



**CITY OF HAMILTON**  
**CORPORATE SERVICES**  
*Office of the City Clerk*

<b>TO:</b>	Chair and Members Governance Review Sub-Committee
<b>COMMITTEE DATE:</b>	July 14, 2021
<b>SUBJECT/REPORT NO:</b>	2022 Municipal Election: Voting Methods and Tabulating By-law (FCS21073) (City Wide) (Outstanding Business List Item)
<b>WARD(S) AFFECTED:</b>	City Wide
<b>PREPARED BY:</b>	Aine Leadbetter, Manager Elections, Print and Mail x 2753 Stacey Applebee, City Solicitor, x 4660
<b>SUBMITTED BY:</b> <b>SIGNATURE:</b>	Andrea Holland, City Clerk

**RECOMMENDATION**

(a) That the draft By-law attached as Appendix “A” to this report FCS21071 to permit the continued use of optical scanning vote tabulators for the purpose of counting votes in municipal elections, and to permit the use of a special vote by mail as an alternative voting method that does not require electors to attend at a voting place in order to vote, which has been prepared in a form satisfactory to the City Solicitor, be approved; and

(b) that a one-time increase of \$125,000 to the Election Expense Reserve (112206) be funded through the Tax Stabilization Reserve, to support a special vote-by-mail initiative for the 2022 municipal election; and

(c) that the annual contribution to the Election Expense Reserve (112206) be increased by \$31,250 to cover the increased costs to deliver a special vote-by-mail for future municipal elections be referred to the 2022 Operating Budget deliberations for consideration.

**EXECUTIVE SUMMARY**

The next municipal election will be held on October 24, 2022. To enhance accessibility, provide greater convenience for the electorate, and to increase flexibility for the City in responding to potential public health concerns, staff is recommending that the option of

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a special vote-by-mail be added as an alternative method of voting to complement in-person paper ballots.

## **HISTORICAL BACKGROUND**

At the General Issues Committee (GIC) meeting on December 9, 2020, Committee approved the recommendation in report FCS20081 that the City Clerk explore and evaluate alternative voting methods, including the vote from home program and special vote by mail, as an option to supplement traditional voting practices in the 2022 Municipal Election and report back to the Governance Review Sub-Committee with recommendations for alternative voting methods and an authorizing by-law.

The City of Hamilton has previously supported the use of technology to support enhancements to voting, including optical scan tabulators and touch screen vote counting equipment. The enactment of By-law 17-059, being a By-law to Authorize the Use of Vote Counting Equipment, authorized the use of vote tabulators during Municipal Elections. By-law. 03-200, Being a By-law to authorize the use of touch screen voting equipment at Municipal Elections similarly allows for the use of touch screen vote counting equipment in elections. While the City has utilized vote counting technology since 1997, Hamilton has not opted to employ alternative voting methods though other Ontario municipalities have successfully implemented additional voting options for electors in past elections.

## **INFORMATION**

Under the *Municipal Elections Act, 1996*, (the *MEA*) as amended, and its regulations, the City Clerk is responsible for ensuring that elections are planned and delivered in a manner that reflects the principles of the *MEA*. While not established as part of the *MEA*, these principles are generally recognized as:

- the secrecy and confidentiality of the voting process is paramount;
- the election shall be fair and non-biased;
- the election shall be accessible to the voters;
- the integrity of the voting process shall be maintained throughout the election;
- there is to be certainty that the results of the election reflect the votes cast;
- voters and candidates shall be treated fairly and consistently; and
- the proper majority vote governs by ensuring that valid votes are counted, and invalid votes are rejected so far as reasonably possible.

In addition to ensuring the principles of the *MEA* are achieved, the City Clerk strives to deliver progressive and innovative elections that improve processes, enhance convenience, and encourage greater participation and engagement. Staff continuously

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monitor legislation updates, municipal trends and best practices to ensure alignment and identify opportunities for continuous improvement.

Section 42 (1) of the MEA allows for municipalities to enact by-laws to support the use of alternative voting methods:

- 42 (1) The council of a local municipality may pass by-laws,
- (a) authorizing the use of voting and vote-counting equipment such as voting machines, voting recorders or optical scanning vote tabulators;
  - (b) authorizing electors to use an alternative voting method, such as voting by mail or telephone, that does not require electors to attend at a voting place in order to vote.

In accordance with recent amendments to the MEA, a By-law passed pursuant to Section 42(1) will apply to a regular election if the by-law is passed on or before May 1 in the year of the election.

When assessing and considering alternative voting methods, the City Clerk must ensure that the approach being recommended upholds the principles of MEA and its regulations, and additionally must confirm that the method can be administered and supported effectively by the corporation. The City Clerk also assesses the local and current context and reviews electoral trends to provide the best advice and best fit for our community.

There are a variety of voting methods that are utilized in municipal elections across the province, including traditional paper-ballots in addition to alternative voting methods such as vote by mail, vote at home, telephone and internet voting.

### **Traditional Voting Approach – In-Person Paper Ballot**

The use of paper ballots to cast a vote in-person is the most common approach used in municipal elections and the primary voting method considered in the MEA. The City of Hamilton has traditionally relied on in-person voting using paper ballots for municipal elections. Paper ballots may be manually counted; however, most municipalities have moved to incorporating voting technology for validation and counting purposes as manual counting involves much time and effort. Since 1997, the City of Hamilton has used vote tabulators, which has allowed for greater accuracy in reading an elector's ballot and additionally enabled the processing of large numbers of ballots in a short period of time, providing reliable and immediate results at the end of election day.

**SUBJECT: 2022 Municipal Election: By-Law to Authorize Alternative Voting Methods (FCS21073) (City Wide) - Page 4 of 12**

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When casting a vote in-person using a paper ballot, an elector attends a poll location in person where they verify their identity and name on the voters list, receive a paper ballot, and go behind a privacy screen to mark their choice(s). The elector would then place their ballot in a secrecy folder to ensure the secrecy of their vote, which is then processed through the vote tabulator. To support the method of paper ballot voting, the City prints ballots specific to each ward, identifies and sets up centrally located accessible polling locations, and ensures adequate staffing and technology.

Paper ballot voting is supported by additional measures to provide greater accessibility and convenience and to further encourage voting. Electors who are unable to attend a voting location in person may, in alignment with Section 44 of the MEA, appoint and register another qualified elector to act as a voting proxy who casts their vote on election day or in an advanced poll. Appointment of a proxy voter does have to be registered in person with the City Clerk, however, which can be a barrier for electors who are unable to get to City Hall to complete this process. The City additionally holds a number of advanced voting polls to provide opportunity for electors to cast their vote at times and locations outside those available on election day. The City provides assistive voting technology to enhance accessibility for persons with disabilities such as paddles, sip and puff technology, and braille inscription. The City has additionally provided curb side voting as an option where a ballot is brought outside to an elector who arrives at a voting location and is unable to physically go into the poll to cast their vote. While these measures provide greater accessibility and convenience, they all still utilize the marked paper ballot, are cast in person, and are processed through a tabulator.

There are many benefits to the paper ballot approach. The process to cast a paper ballot vote is clear and easy to follow. Electors are comfortable and familiar with this process, and there is much tradition attached to physically attending a poll to vote on election day. As electors cast their vote in person, identity can be verified, and they are able to cast their vote in a manner that is free from coercion. Electors have the option to request assistance from poll location staff where needed. Additionally, issues such as rejected or improperly marked ballots can be fixed and addressed easily.

However, Paper ballot voting is not without risk and downside. In-person voting can be time consuming, as it requires a voter to leave their home and travel to and from a voting location where they will potentially wait in line to cast a ballot. Despite best efforts, paper ballot voting can be inaccessible for voters who are physically unable to attend a voting location and do not have access to a proxy. While the risk is minimal, voter fraud can still occur for in-person voting.

Paper ballot remains the preferred method of voting by Staff, and there is no recommendation at this time to remove the option to vote in person on election day, at advanced polls, or through a proxy.

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## **Alternative Voting Methods**

Alternative voting methods allow for voters to cast a vote in an election without having to physically attend a poll location, and as such, are considered to be unsupervised. These methods may be employed as the primary or sole voting method, but more commonly are used to supplement traditional in-person paper ballots. While alternative voting methods have not been proven to increase voter turnout to a great degree, they have the potential to provide greater access and convenience for electors, and additionally may provide greater flexibility to deal with potential public health concerns in 2022 should COVID-19 remain a concern.

### **Vote-by-Mail**

Vote-by-mail is a method of voting that has been used extensively and often as the only method of voting in rural and northern municipalities where there is great distance between electors and significant travel would be required to attend a voting location. Vote-by-mail has also been increasingly implemented by municipalities as the primary alternative to supplementing the paper ballot method. Throughout the COVID-19 pandemic, this approach was used regularly as it proved to be a measure that enabled adherence to public health protocols without requiring significant additional resources or greater technology. The City of Toronto and the City of Ottawa used Special vote-by mail as a voting option for their recent by-elections.

While there are no specific requirements or Regulations that speak to vote by mail in the MEA, Section 42 of the MEA requires the Clerk to establish procedures and forms for the use of any alternative voting method authorized by by-law and provides that if the procedures and forms are consistent with the principles in the MEA those procedures prevail over the MEA and the Regulations. If Vote-by-Mail is approved, the Clerk will establish the necessary procedures to govern the process for vote-by-mail using best practices established through historical use of this alternate method of voting and in accordance with the principles of the MEA.

In a system where vote-by-mail is employed as the only method of voting, all eligible electors receive a ballot package in the mail. In comparison, municipalities that use vote-by-mail as a supplemental method to traditional approaches typically use a special vote-by-mail, where ballot packages are provided to eligible electors only where they request a ballot package in advance. Additional eligibility criteria may be used to determine who can vote-by-mail, but during by-elections throughout the pandemic, eligibility was typically open to all requesting electors.

In a special vote-by-mail, electors would be required to request a ballot package from the City Clerk's Division during a designated window of time. Requesting electors would be verified against the voters list and required to provide proof of identity to

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**SUBJECT: 2022 Municipal Election: By-Law to Authorize Alternative Voting Methods (FCS21073) (City Wide) - Page 6 of 12**

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receive a vote-by-mail ballot package. Once verified and approved, staff would mail out a package including:

- Ballot
- Instructions for returning the ballot
- Declaration form that the elector must sign and return
- Blank secrecy envelope for inserting the marked ballot
- Outer envelope with pre-paid postage for inserting the declaration form and secrecy envelope holding the ballot

The elector would complete their ballot and declaration form and return it to the City via prepaid mail or by placing in a secure drop box location before a set time on election day. Electors who request a special vote-by-mail ballot would not be eligible to vote at the poll location once the ballot is distributed.

Vote-by-mail ballots received by the City would be collected and held by the City Clerk in a secure location. Votes would be opened and tabulated by election officials in a location that would be fully accessible to candidates and scrutineers. In the event that a ballot is rejected from the tabulator, it would be subject to review and adjudication in accordance with the procedures for vote-by-mail established by the City Clerk.

A special vote-by-mail may prove to be an effective supplemental voting method for the City of Hamilton for a number of reasons. A special vote by mail option may provide electors with the ability to mark their ballot from home at their convenience and may allow increased privacy for voters who are not able to vote at voting locations independently. This option may additionally provide greater accessibility for resident and non-resident electors who are unable to attend poll locations. This method would provide the City with greater flexibility to bring ballots to residents where there may be public health concerns such as outbreaks. While Vote-by-mail would require the assistance of a vendor with experience and expertise, this method could be implemented using existing staff resources and would not require any additional equipment.

While research and practice has overwhelmingly shown that vote-by-mail is a safe and secure method of voting with very little proven voter fraud, there are some potential risks and downsides to this approach. As this method relies on the mail system unless an elector drops their ballot off at a drop box location, the receipt of the ballot would be subject to mail processing timelines or could be lost or damaged. This could result in a vote not being counted if damaged or where it was not received by the due date and time. As the elector would be voting outside of a traditional poll in a private setting, this type of voting may open the elector to coercion or influence in their vote. Similarly, as electors would be voting in a private setting, the risk of error on the ballot might be higher without access to assistance but could potentially be lower with no pressure to

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complete quickly at the poll. Additionally, there is an environmental impact to paper-based ballot and mail distribution.

Staff are recommending a special vote-by-mail as an alternative voting method to supplement traditional in-person paper ballots.

### **Vote at Home**

A vote at home program is an alternative voting method that allows electors who are unable to, or who choose not to, leave their homes due to mobility or health concerns with the opportunity to have their ballot brought directly to their house by elections officials. While this alternative voting method has not been widely used, some municipalities such as the City of Toronto and the City of Brampton have used this approach to enhance accessibility in previous elections, and additionally, the province used this approach in the most recent Provincial election.

In a vote from home program, an eligible elector would contact the City Clerk's office during a set period of time in advance of the election to request a home visit to vote. The elector would identify that they were not able to attend a physical poll location without unreasonable difficulty, and staff would further verify the elector's identity and ensure that they are on the voters list. Once eligibility has been verified and a home visit approved, a date and time would be scheduled prior to election day for the home visit. At the confirmed date and time, elections officials would present at the elector's home, verify the identity of the elector, and provide the elector with a ballot to mark. The ballot would be sealed and secured in an envelope, and the elections officials would securely store the ballot. Votes would be opened and tabulated by election officials on election day, in a location that would be fully accessible to candidates and scrutineers. In the event that a ballot is rejected from the tabulator, it would be subject to review and adjudication in accordance with the established procedures.

Voting from home has the potential to provide a more accessible voting experience. By bringing the ballot directly to the voter, electors who are unable to attend a physical voting location are provided an opportunity to fully participate and removes many of the barriers they may face in voting. This method does not require any additional equipment, and by having election officials attend the home, electors can request assistance or ask questions. In addition, this approach is secure as the ballot is brought directly to the elector to complete, and then retained by elections officials in a secure location until election day.

While this method has many advantages, a vote from home program also presents a number of challenges. The administration of a vote from home program would require teams of elections officials trained and experienced in working with vulnerable populations to deliver the program. While there would be no need to bring in a third

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party to run this program, depending on the uptake of the program it could be potentially resource heavy to run internally especially as staff could not work alone. Sending staff into private residences would pose some health and safety concerns, particularly as we would be unfamiliar with the setting or any potential concerns prior to attending. Health and safety concerns would additionally be heightened if the community is still impacted by COVID-19 at the time of the election, where public health measures may not allow for this type of program.

Staff are not recommending vote at home as an alternative voting method to supplement traditional in-person paper ballots.

### **FINANCIAL – STAFFING – LEGAL IMPLICATIONS**

**Financial:** The cost to implement a special vote by mail for the 2022 election is estimated to be \$125,000, though the true cost will be determined through the procurement process. This budget request is in line with other Municipalities of a similar size to deliver this voting program and is based on best practice research and advice suggesting that estimates for uptake of a special vote-by-mail program should account for 10% of eligible voters choosing this method.

To support vote-by-mail for future elections beyond the 2022 municipal election, annual contributions to the Election Expense Reserve would have to be increased by \$31,250.

**Staffing:** n/a

**Legal:** Section 42(1) of the MEA provides that council may pass by-laws authorizing the use of voting and vote-counting equipment (such as vote tabulators) and the use of alternative voting methods which do not require electors to attend at a voting place in order to vote. A by-law to authorize the use of voting and vote counting equipment and alternative voting methods must be passed on or before May 1, 2022 in order to apply to the 2022 Municipal Election.

Pursuant to Section 42(3) of the MEA, where council decides to pass such a By-law, the Clerk is required to establish procedures and forms for the use of any voting and vote-counting equipment and any alternative voting method authorized by by-law and must provide such procedures and forms to each candidate when their nomination is filed. These Procedures and Forms must be consistent with the principles outlined in the MEA. Compliance with this requirement must be achieved by June 1<sup>st</sup> in the year of the election.

Pursuant to Section 40 of the MEA, in addition to giving electors notice of the location of the voting places, dates and times on which voting places are open for voting, and the manner in which electors may use voting proxies

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(where applicable), the Clerk must also give notice of the manner in which electors may use the alternative voting methods where such has been authorized by by-law.

Pursuant to Section 42(5) of the MEA, Section 43 (advance votes) and Section 44 (proxy votes) will apply to alternative voting methods only where the authorizing by-law so specifies and if the by-law specifies that Section 44 applies, it may establish additional criteria that a person must meet to be entitled to vote by proxy. The draft By-law attached as Appendix "A" to this report states that these sections will not apply for special vote by mail.

Pursuant to Section 42(6) when a by-law authorizing the use of voting or vote counting equipment or alternative voting method is in effect the votes are not permitted to be counted until after the close of voting on voting day.

## **POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS**

Should Council wish to implement special Vote-by-Mail as an alternative voting option and/or authorize the use of voting or vote counting equipment, a by-law must be passed on or before May 1, 2022. While the MEA was recently amended to require this decision to be made by May 1st in the year of the election rather than by May 1st in the year prior to the election, based on an assessment of time required to prepare for the 2022 municipal elections, a decision in advance of the May 2022 deadline would be beneficial.

If Council approves the special vote by mail process, the procurement of a vendor to assist with the Vote-by-Mail alternative voting method will be undertaken in accordance with the Procurement Policy.

## **RELEVANT CONSULTATION**

### **Internal consultation**

Consultation for this report was received from:

- Information Technology
- Legal Services
- Risk Management
- Procurement

### **Municipal Benchmarking**

Surrounding and comparative municipalities have been examined to determine the methods of voting being implemented for 2022 as well as level of interest for ranked ballots.

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### **Community Consultation**

Staff attending the following Volunteer Advisory Committees for feedback on alternative voting methods and suggestions for improvement for the 2022 Municipal Election:

- Seniors Advisory Committee
- Committee Against Racism
- Aboriginal Advisory Committee
- Advisory Committee for Persons with Disabilities
- Status of Women Advisory Committee

Staff will continue to consult with the community through Advisory Committees and direct outreach to seek feedback in advance of the election and to ensure that the method(s) implemented are well communicated.

### **ANALYSIS AND RATIONALE FOR RECOMMENDATION**

While research and practice has not shown a direct link between alternative voting methods and increased rates of voter participation, there is much value to enhancing options for voters to engage in elections. The introduction of an alternative voting method to supplement the City's current in-person paper ballot approach would enhance accessibility, provide greater convenience for the electorate, and would additionally provide the City with greater flexibility should COVID-19 continue to pose public health concern into 2022. Through consultations with stakeholders to date, staff recognize that there are equity issues that may be presented with in person only voting and are recommending vote-by-mail to remove barriers for those with physical and other reasons preventing some of the electorate from voting in person.

While there are a number of methods that have been employed successfully in municipalities across the province, choosing an appropriate method for use in Hamilton's 2022 municipal election requires ensuring that the approach is safe and secure, cost-effective, and can be administered effectively by staff. Through an analysis of the vote-by-mail method, staff is confident that this method meets and upholds the principles of the MEA by ensuring that:

- The secrecy and confidentiality of the vote is maintained
- The approach is fair, consistent, non-biased and free of influence
- Access is enhanced for many voters who are unable to physically attend a poll
- The integrity of the vote is maintained
- Certainty in the results would reflect the votes cast, votes are counted, and invalid votes are rejected in line with procedures.

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**SUBJECT: 2022 Municipal Election: By-Law to Authorize Alternative Voting Methods (FCS21073) (City Wide) - Page 11 of 12**

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As such, Staff is recommending that to meet the objectives as outlined above and to ensure that the integrity of the election is maintained while providing greater accessibility and convenience, that the City introduce a Special Vote-by-mail option for voting in the 2022 municipal election and for future elections.

Vote by mail as a method of voting has been used by many municipalities and other levels of government in Canada in their elections and has been proven over time to be a highly effective and secure method of voting. Voters are familiar with using the mail service, and additionally many may have participated in vote-by-mail through other elections. The Federal Government has successfully implemented vote-by-mail for electors living abroad in addition to those living within the country who are unable to attend a poll to vote. The Province of Ontario provides the opportunity for electors to request a vote-by-mail package and submit their ballot via the mail and has not indicated any significant challenges with this approach. Similarly, all Canadian Provinces and Territories have and continue to offer a vote-by-mail to eligible electors within elections to great success.

The implementation of a special vote-by-mail, requiring those interested to reach out to the City to request a ballot, would further ensure that ballots were sent to registered and eligible voters only, minimizing the potential for voter fraud. Concerns about mail could be mitigated effectively through working with Canada post, by providing adequate time for ballot distribution before election day, and by providing drop boxes should eligible voters choose to drop their ballot off at City Hall rather than mail it back. Providing postage-paid ballots would ensure that mailing costs would not be accrued by residents. While a special vote-by-mail program would require additional administration and oversight to roll out, Staff is confident that this can be achieved using existing resources. Risks associated with a vote-by-mail method will additionally be mitigated through the development of thorough procedures to ensure that the principles of the MEA are upheld and adhered to in the delivery of this alternative voting method.

Staff is not recommending the implementation of a vote from home option for the 2022 municipal election due to uncertainty with the public health outlook and concern with health and safety considerations inherent to having City staff conduct home visits.

## **ALTERNATIVES FOR CONSIDERATION**

Council could choose to maintain the status quo and not implement an alternative method for voting for the 2022 municipal election. The City would offer in-person paper ballot voting with the opportunity to cast a ballot in advance polls, through proxy-voting, or at a poll location on election day. Assistive voting technology would continue to be used to provide greater accessibility for persons with disabilities.

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## **ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN**

### **Community Engagement & Participation**

*Hamilton has an open, transparent and accessible approach to City government that engages with and empowers all citizens to be involved in their community.*

### **Our People and Performance**

*Hamiltonians have a high level of trust and confidence in their City government.*

## **APPENDICES AND SCHEDULES ATTACHED**

**Appendix “A” to Report FCS21073** – A By-law to Authorize the Use of Optical Scanning Vote Tabulators as Voting and Vote Counting Equipment and to Authorize Use of a Special Vote by Mail as an Alternative Voting Method and to repeal By-law 17-059 and By-law 03-200.

**Appendix “B” to Report FCS21073** - Review and risk assessment of alternative voting method options

## **SELECTED REFERENCES:**

[Elections Ontario. Special report of the Chief Electoral Officer on election administration and the COVID-19 pandemic, November 30, 2020.](#)

[Gronke, Paul, Eva Galanes-Rosenbaum, Peter A. Miller, and Daniel Toffey. Convenience Voting. Annual Review of Political Science. 2008. 11:437–55.](#)

[Labelle, Blair. An Analysis of Alternative Voting Methods. City of Guelph, July 16, 2013.](#)

[McNeish, Joanne. Voting by Mail. Canadian Journal of Marketing Research. 2005. 22:1.](#)

[Office for Democratic Institutions and Human Rights. Alternative Voting Methods and Arrangements: Benefits, Risks and Practical Considerations In Light Of International Standards And Good Practice, Including In The Context Of The Covid-19 Pandemic. OSCE ODIHR, 2020.](#)