



City of Richmond

Report to Committee

To: General Purposes Committee

Date: March 3, 2021

From: Claudia Jesson
Director, City Clerk's Office

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Re: 2021 By-Election – Ministerial Order Request

Staff Recommendation

That the Chief Election Officer be authorized to apply to the Minister of Municipal Affairs and Housing for an order, under Section 167 of the *Local Government Act*, to enable special provisions for the Richmond 2021 By-Election pertaining to mail ballot voting and other pandemic related matters that may be required, as outlined in the report dated March, 3, 2021 titled "2021 By-Election – Ministerial Order Request" from the Director, City Clerk's Office.

per/ 

Claudia Jesson
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REPORT CONCURRENCE	
CONCURRENCE OF GENERAL MANAGER 	
SENIOR STAFF REPORT REVIEW	INITIALS: 
APPROVED BY CAO 	

Staff Report

Origin

To facilitate conducting a By-Election during the pandemic, the Chief Election Officer is seeking Council's authorization, as required by the Minister of Municipal Affairs and Housing, to apply for an order to enable changes to the By-Election process via special provisions. The purpose of this report is to outline the special provisions that will be required to facilitate a COVID-19 compliant By-Election that will ensure for the safety of voters, candidates, candidate representatives and staff, and to obtain Council's authorization to proceed with the application to the Minister.

This report supports Council's Strategic Plan 2018-2022 Strategy #8 An Engaged and Informed Community:

Ensure that the citizenry of Richmond is well-informed and engaged about City business and decision-making.

Analysis

Existing Legislative Framework

The Province is responsible for the local elections legislative framework that all local governments are required to adhere to. The *Local Government Act* (LGA) sets out in great detail the requirements for conducting general local elections and by-elections.

The City of Richmond's Civic Election Administration and Procedure Bylaw No. 7244 (the "City's Election Bylaw") sets out additional requirements for general local elections and by-elections, including regarding the vote counting system, mail ballot authorization, advance voting and special voting.

The planning and conduct of a By-Election in the midst of a pandemic is new territory for the City. The safety of staff, voters, candidate representatives and candidates will be primary considerations at every phase of the By-Election planning and execution process. The Government of BC has developed a detailed document titled "Guidance for Conducting By-elections and Assent Voting During COVID-19" which provides practical advice and guidance for local governments, including requesting potential bylaw and legislative adjustments through a Ministerial Order.

Section 167 of the *Local Government Act* speaks to the authority of a minister considering special circumstances regarding an election and making an order the minister considers appropriate. A ministerial order may provide an exception to or modification of the *Local Government Act* or a regulation or bylaw under the LGA:

Ministerial orders in special circumstances

- 167 (1) *If the minister considers that special circumstances regarding an election or assent voting require this, the minister may make any order the minister considers appropriate to achieve the purposes of this Part or Part 4 [Assent Voting].*
- (2) *Without limiting subsection (1), an order under this section may provide an exception to or modification of*
- (a) this Act or a regulation or bylaw under this Act, or*
 - (b) the Local Elections Campaign Financing Act or a regulation under that Act.*
- (3) *The authority under subsection (2) includes authority to*
- (a) extend a time period or establish a new date in place of a date set under this Act or the Local Elections Campaign Financing Act, and*
 - (b) give any other directions the minister considers appropriate in relation to this.*

Ministerial Order

A ministerial order will enable the City to conduct a By-Election in a manner that incorporates public health measures during the pandemic. Staff has examined the Ministerial Order issued to the City of Victoria for that City's December 2020 By-Election and determined what is applicable and necessary to conduct a COVID-19 compliant By-Election in the City of Richmond.

If the recommendation of this report is approved, the following special provisions will be requested to form the Ministerial Order for the City of Richmond's 2021 By-Election:

1. Vote By Mail Opportunity for all Eligible Voters:

Current legislation establishes that mail ballots are only an option for persons who have a disability, physical illness or injury or who will be absent for all voting opportunities. The City's Election Bylaw further references this criteria. Due to the pandemic, it will be important to receive authority to provide the ability for all voters to "vote by mail." It should be noted that in the October 20, 2020 Provincial Election, between 29.8% to 38.9% of Richmond voters requested mail-in ballots representing a total of 24,000 mail ballots from Richmond's four ridings. Based on the City of Victoria's recent By-Election turnout statistics, staff estimate a 20% voter turnout in Richmond resulting in over 7,300 mail ballot packages being requested. As recommended by the Province, the vote-by-mail option for all electors is a COVID-19 safety measure which will serve to reduce the number of voters physically attending voting places and therefore mitigate the spread of COVID-19.

2. Use of a Secrecy Sleeve:

The City's Election Bylaw, specifically Section 5.3 Voting Procedures, outlines the specific instructions to complete a mail ballot package. When electors receive a mail ballot package they receive three envelopes: Secrecy Envelope, Certification Envelope and Outer (Prepaid Postage) envelope. To assist with the actual manual processing of the mail ballot packages, staff will be requesting that the "Secrecy" envelope be replaced with a "Secrecy" sleeve. The "Secrecy" sleeve will still maintain the secrecy of the ballot but will enable staff to process the ballot faster, namely insert the ballot into vote tabulating unit. With the anticipated high number of mail ballot packages, the manual process will be much more efficient with one less envelope being required to be manually opened. This requested change will continue to ensure the secrecy of the vote.

3. Chief Election Officer Establishing Processes and Time Limits for Issuing and Receiving Voting By Mail Applications and Mail-in Ballot Packages:

Through the Ministerial Order, the Chief Election Officer is seeking to obtain necessary flexibility in establishing processes and timelines associated with voting by mail, without having to amend the City's Election Bylaw. For this By-Election, voters will be able to apply for mail ballot packages both in person and via the online application module.

Under the City's Election Bylaw, a person wishing to vote by mail ballot must apply no later than 4:00 pm on General Voting Day. For this year's By-Election, there may be instances when a voter wishes to apply for a mail ballot package in person past the 4:00 pm deadline. In order to allow the issuance of a mail ballot package after 4:00 pm, a special provision in the Ministerial Order is required to provide the CEO with the necessary discretion to determine an appropriate deadline.

With regards to the online mail ballot application process, the Chief Election Officer will also require flexibility in determining when the online application process can be closed. With an approved Ministerial Order, the Chief Election Officer could have the discretion to close the online application process by 4:00 pm on the eve of General Voting Day.

The current bylaw also stipulates that voters must return the completed mail ballot packages to the Chief Election Officer at election headquarters (by close of voting). To provide voters with more flexibility, the Chief Election Officer would want to be able to permit voters to return mail ballot packages to any of the voting locations. The overall intention is to ensure that election officials have as much flexibility as possible to ensure that as many mail ballot packages are received by the close of voting on General Voting Day.

4. Processing Mail Ballots before the Close of General Voting

The current provisions in the City's Election Bylaw outline the procedures for mail ballot acceptance or rejection and the procedures for processing mail ballots after the close of voting. The current bylaw establishes that mail ballots can only be opened and processed at the close of voting on General Voting Day (8:00 pm). The Bylaw further states that at 6:00 pm on General Voting Day, the Chief Election Officer can start to open the certification envelopes that still would contain the secrecy envelopes. The sealed secrecy envelopes are then placed into a portable ballot box and cannot be opened and tabulated until 8:00 pm (the close of voting). The manual nature of verification and processing of mail ballot packages requires a significant amount of time and such work requires great attention and cannot be rushed. Without the ability to process the mail ballots prior to the close of voting, the time of issuing the unofficial results would be significantly impacted. With the projected number of approximately 7,300 mail ballots, a special provision will need to be issued to enable election staff to start processing mail ballots much earlier. It should be noted that detailed procedures would be developed by staff outlining the earlier processing times for mail ballots and would be communicated to ensure for transparency.

5. In-Person Oral Voter Declarations in Place of Written Declarations

With respect to in-person voting, the *Local Government Act* outlines the requirements that must be met before an elector is given a ballot. In order to obtain a ballot, a person must sign a written declaration that he or she is entitled to vote in the election and has not voted before in the same election. The written declaration process is considered a high-touch point and as such has potential risks regarding the spread of COVID-19. In place of the required written declarations, electors can be required to provide oral declarations (ie. reading out loud the declaration before an election official) prior to being issued a ballot. In the October 2020 Provincial Election, voters were permitted to provide oral declarations as a means of mitigating the potential spread of COVID-19.

6. Sole Discretion to the Chief Election Officer for Special Voting Opportunities

The City's Election Bylaw provides the authority for the Chief Election Officer to establish dates for any special voting opportunities and to designate the voting places and to set the voting hours for such special voting opportunities. In past elections, staff has always made arrangements with care home facilities and arranged for mobile voting to ensure that any eligible elector would have an opportunity to cast a vote.

Due to the pandemic and the strict protocols with care homes, sending election officials to various care homes to bring a voting opportunity to the residents is not an option. In addition, training care home facility staff as election officials has not been explored at all given the continuing COVID-19 pandemic. Without having to amend the City's Election Bylaw, the intention is to request the Province to provide the Chief Election Officer discretion to decide not to undertake special voting for the 2021 By-Election. It should be noted, however, that even without Special Voting Opportunities staff will be reaching out to care homes, advising the facility staff regarding the vote by mail opportunity for all voters, and providing assistance as required.

Next Steps

Should Council approve the recommendation in this report, the Chief Election Officer will proceed with the application to the Minister, as outlined in this report. It is anticipated that Provincial staff will then draft the Ministerial Order accordingly and will forward the document for formal consideration and approval by the Minister. When the Ministerial Order is issued to the City, the Ministry requires that Council approve the Order. This being the case, the Chief Election Officer will prepare the necessary report to Council once the Ministerial Order is received.

Financial Impact

The costs associated with implementing the special provisions contemplated by this report are included in the approved By-Election budget.

Conclusion

As part of the 2021 By-Election, the Chief Election Officer is seeking Council's authority to apply to the Minister for an order under Section 167 of the *Local Government Act* for the special provisions, as outlined in this report. An approved Ministerial Order with the above-noted provisions will facilitate the conduct of a COVID-19 compliant By-Election that will ensure for the safety of voters, candidates, candidate representatives and staff.

per/ 

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