



EXECUTIVE COMMITTEE OF COUNCIL

*HIS WORSHIP, THE MAYOR
AND COUNCILLORS*

SUBJECT: PROPOSED AMENDMENTS TO ELECTION BYLAW

RECOMMENDATION:

1. THAT the City Solicitor be authorized to prepare an amendment to the Burnaby Automated Vote Counting System Bylaw as outlined in Appendix 1 of this report.

REPORT

The Executive Committee of Council, at its meeting held on 2008 June 30, received and adopted the *attached* report from the Election Supervisor which provides information on proposed changes to the Automated Vote Counting System Bylaw and changes by the Province related to elections contained in Bill 7, Local Government Statutes Amendment Act.

The changes proposed for the Automated Vote Counting System Bylaw are as a result of concerns expressed by Councillors regarding processes surrounding rejected ballots and recount procedures.

The report also provides information on the changes implemented by the Province in Bill 7, related to local government elections. With regard to those areas of the legislation where Council was given the authority to implement bylaws, the Committee are not recommending the introduction of any new bylaws for the 2008 election.

Respectfully submitted,

Councillor P. Calendino
Chair

Councillor N. Volkow
Vice Chair

Councillor L.A. Rankin
Member

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|--|
| Copy - City Manager
- Deputy City Manager
- City Solicitor
- City Clerk |
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TO: CHAIR AND MEMBERS
EXECUTIVE COMMITTEE OF COUNCIL **DATE:** 2008 June 11

FROM: ELECTION SUPERVISOR **FILE:** 45000

SUBJECT: PROPOSED AMENDMENTS TO ELECTION BYLAWS

PURPOSE: To provide a response to proposed changes to the Automated Vote Counting System Bylaw and information on changes related to elections contained within Bill 7 Local Government Statutes Amendment Act

RECOMMENDATION:

1. **THAT** this report be received for information purposes.

REPORT**BACKGROUND**

At its 2008 March 10 meeting, the Executive Committee of Council received a report from the City Clerk responding to issues and concerns raised regarding Burnaby's Automated Vote Counting System Bylaw and a document prepared by the Committee Chair was introduced outlining several areas of concern about the report and proposing more extensive changes to the bylaw.

At the same time the Provincial Government introduced Bill 7 "Local Government Statutes Amendment Act" introducing a number of amendments to the election provisions of the Act. Bill 7 received Final Assent on 2008 March 31 and this report provides a summary of the changes and comments on the legislation as it relates to the election process in the City of Burnaby.

**CHANGES PROPOSED TO AUTOMATED
VOTE COUNTING SYSTEM BYLAW**

Arising from a meeting held with Councillors Calendino and Dhaliwal, the City Solicitor has prepared a "draft" bylaw (see attached) of changes proposed to the Automated Vote Counting System Bylaw. The following comments regarding the implementation of the proposed bylaw, changes in relation to the legislation and impact on voting day process are provided for the Committee's consideration.

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Proposed Amendment

Section 2 – would amend s.4(6),(7) and (8) to prohibit an election official from visually inspecting a returned ballot, but would permit the Presiding Election Official to do so but only where the elector appears to be unable to understand the ballot instructions because of reading or writing difficulties or other disability.

The bylaw amendment will be addressed through training of staff for election day, specifically PEOs, APEOs and Machine Attendants. It should be noted that, despite the proposed change, those persons who have completed the appropriate forms, in accordance with Section 121 of the Local Government Act which permits either an election official or another elector to assist an elector with voting, will be permitted to view the ballot. Section 121 applies to electors “who are unable to mark a ballot because of physical disability or difficulties with reading or writing” and allows them, upon completion of the required documents, to “be assisted in voting by an election official or by a person accompanying the elector.”

Proposed Amendment

Section 3 – rewords Section 4(11) to provide that if an automated unit malfunctions during voting day, all ballots must be inserted into the emergency ballot compartment and counted only after the close of voting.

For consistency purposes it is assumed that this procedure would also apply to a power outage at the voting place. Prior to adopting such an amendment, be aware that should a voting place experience significant power disruption and/or machine malfunction the capacity of the bypass bin could be challenged if ballots were not removed and run through the machine when the opportunity presents itself.

Proposed Amendment

Section 8 – the recount provisions, s.8 is amended

- a) to provide for an automatic non-judicial machine recount where the difference in votes between the lowest successful candidate and the highest unsuccessful candidate is less than 1/500;
- b) to require the Chief Election Officer to apply for a judicial recount if the difference is still less than 1/500, at the City’s cost;
- c) to provide for manual recounting on a judicial recount; and
- d) to require the Chief Election officer to notify the candidate of the time and place of any recount (non-judicial or judicial)

There are no concerns about conducting an automatic machine recount under the conditions noted.

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It is important to note in regard to item b) above that, although the Chief Election Officer would be required to apply for a judicial recount, the application must still meet the criteria set out in Section 138.2 of the Local Government Act as the court is only permitted to hear an application on that basis.

The proposed bylaw amendment requires the Chief Election Officer to only make application for the one (1) next highest unsuccessful candidate under the 1/500th mark. It should be considered that a situation could occur where more than one (1) candidate could have less than a 1/500 (67 votes based on 2005 figures) difference in votes from the one elected.

On the matter of cost, despite the requirement that the City will bear the cost of a recount, when there is a difference of less than 1/500th, the decision of distribution of payment of costs is still determined by the Court as set out in Section 140(3) of the Act; the City's only option is to indicate its willingness to pay costs to the Court.

It is also important to note that past practice has had the City enter into an agreement with the Board of Education regarding the Board paying for a portion of costs related to the election of School Trustees. There has never been an agreement to recover the costs of a recount; it is assumed that, under the less than 1/500th provision, the cost of a judicial recount on a School Trustee ballot would be borne by the City of Burnaby.

BILL 7 – LOCAL GOVERNMENT STATUTES AMENDMENT ACT

Following the 2005 Local government Election the provincial government conducted a comprehensive survey of local governments regarding the election process. The amendments included in the Local Government Statutes Amendment Act respond to some of the specific feedback they received, as well as improving accountability and transparency. In particular, changes were made in the following areas:

- Expanded advance voting opportunities;
- Expanded mail ballot opportunities;
- Simplification of non-resident property elector registration requirements; and
- The definition of a “campaign organizer” and their requirement to file campaign financial disclosures

Some of these amendments apply to all municipalities across the province; however, some provide the option for local Councils to implement bylaws that will meet the needs of their specific constituencies. The following report provides a description of the amendments contained in the new legislation and comments on any action that may be required by Council.

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Division 4 – Electors

In an effort to ease the process for a non-resident property elector to vote the legislation has been amended to eliminate the requirement of applying to the Election Office prior to voting to obtain a non-resident property elector certificate. The applicants may now submit the required documentation directly to the staff at the voting place.

No action will be required by Council. This change does appear to make the process more streamlined for non-resident property electors; however due to the significant number of voting divisions in Burnaby over 70 persons will require training in the process of registering a non-resident property elector.

The number of persons voting in this category jumped significantly from 12 in 2002 to 71 in 2005. Our experience from the last election would indicate that, despite best efforts, the process can be time consuming and confusing. The Election Office will contact, by letter, all those individuals who registered in this category in 2005 and will endeavour to register them in advance to alleviate confusion on general voting day. It is also intended to still offer a process where a non-resident property elector may work with Election Office staff to ensure they have all the necessary documentation prior to attending their voting place.

Division 6 - Nominations and Declaration of Election

With regard to nomination of candidates, s71 now provides an option for local governments to increase the number of nominations required for each candidate. The existing number of nominators is two (2); the Act now permits a community to, **by bylaw**, increase that number to a minimum of 10 or, for a community with a population of over 5,000, increase the number of nominators to a minimum of 25. If a bylaw is not implemented the minimum number of nominators per candidate will remain at two (2).

It is assumed this legislative change was implemented to lessen the opportunity to obtain a nomination by those persons, who do not take the opportunity of being a candidate seriously. Burnaby has not had a history of problems in this regard and it is recommended the number of nominators remain at two (2); however, should Council wish to increase the number of nominators required it would require authorization for the City Solicitor to prepare a bylaw.

In responding to the same area of concern s72 (2) has been amended requiring the person nominated to submit a solemn declaration “that the person fully intends to accept the office if elected” upon delivering nomination documents.

It should also be pointed out that while Bill 7 made no change to s72.1, existing legislation permits a local government to, **by bylaw**, require a nomination deposit of not greater than \$100 for each office.

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Currently Burnaby has not implemented a bylaw to require a nomination deposit and at this time see no significant benefit to implementing one.

Nomination documents delivered to the Chief Election Officer must be made available for public inspection at government offices until 30 days after the declaration of the election results. To allow for the use of new technology in viewing nomination documents s73 has been amended to give Council the option, *by bylaw*, to provide public access to nomination documents in any manner the local government considers appropriate including by the Internet or other electronic means. An individual inspecting the documents is still only permitted to do so for the purposes of the Act; however the need for that person to sign a declaration to that effect has been removed.

Although there is interest in viewing nomination documents, past experience would indicate there is not enough demand to require posting these documents on the internet. Some concern has been identified regarding the posting of personal information such as telephone numbers and addresses on the internet. There has already been one potential candidate who has inquired about not having his address listed on the Notice of Election as he works in the corrections system. At this time it is recommended that the nomination documents be available for viewing in the Office of the City Clerk and under the new regulations photocopies can also be provided.

Division 8 – Campaign Financing

The new legislation has created a new category of organization involved in the election process called “campaign organizer”. Under the previous legislation only candidates and elector organizations were required to file campaign financing disclosure documents and follow other rules regarding campaign financing; the legislation now applies to a campaign organizer. Section 83 defines a campaign organizer as follows:

- (a) an organization, whether incorporated or unincorporated, other than an elector organization, that undertakes, or intends to undertake, an election campaign that
 - (i) augments or operates in place of, or
 - (ii) is intended to augment or operate in place of the election campaign of one or more candidates or of one or more elector organizations, or both, or
- (b) an individual who
 - (i) undertakes, or intends to undertake, an election campaign referred to in paragraph (a), other than an election campaign for the individual as a candidate, and
 - (ii) accepts, or intends to accept, campaign contributions in relation to the campaign from any other individual or any organization, whether incorporated or unincorporated;

A campaign organizer does not endorse candidates on the ballot; but mounts an election campaign, including a campaign before the person is nominated or declared a candidate, for any of the following purposes:

- To promote or oppose the election of a candidate or another candidate
- To approve a course of action advocated by a candidate or disapprove a course of action advocated by another candidate;

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- To promote an elector organization or campaign organizer and its program or to oppose another
- To promote the selection of a person to be endorsed by an elector organization or to oppose the selection of another.

Significant amendments have been made to the Campaign Financing legislation to account for a campaign organizer including: the appointment of a financial agent, campaign accounts and specific requirements related to information provided to the Chief Election Officer. It should be noted that a campaign organizer is not required to submit the information until such time as the organizer has incurred election expenses or received campaign contributions greater than \$500.

Also included in the legislative changes were amendments to the campaign financial disclosure statements which now must include the name and address of the savings institution for campaign accounts and the names of candidates and/or elector organizations endorsed by elector organizations or campaign organizers and requires that in the case of a withdrawal of a ballot endorsement of a candidate by an elector organization the respective names must still be shown on both financial disclosures.

None of the above noted amendments require new bylaws nor amendments to existing bylaws; they are applied Province wide to all candidates, elector organizations and campaign organizers.

All disclosure statements, signed declarations and supplementary reports required to be submitted to the Chief Election Officer are required to be available for public inspection until 7 years after general voting day. Similar to nomination documents, the legislation has been amended to permit a local government to, *by bylaw*, provide public access to disclosure statements and supplementary reports for all or part of the required period in any manner the local government considers appropriate, including by the Internet or other electronic means. Any person who inspects or accesses a disclosure statement or supplementary report document must not use the information included in them except for the purposes of the Act or Community Charter and the requirement to sign a declaration concerning the purpose of inspection and use of information in the documents has also been removed.

As was noted in relation to the publishing of Nomination documents some concern has been identified regarding the posting of personal information on the internet. While it is acknowledged that allowing the documents to be posted on the internet makes the information more easily available there are some inherent problems related to privacy issues. It is recommended that the practice of having the documents available for inspection at City Hall continue to be the method for inspection.

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Division 9 – Voting Opportunities

In the past, advance voting was only permitted for those persons who were unable to vote on general voting day due to a limited number of reasons and they were required to sign a declaration as to what that reason was prior to voting. The province has now made voting in advance open to any elector who wishes to vote at an advance voting opportunity rather than on general election day which should result in allowing a greater number of people to vote. A separate report is being forwarded to Council regarding advance voting opportunities.

In an attempt to improve voting opportunities in Burnaby the report will recommend establishing the first day of advance voting on Saturday, November 1st. This date is a full week earlier than in 2005 and it is the first time advance voting is being held on a Saturday. The remaining dates being recommended are Wednesday, November 5th (required advance voting day), Thursday, November 6th and Wednesday, November 12th.

In another effort to improve voting opportunities the province is allowing municipalities to, **by bylaw**, extend voting by mail ballot to all persons who expect to be absent from the municipality on the date of general voting and the times of all the advance voting opportunities. Voting by mail ballot has been permitted since 1998 for persons with physical disability, illness or injury, however, Burnaby has not implemented such a bylaw. The bylaw requires the establishment of procedures for voting and registration and the Act outlines a comprehensive list of requirements that must be included in those procedures.

The City of Richmond is one of a small number of local governments who have utilized a mail ballot in place of Mobile Polls (Special Voting Opportunities) for seniors and care facilities. The Chief Election Officer in Richmond has been satisfied with the process to date and is proposing to amend their bylaw to extend this opportunity to other voters for the 2008 election.

As noted above a bylaw must be prepared outlining the procedures for a mail ballot. The procedures must include: time limits with relation to voting by mail ballot; application procedure, voting procedure; replacement of spoiled ballot procedure; acceptance or rejection of a mail ballot procedure; procedures related to a challenge of an elector and an electors name already used and; procedures after close of voting. In addition to the bylaw, the Act requires a mail ballot package to contain the following: ballot; secrecy envelope, certification envelope, outer envelope; application for registration as an elector, and, instructions on how to vote by mail ballot. Notice of the opportunity to vote by mail ballot must also be given in a manner considered appropriate by the Chief Election Officer. The Act also requires that the Chief Election Officer's records are to be kept in a manner that an elector's right to vote may be challenged (in accordance with s116).

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It is critically important the procedures for the mail ballot process be clear and without opportunity for violation. This being said, given the limited time remaining to organize the 2008 election, it is not recommended that Burnaby implement a mail ballot bylaw for this year; however should Council choose to look at this process for the 2011 election, direction should be given to allow staff sufficient time to develop and implement an appropriate process.

As in previous elections, the Election Office has arranged for Mobile Polls to attend care homes and hospitals in Burnaby on Wednesday, November 05 and to attend Burnaby General Hospital on November 15, voting day. Also, as permitted in s122 of the Act the PEO or other election official is permitted to conduct "curbside voting" for anyone who is able to be transported to their voting place but is unable to enter the voting place. It is our intention to increase promotion of this opportunity to residents. It is also hoped that our attempt to extend the advance voting opportunity to November 1st will provide sufficient voting choice for this election.

Division 16 – Final Proceedings

To resolve a conflict in requirements between the previous Local Government Act and the Interpretation Act regarding providing copies of documents, the new legislation requires that persons entitled to inspect the materials referred to in this section (election materials such as voting books and lists of electors) are not entitled to obtain a copy of those materials.

Despite the Interpretation Act Burnaby has never provided copies of any election materials to anyone other than those specifically permitted under the Local Government Act.

Division 17 – Election Offences

Provision has now been provided to include "campaign organizer" and "unincorporated organization" in wording related to advertising on general voting day.

No action is required by Council.

Division 18 – General

Prescribing information that must be provided to the Chief Election Officer under Section 85.01 has been added to the list of regulations the Lieutenant Governor in Council may make.

No action is required by Council.

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CONCLUSION

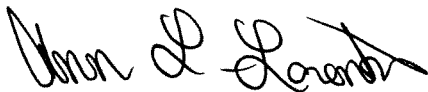
There are a number of options presented in this report for the Committee to consider regarding the 2008 election. While most of the legislative amendments contained in Bill 7 do not require bylaws; there are some that must be considered and serious consideration given to the recommendations put forward that will allow the 2008 local government election to be organized in an efficient and legally compliant manner.

In this regard, while the Election Office support the mail ballot initiative, at this stage of the election we cannot recommend Council implement this process for 2008 and suggest consideration be given to introduction of a bylaw in 2011. We are also recommending a cautious approach to using the internet to post nomination and financing documents because of concerns surrounding personal information and would like to re-assess this process following the 2008 election. A bylaw to change the number of nominations required for a candidate and the implementation of a nomination fee could be adopted for the 2008 election.

With regard to the changes proposed for the Burnaby Automated Vote Counting System Bylaw as outlined in the memorandum from the City Solicitor, it is recommended that should the Committee choose to forward these bylaw amendments to Council they must be presented at the Council meeting to be held on 2008 July 07. In accordance with s39 of the Act, all 2008 Election Bylaws must be finally adopted by 2008 August 04.

This is for the information of the Committee.

Respectfully submitted,



Ann Lorentsen
ELECTION SUPERVISOR

:all
Attachments

Copied to: Deputy City Manager
City Solicitor

CITY OF BURNABY

BYLAW NO. _____

A BYLAW to amend Burnaby Automated
Vote Counting System Bylaw

The Council of the City of Burnaby ENACTS as follows:

1. This Bylaw may be cited as **BURNABY AUTOMATED VOTE COUNTING SYSTEM BYLAW, AMENDMENT BYLAW 2008.**

2. Subsections (6), (7) and (8) of section 4 of the said Bylaw are repealed and the following substituted:

“(6) If before inserting the ballot into the vote tabulating unit an elector determines that he or she made a mistake when marking the ballot, the elector may request a replacement ballot by advising the election official in attendance.

(7) If a ballot is returned by the vote tabulating unit, the election official shall state the reason for the rejection as shown on the vote tabulating unit and give the elector the option of:

(a) completing a replacement ballot; or

(b) reinserting the returned ballot into the vote tabulating unit using the ballot return override procedure to count any marks that have been made correctly;

and the election official shall proceed in accordance with the elector's choice.

(8) Upon being advised of the replacement ballot request under subsections (6) or (7) (a) the election official shall direct the elector to the presiding election official who shall issue a replacement ballot to the elector and mark the returned ballot "spoiled" and shall retain all such spoiled ballots separately from all other ballots and they shall not be counted in the election.

(8A) An election official shall not visually inspect a returned ballot.

(8B) The presiding election official may assist an elector if requested by the elector but only if the elector appears to be unable to understand the ballot instructions because of difficulties with reading or writing or other disability. ”

3. Subsection (11) of section 4 of the said Bylaw is repealed and the following substituted:

“(11) During any period that a vote tabulating unit is not functioning, the election official supervising the unit shall insert all ballots delivered by the electors during this time into the emergency ballot compartment, and such ballots shall be counted after the close of voting in accordance with section 7(1) (a). ”

4. Subsection (2)(d) of section 5 of the said Bylaw is amended by adding thereto, after the word "secured", the words "and sealed in such a manner that it cannot be accessed without breaking the seal".

5. Subsection (3)(b) of section 5 of the said Bylaw is repealed and the following substituted:

“(b) secure and seal the vote tabulating unit so that ballots cannot be added or withdrawn without breaking the seal, and ”

6. Subsection (1) of section 6 of the said Bylaw is amended by striking out “section 3” where it appears and substituting “section 4”.

7. Subsection (2) of section 6 of the said Bylaw is amended by adding after the words “seal the portable ballot box” the words “so that ballots cannot be added or withdrawn without breaking the seal”.

8. Section 8 of the said Bylaw is repealed and the following substituted:

“RECOUNT

8(1) If on the initial ballot count after the close of voting on the general voting day the difference between the votes received by the candidate apparently elected with the lowest number of votes and the candidate or candidates with the next highest number of votes is less than 1/500 of the total ballots considered, the chief election officer shall proceed to recount the ballots in accordance with the following procedures:

- (a) the memory packs of all vote tabulating units will be cleared;
- (b) vote tabulating units will be designated for each voting place;
- (c) all ballots will be removed from the sealed ballot boxes; and
- (d) all ballots, except spoiled ballots, will be reinserted in the appropriate vote tabulating units under the supervision of the chief election officer;

and the results shall be declared the official election results.

- (2) If after a recount under subsection (1) the votes received by the candidate declared elected with the lowest number of votes and the candidate or candidates with the next highest number of votes is less than 1/500 of the total ballots considered, the chief election officer shall make application for a judicial recount. The judicial recount shall be conducted manually in accordance with the procedures set out in the *Local Government Act* for the manual counting of votes, and the cost of the recount shall be paid by the City.
- (3) The chief election officer shall notify the candidates of the time and place of any recount conducted under subsection (1) and any judicial recount. ”

Read a first time this	day of	2008
Read a second time this	day of	2008
Read a third time this	day of	2008
Reconsidered and adopted this	day of	2008

MAYOR

CLERK