



City of Richmond

Report to Committee

To: General Purposes Committee

Date: May 30, 2011

From: David Weber
Director, City Clerk's Office

File: 12-8125-60-01/Vol 01

Re: **Determining Election Results Where a Tie Vote Exists After a Judicial Recount**

Staff Recommendation

That Civic Election Administration and Procedure Bylaw No. 7244, Amendment Bylaw No. 8770, be introduced and given first, second and third readings.

David Weber
Director, City Clerk's Office
(604-276-4098)

Att.

FOR ORIGINATING DEPARTMENT USE ONLY		
CONCURRENCE OF GENERAL MANAGER		
REVIEWED BY TAG	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
REVIEWED BY CAO	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>

Staff Report

Origin

Section 141 of the *Local Government Act* provides the City with the option to determine the results of an election by lot (random draw) if, following a judicial recount, a tie vote is the result. In order to exercise this option, a bylaw must be adopted by City council in relation to determining the result by lot for the office of Mayor and Councillor. In order to apply to a tie vote situation for the office of School Trustee, the Board of Education must independently consider and adopt a bylaw. If such a bylaw is not adopted, then the *Local Government Act* requires that tie vote situations be resolved through a runoff election.

This matter was last before Council for consideration in 1993 and in 1996. In both instances, the Council of the day chose the runoff election option. At that time, the Richmond Board of Education also chose the runoff election option. The issue has not been re-visited since.

Analysis

Although the chances of a tie vote following a judicial recount are remote, the possibility exists and there are instances where this has occurred in British Columbia in the last decade. In the District of Hope in 2002, a tie vote following a judicial recount for the last Councillor position was determined by lot in accordance with the District's election bylaw. In the same year, in Whistler, again for the last Councillor position, a tie vote following judicial recount was determined through a runoff election since Whistler had not adopted a bylaw to deal with a tie by lot.

Where a runoff election is required, the *Local Government Act* indicates that it must be conducted in a manner that is equivalent to the original election and with the same voting opportunities as originally provided. In other words, the runoff election cannot be reduced in scale and would therefore likely incur costs roughly approaching the cost of the original election. While some of the costs for the runoff election might be avoided because of the work that would have just recently been completed for the original election, many of the costs for a second election (for example, for election day staffing at the voting places, vote counting machine re-programming, ballot printing, statutory and other advertising) would remain and would amount to approximately \$250,000 in unbudgeted additional costs. There would be no additional cost to determining the final result by lot following a judicial recount.

In the case of a final determination by lot, the *Local Government Act* specifies a procedure whereby the court directs that a winner be randomly drawn and declared from the two or more tied candidates. Most Metro Vancouver municipalities surveyed have included provisions in their election bylaws for the final determination of a tie vote by lot, including Vancouver, Delta, Surrey, New Westminster, North Vancouver (District and City), West Vancouver, Coquitlam, Port Coquitlam, Maple Ridge and Port Moody. Burnaby and Richmond are the only Metro Vancouver municipalities surveyed that would be subject to the runoff election scenario.

In the case of a runoff election, the election is between all candidates who were unsuccessful in the original election for that particular office. Candidates are given the opportunity to withdraw

from the runoff election and, of course, no new nominations may be accepted. As a follow-up action to choosing the runoff election option in 1996, the Council of the day submitted a resolution to UBCM requesting legislative changes to allow a runoff election to be conducted on a reduced scale and to change the provisions so that the runoff election would only be between the tied candidates. Although the resolution was endorsed at the UBCM convention, the provincial government did not act on the request and responded that such changes would require a broad policy review and consultation process (see **Attachment 1**). The legislative provisions for a runoff election have remained the same since that time.

Financial Impact

The cost of a runoff election for the office of Mayor or Councillor would have a significant financial impact on the City.

As provided in the *School Act*, in the case of a runoff election for the office of School Trustee, the Board of Education would be solely responsible for the costs, although the City would still be responsible for conducting the runoff election.

Except in the rare instance of a runoff election scenario, there is no direct financial impact associated with this report.

Conclusion

Given the passage of time since Council last considered this matter and the significant financial impact associated with this remote, but not impossible scenario, staff felt it appropriate to bring this matter forward once again for consideration. Based on the potential financial impact alone, staff recommend the adoption of a bylaw to determine a tie vote by lot.

If no action is taken to enact a bylaw, then the runoff election provisions will automatically continue to apply. If Council chooses to exercise the option to resolve a tie by lot following a judicial recount, then a bylaw to that effect, as attached, must be adopted prior to August 8, 2011 in order to apply to this year's election.



David Weber
Director, City Clerk's Office
(604-276-4098)

Att. 2

Attachment 1 – UBCM Resolution B53 (1996) on Tie Votes (Richmond)

Attachment 2 – Civic Election Administration and Procedure Bylaw No. 7244, Amendment Bylaw No. 8770

Year	Number	Resolution Title	Sponsor
1996	B53	TIE VOTES	Richmond

Resolution Text

WHEREAS Section 142 of the Municipal Act establishes the conditions under which a runoff election is to be conducted in the case of a tied vote in an election for the office of Mayor and Councillor;

AND WHEREAS subsection (3) of Section 142 states that the candidates in a runoff election are to be the unsuccessful candidates in the original election who do not withdraw, rather than only the candidates who have an equality of votes, as is the case when a tied vote is resolved by lot in accordance with Section 141;

AND WHEREAS an inequity has been created in that one tied vote determination method chosen by an incumbent council restricts the possibility of being elected to only the candidates with an equality of votes, whereas the alternate method specified in the Municipal Act permits any of the unsuccessful candidates to be elected;

AND WHEREAS subsections (8) and (9) of Section 142 require, so far as reasonable possible, the runoff election proceedings to be conducted, and the voting opportunities to be provided, in the same manner as the original election, thereby subjecting the public of the municipality in question, to an onerous and unnecessary expense:

THEREFORE BE IT RESOLVED that the Union of BC Municipalities request the provincial Ministry of Municipal Affairs and Housing to bring forward amendments to subsections (3), (8) and (9) of Section 142 to permit only those candidates with an equality of votes to participate in a runoff election, and to permit the runoff election to be conducted on a smaller, more appropriate scale than the original election.

Provincial Response**MINISTRY OF MUNICIPAL AFFAIRS AND HOUSING**

This matter was considered during a three year review at the time the legislation was amended in 1993. There are policy issues on all sides that would have to be reviewed. If they were to be reviewed, such a review should be done in the broader context of the proposal of the Minister of Municipal Affairs and Housing to work with UBCM, through the Joint Council, on the development of a multi-year plan for the establishment of a new legislative foundation for local government. At its January 22, 1997 meeting, the UBCM Executive authorized the UBCM President to respond positively to that proposal.

Convention Decision

Endorsed

Executive Decision**Committee Decision**



City of Richmond

Bylaw 8770

Civic Election Administration and Procedure Bylaw No. 7244, Amendment Bylaw No. 8770

The Council of the City of Richmond enacts as follows:

1. Civic Election Administration and Procedure Bylaw No. 7244, as amended, is further amended at Part 4 by adding the following as section 4.8:

4.8 Resolution of Tie Vote After Judicial Recount

4.8.1 In the event of an equality of valid votes for two or more candidates following a judicial recount for a general local election or **by-election** for the office of Mayor or Councillor, the result will be determined by lot in accordance with section 141 of the *Local Government Act*.

2. This Bylaw is cited as "**Civic Election Administration and Procedure Bylaw No. 7244, Amendment Bylaw No. 8770**".

FIRST READING

SECOND READING

THIRD READING

ADOPTED

CITY OF RICHMOND
APPROVED for content by originating dept.
APPROVED for legality by Solicitor

MAYOR

CORPORATE OFFICER