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**TO:** CITY MANAGER **DATE:** 2020 November 16

**FROM:** ACTING CITY CLERK

**SUBJECT: VOTING OPPORTUNITIES BYLAW AND AUTOMATED VOTE COUNTING SYSTEM BYLAW AMENDMENTS**

**PURPOSE:** To obtain Council approval for the Burnaby Voting Opportunities Bylaw and to amend the Burnaby Automated Vote Counting System Bylaw.

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**RECOMMENDATIONS:**

1. **THAT** Council authorize the City Solicitor to bring forward the Burnaby Voting Opportunities Bylaw, as outlined in Section 4.0 of the report.
2. **THAT** Council authorize the City Solicitor to bring forward a bylaw to amend the Burnaby Automated Vote Counting System Bylaw, as outlined in Section 5.0 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 by-election preparations, including election bylaws.

This report is seeking Council authorization to bring forward the Burnaby Voting Opportunities Bylaw, and to amend the Burnaby Automated Vote Counting System Bylaw.

**2.0 POLICY SECTION**

Initiatives outlined in the report align 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

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- 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 BACKGROUND**

The City has several bylaws for administering elections:

- Advance Voting Opportunities Bylaw 2018;
- Special Voting Opportunities Bylaw 2018;
- Automated Vote Counting System Bylaw;
- Access to Election Filing Documents Bylaw 2013; and
- Provincial Voters List Adoption Bylaw 1993.

The Advance Voting Opportunities Bylaw 2018 and Special Voting Opportunities Bylaw 2018 were prepared specifically for the 2018 general local election, whereas the other bylaws contain provisions generally applying to all local elections. Per the *Local Government Act*, bylaws and bylaw amendments pertaining to election matters must be adopted at least 88 days prior to a by-election.

### **4.0 VOTING OPPORTUNITIES BYLAW**

#### **4.1 Advance Voting Opportunities**

Section 107(1) of the *Local Government Act* requires that local governments provide at least two advance voting opportunities, one on the 10<sup>th</sup> day before the general voting day, and the other on another date set by the local government by bylaw. A local government may, by bylaw, also establish, or authorize the Chief Election Officer (CEO) to establish, additional advance voting opportunities. In 2018, the City provided three advance voting opportunities at six locations through the Advanced Voting Opportunities Bylaw 2018.

As a result of the COVID-19 pandemic, staff are reviewing provision of advance voting opportunities for the upcoming by-election. With consideration of election participants' health and safety, staff are planning to provide several advance voting opportunities at six

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locations. The exact number of advance voting opportunities will depend on availability of other voting opportunities (i.e. mail ballot voting), facilities and resources, as well as any changes in Provincial guidelines that may impact conducting by-elections during the pandemic. Staff will review the advance voting opportunities provided during the 2020 Provincial election.

Staff are seeking Council's authorization to bring forward the Voting Opportunities Bylaw to set the two required advance voting opportunities on the 10<sup>th</sup> day and 14<sup>th</sup> day before the general voting day for all future local elections, including the upcoming by-election and 2022 general local election. Because general voting day for local elections is always on a Saturday, these required advance voting opportunities would provide for at least one voting opportunity in the middle of the week (Wednesday), and another voting opportunity on a weekend day (Saturday) before the general voting day.

It is also proposed that the Bylaw provide authority to the CEO to determine additional advance voting opportunities, and designate voting places and hours for all advance voting opportunities. Providing these authorizations to the CEO will allow for flexibility during the upcoming by-election and future local elections to accommodate unforeseen circumstances without subsequent bylaw amendments. Information on the number and locations of advance voting opportunities for the upcoming by-election will be provided to Council in a future report.

A copy of the proposed Burnaby Voting Opportunities Bylaw is included as Attachment #1 to this report.

#### **4.2 Special Voting Opportunities and Mail Ballot Voting**

The City, in accordance with Section 109(1) of the *Local Government Act*, may hold special voting opportunities (SVOs), but is not obligated to do so (unlike advance voting opportunities). 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. In 2018, SVOs were provided to residents or patients at 22 facilities (21 care homes and Burnaby General Hospital).

Section 110(1) of the *Local Government Act* authorizes the City, by bylaw, to permit mail ballot 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. Due to the COVID-19 pandemic, the BC Minister of Municipal Affairs and Housing has recently issued several Ministerial Orders to allow a number of municipalities to permit mail ballot voting in their by-elections without the aforementioned restrictions. The City does not currently permit mail ballot voting.

Staff are examining advisability and feasibility of holding SVOs and providing mail ballot voting in the by-election. More information on SVOs and mail ballot voting will be provided

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to Council at the 2021 January 25 meeting. Any necessary bylaws or bylaw amendments will be proposed at that time.

## **5.0 AUTOMATED VOTE COUNTING SYSTEM BYLAW AMENDMENTS**

### **5.1 Secrecy Sleeve**

A secrecy sleeve is an open-ended folder or envelope used to cover ballots in order to conceal the choice(s) made by the voter. Under the current Automated Vote Counting System Bylaw, a secrecy sleeve is made available to a voter upon their request.

A secrecy sleeve is one of the measures used to preserve the secrecy of the ballot; however, it is not required by the *Local Government Act*. Other measures include voting booths where voters mark their ballot in private, solemn declarations made by each person present at a voting place, and training provided to election officials. Section 123(2) of the *Act* states that each person present at the voting place must preserve the secrecy of every ballot and must not:

- interfere with a person who is marking a ballot;
- attempt to discover how another person voted;
- communicate information regarding how another person voted or marked a ballot;  
or
- induce a person, directly or indirectly, to show a ballot in a way that reveals how the person voted.

The Provincial guidelines for by-elections during the COVID-19 pandemic recommend local governments reduce high-touch points, including a variety of election documents. As a result, staff are recommending removal of a secrecy sleeve from the Automated Vote Counting System Bylaw for the upcoming by-election and future local elections.

Removal of a secrecy sleeve from the Bylaw does not prevent its administrative use. Single-use secrecy sleeves will be provided for curbside voting during the by-election. Local governments are required by Section 132 of the *Local Government Act* to provide curbside voting to voters who are unable, through physical disability or impaired mobility, to enter the voting place. Curbside voting does not involve a voting booth and requires election officials to transport the ballot to the vote tabulating units inside of a voting place, therefore warranting additional measures to preserve secrecy of the ballot.

Staff will review a wider use of a secrecy sleeve ahead of the 2022 general local election. Making secrecy sleeves available upon request by voters can be re-implemented administratively, without an amendment to Automated Vote Counting System Bylaw in the future.

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## **5.2 Housekeeping Amendments**

In 2018, the City awarded a lease contract to Dominion Voting Systems Corp. to provide vote tabulators for the 2018 and 2022 Local Government elections, and any by-elections held prior to 2022 December 31. Amendments to the Automated Vote Counting System Bylaw are proposed to ensure that the bylaw reflects the technology used to administer elections. Proposed amendments include:

- replacing the term “memory pack” with “memory card” and updating the definition to refer to a “flash memory card”; and
- replacing the term “register tape” with “results tape.”

Further, several bylaw provisions are proposed to be amended to reflect more efficient operational procedures, or to clarify intent. These proposed changes are outlined below:

- amend Section 4(9) of the Bylaw to clarify that any ballot counted by the vote tabulating unit is valid, and any acceptable marks contained on such ballots will be counted in the election, subject to any determination made under a judicial recount.
- amend Section 4(11) to allow ballots deposited into the emergency ballot compartment to be inserted into the main compartment as soon as reasonably possible, instead of after the close of voting hours. This allows for more efficient “close of voting” procedures. In order to ensure transparency, it is proposed that the ballots from the emergency ballot compartment can only be deposited into the main compartment in the presence of at least two election officials.
- amend Section 5 such that SVOs and advance voting opportunities follow the same procedures using vote tabulating units, and repeal Section 6 which currently provides for use of ballot boxes (rather than vote tabulating units) for SVOs. It is feasible and more efficient to use vote tabulating units for SVOs.
- replace Section 5(2)(a) to reflect that any remaining ballots in the emergency ballot compartment are inserted into the vote tabulating unit prior to the compartment being sealed and vote tabulating unit being secured.
- amend Section 5(2)(b) to reflect that the emergency ballot compartment (instead of emergency ballot box) is sealed (instead of locked), and vote tabulating unit is secured to prevent insertion of any ballots after the close of each advance and special voting opportunity.
- amend Section 7(2) such that SVOs and advance voting opportunities follow the same procedures at the close of voting on general voting day.

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## 6.0 CONCLUSION

This report is seeking Council authorization for the City Solicitor to bring forward the Burnaby Voting Opportunities Bylaw, and amend the Burnaby Automated Vote Counting System Bylaw. The proposed Burnaby Voting Opportunities Bylaw will establish the required advance voting opportunities under the *Local Government Act*, and authorize the CEO to determine additional advance voting opportunities and establish voting locations and hours for all advance voting opportunities. The proposed amendments to the Burnaby Automated Vote Counting Systems Bylaw will align existing bylaw provisions to reflect current technology and update operational procedures.

Staff will continue to update Council on by-election preparations, including any other required bylaws or bylaw amendments in the coming months.



Blanka Zeinabova  
ACTING CITY CLERK

NV:nv

### Attachment

Copied to: Director Corporate Services  
Director Finance  
Director Engineering  
Director Parks, Recreation and Cultural Services  
Director Planning and Building  
Director Public Safety and Community Services  
Chief Information Officer  
City Solicitor

## CITY OF BURNABY

### BYLAW NO. xxxxx

The Council of the City of Burnaby ENACTS as follows:

#### PART 1: CITATION

- 1.1 This Bylaw may be cited as **BURNABY VOTING OPPORTUNITIES BYLAW 2020**.

#### PART 2: DEFINITIONS

- 2.1 In this Bylaw, unless the context otherwise requires,

<b>“additional advance voting opportunity”</b>	has the meaning set out in the <i>Local Government Act</i>
<b>“advance voting opportunity”</b>	means a <b>required advance voting opportunity</b> or an <b>additional advance voting opportunity</b>
<b>“Chief Election Officer”</b>	means the individual appointed by <b>Council</b> as the chief election officer for the conduct of a local election or other voting
<b>“City”</b>	means the City of Burnaby
<b>“Council”</b>	means the Council of the City
<b>“Local Government Act”</b>	means the <i>Local Government Act</i> , RSBC 2015, c. 1, as amended or replaced from time to time
<b>“required advance voting opportunity”</b>	has the meaning set out in the <i>Local Government Act</i>

#### PART 3: ADVANCE VOTING OPPORTUNITIES

- 3.1 In addition to the **required advance voting opportunity** established by Section 107(1) of the *Local Government Act*, held on the 10<sup>th</sup> day (Wednesday) before general voting day, the second **required advance voting opportunity** for a general local election or by-election shall be held on the 14<sup>th</sup> day (Saturday) before the general voting day for the general local election or by-election, as applicable.
- 3.2 The **Chief Election Officer** is hereby authorized to establish **additional advance voting opportunities** for each local election or other voting, to be held in advance of the general voting day for the local election or other voting.

- 3.3 Subject to the *Local Government Act*, the **Chief Election Officer** is hereby authorized to designate the voting place or voting places and establish the date and voting hours for each **advance voting opportunity**.

Read a first time this                      day of                      , 2020

Read a second time this                      day of                      , 2020

Read a third time this                      day of                      , 2020

Reconsidered and adopted this                      day of                      , 2020

MAYOR

CLERK