



Item
Meeting 2018 June 25

COUNCIL REPORT

TO: CITY MANAGER **DATE:** 2018 June 20

FROM: CITY CLERK & CHIEF ELECTION OFFICER **FILE:** 45000
Reference: 2018 Election

SUBJECT: BURNABY AUTOMATED VOTE COUNTING SYSTEM BYLAW AMENDMENTS

PURPOSE: To obtain Council authorization to amend the Burnaby Automated Vote Counting System Bylaw.

RECOMMENDATION:

1. THAT Council authorize the City Solicitor to bring forward a bylaw to amend the Burnaby Automated Vote Counting System Bylaw, Bylaw No. 10415 as outlined in the report.

REPORT**1.0 INTRODUCTION**

At the 2018 June 11 Regular Council meeting, Council received a report entitled "2018 Election Bylaws and Election Day Pay Rates". Upon consideration of the report, Council approved six of the seven recommendations and deferred the seventh recommendation to the 2018 June 25 Council meeting. Council requested additional information regarding the proposed amendments to the Automated Vote Counting System Bylaw, Bylaw No. 10415.

The purpose of this report is to provide further information to Council regarding the proposed amendments to the Automated Vote Counting System Bylaw.

2.0 POLICY

The City of Burnaby's *Corporate Strategic Plan* supports the following goals and sub-goals of the Plan:

- A 'Thriving Organization'
 - Communication – "practice open and transparent communication among staff, Council and the community".

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- Reliable service, technology and information – “protect the integrity and security of City information, services and assets”.
- Technology and Innovation – “support technology development and innovation to empower staff to advance community objectives”.
- A ‘Connected Community’
 - Digital Connection – “provide online access to core City services and information”.
 - Partnership – “work collaboratively with businesses, educational institutions, associations, other communities and governments”.

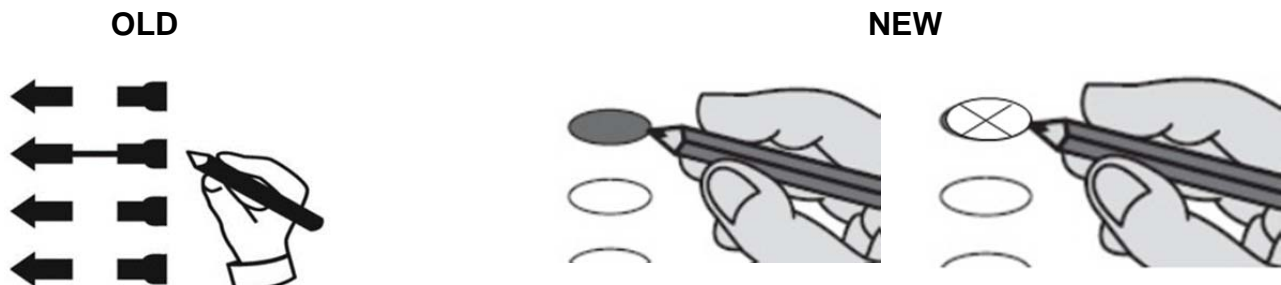
3.0 AUTOMATED VOTE COUNTING SYSTEM BYLAW PROPOSED AMENDMENTS

In May 1994, Council approved the purchase of 42 automated vote counting machines to be utilized in future local government elections. The machines, now 23 years old, present unacceptable vulnerabilities in regard to maintenance, support and security.

Leading up to the 2018 Local Government Election, staff initiated a Request for Proposal (RFP) for the lease of new vote counting machines. Through discussions with leading Canadian vote counting machine and election solution providers, and upon rigorous review of the RFP submissions by Purchasing, IT and the Office of the City Clerk, a lease contract has been awarded to Dominion Voting to provide vote tabulators for the 2018 Local Government Election.

As a result of the use of new vote counting machines, amendments are required to the Automated Vote Counting System Bylaw. Ballots compatible with the new vote counting machines will use an oval to be filled in or marked with an “X”, and an update to the definition of an acceptable mark is therefore required. Election staff will provide demonstrations upon request to voters unclear about what constitutes an “acceptable mark” and directions will also appear in the voting compartments for voter reference. An amendment to the definition of “acceptable mark” is required to reflect the change as demonstrated below.

Recommendation: Amend the definition of “acceptable mark” in the Automated Vote Counting System Bylaw.



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Under the current bylaw, the presiding election official is required to provide a demonstration to each elector on how to vote using the automated vote counting machine. Considering the volume of voters that attend each voting location, and the myriad of responsibilities of the presiding election officials, staff propose that demonstrations be provided upon request, and any election staff member that has received the appropriate training be permitted to undertake the demonstration.

Recommendation: Amend the Automated Vote Counting System Bylaw to permit trained election staff to provide ballot demonstrations upon request.

Historically, ballots have included the names of the candidates for each of the offices of Mayor, Councillor and School Trustee and the elector organization (political party) each candidate is formally affiliated with. The current definition of “ballot” does not include a reference to an elector organization endorsement.

Recommendation: Amend the definition of “ballot” in the Automated Vote Counting System Bylaw to include reference to the elector organization endorsement.

In 2008, the Chair of the Executive Committee of Council submitted a document entitled “Burnaby Automated Vote Counting System Bylaw” to the Executive Committee proposing several amendments to the bylaw. Specific concerns raised included 1) the notification of candidates in the case of a recount, and 2) manual vs. automated recount procedures and the accuracy of identifying an acceptable mark. As a result of the concerns, and based on a report to Council from the Election Supervisor, the bylaw was amended to require judicial recounts to be conducted manually and set forth conditions upon which a judicial recount must be requested by the Chief Election Officer. The bylaw also included a requirement to notify candidates when and where a non-judicial recount would be undertaken.

Authority to conduct a non-judicial recount was formerly permitted under the *Local Government Act*. However, amendments to the Act, likely as a result of enhancements in ballot tabulator technology, eliminate the City’s authority to conduct a non-judicial recount based on repealed legislation. The previous analogue automated vote counting machines (Eagles) were basic in their function and were only capable of determining an acceptable mark based on a strict interpretation of coded rules. To review ballot markings, a manual review was required. The vote counting machines to be used for the 2018 Local Government Election have far more advanced capabilities than the Eagle machines.

New counting machines provide an image of every ballot cast and append to the image a record of how the system interpreted the voter’s mark. This ‘ballot-level audit trail’ allows an election official to review not only the ballot images, but also the machine’s interpretation of each ballot thereby reducing ballot marking ambiguity. The Office of the City Clerk is confident that the selected machines will ensure a reliable, transparent, secure and accurate electoral process without the requirement for a manual recount.

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Local Government Act Section 148, *Application for Judicial Recount*, outlines the grounds upon which an application for a judicial recount can be made and the procedures for conducting a judicial recount. It has been determined by the BC Supreme Court that judicial recounts are governed completely by the *Local Government Act*, which also sets out the requirement for candidate notification.

Local Government Act Section 148 (5) requires the Chief Election Officer to apply for a judicial recount in the event that a “candidate cannot be declared elected because there is an equality of valid votes for 2 or more candidates”. *Local Government Act* Section 148 (2) stipulates that an application for a judicial recount may be made on one or more of the following bases:

- (a) that votes were not correctly accepted or ballots were not correctly rejected as required by the rules of section 139 [rules for accepting votes and rejecting ballots];
- (b) that a ballot account does not accurately record the number of valid votes for a candidate;
- (c) that the final determination under section 145 [determination of official election results] did not correctly calculate the total number of valid votes for a candidate.

An application for a judicial recount, based on any of the aforementioned reasons can be made by (a) an elector of the jurisdiction for which the election was held, (b) a candidate in the election or a candidate representative of a candidate in the election, or (c) the chief election officer (*Local Government Act*, Section 148(4)).

Based on the aforementioned changes in legislation and authority, it is recommended that Section 8 be repealed and replaced with provisions to reiterate the grounds for application for judicial recount as outlined in Division 15 of the *Local Government Act*. This will allow for greater transparency in respect to judicial recount applications.

Recommendation: Repeal Section 8 of the Automated Vote Counting System Bylaw and replace with provisions to reiterate grounds for application for a judicial recount as outlined in Division 15 of the *Local Government Act*.

The current Automated Vote Counting System Bylaw is silent on results determination of a tie vote. As such, if a tie vote occurred after a judicial recount, the City would be required to hold a runoff election in accordance with Section 152 of the *Local Government Act*. Runoff elections, as required by the *Local Government Act*, must be conducted in a manner that is equivalent to the original election with the same voting opportunities originally provided.

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A runoff election cannot be reduced in scale and as such the cost incurred would be roughly the same as the original election. While some cost savings of completed work may be realized, many of the costs for a second election (for example, election day staffing at the voting places, ballot printing, statutory and other advertising) would remain.

Section 151 of the *Local Government Act* permits local governments, by bylaw, to resolve by lot a tie vote following a judicial recount. Lower Mainland municipalities that include provisions in their election bylaws for the final determination of a tie vote by lot, include: Vancouver, Delta, Surrey, New Westminster, North Vancouver (District and City), West Vancouver, Coquitlam, Port Coquitlam, Maple Ridge, Richmond and Port Moody. There would be no additional cost to determining the final result by lot following a judicial recount.

Recommendation: Add a section to the Automated Vote Counting System Bylaw to permit the determination of election results by lot if there is a tie vote, after a judicial recount has been conducted.

4.0 PROPOSED BYLAW AMENDMENTS

Staff proposes Council authorize the following bylaw amendments to the Automated Vote Counting System Bylaw, Bylaw No. 10415 based on the information provided in the report.

Automated Vote Counting System Bylaw

- Bring forward an amending bylaw to the Automated Vote Counting System Bylaw to:
 - Change the definition of “acceptable mark” from completed arrow to filled oval or oval marked with an “x”;
 - Update the definition of “ballot” to include elector organization endorsement;
 - Replace the sample ballot, Schedule A, with the new ballot sample (Appendix A);
 - Replace section 4(1) to allow election staff to provide the demonstration upon request, eliminating the requirement of the presiding election official to provide a demonstration to every voter;
 - Repeal section 4(2)(a)(ii) as the Vote Anywhere program allows residents to vote at any election location throughout the City;

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- o Repeal Section 8 of the Automated Vote Counting System Bylaw and replace with provisions to reiterate the grounds for application for a judicial recount as outlined in Division 15 of the *Local Government Act*;
- o Add a section to the bylaw that in the event of a tie vote, after a judicial recount, permits the results of the election to be determined by lot; and
- o Update all *Local Government Act* section reference numbers to reflect the current section references.

5.0 CONCLUSION

The Election Office is excited to undertake the 2018 Local Government Election and is working closely with a variety of City departments to ensure an engaging, transparent, secure and procedurally sound election. This report outlines changes in legislation and technology in respect to the automated vote counting system, and provides a consolidated list of amendments to the Automated Vote Counting System Bylaw. Staff will continue to provide updates to Council on election-related initiatives over the coming months.

Kate O'Connell
CITY CLERK

Eva Prior
CHIEF ELECTION OFFICER

Attachments

Cc: City Manager
Director of Corporate Services
Chief Information Officer
City Solicitor

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APPENDIX A SAMPLE BALLOT

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**City of Burnaby
Local Government Election
Date**

To vote, fill in the oval next to your choice(s), like this: ● or ● Use only the marking pen provided.

Candidates for MAYOR Vote for no more than ONE (1)	Candidates for COUNCILLOR Vote for no more than EIGHT (8)	Candidates for SCHOOL TRUSTEE Vote for no more than SEVEN (7)
Jennifer ABEL <input type="radio"/>	Jeremiah BROWN <input type="radio"/>	Ivan BONDY <input type="radio"/>
Phil BROWN <input type="radio"/>	Douglas CSIMA <input type="radio"/>	Alexandre CLODEAU <input type="radio"/>
Patrick CHAN <input type="radio"/>	Alex HARVEY <input type="radio"/>	James BROWN <input type="radio"/>
Sidney CROSBY <input type="radio"/>	Kaillie HUMPHRIES <input type="radio"/>	Chris CUMMINGS <input type="radio"/>
Drew DOUGHTY <input type="radio"/>	Haley IRWIN <input type="radio"/>	Brenda GLEN <input type="radio"/>
Meagan DUHAMEL <input type="radio"/>	Chris KUNITZ <input type="radio"/>	Janine HANSON <input type="radio"/>
	Genevieve LACASSE <input type="radio"/>	David HOWELL <input type="radio"/>
	Deborah MORRISON <input type="radio"/>	Carol HUYNH <input type="radio"/>
	Henry PHELAN <input type="radio"/>	Brad JACOBS <input type="radio"/>
	Eric ROBERTSON <input type="radio"/>	Perianne JONES <input type="radio"/>
	Eric ROBERTSON <input type="radio"/>	Zina KOCHER <input type="radio"/>
	RANDALL <input type="radio"/>	Kim LAMARRE <input type="radio"/>
	RODOLFO <input type="radio"/>	Patrick MARLEAU <input type="radio"/>
	Phil SCOTT <input type="radio"/>	Rick NASH <input type="radio"/>
	Rick SHARP <input type="radio"/>	Mark OLDERSHAW <input type="radio"/>
	Chris SINCLAIR <input type="radio"/>	Scott PERRAS <input type="radio"/>
	Nathan SMITH <input type="radio"/>	Trevor PHILP <input type="radio"/>
	Judy SORESENSEN <input type="radio"/>	
	Natalie SPOONER <input type="radio"/>	

COMMUNITY OPINION QUESTIONS

<p>ORANGE PARK The proposed dedication is an area of approximately 0.00 acres (0.00 hectares) located in the central region of Burnaby. Do you agree to the dedication of the subject lands within Orange Park?</p> <p style="text-align: right;">Yes <input type="radio"/> No <input type="radio"/></p>	<p>LEMON PARK The proposed dedication is an area of approximately 0.00 acres (0.00 hectares) located in the central region of Burnaby. Do you agree to the dedication of the subject lands within Lemon Park?</p> <p style="text-align: right;">Yes <input type="radio"/> No <input type="radio"/></p>	<p>APPLE PARK The proposed dedication is an area of approximately 0.00 acres (0.00 hectares) located in the central region of Burnaby. Do you agree to the dedication of the subject lands within Apple Park?</p> <p style="text-align: right;">Yes <input type="radio"/> No <input type="radio"/></p>
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