

8.1.5 Bylaw Authorizing Mail Ballot Voting

If Council directs staff to implement mail ballot voting, *Burnaby Voting Opportunities Bylaw 2020* would need to be amended to include provisions and procedures for mail ballot voting. The bylaw provisions would include the current restrictive criteria under the *LGA* for mail ballot voting (i.e. voters with a disability, illness or injury that affects in-person voting or voters who will be absent for all in-person voting opportunities). Once the bylaw is amended, mail ballot voting in these restrictive circumstances would be available for all future local elections (unless Council subsequently repeals the provisions). Due to the restrictions in the *LGA*, expansion of mail ballot voting to all other eligible voters would require approval by way of a Ministerial Order.

If directed by Council, amendments to *Burnaby Voting Opportunities Bylaw 2020* to implement mail ballot voting can be presented in a report to Council at a future Open meeting. Per the *LGA*, this bylaw amendment would need to be adopted at least 88 days prior to General Voting Day in order to be effective for the 2021 by-election.

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8.1.6 Ministerial Order

Pending Council direction and appointment of the Chief Election Officer, staff would make a formal request to the Ministry of Municipal Affairs for a Ministerial Order to expand use of mail ballot voting to all eligible voters in the 2021 by-election. The City would also request other exceptions in the Ministerial Order (i.e. use of secrecy sleeves instead of envelopes in mail ballot packages).

8.1.7 Communication to Voters

If Council decides to implement mail ballot voting, staff will inform voters of this opportunity and important dates via the City's website, social media, and the local newspaper (including as part of the legislated notice of election).

8.2 Advisability of Mail Ballot Voting

In the City of Victoria's recent by-election, the majority of those who voted (97%) casted their ballot in person, despite the by-election being held during the second wave of the pandemic. The lower use of mail ballots in Victoria's by-election compared to the 2020 Provincial election may be attributed to factors such as jurisdiction (i.e., municipal versus Provincial), election type (i.e., by-election versus general election), and application timelines (i.e., longer period Provincially due to use of 'write-in' ballots). Voter turnout in a by-election is historically lower than in a general election.

Tight legislated timelines, rushed implementation of a new and complex process, as well as the impact on the City's resources during the pandemic are concerning factors when considering implementation of mail ballot voting for the 2021 by-election.

Council could postpone potential implementation of mail ballot voting until the 2022 general local election. If Council decides to do so, additional advance voting opportunities will be provided in the 2021 by-election to ensure voters have several opportunities to vote. Vancouver in its 2017 by-election offered two legislatively required advance voting days at a single location; whereas Victoria in its 2020 by-election offered eight advance voting days at a single location. Providing multiple advance voting days at several locations increases accessibility of voting across the city, and enhances physical distancing. Having more advance voting opportunities and the By-Election COVID-19 Safety Plan (communicated to voters in advance) will ensure voters feel safe to vote in person. Staff will recommend the number of advance voting opportunities, and present the COVID-19 Safety Plan in a report to Council at a future Open meeting.

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8.3 Feasibility of Mail Ballot Voting

If Council decides to implement mail ballot voting for the 2021 by-election, staff will require technical resources (i.e. Mail in Ballot VoterView module), partial contracting of services, and additional resources to implement this voting opportunity. If additional human resources cannot be retained in time for the by-election or demand for mail ballot voting is higher than anticipated, internal resources may need to be reallocated.

9.0 PROVISION OF SPECIAL VOTING OPPORTUNITIES IN BURNABY

9.1 Bylaw Authorizing Special Voting Opportunities

In order to have SVOs in the 2021 by-election, *Burnaby Voting Opportunities Bylaw 2020* would need to be amended to include provisions for SVOs since previous Special Voting Opportunities Bylaws applied to each specific local election only. It is recommended that the bylaw provisions identify the circumstances for the SVOs (i.e. seniors' care facilities), and authorize the CEO to establish the date(s), voting hours and locations of the SVOs, as permitted by the LGA. This would alleviate the need for a specific SVO bylaw for each local election, and provide greater flexibility for the CEO to address specific situations where SVOs are needed or advisable.

If directed by Council, amendments to *Burnaby Voting Opportunities Bylaw 2020* to provide for SVOs will be presented for consideration by Council at a future Open meeting. It is proposed that the bylaw be amended to authorize the establishment of SVOs at seniors' care facilities, and that voting at these SVOs be restricted to residents of the facilities, and further authorize the CEO for a local election to establish the date, hours and locations of the SVOs as well as, where appropriate, limit the number of candidate representatives who may be present at a SVO. These authorities would be in place for the 2021 by-election and future local elections. The dates, hours and locations for SVOs for the 2021 by-election would be established by the CEO, following coordination with seniors' care facilities. Although there was a SVO for patients at Burnaby Hospital during the 2018 general local election, this SVO is not recommended to be included for future local elections as only 18 voters had casted ballots at Burnaby Hospital.

Per the LGA, the bylaw amendments to provide for SVOs would need to be adopted at least 88 days prior to the General Voting Day for the by-election.

9.2 Advisability of Providing Special Voting Opportunities

The City has established procedures for administering SVOs. In 2018, SVOs were provided to residents and patients at 22 facilities (21 seniors' care facilities and Burnaby General Hospital). The SVOs at seniors' care facilities were held on a weekday prior to General Voting Day. Weekday SVOs ensure the availability of facility staff to assist voters

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at the facilities. Four teams of four election officials administered voting at pre-scheduled times, and 455 residents in total (1% of 2018 voter turnout) voted. One team of election officials administered voting on General Voting Day at the Burnaby General Hospital where 18 patients voted.

Compared to mail ballot voting, the cost of SVOs is lower due to use of standard ballots and no need for an additional software program. The exact costs will be known once a schedule for SVOs is developed in coordination with seniors' care facilities.

Although the provision of SVOs is not preferable during the pandemic due to earlier noted challenges, the City can work with seniors' care facilities to offer voting opportunities in the lieu of mail ballot voting. Provision of SVOs will depend on facilities' ability and openness to have their staff trained as election officials, and to administer voting using the City's equipment and facilities' human resources. The SVO at Burnaby Hospital is not recommended as only 18 voters casted ballots at that SVO in the 2018 general local election.

9.3 Feasibility of Providing Special Voting Opportunities

In order to implement SVOs during the pandemic, the City would either schedule SVOs over a minimum of two days, or increase the number of SVO tabulators to administer all SVOs on a single day. While the implementation of SVOs will require advance and extensive coordination with individual seniors' care facilities, internal resources can be reallocated to undertake this work.

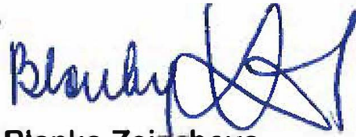
10.0 CONCLUSION

Establishment of mail ballot voting entails significant changes and additions to the City's local election processes, would need to be done over a short period, and would require substantial additional resources. As a result, it is recommended that Council postpone potential implementation of mail ballot voting until the 2022 general local election. To ensure voters have ample opportunity to vote and feel safe doing so in person, staff would increase the number of advance voting opportunities for the 2021 by-election.

While SVO provision during the 2021 by-election is more challenging due to the COVID-19 pandemic, the City has established processes in place. Furthermore, the City can liaise with the seniors' care facilities to offer SVOs at facilities able to provide staff to administer voting. It is recommended that Council authorize the City Solicitor to bring forward amendments to *Burnaby Voting Opportunities Bylaw 2020* to provide for SVOs during local elections, as outlined in Section 9.1 of this report. Following adoption of the bylaw amendments, the dates, hours and locations for SVOs for the 2021 local by-election would be established by the CEO following coordination with seniors' care facilities in the City.

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Pending direction from Council, staff will bring forward any required amendments to *Bumaby Voting Opportunities Bylaw 2020* for consideration by Council at a future meeting. Based on Council's decision, City staff will continue preparations for the 2021 by-election and bring forward options for the by-election date, provision of other voting opportunities, as well as equipment needs and staffing.



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