



Hamilton
OFFICE OF THE
AUDITOR GENERAL

Elections Administration Audit Report

May 31, 2023

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HAMILTON
VOTES **2022**

MUNICIPAL ELECTION

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Executive Summary

- 1 The purpose of the audit of elections administration was to review and assess the adequacy and effectiveness of systems, resources, agreements, policies and procedures used to administer the 2022 election cycle. Relevant to our audit were election processes not only on election day, but those prior and leading up to the election. Accordingly, we reviewed various processes related to logistics, communications, planning and preparations, in addition to those affecting compliance with procedural requirements of the Municipal Elections Act.
- 2 The review was conducted in three parallel streams. The first stream was the review by a municipal expert of the key processes used to administer the election. The major areas reviewed included elector information, voting list, location management, candidate nomination and information, voting methods, procedures and administration, and third-party advertisers. Compliance with the Municipal Elections Act (MEA) was assessed, and our audit team also reviewed the practices adopted by the Clerk for possible improvement opportunities. The second stream was a review of technologies used to conduct the election including tabulators, e-poll books, and related software. The purpose of this phase was to understand the implications of the technologies used with respect to election efficiency, and to ensure risks can be appropriately managed including cyber threats, adequacy of privacy and integrity controls, resources support and failure contingencies. The last part of the review consisted of two statistical surveys - one of electors and the other of candidates. The objective was to obtain objective information about the satisfaction of these groups with the election process and through their commentary identify areas for improvement.
- 3 For the compliance review phase, our Office found that the Clerks processes substantially complied with requirements under the MEA. As indicated in the detailed report, there were some compliance issues related to voting hours, voter lists and notification. However, the deviations did not compromise in any material way the seven generally accepted election principles that engender confidentiality of voting, absence of bias, voter accessibility, integrity, certainty and accuracy of results, and fair and consistent treatment of voters and candidates. There were some important observations relating to more efficient and effective processes to better support candidates and voters that we outline in the report. Some of the major issues of the report include the disruption of service on election day due to technology failure; logistical issues in printing voter notification cards; tight timelines and reliance on Canada Post that affected the receipt of voter cards and vote by mail kits; and a privacy breach that had to be reported to the Information and Privacy Commissioner. Specific improvement opportunities are described in the detailed findings section.
- 4 For the technology assessment phase, our experts, Valencia Risk (Valencia), sought and obtained explanations for technology issues that arose during the election. In general, they found that technologies, when deployed and used as designed, are reliable and effective in protecting against security or infiltration threats, and in providing accurate processing and outputs. Some issues found that are included in their presentation (Appendix B) relate to the absence of Canadian standards with which to assess and ensure the sufficiency and efficacy of technology controls, limited training and technical support, the level of involvement of in-

house IT security, use of formal IT threat assessment, lack of contingency planning and the need for stronger technical controls.

- 5 For the survey phase, Metroline Research has provided an analysis of the survey results (Appendix C). A survey of electors was conducted by telephone and had 600 respondents which is considered accurate to within +/- 4% 19 times out of 20. The results show that residents are mainly satisfied with the process, with 68% saying they were very satisfied and 24% somewhat satisfied (92% total). Some 86% said they were able to cast their vote in 10 minutes or less. The survey sent to all 150 candidates brought 42 responses (28%). Over half responding candidates were satisfied (very or somewhat) with every resource. About 81% made use of the candidates portal with 62% saying that finding information was very or somewhat easy and 26% saying it was very or somewhat difficult. The two primary election administration issues expressed by candidates were residents not receiving a voter's card (67%) and residents not aware of their polling locations (55%). From the survey results we concluded there is opportunity to improve the candidate experience.
- 6 In addition, there were residents who proactively provided commentary via the Office of the Auditor General (OAG) website and dedicated election audit site. As outlined in this report the comments received were a mixture of positive and negative experiences. From a process improvement perspective, not receiving voter cards or vote by mail packages, election website challenges, the expressed need for more polls closer to the voters, the election day crash of the system during which staff struggled to cope, and the desire to have online voting were most often given as opportunities.
- 7 In the course of reviewing the election process we found some practices adopted by the Clerk to be innovative and worthy of honourable mention. In particular, the use of a formal risk assessment framework and accompanying methodologies in preparing and planning for various risk scenarios in the administration of the election was a best practice, as was the use of a virtual assistant on the election website, and the voice assistant that provided capability to respond to Siri and Alexa enquiries.
- 8 Overall, OAG made 50 recommendations to the Clerk for consideration prior to the next election. Due to the constraints of time we gave the Clerk the option of providing individual responses or alternatively one overall response, outlining general agreement and/or any concerns with the recommendations along with a commitment to provide detailed responses by September 2023 for presentation to the General Issues Committee.
- 9 Finally, our Office wishes to acknowledge the co-operation of the Office of the Clerk in responding to the review requirements. We also acknowledge and point out to the reader that the Clerk has broad authority to make decisions regarding election process, in order to ensure elections are conducted impartially and fairly, without bias or influence. It is a solemn responsibility. Our recommendations are therefore just that – recommendations - and are intended to be respectful of the Clerk's independence.

Introduction

10 On January 25, 2023, Council passed the following motion:

Audit of the 2022 Municipal Elections in the City of Hamilton (Item 11.2)

WHEREAS, the City Clerk has responsibility under the *Municipal Elections Act* for conducting elections within the city of Hamilton;

WHEREAS, Council is responsible for providing funding for the conduct of municipal elections, the use of City resources during an election, the methods used for voting and the passing of by-laws related to election signs; and,

WHEREAS, there have been concerns raised including, but not limited to, the use of vote by mail ballots, elector privacy, timely distribution of information to electors and candidates, as well as voting delays during the 2022 municipal elections in the city of Hamilton;

THEREFORE, BE IT RESOLVED:

(a) That the City Auditor [now Auditor General] be directed to:

- (i) undertake and oversee, an audit of the administration of the 2022 municipal election in the city of Hamilton and report back in May of 2023 to Audit, Finance and Administration Committee on the findings of the audit to ensure that sufficient systems, resources, vendors and vendor agreements, and policies and procedures are in place to comply with the provisions of the *Municipal Elections Act*;
- (ii) produce an actionable set of recommendations focused on improving the administration of the City of Hamilton's elections for the 2026 municipal election; and,
- (iii) and make recommendations to Council with regard to suggested legislative reforms to the Municipal Elections Act; and,

(b) That the audit process, of the 2022 municipal election in the city of Hamilton, include the retention of an election expert, and the solicitation of feedback from electors and candidates.

11 In April 2023, Council provided direction that the Elections Administration Audit was to report back to the General Issues Committee in May 2023.

12 This report fulfils the requirements of both Council directions. A consulting election expert (Kris Fletcher) was retained by the Office of the Auditor General (OAG). Ms. Fletcher has extensive experience as a Municipal Clerk who administered many municipal and school board elections, along with experience as a Returning Officer for an Electoral District in

recent Ontario Provincial Elections. Additionally, the OAG retained Valencia Risk, a specialty IT Risk Advisory and Audit firm to complete work relating to the technology aspect of municipal and school board elections.

- 13 Feedback was solicited from eligible voters and candidates via two surveys that were conducted through late March and April 2023. The surveys were administered by Metroline Research Group (Metroline), and Metroline completed the survey analysis and results reporting.

The 2022 Election

- 14 In Ontario, Municipal and School Board elections are conducted pursuant to the Municipal Elections Act, 1996 (MEA), as amended, and its regulations. The Clerk is responsible for administering municipal elections in accordance with the Act. Specifically, Subsection 11(2) of the MEA provides that the Clerk's responsibility includes:
- (a) preparing for the election;
 - (b) preparing for and conducting a recount in the election
 - (c) maintaining peace and order in connection with the election; and
 - (d) in a regular election, preparing and submitting the report described in Subsection 12.1(2) [removal and prevention of barriers that affect electors and candidates with disabilities]
- 15 Election administration engenders a daunting set of tasks, often with very strict time constraints. Prior to and leading up to an election requires rigorous planning by the Clerk and the election office team. The Clerk must ensure Council approval and enactment of By-Laws and/or amendments that are necessary to carry out the election as prescribed by the MEA, and of certain policies, as well as the establishment of an Election Compliance Committee. The Clerk and elections office staff must face significant logistical, administrative and communications challenges in carrying out the procurement of vendors of equipment, supplies and services, the hiring and training of staff, the development of forms and procedures for use in administering the election including those for voters, candidates and third party advertisers, the determination and establishment of polling locations, voting methods, the fulfillment of accessibility requirements of the Act, and in developing the materials, policies, procedures, strategies and infrastructure for communicating information to stakeholders.
- 16 The Clerk has the independent authority under the Act to prescribe procedures and forms that are not otherwise provided for in the Act or regulations, including the power to require a person to furnish proof of identity and residence, citizenship or any other matter.
- 17 A very important responsibility of the Clerk mandated by the Act is providing electors, candidates and persons eligible to be electors with the information to enable them to exercise their rights.

Voting Methods Approved for the 2022 Election

18 Hamilton electors were able to cast their ballots in a number of ways:

In-person voting on election day, and at advance polls conducted on specific days and locations in each ward. Votes were cast by marking physical ballots which are read and counted by tabulator machines. Electors who were unable to get to a voting location were able to appoint a **proxy** to cast a ballot on their behalf by completing the appropriate form certified by the Clerk.

In-person voting at special advance polls being conducted at institutions using "ballot on demand" technology. This technology enabled a ballot to be printed and cast at the institution's location for any ward to offer convenience to voters who might otherwise face barriers or have to travel to their ward to vote.

Vote by Mail which allowed eligible electors to make application to be able to receive a vote by mail kit containing a ballot, instructions, voter declaration form and secrecy and prepaid return envelopes. The use of mail meant that voters needed to make timely application and mail back their vote sufficiently ahead of time to ensure it would be received by election day otherwise it would not be counted.

Long Term Care-Special Provisions




19 Special provisions in the *MEA* allow for in person voting on election day at long term care facilities and retirement residences. Due to COVID, there was a concern that these facilities would be closed to the public if there was an outbreak. Such a closure would not have permitted election workers to enter these facilities. Staff developed a program to allow residents in these facilities to vote using Vote by Mail. Kits were prepared for the residents and delivered to the various facilities and picked up by staff on voting day. These ballots were not accounted for as vote by mail ballots but were included in the in person voting totals as they would have in a regular election year.

Election 2022 Results

20 The election took place on Monday, October 24, 2022 where in Hamilton one Mayor, 15 Councillors, and 22 School Board Trustees were elected to office. There were a total of 143,375 votes cast out of 405,288 electors eligible to vote, resulting in a voter turnout of 35.38%. By comparison, the City of Kitchener had a turnout of 20.26%, Cambridge 28.87%, Waterloo 27.18% and Ottawa 43.79%. The average turnout across Ontario was 36.3%.

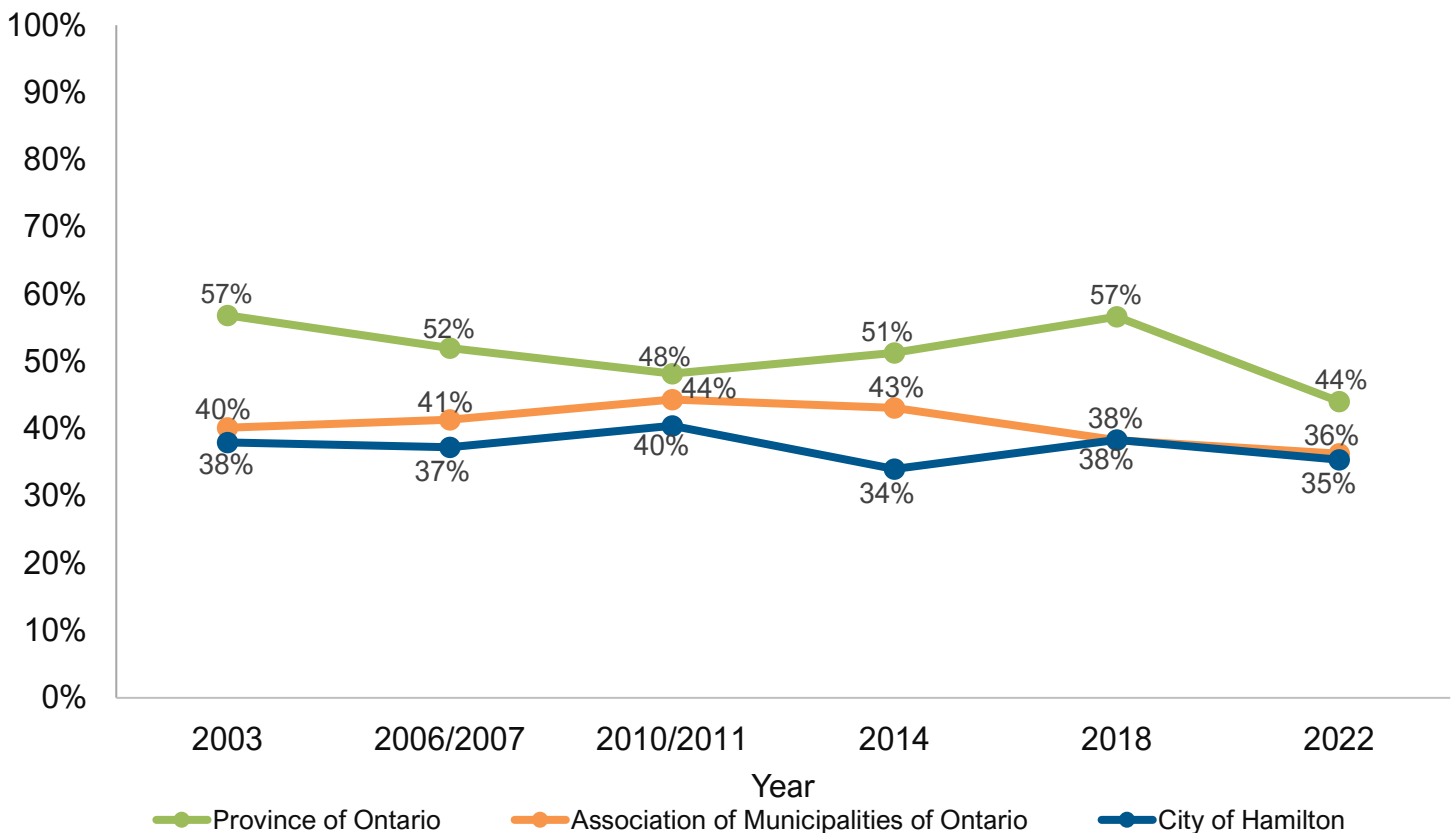
21 The total spending for the election was \$2.7M which compares slightly favourably to the budget of \$2.8M.

Voter Turn Out

Voter Turn Out		
	Number of Eligible Voters	405,288
	Ballots Cast	143,375
	Voter Turn Out	35.38%

22 As can be seen in the accompanying graph (below), Hamilton has been historically lower in voter turnout than the municipal average.

Voter Turn Out (Percentage %)



Source: Elections Ontario, Association of Municipalities of Ontario, and, City of Hamilton, Office of the City Clerk.

23 In the chart below, it shows the voter turnout alongside the voting methods the municipality uses. There does not appear to be a discernable correlation between the two. For example, Burlington and four other municipalities, which have online voting, did not experience a turnout as high as Hamilton.




2022 Municipal Election Voter Turnout and Voting Method

Municipality	Number of Eligible Voters	Number Who Voted	Turn Out Percentage	Voting Methods
Brampton	354,884	87,155	24.56%	<ul style="list-style-type: none"> • Paper – Tabulators/Scanners • Touch Screens • Assistive Devices
Burlington	142,218	39,217	27.58%	<ul style="list-style-type: none"> • Internet • Paper Ballot- Tabulators/Scanners • Assistive Devices
Cambridge	95,921	27,689	28.87%	<ul style="list-style-type: none"> • Internet, Paper – Tabulators/Scanners • Vote by Mail • Assistive Devices
Guelph	104,612	29,254	27.96%	<ul style="list-style-type: none"> • Paper Ballot – Tabulators/Scanners • Vote by Mail
Hamilton	405,288	143,375	35.38%	<ul style="list-style-type: none"> • Paper Ballot Tabulators/Scanners • Vote by Mail • Assistive Devices
Kitchener	171,025	34,658	20.26%	<ul style="list-style-type: none"> • Paper Ballot – Tabulator/Scanner • Assistive Devices
London	281,074	71,678	25.50%	<ul style="list-style-type: none"> • Paper – Tabulator/Scanner • Vote by Mail • Assistive Devices
Markham	220,234	68,641	31.17%	<ul style="list-style-type: none"> • Internet • Paper Ballots • Assistive Devices
Mississauga	491,260	107,310	21.84%	<ul style="list-style-type: none"> • Paper • Tabulator Scanner • Assistive Devices
Oakville	144,970	41,021	28.30%	<ul style="list-style-type: none"> • Paper • Assistive devices
Ottawa	722,227	316,260	43.79%	<ul style="list-style-type: none"> • Paper-Tabulator/Scanner • Vote by Mail • Assistive Devices
Richmond Hill	130,714	41,148	31.48%	<ul style="list-style-type: none"> • Internet • Paper Ballot
Toronto	1,930,812	563,124	29.17%	<ul style="list-style-type: none"> • Paper – Tabulator/Scanner • Assistive Devices
Vaughan	171,025	60,935	26.96%	<ul style="list-style-type: none"> • Internet • Paper Ballots – Vote Tabulators

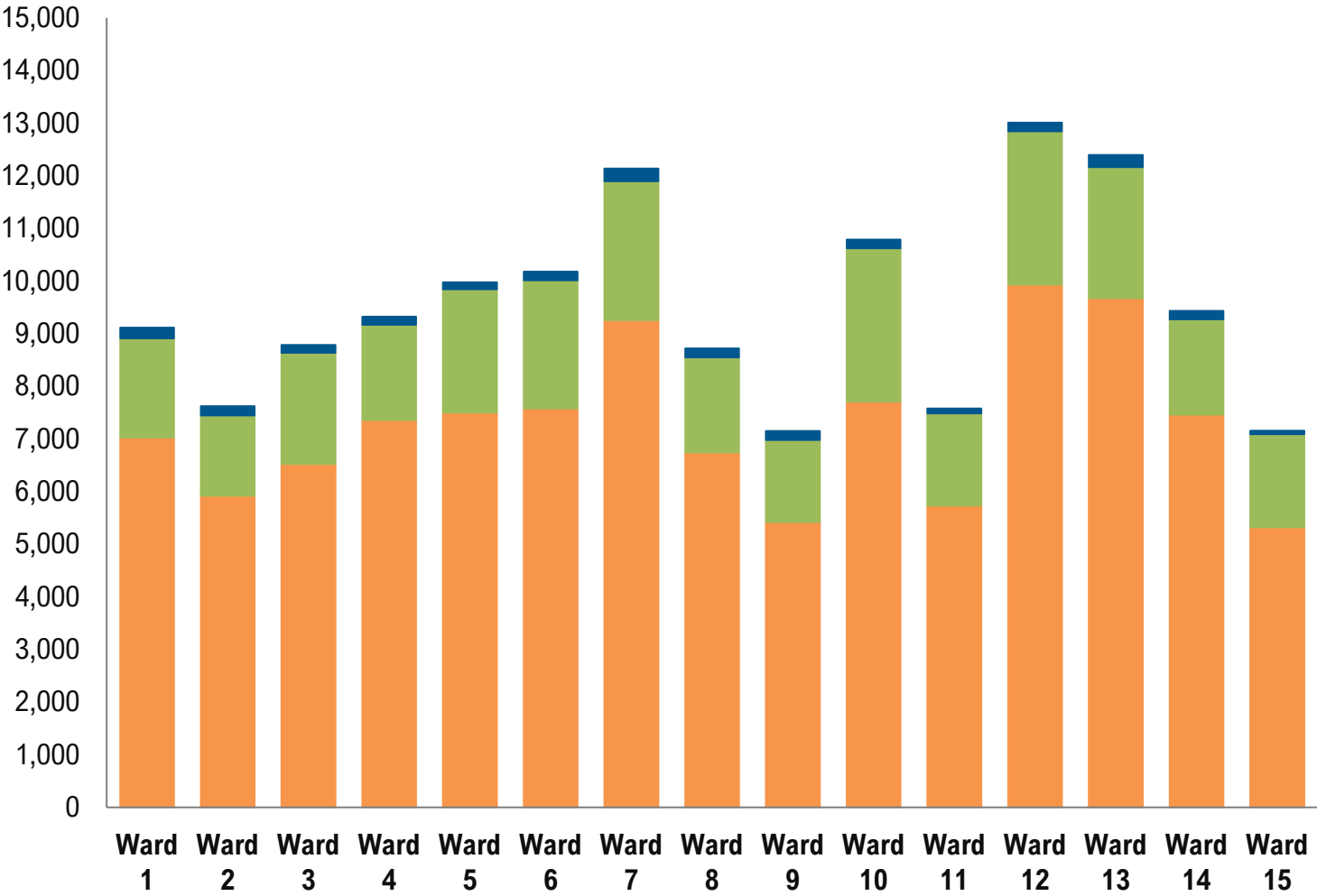
Source: Association of Municipalities of Ontario, 2022 (<https://elections2022.amo.on.ca/web/en/home>).

24 Below is shown the voting methods used by electors overall and broken down by ward.

City of Hamilton Voting Methods Used by Electors (2022)

Voting Methods	Number of Ballots	Percent Turn Out
 Ballots cast (vote Tabulator) Election Day	109,179	76.15%
 Ballots Cast (vote Tabulator) Advance Poll	31,748	22.14%
 Vote by Mail	2,448	1.71%
Total	143,375	100%

Total Number of Ballots Cast by Ward and Voting Type



	Ward 1	Ward 2	Ward 3	Ward 4	Ward 5	Ward 6	Ward 7	Ward 8
■ Vote By Mail	205	176	151	151	132	162	239	173
■ Advance Votes	1,883	1,523	2,110	1,812	2,344	2,434	2,638	1,803
■ Voting Day	7,027	5,924	6,527	7,358	7,502	7,581	9,258	6,745
Total	9,115	7,623	8,788	9,321	9,978	10,177	12,135	8,721

	Ward 9	Ward 10	Ward 11	Ward 12	Ward 13	Ward 14	Ward 15
■ Vote By Mail	169	167	94	168	235	157	69
■ Advance Votes	1,559	2,910	1,753	2,914	2,490	1,809	1,766
■ Voting Day	5,424	7,711	5,733	9,930	9,672	7,464	5,323
Total	7,152	10,788	7,580	13,012	12,397	9,430	7,158

Source: City of Hamilton, Office of the City Clerk.

Key Vendors

25 Dominion Voting Systems

The City rented tabulator hardware, obtained software licenses and procured services from Dominion Voting Systems (Dominion).

26 Comprint Systems Inc. (Operating as DataFix)

The VoterView system was procured from DataFix. VoterView is an internet-based application offered by DataFix designed to provide election administrators with complete election administration capability, including an electronic view of electoral information, and other election planning tools.

27 Per Clerks, the system offered by Datafix is used by the majority of municipalities in Ontario, and the Province of Ontario. Datafix offers optional modules to be subscribed to that can be added to the VoterView system. These modules support enhanced election administration, including live voter list strikeoff, human resources management, and the development of a portal for candidates.

The City of Hamilton subscribed to the following Optional Modules:

- Online Voter Services
- Candidate Access Portal
- Election Worker Management
- Epoll book – VoterView Express
- Voting Place Management
- Election Event Dashboard

- 28 DataFix was also contracted to deliver "Vote by Mail Application" and "Vote by Mail Fulfillment" services.

Vote by Mail (VbM) Application services consisted of an online application where voters apply to receive a VbM kit, and where the City of Hamilton is responsible for reviewing and approving the applications in VoterView. Elections Office staff also requested applications received via telephone through VoterView.

Vote by Mail fulfillment services consisted of the preparation, printing, and depositing of Vote by Mail kits for each approved Client at a Canada Post facility.

29 **Elections Ontario**

The City leased tabulators and ePoll books (laptops) from Elections Ontario.

30 **Voter Notification Cards (VNC's)**

Significant issues were encountered in the production and mailing of VNC's. Ultimately a variety of vendors were used to produce the VNC's.

Audit Objective

- 31 The overall objective of the audit was to:
- Ensure that sufficient systems, resources, vendors and vendor agreements, and policies and procedures are in place to comply with the provisions of the *Municipal Elections Act*.
 - Produce an actionable set of recommendations focused on improving the administration of the City of Hamilton’s elections for the 2026 municipal election are to be made.
 - To make recommendations with regards to suggested legislative reforms to the Municipal Elections Act to the Province of Ontario.

Audit Scope

- 32 The audit scope was focused on the administration of the 2022 Municipal Elections in Hamilton. This included all the processes related to the administration of the Act, logistics planning and execution, communications, resources, budgeting and reporting.
- 33 Not included in our scope were processes related to post-election compliance activities that are prescribed under the MEA such as financial disclosure requirements. The audit scope also did not include the process to adjudicate ballots that were unable to be read by tabulators for vote by mail ballots and proxy ballots.

What We Did

- 34 The OAG performed the following procedures:
- Gained an understanding of the processes related to the administration of municipal elections.
 - Gained an understanding of the technologies utilized in elections and the associated risks and opportunities.

- Researched and reviewed relevant information including initial interviews with key stakeholders involved in various aspects of the election process and experts.
- Assessed key risks and challenges, including known issues for the election administration process.
- Reviewed of how the various risks are mitigated/controlled.
- Identified areas of non-compliance or high risk of non-compliance with the *Municipal Election Act*.
- Concluded on reasons/root causes for the various issues identified.
- Identified areas of improvement or advocacy for the municipal elections process.
- Obtained feedback from eligible voters and candidates to draw conclusions about the customer service aspect of the administration of municipal elections.

How We Did It

- 35
- Reviewed the applicable regulations and guidelines in the *Municipal Elections Act* for the administration of municipal elections in the Province of Ontario.
 - Interviewed relevant staff
 - Interviewed and consulted with the CEO of Elections Ontario
 - Retained subject matter experts (SMEs), namely an Elections SME (Kris Fletcher, Consultant), Valencia Risk (Cyber and Technology Risk Advisors and Auditors), Metroline Research Group (Survey SMEs)
 - Examined the Office of the City Clerk's election reports and supporting documentation
 - Evaluated various election technology components.
 - Reviewed the planned election processes vs actual and conducted a gap analysis.
 - Compare the City of Hamilton approach to other municipalities.
 - Conducted two surveys to obtain feedback:
 - Survey of eligible voters (telephone survey)
 - Survey of candidates in the 2022 municipal elections administered by the City of Hamilton

Detailed Findings

Compliance Review

Why is a compliance review important?

- 36 The *Municipal Elections Act* establishes rules and procedures that need to be followed in order to have a successful election. While internal policies and procedures typically provide necessary guidance, legislation and regulations are mandatory and must be addressed. Non-compliance can lead to fines and penalties, and potential damage to the organization's reputation resulting in the loss of trust and confidence of those people served by the City of Hamilton.
- 37 The purpose of compliance is to adhere to both internal policies and procedures, along with governmental laws. Implementing compliance procedures protects the municipalities reputational risk and improves the municipality's vision and value and prevents and detects violations of rules.

The *Municipal Elections Act* (MEA)

- 38 The *Municipal Elections Act* is a substantial piece of Legislation that sets out the rules for a Municipal Election. The legislation is also accompanied by a series of regulations. The *MEA* provides directives and guidance on how an election should be conducted.
- 39 The legislation also provides substantial authority to the municipal Clerk. Section 12 of the *Municipal Elections Act* outlines the powers of the Clerk, including that they may provide for any matter or procedure that is not otherwise provided for in an *Act* or regulation and that, in the City Clerk's opinion, is necessary or desirable for conducting the election.
- 40 The Clerk shall create and implement any policies and procedures that are necessary to conduct an election in a manner that reflects the principles of the Act, and its regulations. These principles are generally recognized as being:
- (a) The secrecy and confidentiality of the voting process is paramount;
 - (b) The election shall be fair and non-biased;
 - (c) The election shall be accessible to the voters;
 - (d) The integrity of the voting process shall be maintained throughout the election;
 - (e) There is to be certainty that the results of the election reflect the votes cast;

- (f) Voters and candidates shall be treated fairly and consistently; and
- (g) The proper majority vote governs by ensuring that valid votes are counted and invalid votes are rejected so far as reasonably possible.

41 Under Section 15(2) the Clerk can delegate any of their powers and duties in relation to an election to any election official as they consider necessary. This delegation shall be in writing.

Council's Role in the Election

42 In order to preserve the integrity of the election Council's official role is limited. Council is responsible for ensuring certain policies and by-laws are in place. As an example, Council is responsible for authorizing the use of vote counting equipment and alternative voting methods or for agreeing to put a question on the ballot (Not done in the 2022 election). Council is also responsible for budget, use of corporate resources and the Election Sign By-law.





Compliance with the Legislation





43 **Overall the OAG finds that the Clerk's processes substantially complied with requirements under the MEA. While there were some deviations, they did not compromise in any material way the seven principles of the Act described above.**







The follow areas were reviewed:



- Prior to election
- Nomination Procedure
- Wards, Polls, Vote Locations
- Voters and Voters' List
- Voting, Counting, Voting Places
- Accessibility
- Third Party Advertisers
- Staffing and Appointments
- Post elections

The key findings have been summarized into the tables below:






Legend	
	Some Non-Compliance Found
	Compliant: some Concerns and Areas for Improvement
	Substantially Compliant
	Not Applicable/Not Used/No Changes

Phase and Description	Compliance Rating
PRIOR TO ELECTION	
Budget <ul style="list-style-type: none"> Council approves budget administered by Clerks Policy Matters <ul style="list-style-type: none"> Notice, Forms Sign By-law Procedures established Various Administrative Matters <ul style="list-style-type: none"> Hours of voting 	 Substantially Compliant
Policy Matters <ul style="list-style-type: none"> Recount Campaign Contribution Rebates Ballot <ul style="list-style-type: none"> Questions on ballot 	 Not Applicable/Not Used/No Changes
NOMINATION PROCEDURE	
Nominations <ul style="list-style-type: none"> Notify office is open to accept nominations Process for accepting nominations documented Nomination of qualified persons is certified by Clerks Ballot Form <ul style="list-style-type: none"> Clerk permits another name a Candidate uses to appear on ballot Financial Reporting <ul style="list-style-type: none"> Certificate of maximum campaign expenses and notice of penalties is determined by Clerk 	 Substantially Compliant
Nominations <ul style="list-style-type: none"> Electronic filing of nomination 	 Not Applicable/Not Used/No Changes

Phase and Description	Compliance Rating
WARDS, POLLS, VOTE LOCATIONS	
Space <ul style="list-style-type: none"> School Boards 	 Substantially Compliant
Space <ul style="list-style-type: none"> Procedure for selecting poll locations established Locations must be accessible to electors with disabilities Municipalities mandatory provision of space 	 Substantially Compliant
Voting Subdivisions <ul style="list-style-type: none"> Dividing Municipality into voting subdivisions in an election year Space <ul style="list-style-type: none"> Landlords, condos, Corporations managing buildings containing 100 units or more 	 Not Applicable/Not Used/No Changes
VOTERS AND VOTERS' LIST	
Voters (Electors) <ul style="list-style-type: none"> Clerk notifies electors about the voting locations, hours of voting, manner for proxy voting, and alternative voting methods Voters' List <ul style="list-style-type: none"> Electronic Voters' List on Voting Day 	 Compliant: Some Concerns and Areas for Improvement (Voter Notification Cards)
Voters (Electors) <ul style="list-style-type: none"> Electronic proxy filing Voter identification policy Clerk determines policy to inform electors how to exercise their voting rights Preliminary list of Electors Voters' List <ul style="list-style-type: none"> Revisions to Voters' List – interim list changes provided to certified Candidates and send list of changes to MPAC within 30 days of Election Day Removing deceased persons from list 	 Substantially Compliant
VOTING, COUNTING, VOTING PLACES	
Voting Hours <ul style="list-style-type: none"> Voting places open to vote from 10:00 AM to 8:00 PM 	 Some Non-Compliance Found (Voting Hours)

Phase and Description	Compliance Rating
<p>Notice of Elections</p> <ul style="list-style-type: none"> • Clerks required to notify about voting locations, hours of voting, manner for proxy voting, and alternative voting methods <p>Advance Vote</p> <ul style="list-style-type: none"> • Updates to Voters' List <p>Vote By Mail</p> <ul style="list-style-type: none"> • Alternative voting method <p>Proxy</p> <ul style="list-style-type: none"> • Filing by proxy <p>Voting Hours</p> <ul style="list-style-type: none"> • Hours of voting at Institutions <p>Declaring Emergency</p> <ul style="list-style-type: none"> • Clerk discretion to determine emergency or circumstances that will undermine the integrity of election, and when such emergency has passed <p>Counting Votes</p> <ul style="list-style-type: none"> • Clerk makes information for the number of votes for each candidate, declined and rejected ballots and votes on a question available as soon as possible after Voting Day 	<p> Compliant: some Concerns and Areas for Improvement (1- Voters List-Voting Day and 2- Vote by Mail Privacy Breach)</p>
<p>By-law</p> <ul style="list-style-type: none"> • Authorizing use of voting, vote count equipment and alternative methods <p>Vote Counting</p> <ul style="list-style-type: none"> • Clerk establishes procedures for carrying out intent of the by-law and provides candidates the procedures when nominations filed <p>Advance Vote</p> <ul style="list-style-type: none"> • Clerk establishes dates, locations, hours, and process for securing advance ballot boxes, materials, and documents <p>Vote by Mail</p> <ul style="list-style-type: none"> • Alternative voting method <p>Proxy</p> <ul style="list-style-type: none"> • Clerk determines persons qualified to appoint and be appointed as voting proxy 	<p> Substantially Compliant</p>

Phase and Description	Compliance Rating
<p>Voting Places and Procedures</p> <ul style="list-style-type: none"> • Clerk designates number and locations of voting places, ensuring each voting place is accessible to electors with disabilities • Clerk issues instructions to DRO regarding attending on an elector in an institution or retirement home to allow person to vote and assisting voter with mobility impairment <p>Secrecy</p> <ul style="list-style-type: none"> • Secrecy is maintained by every person present at the voting place and at the counting of votes <p>Advance Poll Voting</p> <ul style="list-style-type: none"> • Clerk establishes dates, number, and location of voting places <p>Counting Votes</p> <ul style="list-style-type: none"> • Clerk compiles statement of results received from DROS to determine election results • Clerk in presence of DRO can open a ballot box to assist with interpreting statement of result 	
<p>Proxy</p> <ul style="list-style-type: none"> • Clerk may provide electronic filing <p>Voting Places and Procedures</p> <ul style="list-style-type: none"> • Clerk may establish certain polls voting locations open before 10:00 AM on voting day 	<p>⊖ Not Applicable/Not Used/No Changes</p>
ACCESSIBILITY	
<ul style="list-style-type: none"> • Clerk prepares a plan to identify, remove, and prevent barriers that affect electors and candidates with disabilities and reports any barriers identified and removed • Clerk notifies electors about the voting locations, hours of voting, manner for proxy voting, and alternative voting methods 	<p>✔ Substantially Compliant</p>

Phase and Description	Compliance Rating
THIRD PARTY ADVERTISERS	
Registration <ul style="list-style-type: none"> Accepted by Clerk or designate Filing requirements, registration fee Maximum campaign contributions determined 	 Substantially Compliant
Registration <ul style="list-style-type: none"> Municipality has authority to remove advertising 	 Not Applicable/Not Used/No Changes
STAFFING AND APPOINTMENTS	
<ul style="list-style-type: none"> DRO was appointed at each voting location and Clerk may appoint other election officials in addition to DRO Clerk provides training Instructions provided to DRO on attending on an elector in an institution or retirement home 	 Substantially Compliant
POST ELECTIONS	
<ul style="list-style-type: none"> Clerks determines retention location of ballots, documents, materials for destruction after 120-day period ends Clerk retains financial statement until elected candidates in next election take office Candidates' financial reports are available to the public at no charge Security during and after election 	 Substantially Compliant
POST ELECTIONS	
<ul style="list-style-type: none"> Not included in audit scope 	 Not Applicable/Not Used/No Changes

44 As noted in the above tables, there were four areas that raised concerns to the OAG:

- 1) Voting hours compliance
- 2) Vote by mail privacy breach
- 3) Voter notification cards
- 4) Voters' list

A more detailed analysis of each area of concern is listed below.

(1) Voting Hours Compliance

Issue of Non-Compliance on Voting Day

- 45
- The *MEA* establishes core hours for voting day - 10:00 a.m. to 8:00 p.m. (Section 46(1))
 - The Clerk has the authority to open the polls earlier if there is a by-law passed to allow this (Section 46(2)). This did not happen in Hamilton.
 - The Clerk may establish reduced voting hours in institutions, specifically retirement homes and long-term care facilities.
 - There were 157 poll locations on Voting Day.
 - On voting day 12 of 157 polls were not open at 10:00 a.m. (7.65%).
 - Eight of the 12 were open by 10:15 a.m. This reduced the percentage of polls that did not open to 2.55%.
 - Nine of the 12 were open before 10:30. This reduced the percentage of polls that did not open to 1.91%.
 - The remaining three polls opened at 10:45, 11:00 and 11:20.
 - Due to the fact that the polls were not open in accordance with the legislation the Clerk sought a legal opinion (from in-house legal counsel) prior to extending the polling hours.
 - The only official recourse available to the Clerk under the *MEA* is to declare an emergency under section 53(1).
 - Notice of the emergency declaration was provided to candidates (via email), the local media via a news release, and on the City's website.
 - In the issued declaration, the hours were extended at all these polls to provide 10 hours of voting. Voting was concluded at all polls by 9:20 p.m.

Emergency Declaration – Communication Protocol for the Opening of Polls

- 46
- The Managing Deputy Returning Officer (MDRO, site supervisor) for each polling location was responsible for "verifying that all staff are present and ready to work (notify Ward Centre immediately of any issues)", per the MDRO Training Manual and they were also expected to check-in when opening polls. Per the Elections Office, this was reviewed in the training received by MDROs.
- 47
- While manuals and training material may have covered these important steps, the message can be lost when an opening is not going according to plan, when the situation is "live". Polls that were unable to open by 10:00 a.m. should have contacted their Ward Captain immediately. Some did, some did not, and some polls needed to be chased down.

- 48 In fact, there were 3 polls that didn't open until after 10:30. This precipitated an emergency situation in which the Clerk had to consult with Legal on the official declaration of the emergency.
- 49 In our view this begs the question as to whether there should have been more rigorous protocols in place for the correct response to (in this case, technology) issues that cause disruption to openings which then require expeditious response. Protocols we would expect would be in the nature of procedures, decision making criteria, and explanation of what roles make what decisions.
- 50 Ward Captains and the Election Office also could have been more proactive in ensuring polls were up and running. The elections team had an electronic dashboard to indicate if a poll is open and the number of electors that were being processed. This had worked very well during the advance polls, however it failed on voting day due to the technology problems described elsewhere in this report. Elections Ontario uses software called DOMO Dashboard for use during the recent provincial election. This is, perhaps, an alternative that can be considered for the next election. The poll that opened the latest was the Hamilton Dream Centre which was caused by connectivity issues and ultimately IT was sent out to ensure they got connected.
- 51 Finally, with clear and rigorous protocols in place, you have the opportunity to confidently vest decision making authority with Ward Captains who in some circumstances can help troubleshoot basic problems, or, establish clear understanding of when to escalate a matter to the Election Office.
- 52 While the OAG did review feedback from various sources received by the Office of the City Clerk regarding the polls not being open on-time or being slow to process people, we did not find any comments about the extension of the voting period.
- 53 The OAG notes that the *MEA* does not provide an opportunity for the "ranking" of emergencies. Either a municipality is compliant or not compliant. Polls not opening exactly on time does happen in many municipalities. The circumstances can all be unique. Likewise, the declaring of an emergency with respect to the opening times of polls is also dependent upon the municipality. Some municipalities may not declare an emergency if a poll opens late as there is no set standard. Per the *MEA*, "The clerk may declare an emergency if he or she is of the opinion that circumstances have arisen that are likely to prevent the election being conducted in accordance with this Act, 1996, c. 32, Sched., s. 53 (1)". Accordingly, this may be something to advocate to the Province – that there be a standard or guidance that speaks to the criteria for when emergency declarations need to be made. Otherwise the public is left wondering why one municipality declares an emergency in the exact same circumstance that another does not.

(2) Vote By Mail Privacy Breach

- 54 There was a privacy breach that occurred on October 13, 2022 that impacted approximately 450 individuals that had registered to use the Vote by Mail process. Multiple email addresses were inadvertently entered in the to: line of the email instead of the bcc: line, exposing email addresses to all recipients of the email message. A media release was issued on October 14, 2022 to local media to advise of the privacy breach.
- 55 The individuals impacted by this breach were persons who applied for Vote by Mail, and were receiving notification from the City about the next steps in this voting process.
- 56 There were 450 email addresses exposed to the other people on the email chain. The only piece of personal information exposed was the email address. Depending upon that email address, the email may not have exposed any personal information.
- 57 In sending mass emails the practice utilized by Clerks is to put the email addresses in the BCC (blind carbon copy) field. When email addresses are placed in the BCC field of an email message, those addresses are not visible to the recipients of the email. In this case, staff put the email addresses in the CC (carbon copy) field. When email addresses are placed in the CC field of an email message, those addresses are visible to everyone who receives the message).
- 58 We found that there was action taken by the City when the breach was found. There was an attempt to recall this message however this was unsuccessful for all external email addresses outside of the "Hamilton.ca" domain. An email was sent to those individuals who had received the email apologizing for the error. A media release was also issued, and the OAG found evidence that the Information and Privacy Commissioner of Ontario (IPC) was notified.
- 59 Individuals impacted by the breach were advised via email on October 13, 2022 (same day as the breach occurred) that they could contact the IPC directly.
- 60 Ten comments were received by the Office of the City Clerk regarding the privacy breach. Those people who commented were very unhappy about the exposure of their email address.
- 61 The IPC notified the City on January 10, 2023 that they had opened a file and requested information from the Office of the City Clerk by January 24, 2023. Clerks responded within the required timeframe and provided analysis of the breach. Overall, it was found although the initial report of the number of affected individuals being 450, the total of affected unique individuals was ultimately found to be 167. Analysis of the event was provided to the IPC and ultimately it was found by the assigned Corporate Privacy Specialist that the breach was an isolated incident resulting from human error.
- 62 The OAG finds that this is a breach under *MFIPPA*, not under the *Municipal Elections Act*. The *MEA* is silent on this topic as *MFIPPA* would have overreaching authority.
- 63 It is the OAG's opinion that while the privacy breach is regrettable, the breach did not infringe upon the secrecy of the election ballot as ballots were being mailed via postal mail, and were

not being sent by email. Ultimately how people were voting was not exposed in this privacy breach.

64 That being said, there is room from a process improvement perspective to better manage privacy risks in the future. The OAG enquired if the Office of the City Clerk had an email marketing software tool to utilize for the many instances during the administration of the election where it is necessary to send emails to a high volume of individuals. The Office of the City Clerk did not have this type of technology available to them during the administration of the 2022 municipal election.

(3) Voter Notification Cards

65 Per the *MEA*, The Clerk is required to give Notice of the Election. This notice is to include information on voting places, and dates and times of voting. The City fulfilled this notification by advertising in local newspapers, having radio announcements, social media posts, posting on the City of Hamilton website, and the sending of Voter Notification Cards (VNC) via postal mail.

66 The City of Hamilton faced 2 issues when developing their VNC:

1. The printing of the VNC cards; and
2. The mailing of the cards.

67 The original vendor (for Contract Number C3-10-22) was unable to provide the services within the timelines specified in the Request for Tender. This left the Clerk scrambling at the last minute to find another printer. Ultimately a combination of in-house printing and various other local printers was utilized to complete the work.

68 While the issue with the vendor was unfolding, it was also challenging because of paper shortages within the paper commodity market, which made the City unable to utilize the existing corporate contract for paper.

69 Details on these procurement challenges can be found in the Budget, Procurement and Vendor Management Issues section of the report on page 41.

70 Complaints were received by the Elections Office about cards not arriving, or cards arriving after advance polls were completed. In one instance the cards arrived after the election was over. In some cases, this was a problem with the voters' list as it may not have captured all elector changes, or there was new development/subdivision.

71 The delivery timeframes of VNC by Canada Post was not always the most consistent. This causes confusion with electors as they try to determine if they are or are not on the voters' list. For some electors the VNC is the only way they know there is a municipal election. VNCs are generally about the size of a postcard. Some electors inadvertently throw these cards into the garbage or recycling by accident.

72 The Elections Office also found several cards that were undeliverable. No count was taken of the number of cards returned before these cards were destroyed.

(4) Voters' List - Prior to Voting Day

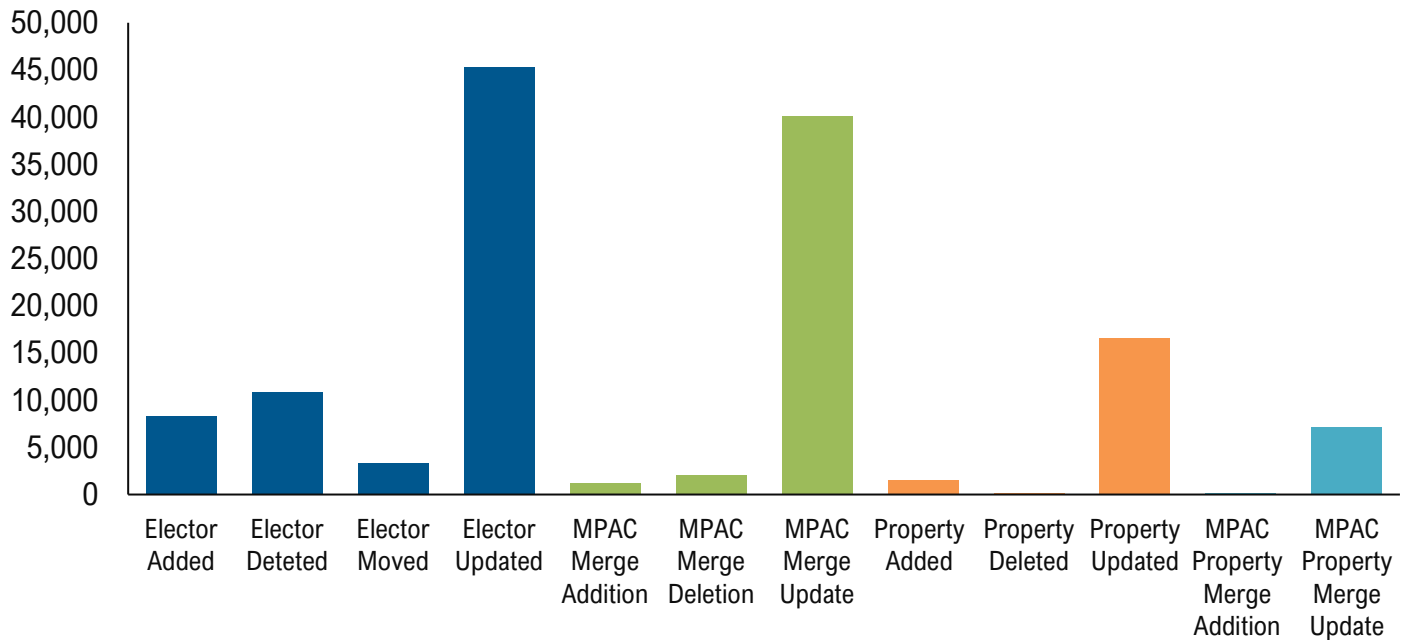
73 The creation of the voters' list currently comes from the Municipal Property Assessment Corporation (MPAC). The quality of the list has historically caused municipal clerks across the Province concern. For the 2026 elections the voters' list will come from Elections Ontario. This has been something that clerks have wanted for several years. The process utilized for the 2022 municipal election is the last time that the MPAC provided voters' list will be utilized.

74 Municipalities will need to develop a strong partnership with Elections Ontario to ensure the voters' list process fulfills municipal needs. Currently the Ontario voters' list does not include information such as school support (which is critical for the election of school board trustees). Municipalities need to be proactive to ensure the transition to the new list is successful.

75 To support the accuracy of the voters list, MPAC created the Voterlookup tool. This allows electors to go online (www.voterlookup.ca) to see if they are registered for the election. If the person is not on the list, they can add themselves to the list as long as they provide the required data. The City of Hamilton, like several municipalities, supports this tool through various notices and advertisements. This happened in the Spring of 2022 while Elections Ontario was promoting their electronic tool. This may have caused some confusion with electors. This should not happen in the 2026 election with the change to the voters' list.

76 Overall, there were 136,927 changes to the voters' list in Hamilton between September 1, 2022 and November 24, 2022. These changes were made by MPAC, electors and the Election Office. Approximately 85,500 changes came from MPAC directly through the merging and updating of data. After the merging and updating was complete, the most common change was deleting someone from the list. Over 10,000 names were deleted. The reason for this deletion varied however the most common deletion was a duplicate on the list. For the Election Office, updating the voters' list is a significant amount of work in a compressed time period. After Voting Day, only Elections Office staff were able to make changes to the list, and these changes are part of the administrative tasks that occur after the election when various types of required paperwork are completed.

Voters List Changes by Type of Change



		Change Type			
		Added	Deleted	Moved	Updated
■	Elector	8,305	10,845	3,381	45,271
■	MPAC Merge	1,266	2,102		40,122
■	Property	1,539	205		16,571
■	MPAC Property Merge	118			7,202
TOTALS		11,228	13,152	3,381	109,166

Elector Deleted Reason

Elector Deleted Reason	
Deceased	230
Decline Oath	6
Duplicate Name in Voters list	9,677
Lives in Another Municipality	262
Name Anomaly	82
Not a Canadian Citizen	2
Not at This Address	568
Not of Voting Age	5
Other	13

Source: City of Hamilton, Office of the City Clerk.

77 Overall, the OAG finds that there generally was compliance with the MEA regarding the voters' list prior to voting day.

(4) Voters' List - Voting Day

78 Access to the voters' list was very problematic on voting day. Many municipalities across Ontario (who all had the same voting day, October 24, 2022) use the same vendor DataFix for the provision of VoterView system that provides election administrators with complete election administration capability, including an electronic view of electoral information (e.g. the Voters' List), and other election planning tools.

79 Based on information provided by the vendor, DataFix, some customers experienced a slowdown in response times while using the VoterView website. Per DataFix, the root cause "was a race condition on a single web server that was triggered by a series of simultaneous events. Only users connected to the problem web server were affected: all others would not have experienced any issues. The server impacted the City of Hamilton's municipal elections, causing the system to slow and polls were impacted because access to the electronic Voters' List (including real-time strike-off's) was not timely. Based on feedback received by Election Office that was reviewed by the OAG as part of the audit, some people left the polls in frustration or endured longer than normal waits.

80 Per DataFix, this specific server issue had not been experienced in previous load testing or large-scale elections (including the British Columbia municipal elections on October 15, 2022). They also noted that they have already implemented significant changes to the VoterView hosting architecture, and have longer term plans for future improvements, and will be exploring new communications mechanisms so that status updates can be quickly distributed to all customers during critical time periods.

What Happened on Election Day?

One election day there was a widespread technology disruption to the voting process and this caused a delay in the opening of some polls and a slowdown in voter check-in. E-poll books, which are basically laptops stationed at each poll location, are equipped with voter management software that is used to view and process voter information, poll activity and staffing. An e-poll book provides access to the voters' list so that poll workers can quickly find an elector using the voter cards they bring to the poll location, and it allows staff to strike the voter off the list as having voted. On election day the functionality to perform these tasks was lost and/or disrupted at various points in time.

We found that the vendor was experiencing issues with one or more servers which affected the capacity of the system to process voter information. Lack of vendor communication regarding the nature and scope of the technical problem, and expected time to resolution, created uncertainty amongst staff about whether they should switch to manual processes.

Some poll stations switched to a printed voters' list while others chose to keep using the software. The technical failures also knocked out the "dashboard" function which inhibited the ability of the central elections team to see what was happening at poll stations.

- 81 While the above information provided by DataFix is relevant and informative, in order to ensure there is a no repeat of this issue (or another technology issue) during the 2026 municipal elections, the City of Hamilton needs to ensure that it is adequately protected by having rigorous technical specifications and options for recourse due to vendor non-performance in future vendor contracts. It is crucial that the vendor contracts include specific vendor support specifications and requirements, with particular attention given to contract terms regarding Voting Day support. It is also important that vendors are available for support as required on Voting Day and that they are able to be held accountable if they are found to be not to be delivering their services in accordance with the contract. Weaknesses in vendor contracts was identified by Valencia in their audit of the election technology, refer to paragraph 105, and Appendix "B" to Report AUD23008.
- 82 While Voting Day staff was trained on what to do if they needed to go to contingency, no one anticipated this kind of slow down across all locations and they were not prepared adequately for it. This type of specific issue was also not anticipated when Elections Office staff completed the risk management analysis. Technology failure was identified but not the specific syncing issue that occurred. To make matters worse DataFix was not communicating with municipalities about the issue.
- 83 It is critically important for Voting Day staff to be well trained to switch over to manual contingency plans in the event of a technology failure. Consideration needs to be given to devoting a meaningful amount of training time to show how to act in the event that contingency plans are activated. This could involve a tabletop exercise or simulations for key voting day staff (Managing Deputy Returning Officer's and Ward Captains at a minimum) and the provision of easy-to-understand tools to support staff in the field on Voting Day. These tools should include the provision of clear direction of when the switch over to manual should occur, if technology issues are encountered.
- 84 The issues with the Voters List also impacted candidates. They were unable to get up to date strike-off data that was promised to them by the Elections Office. This caused frustration and Elections Office staff was unable to provide adequate answers to candidate questions. The OAG notes that this situation is not a compliance issue under the *MEA* as there is no legislative requirement to provide strike off data on voting day to candidates. Essentially the Elections Office over promised and under delivered due to the issues encountered with the vendor (DataFix), but there was not any non-compliance with the *MEA*.
- 85 DataFix provides services to a significant number of municipalities in Ontario. They are the dominant player in this business to the point of exclusivity. DataFix has provided a useful service for many elections, so it was disappointing for many municipalities when the system failed. One way for this issue to be prevented would be to ensure that minimum technical requirements are included in the contract, along with significant penalties for non-performance of contracted services.

Efficiency and Effectiveness of Processes: Identified Issues

- 86 In addition to the compliance review that was completed above, the OAG team identified a number of additional process issues. We have grouped them by theme below.

Staffing and Resource Issues

- 87 Staffing a municipal election is no small feat. For the 2022 municipal election, the Elections Office had 2,419 positions they were required to fill. To do that they seconded 750 City of Hamilton staff and hired 871 external staff. Many staff (both City and external) filled more than one role on more than one day (e.g. an individual had a position at both an advanced poll and a voting day poll). So, in the end, 1041 positions were filled by City of Hamilton workers which would account for 43% of the positions available. The Elections Office secured the commitment of the senior leadership team of the City, and increased the number of city staff working the election by 400 (750 vs 350) from the last election. In our view, this was a critical step in meeting the resource requirements necessary for the election.
- 88 Further, there was difficulty in hiring qualified staff from external sources. Recruitment is a perennial challenge for municipal elections due to a reluctance to work a one-day job. As noted above, for the first time ever, the Elections Office obtained commitment from the City's Senior Leadership Team (SLT) to help staff the election, and this more than doubled the number of staffing coming from City staff. In order to plan for contingencies and manage the risk of staff illnesses (due to the COVID-19 pandemic) or no-shows, some staff are hired as "spares" and their initial assignment is to be on "standby" and they are assigned as needed on voting date. Some 47 spares were hired and per the Elections Office all of them were used by Voting Day. Overall, per Clerk's there were no staffing shortages experienced at the polls.
- 89 There was no involvement from the Human Resources Division (HR) in hiring elections staff the worked at advance polls or on voting day, other than consulting for some sharing of materials and resources at the start of the elections planning process. Elections Office staff charged with hiring had this included in the position's job description, but due to the position being unionized and the hiring process that was required to be adhered to, there is no guarantee that the successful candidate for that position will have previous HR (or hiring and recruitment) experience. This is a significant risk to the organization, and the details of these critical positions and their place within the Elections Office structure needs to be carefully considered.
- 90 The hiring process for internal City of Hamilton hires for election day did not include an interview. For external hires, an interview was conducted. Consideration may need to be given to engaging the services of a recruitment firm if the HR Division is unable to support the election administration efforts due to the high volume of hires needed within a short time period, along with a more robust recruitment campaign to attract staff.
- 91 Another issue regarding resourcing noted by the OAG was the fact that there was no dedicated Communications Officer for the election. Assigned staff also had to cover two other City departments in addition to their duties relating to the election. Consideration should be given to assigning a staff member from Communications to work on the election during critical points of the voting period. Elections are so fundamental to municipal government, and communications is a critical part of running a successful election, the OAG notes that the allocation of communications resources should be commensurate with this importance.

Organizational Structure Not Optimal, Internal Resources Could be Better Utilized

- 92 The organizational structure for the Elections Section is quite flat. There are a high volume of positions reporting to the Manager, Elections, creating a bottleneck during peak activity periods. The only permanent staff in the Elections Officer are the Manager (Elections, Print and Mail), and one Program Secretary. The remaining team members are brought in on a contract basis in the lead up to the election. Based on the OAG's review of staffing contracts, start dates ranged from July 2021 to May 2022. Consideration may need to be given to having contract positions start earlier so that logistics and planning tasks can be completed over an extended time period.
- 93 The OAG found there was generally a shortage of management and supervisory expertise to direct staff. The City Clerk and Elections Manager do not have the capacity and availability to be responsible for everything related to day-to-day decision making and execution during peak demand periods during the election cycle. Evaluation is required of the positions and organizational structure needed to effectively support the administration of the municipal election.
- 94 Based on the OAG's analysis, there is a high need for logistics expertise, recruitment, and a need for at least part-time resources to establish standards relating to the election and adult education/trainer expertise, and user experience (as it relates to the candidate's portal). There is a need for some positions to have more authority, both supervisory and decision-making in order to make the team more effective and responsive.
- 95 In-house expertise for hiring and training was not utilized (there are teams within the City's Human Resources (HR) Division that specialize in recruiting, and organization learning and development). Training of staff did not involve the organizational development and learning section from the HR Division. Training was provided by Elections Staff.
- 96 In-house expertise for user design and experience could be utilized in future elections for candidate portal setup and customization, or at a minimum to advocate to the vendor for changes to their system. Within the City's Communications and Strategic Initiatives Division there is the Web Strategy and User Experience team that has relevant expertise.
- 97 Information Technology Division staff are utilized to support each municipal election and by-election, it is therefore reasonable to expect the same utilization of other existing organizational resources. There is an opportunity to leverage in-house expertise in adult learning and development and user experience to train the large, temporary workforce and to review the design of the candidate's portal that is critical to the success of the municipal election.

Voting Technology Issues

- 98 Technology now plays a vital role in municipal elections. Voting technologies, namely tabulators and e-poll solutions are intended to make the election process more efficient and reliable.

- 99 A wide range of technology was used by the City of Hamilton as part of the administration of the 2022 municipal election. The technology included tabulators, E-Poll books, an electronic voters list, and a candidate portal to name a few.
- 100 Tabulators, which were used to read and count manually completed ballots for the 2022 election, were leased from the Province of Ontario and supplied by Dominion Voting Systems. The e-poll books (laptops, are also leased from Elections Ontario. The software that is run on the e-poll books (VoterView Express) which is used to facilitate the management/interface with the electronic voter list are procured directly from a vendor, DataFix.
- 101 To that end, the OAG engaged Valencia Risk (Valencia) to complete an audit of the technology utilized in the administration of the 2022 municipal election in Hamilton. Specifically, we retained Valencia to examine and evaluate the use of technology and related administrative procedures and controls. We requested that this include the technology(ies) used to maintain and administer the Voters' List, strike-off list, and for the tabulation of the votes. Our technology consultants conducted a thorough review of the use of these technologies, and the results of their work is contained in Appendix "B" to Report AUD23008. Access and availability of the software utilized on the e-poll books was without issue on the advance poll days of the election. However, on election day there were problems experienced with the software used on the e-poll books that are explained elsewhere in this report.
- 102 Valencia also examined and evaluated IT systems, resources, vendors and vendor agreements, as well as policies and procedures supporting electoral practices at the City and compliance with the Municipal Elections Act. The Elections Administration Audit – Technology Report from Valencia is attached as Appendix "B" to Report AUD23008.
- 103 Valencia also provided recommendations to mitigate gaps in existing processes that can be implemented for the 2026 municipal election. These are included in both Appendices "B" and "D" to Report AUD23008. They also provided the OAG with suggestions for support or legislative reforms to be provided to the Province of Ontario through Elections Ontario. A summary of the key findings from the technology portion of the audit are listed below:

Standards, Guidance, and Legislation

- 104 One of the key findings is that there are no Canadian standards to assess Canadian municipal electoral technical controls. Therefore, Valencia utilized the National Institute of Science and Technology's Cybersecurity Framework for Election Infrastructure (NISTIR-8310 draft) for this audit. NISTIR-8310 provides a risk-based approach for managing cybersecurity activities and reducing cyber risk to election infrastructure.

Procurement

- 105 The audit also found that there was reliance (via Council-approved single source procurements) on Elections Ontario for selecting key technology vendors (DataFix – Voters' List and Dominion (Vote Tabulator), and there was limited involvement by the City's IT Security team to establish technical security controls. Vendor contracts were also utilized and there were no security requirements established in the procurement documents or contracts.

Training and Support

- 106 Some training issues were also identified. There was limited training from DataFix and Dominion. Staff training was not always mandatory, there was inconsistent engagement with the IT Division regarding training and IT security requirements. There was also a generally a lack of clarity around roles and responsibilities regarding IT security.

What is an E-Poll Book?

An e-poll book refers to the hardware (laptop) and software program that contains information about eligible voters and provides the functionality necessary for voter check-in and validation. It can provide real-time voter turnout tracking and statistics such as the activity at different locations. Electors have a unique number on their voter cards. Scanning of the card automates the process of bringing up the elector's information and striking off who has voted, making the process fast and efficient.

Since the software utilized on e-poll books plays a crucial role in the voting administration process, and they contain personal information, it is important to ensure both physical and electronic security controls are in place. As with technology, the potential for malfunction exists. The possibility of system outages, whether they happen on a wide scale or more locally, cause some jurisdictions to keep paper copies of the voters list on hand for such contingencies.

IT Project Management

- 107 IT project management for the election was organized and executed by the Clerk's office and IT project manager independently. There was a limited number of continuing/experienced staff involved on the electoral team. This resulted in reliance on past processes and lessons learned to conduct elections. Overall the Elections Office was well supported by Dominion Voting. The audit found that there was a lack of support from DataFix (specifically when troubleshooting electoral technologies).

IT Controls

- 108 Standards and vendors used by the Province were adopted and adhered to by the Clerk's office. Accountability for IT security and cybersecurity controls and standards was not well established or understood, which resulted in a complete reliance on contracted third parties such as Dominion and DataFix. We also found that there were weak controls regarding Wi-Fi passwords for polling stations. Additionally, it was found that there was weak Detective Intrusion Monitoring.

Suggested Support from Province and/or Legislative Reform

- 109 Elections Ontario has established an Advisory Committee on Standards for Voting Technologies. For the 2026 municipal elections, Elections Ontario will be taking over the voters' list from MPAC. There is an opportunity for the City of Hamilton to request that Elections Ontario provide guidance on electoral best practices for all municipalities that includes IT security standards. The City of Hamilton should also consider working with other municipalities to improve IT security and testing.

Vendor Participation in Audit

- 110 The OAG notes that attempts were made to interview both DataFix and Dominion. Both refused to meet with the OAG audit team. Neither contract contained an audit clause, which would have been useful to the OAG. DataFix ultimately did provide written responses to OAG questions. Dominion would not provide a written response to questions sent by the OAG. Rather, Dominion responded by referring OAG to its website rather than agree to participate in an interview or provide a written response to the OAG's questions.

Tabulators

- 111 With the tabulators, we attempted to obtain information from the vendor about the controls that exist to protect the confidentiality and integrity of information and accuracy of processing. However, as noted above, we were unsuccessful in speaking directly with their representatives or obtaining specific answers to our questions. Therefore, the assurance we can provide regarding the functioning of this technology is limited. That being said, we were able to meet with staff that test and use the equipment, as well as other technology experts familiar with these systems, sufficient to gain a high-level understanding of the controls that would prevent tampering and ensure integrity of results. Based on our limited understanding as described above, we can say that we developed no concerns with the tabulating equipment.

Voter and Candidate Experiences

- 112 At the time of our audit, feedback had been received directly by the Elections Office from residents, and it was reviewed by the OAG and our Elections Expert as part of the audit and considered during the development of our audit procedures. The Council direction for this audit specifically included obtaining the feedback of electors and candidates. OAG engaged a market research firm, Metroline Research Group Inc. (Metroline) to provide professional expertise and advice to the OAG in developing and finalizing the surveys. Metroline administered both surveys independently, and completed the survey analysis on behalf of the OAG. The report from Metroline that includes the survey findings, methodology and questions is included as Appendix "C" to Report AUD23008.
- 113 In order to obtain statistically valid feedback from electors, a telephone survey of eligible voters for the 2022 municipal election in Hamilton was completed. The rationale for selecting

this quantitative research method was so that a **representative sample** of eligible voters from the 2022 municipal election in Hamilton could be obtained. A random telephone survey (cellphones and landlines) with 600 interviews, considered accurate to within +/- 4%, 19 times out of 20 (95% Confidence Interval) was completed. The candidate survey was an online survey that was sent to all registered candidates (150 in total) for Mayor, Councillor, and School Board Trustee from the 2022 municipal election in Hamilton.

- 114 The community survey found that 92% of respondents (eligible voters) who voted were satisfied with the experience. Of those who voted in person, 86% said they were able to cast their vote in 10 minutes or less. Overall, voters had a good experience when they went to vote in person, the hours were found to be convenient (82% strongly agreed), location was easy to find (86% strongly agreed), and the signage in the building was easy to follow (87% strongly agreed).
- 115 90% of voters strongly agreed that election workers provided good service and 80% found that election workers were knowledgeable. Voters did not feel anxious or intimidated by going to vote in-person (89% strongly disagreed when asked if they felt intimidated).
- 116 In the candidate survey, the top resources candidates were aware of included the City of Hamilton website (88%), the candidates portal (81%), and the Candidates' Information Session (79%). Overall, at least half of candidates were satisfied (very or somewhat) with every resource. Highest satisfaction came from in-person/virtual meetings with the City Clerk's office (81%), and email contact with the City Clerk's office (70%).
- 117 Overall, 81% of those candidates who filed prior to nomination day said it was easy, and all of those who filed on nomination day said it was easy. About 4 in 5 candidates made use of the candidates portal (81%). The two primary reasons mentioned in using the portal were to access policies and procedures (91%) and to review the voters list (85%), keeping up with messages from the City was third (74%).
- 118 The two primary election administration issues expressed by candidates were residents who didn't receive a voter's card (67%), and residents not aware of their polling location (55%). Most candidates who responded to this survey had received a copy of the voters list (86%).
- 119 Overall, 42% found it 'very' or 'somewhat' easy, compared to 22% who found it 'somewhat' or 'very' difficult, the balance (36%) found it neither easy nor difficult. Just over one-third of candidates (36%) had some issues with the electronic voters list on Election Day. The issues were related to seeing who had or had not voted, to be able to focus efforts of the campaign team and volunteers.
- 120 More than half (57%) of the candidates needed to contact the City of Hamilton Election office, 38% were satisfied with the answer they received, compared to 45% who were not satisfied, and 17% were neutral. Of the 71% of the candidates contacted the Customer Contact Centre or the Municipal Services Centre with a question/request about the election, more than two-thirds (69%) of those who made contact were satisfied (very or somewhat) with the response received, compared to 8% who were not satisfied.

Internet Voting and Vote by Mail

- 121 Regarding internet voting, per the community (elector) survey:
- 31% are aware that internet voting is happening in other communities.
 - 52% said they would have been at least somewhat likely to cast their vote online if that had been an option in the 2022 election.
 - 44% believe internet voting is safe and secure.
 - 83% feel that Hamilton should add internet voting in the next election, either as a way for them to cast their own vote, or as a way for other residents to do it.
 - 17% feel that Hamilton should not consider it.
- 122 Per the candidate survey:
- Two-thirds feel that the City of Hamilton should continue to offer voting by mail (67%). 19% (about 1 in 5) feel that mail voting should be discontinued. A review of their responses as to why indicates a concern about fraud.
 - A little more than half (55%) of candidates are aware of internet voting. Whether aware of internet voting or not, 60% of the candidates feel that internet voting is safe and secure.
 - 53% of candidates feel that Hamilton should offer internet voting in the future.

Additional Feedback Opportunities

- 123 In addition to the survey sample we provided an opportunity for anyone who wanted to provide comment on the election process to do so by going to the OAG website www.hamilton.ca/electionaudit. Voters landing at the site were able to provide direct feedback through an online form (comments box), or they could speak with us directly, so they could articulate their observations, concerns or suggestions regarding the election process. Alternatively, they could choose to take an online version of the same telephone survey that was being used in the random sample. (Note: the online survey results were not included in the results of the sample.)
- 124 We have summarized the comments received from these additional feedback channels, citing the category of issue, along with the number of commentators pertaining to that issue. The summarized comments were as follows:
- Well organized election (6)
 - Election not well organized (5)
 - Poor communications at polling location (1)
 - Friendly, helpful staff (4)
 - Election day system crash/ staff struggled to cope (2)
 - Vote by mail very easy process (1)
 - Did not receive voter notification card or received late/wrong information (5)

- Election website not linked/navigable to candidates (2)
- Mail in ballots not delivered in a timely manner (5)
- Election website difficult to navigate (2)
- Need more advance polls, locations too few and too far (3)
- Need more location selection transparency (1)
- Late/inaccurate poll location information (1)
- City should have online voting (3)
- Voter turnout too low (2)
- Used website chat to find vote location (1)
- Need to advocate for rank balloting (1)
- Privacy concern (disclosure of private email) (1)

125 More broadly, of the submissions received, there were mixed results with a slightly higher number in the general responses saying the election was well organized versus not well organized. The highest number of improvement opportunities was in distribution of voter notification cards on a timely basis with the correct information, timely delivery of vote by mail packages, sufficiency and proximity of poll locations, and the desire for internet voting.

126 The random telephone survey results cannot be directly compared to online survey/self-directed feedback results due to the differences in survey methodology, sample size, and respondent profile. A summary of the online results is included in Appendix "C" to Report AUD23008.

Candidate Experience

127 Overall, it was generally found in the survey results that residents were more satisfied with the elections administration than candidates. During the OAG's audit work, it was found that there was no dedicated method by which to respond to candidate questions and/or concerns. Candidates were instructed to email the same generic mailbox (elections@hamilton.ca) as for general enquiries of the public. It would perhaps be more effective to have a "candidate concierge" approach, with an email or other form of contact that was dedicated to candidates, and with dedicated resources trained in all the requirements and issues facing candidates to ensure that the Elections Office is as responsive as possible to candidates and their teams. This would enable a more targeted response to candidate questions and concerns.

Nomination Process

128 One of the issues that came to our attention regarding candidate experience was related to the number of supporting signatures required to be submitted. The *MEA* requires at least 25 qualified nominators for the Clerk to be able to certify the candidate's application. Administratively, the form itself can only accommodate 25 entries. The Clerk's Office stated and provided evidence to the OAG that they communicated to candidates that "it is a good

idea to get more than 25 endorsements in the event that some of your endorsements are not valid".

- 129 The reason is that there have been situations in the past that we have been made aware of, where a candidate has one or two nominators that are found not to qualify. In those situations, having the extra signatures mitigated against the risk of not meeting the minimum needed. Regardless of how many endorsements are submitted, the Clerk need only utilize the first 25 endorsements that are deemed to be valid for certification purposes. Per the OAG's review, there is no obvious reason that the Clerk cannot simply accept whatever number of endorsements a candidate chooses to submit, and then ensure compliance with the *MEA* for the required 25.
- 130 We understand that Clerks across the province often advise candidates to get more than 25 signatures. To assist candidates with this process, some municipalities provide candidates with additional paper copies of the endorsement form (Form 2), add and post an additional unnumbered pdf for the candidate to print or they suggest to candidates that they just copy additional pages themselves and change the numbering. The best solution however would be that the Province amend the form to make it open ended so more signatures could be collected using the prescribed form. We therefore recommend that the City advocate to the Province that the form be revised to accommodate more than 25 signatures.

Candidates Portal

- 131 We do note that the OAG was unable to access the Candidate's Portal as it had been shut down, but we were able to review the documents uploaded to the portal and obtained feedback from candidates regarding their portal experience via the candidate's survey.
- 132 Also during the OAG's work, whilst reviewing comments received from candidates, it was found that there was feedback about the need for the candidates to have post-election access to the portal for financial reporting purposes. While the post-election financial reporting was not part of the scope of this audit, it is important for candidates to have the information they need to successfully comply with *MEA* financial reporting requirements. Having access to information relating to financial reporting resources is a legitimate business purpose and the resources should remain easily accessible to candidates. Per Clerks, candidates were provided this information via registered letter, it was posted on the website and email reminders were sent. It is the OAG's opinion that it would improve the candidate experience if it were easily accessible on the portal that candidates became used to using before Voting Day.
- 133 Overall, for the 2026 municipal election, additional efforts should be made to consider the candidate experience throughout the design of election administration processes and enable candidates to access information for the entire duration required (through to the post-election financial compliance reporting period).

Voter List Availability Post Election

134 There were some candidates that expressed concern that the voters' list was not available after the election day. It was normally available to them through the electronic portal using a special identifier. Under the *Municipal Elections Act* a candidate may obtain access to that part of the voters' list that contains the names of electors who are entitled to vote for their office provided they agree to follow the conditions prescribed in the *Act* concerning its use. However, on the timeframe for availability and access post-election day the *Act* provided no specification. In the absence of any guidance the Clerk conferred with other municipalities on what they were planning and chose to close access to the voters list at midnight after closing of the polls on election day. However, we have been advised of new legislation that is in place that now specifies an access period up to the end of the campaign period (December 31 of the election year).

Consideration of the Use of Internet/Online Voting

135 In the course of collecting feedback on the election from Hamilton electors, some of the voters expressed a desire for the City to go forward with using internet voting as a method in the next election. In Ontario, municipalities may choose to adopt online voting, and for the 2022 election more than 200 municipalities did so.

136 However, neither Elections Ontario or Elections Canada have introduced online voting for provincial or federal elections. Many experts say that despite the advantages, online voting is not mature enough from a security perspective. Electronic voting systems, because they are necessarily connected to the internet, face the threat of attack by cybercriminals and other malicious actors, with the potential consequences of service denial, ballot secrecy compromise, or votes being altered, added or not being counted at all. These are valid concerns given the rise of cybersecurity incidents more generally across the world, including some notorious examples from cities and municipalities.

137 In Ontario, in 2018, several municipalities using online voting experienced problems with online ballots on election day, which required them to implement emergency voting time extensions for up to 24 hours.

138 In our view, the City should consider the use of online voting, but should do so only through careful consideration of the benefits and risks.

The benefits of online voting:

- Accurate and efficient processing
- Greater accessibility for some electors who currently face barriers
- The ability to reduce the number of workers, and the associated strain and burden of finding and hiring capable resources which is becoming increasingly difficult
- Convenience for voters

- An incentive for voters to participate
- The ability to reach underrepresented populations

139 The risks of online voting:

- Implementations in other jurisdictions have yet to conclusively demonstrate a significant impact on voter participation
- Currently there are no national or provincial standards for online voting systems
- Election security concerns and the opportunities for organized cybersecurity attacks against online voting systems that could breach, disrupt, manipulate or compromise voting integrity
- Internet voting could disenfranchise electors that do not have access to a computer or the internet
- Weakness in the ability to verify the identity of the online voter
- Challenges in assuring voting confidentiality and preserving ballot secrecy
- Significant costs associated with implementing robust technology solutions for online voting
- Denial of service as a result of issues with equipment malfunction, network outages or capacity constraints
- Lack of an audit mechanism or verifiable paper trail alternative to satisfy a challenge to results or recount
- If a major incident happens in an election, the general public may not accept the legitimacy of the election and elected members.

140 In coming to a decision about future online voting in Hamilton elections, we believe the above risks, cost and benefits should be thoroughly evaluated.

Budget, Procurement and Vendor Management Issues

Budget

141 The overall budget for the 2022 municipal elections in Hamilton was \$2.8M. Based on the most recently available numbers (unaudited), actual spending was slightly under the budgeted amount at \$2.7M. The OAG notes that it was challenging to obtain support for the \$2.8M budget amount that was provided to us by Clerk's. Essentially what is missing is the "buildup" to the total election cost. We were able to obtain the actual spending for election broken down into categories and line item detail, and we were expecting to be able to compare that to a budget work up on the same basis. Ottawa for example, is able to report its variance in greater detail to the public. However, we were advised the City would not be able to do so because there was no corresponding budget detail. The budget is based on estimated need, using prior election costs, adding in for new activities, anticipated cost increases, inflation, etc. Due to this approach, it is challenging for members of the public to obtain this information in an easy-to-understand format.

- 142 The OAG also reviewed the webpage www.hamilton.ca/elections and while there were many resources relating to the election on this page, there was not any information regarding the cost of administering municipal elections and how these costs were broken down. To improve transparency and accountability to the public, financial information in an easy to understand format should be posted on the City's website and more broadly shared with the public.

Procurement

- 143 The OAG reviewed the procurement of various items relating to the election. We did not find any non-compliance with the City of Hamilton's Procurement By-law, however we do note some opportunities for improvement in this area.
- 144 We did find that Legal Services reviewed all but one of the contracts relating to procurements for the election. The contract that they did not review was not provided to them by the Elections Office. However, we do note that most of the contracts relate to the procurement of IT equipment and services, and it would be prudent for the Elections Office to have IT security review the technical specifications and have a lawyer that is experienced in IT contracts complete the contract review.

Voter Notification Card Production Challenges

- 145 Significant challenges were encountered during the procurement of Voter Notification Cards (VNCs, also known sometimes as Voter Information Cards). Approximately 400,000 VNCs were required. Procurement was not initiated until mid-July 2022, with the Request for Tender (RFT) being posted publicly on Bids & Tenders in early August 2022. The RFT closed on September 2, 2022. In our view this was an unrealistic timeline leaving little room for error.
- 146 A delay was then encountered in awarding the tender due to the amount that was listed as the "budgeted" amount on the "Request for Tender Form" (\$350,000) that is required to be completed to initiate a tender and is signed off by the relevant General Manager. This "budget" amount was an informal amount, as it is part of the overall election budget that is allocated to the Clerk, not on a line-by-line basis. The lowest compliant tender came in at about \$44K over the budget amount that was listed on the "Request for Tender Form". General Manager approval was sought for the overage and was ultimately obtained, but four calendar days passed between the request and the approval. As noted above, ultimately the election was delivered slightly under budget. These four days were critical time that was lost during this procurement process. The postage alone for mailing the VNC's was \$368,000 (plus HST).
- 147 The tender was ultimately awarded on September 22, 2022 to Trico Packaging & Print Solution Inc. This was problematic because the tender specifications required the successful bidder to provide samples for final approval on September 19, 2022, which ultimately ended up being before the tender was actually awarded. The VNC's were to be mailed out the week of September 25, 2022. This was only three days after the tender was awarded. On top of

this, issues were also encountered with the vendor on September 23, 2022 (one day after the contract award) regarding the timing of payment for postage, which also contributed to delays in the procurement process.

- 148 Ultimately the contract was cancelled on September 30, 2022 due to the fact that the required dates set out in the RFT for submission of proofs, final approval of samples and submission of VNC's to Canada Post had past and were all unachievable. Given that the first date of advance polls was October 7, 2022, it was critical that an alternative solution for the production and mailing of VNC's be found.
- 149 The elections team had to scramble for these resources at a most inopportune time, so a decision was made to use a combination of the City's in-house print shop and vendors that were part of existing corporate contracts for printing services to produce the VNC's. On top of all the other issues encountered in this procurement, per the Procurement Section, there was a challenging paper commodity market at the time that the paper was needed to produce the VNC's. Paper suitable to the production of the VNC's was extremely difficult to source on such short notice.
- 150 A Policy 11 Non-competitive Procurement (Single Source) form was ultimately approved by the City Manager on September 29, 2022 for the procurement of paper, and was supported by the Procurement Section for the purchase of the paper required for the printing. Additional approvals were not required for the usage of existing corporate contracts. The cost of paper was approximately \$17K (plus HST).
- 151 The above-noted issues caused a delay in getting the VNCs to Canada Post by their original deadline. This deadline was missed, as per the original tender for this work, the cards were to be in the mail the week of September 25, 2022. It should also be noted that Friday, September 30, 2022 was a federal holiday (including Canada Post). This federal holiday may have contributed to a backlog and/or delays in deliveries the following week.
- 152 Based on evidence reviewed by the OAG, ultimately the VNC's were at Canada Post the morning of Monday, October 3, 2022. The first day of advanced polls was Friday, October 7, 2022.
- 153 The VNC's were produced and deposited at the Canada Post Hamilton Processing Facility (in Stoney Creek) on Monday, October 3, 2022. Per Canada Post's published service standards, delivery from Hamilton to within Hamilton should be two business days (the day of drop off is Day 0). This meant that the VNC's would have been delivered on October 5 if the Canada Post service standards were met. October 5 was two days prior to the start of advance polls (October 7, 2022). In our view, this was cutting it very close.
- 154 One other factor that needs to be considered is that Friday, September 30 was a federal holiday (National Day for Truth and Reconciliation), with federally regulated workplaces such as Canada Post impacted. Canada Post operations were impacted by this, with post offices closed and no collection or delivery of mail. This may have led to a backlog and catchup of delivery the week of October 3, 2022. Additionally, shortly after that was Thanksgiving Day (Monday, October 10, 2022), which may have also impacted postal delivery.

- 155 The Procurement Section completed some analysis of the issue regarding vendor contract termination. One of the problems identified was that the "award notification" was not issued until September 22, 2022, which was after the date in the contract where the sample VNC cards were to be provided by the City (September 19, 2022) and made it infeasible to have all VNC cards produced and submitted to Canada Post for mailing by the week of September 2022. Overall, the Procurement Section advised the OAG that their own "lessons learned" assessment recommended that the procurement process for elections items should begin much earlier for the next election, by June at the latest. The OAG agrees with this assessment, the procurement process should begin as early as possible for the 2026 municipal elections.
- 156 Given the broad authority granted to the City Clerk under the *MEA*, consideration should be given to granting the City Clerk temporary enhanced signing authority levels for elections-related contracts that fall within the overall Council-approved elections budget to ensure that procurements can be successfully completed within the tight timelines for an election. The need for this is illustrated in the 4 days that were lost seeking a higher approval authority for the spend because the winning bid was higher than the budget.
- 157 The OAG enquired with Procurement if a "Vendor Performance Form, Policy #8" was completed for the vendor that had the contract cancelled. Per Procurement, this was not feasible due the fact that it was Procurement's opinion that the City's Election Office was partially responsible for some of the delays encountered with the procurement.

Vote by Mail Vendor Challenges

- 158 DataFix was contracted to deliver "Vote by Mail Application" and "Vote by Mail Fulfillment" services. The Vote by Mail (VbM) Application services procured were an online application where voters apply to receive a VbM kit, and where the City of Hamilton is responsible for reviewing and approving the applications in VoterView. Electors could also telephone in and request a VbM kit, whereupon Elections Office staff would input the request into the VoterView system.
- 159 The Vote by Mail fulfillment services procured were the preparation, printing, and depositing the Vote by Mail kits for the Client at a Canada Post facility.
- 160 Per information provided by the vendor, the final available date for sign off on voter kits was to occur by September 19, 2022 for mailing on September 30, 2022. Per the Elections Office, proofs were not received for review until September 21, 2023. There were issues with the proofs, resulting in some back and forth with the vendor, with final approval occurring on September 27, 2022. Datafix verified that printing and mailing would be completed by end of week (September 30, 2022) but packages for Long Term Care homes and other backup packages would be delivered the week of October 5 by courier.
- 161 Around September 28 or September 29, 2022, DataFix notified the City that mail was delayed due to the federal holiday on September 30, 2022. DataFix told the Elections Office that the City of Hamilton's VbM packages were part of this delay and they would be mailed on October 3. The Elections Manager requested proof of mailing and this was provided by the vendor. OAG was able to verify that items were mailed on October 3, 2023.

- 162 However, the City's items were dropped off at the Mississauga (Toronto Gateway East) location. This changed the Canada Post delivery standard from 2 days (Hamilton to Hamilton, per the Canada Post Service Standards Table for Lettermail) to 3 days (Toronto to Hamilton, per the Canada Post Service Standards Table for Lettermail).
- 163 Drop off at the Canada Post facility is considered to be Day 0 (October 3, 2022), therefore delivery to the Canada Post Service Standard would be Thursday, October 6. As previously noted, Monday, October 10, 2022 was another statutory holiday federally, Thanksgiving Day, on which there is no mail delivery. Overall, this may have negatively impacted the delivery of the VbM packages and compressed the delivery timelines to residents, who were instructed to put the completed ballot into the mail no later than October 13, 2023.
- 164 A Vendor Performance Form, Policy #8 was not completed for DataFix's Vote by Mail Services. This is not required as per Policy #8 of the Procurement By-law (it is a requirement for contracts over \$100K). This should be completed in the future when a significant issue described as above is encountered with a vendor.
- 165 Further compounding these challenges was the fact that the Elections Office lost staff that were responsible for the Vote by Mail process prior to some of the critical dates listed above. Overall, we noted that the Vote by Mail process has many dependencies and tight timelines. It requires a high degree of organization, logistics and reliance on the vendor to perform as contracted. This meant that the Vote by Mail cut off date for applications was September 23, which is to assure that voters can receive the ballots and get them returned by elections. Additionally, it is our understanding that users of the Vote by Mail process were instructed to mail back the ballot by October 13, so the ballot was received back by the Elections Office by Voting Day. Careful consideration and planning of Vote by Mail timelines and vendor performance will need to occur if Vote by Mail is an approved voting method for the next election in Hamilton.

Risk Assessment Plan

- 166 A risk assessment is not required by Provincial Legislation for the administration of municipal elections in Ontario. A risk assessment was completed by Elections Office staff. It is to staff's credit that they completed a risk assessment. Per the Elections Office, the risk assessment was reviewed by the Legal and Risk Management Services Division.
- 167 The risk assessment was developed around the following themes:
- in-person voting on voting day;
 - vote-by-mail;
 - risks related to Public Health (COVID-19) and
 - technology.
- 168 Staff did use the assessment tool in planning for supplies and logistics related to COVID-19. However, the magnitude of the technology issues encountered was beyond what had been

envisaged by the plan. Vendor management issues (print, mail, technology) were not clearly articulated nor addressed in the risk assessment and corresponding action plans.

- 169 The risk assessment did not include anything regarding the labour market and the difficulties of a general labour shortage. The plan did consider the impacts of a potential labour shortage due to COVID-19. The was the right focus but with the wrong lens.

Communications Strategy

- 170 With any election it is important to engage with electors through a well crafted strategy and plan to increase their awareness of the election and provide them with the information they need to vote.

- 171 In reviewing the strategy, we found that the Clerk's plan, done in consultation with the City's Communications and Strategic Initiatives Division, was very comprehensive and included multiple channels of communication so that no matter what media citizens consumed there would be a high chance of reaching most people. The following channels were used:

- Print – Hamilton Spectator, Hamilton Community News Chain
- TV – CHCH, Cable 14
- Radio – 3 local stations (Corus Radio, Bell Radio, KX 94.7)
- Online – Google, Bell Digital, Corus Digital, Hamilton Spectator online, McMaster Silhouette online
- Digital Billboards – City Hall, Gage Park, Farmer's Market TVs, Hamilton Public Library TV screens, City-owned TV screens
- Outdoor Billboards – Outfront media (ex. located along LINC)
- Transit Shelters – full sized promo at transit shelters located in every ward and near all post-secondary schools
- Social media – Twitter, LinkedIn, Instagram, Facebook
- Physical posters – located in Recreation Centres, Libraries and Municipal Service Centres
- Mail/Post – inserts included in property tax bill mailings
- HamOnt Youth – leveraged relationship with HamOnt Youth team to raise awareness and call to action with young voters
- Post-secondary partnerships – leveraged the social media outlets, campus radio stations and/or newspapers (where possible), digital screens and posters on campus at Mohawk, McMaster and Redeemer

- 172 The team issued three media releases in advance of the election:

- (October 3) [New online tool helps Hamilton voters prepare for municipal election](#)

- (August 25) [Hamilton launches new Vote by mail option ahead of municipal election](#)
- (June 21) [Hamilton committed to making voter experience more accessible for municipal election](#)

173 Seven videos were created and posted on YouTube/social media reels/Hamilton.ca to highlight election FAQs, the voting process, accessible voting equipment, polling locations, etc.

Administration of Election Sign By-Law

174 The City's Election Sign By-Law 22-031 applies to signs used to advertise, promote, or take a position with respect to a candidate in the municipal election. Candidates must conform to rules regarding sign size and content, as well as where and under what circumstances they can be placed.

175 Due to the significant effort and cost associated with campaign activities that promote candidates it is important that the By-Law be understood and complied with at the outset.

176 Various efforts are made by City officials to communicate and inform about sign compliance, starting with a letter sent to candidates upon the filing of their nomination papers. The letter provides candidates with very basic information about compliance requirements. It provides official notice that non-compliant signs may be removed without notice, and a link to the consolidated By-Law. We noted there would be improvement in this communication if it also provided contact information and was linked to additional information on the City's election website containing the By-Law infographic and FAQ's. The Sign By-Law is also presented at one of two information sessions held for candidates regarding election administration and compliance (which is also recorded and made available via linked, YouTube video recordings).

177 Enforcement of the By-Law is carried out by the City's Licensing and By-Law Services Division (Enforcement). Infractions of the By-Law are identified by persons who submit complaints, as well as proactively by Enforcement personnel. They have the ability to lay charges as well as to issue a fine. When non-compliant signs are proactively removed, they are stored for 28 days, during which time they may be retrieved by candidates for re-use, subject to a storage fee that is published in accordance with the City's approved fee schedule.

178 When signs are removed proactively by the City, there is an expectation by management that candidates be informed of the sign removal in a timely fashion by By-Law staff. However, we note there is not a policy in place to establish that formally. These occurrences have the potential to cause consternation amongst candidates and/or campaign staff if they are not advised of the removal in a timely manner.

179 In general, we found there was little information presented/available to candidates in materials on the website or in information sessions regarding the nature of enforcement activities - specifically, how enforcement will be administered, what to expect insofar as communication of removal; how, where and what one should expect to pay for retrieval of signs, and the most common infractions that occur.

180 We asked Enforcement if a candidate were to enquire about where, specifically, they can place a sign with respect to a particular address, we were advised candidates can call the Enforcement office where staff have the ability through the City's geographic information system (GIS) to provide that information. However, they don't appear to have established a standard procedure for that circumstance. They could also improve communications to candidates regarding the availability of such information.

181 In the 2022 election there were no formal charges laid for election sign infractions, and no fines issued. Statistics we received from Licensing and By-Law Enforcement state there were a total of 240 election sign infractions, 162 of which were identified proactively by By-Law staff. The most common reasons for violation and/or removal were signs placed on City property, or on private property without permission, placement before or after the allowed timeframe, posting on utility poles or a structure that is larger than allowed.

Application of the Use of City Resources During an Election Policy

182 The policy on the "Use of City Resources During an Election" is a very important policy meant to ensure fairness to candidates and maintain the independent and non-partisan functioning of government.

183 It is also intended to ensure the requirements of Section 88.18 of the *MEA* are met: ".....municipality shall establish rules and procedures with respect to the use of municipal resources during the election campaign period"

184 The policy states that the City shall not provide city resources or financial or in-kind contributions to election campaigns for candidates or third parties in municipal, provincial, or federal elections. It goes further in providing specifics regarding prohibitions of various sorts against Members of Council and candidates using City resources or displaying campaign material at or in City owned or leased facilities.

185 In the course of our audit we became aware of an issue that arose in the application of this policy during the campaign period. The issue relates to the application of Section 6.1.3 of the policy which states:

"During the campaign period, Members of Council, candidates and third parties are not permitted to:

(c) Use City facilities or property for campaign events **unless** the facility or property is rented in accordance with approved policies and procedures."

186 In discussion with the Clerk, as verified by a review of the frequently asked questions supporting the policy, a campaign event is something distinct and apart from having a photo or video taken whilst standing in a public place on City property. Further, candidates are not precluded from holding a campaign event on City property. They can hold a campaign event if they meet the requirement that the space, for example the forecourt in front of City Hall, be rented or "booked" in advance. Our understanding is there is no charge for this.

- 187 It is also our understanding that there was some controversy in how this particular aspect of the policy was applied during the campaign. As a result, we decided to review the policy itself.
- 188 In our assessment of the issue, in light of the circumstances and the wording given, there is room for interpretation as to what constitutes a “campaign event” in the application of this part of the policy. A person reading it might be challenged to know what specifically, is meant by a “campaign event” and what factors are used to judge that threshold. Bringing clarity to what constitutes a campaign event – meaning the criteria that are used to decide and ultimately trigger when something is (or isn’t) a campaign event would go a long way toward resolving and preventing misunderstandings. Accordingly, we made a recommendation to develop guidelines and information tools to assist candidates in understanding the application of the requirement that they may not use City facilities or property for campaign events unless rented or booked.

Development of Standard Operating Procedures

- 189 The City of Hamilton’s Election Office has a robust set of standard operating procedures (SOPs). All standard operating procedures were created from scratch through researching of best practices from other municipalities, the Ontario Provincial Election, and were reviewed by legal services. New procedures were developed for Vote by Mail, and Vote on Demand. Consideration should be given to the effectiveness of the SOPs in the lead up to the 2026 municipal election.

Selecting Poll locations – Suitability Standards Should be Evaluated

- 190 There were 157 polling locations on Voting Day. Additionally, there were 15 Advance poll locations, 50 Institutional Polls, seven Ballot on Demand locations, and 18 special advance polls for legacy institutions. The City of Hamilton does have a poll inspection checklist, “Voting Location Assessment” and this checklist does consider accessibility. For the polls in this election, all polls met the criteria so no remediation measures were needed. This information is also included in the accessibility plan. The polling locations were inspected using the checklist by Elections Office Staff. The OAG notes that the Voting Location Assessment does not consider if the location is a neutral location (e.g. not affiliated with a political party supported by incumbents, not known to be supporting specific candidates, including incumbents). We also note that the Clerk developed their own accessibility criteria for the election. Per Clerks, this included best practice research with the Province, federal government, other municipalities and with an AODA Specialist on staff at the City of Hamilton. We understand that there are no universal criteria for all municipalities in Ontario. There is an opportunity for the City to advocate that the Province develop such criteria.
- 191 One positive noted by the OAG is that poll workers were surveyed after Voting Day, and the survey asked about the suitability of poll locations. The survey asked “Was the voting site suitable for a polling station location?”. If the worker responded “no”, they were asked to provide details regarding “What made this location unsuitable?” in a free form comment box. This feedback should be considered in selecting poll locations for future municipal elections.

192 Each polling location also had WIFI internet capabilities, however this was not used. Hamilton used modems from the province that connected to sim cards to Hamilton's secure network. This process established a dedicated cellular connection that avoided having to use local WIFI as staff didn't want to have any reliance on WIFI or broadband during voting and for security purposes.

193 However, we do note that IT did not visit every site. This is something that Elections Office staff would like to see done at the next election. The OAG agrees that this would be a useful step to take from both a logistics and risk management perspective. In addition, we would advise that the Clerk assess feedback from the elector survey to decide if other suitability criteria should be added or more clearly specified. For example, survey responses suggested that parking was very important to electors, yet for some was not adequate. In another case it was suggested that locations should not be selected if the building and/or tenant of the building is associated with or known to be supportive of a particular candidate.

Voting Places – Staffing Standards Should Be Evaluated

194 Currently a standard is used for determining the number of staff to hire. This standard uses the total number of electors in a poll. For example:

- 1 DRO (Deputy Returning Officer) is hired for every 300 people
- 1 revising officer is hired for every 600 people
- 1 election assistant is hired for every 500 people.

195 Given the difficulties in recruiting staff and low voter turn out (consistently at or below 40% for the past 20 years), the question needs to be asked if it makes sense to continue to use these standards. The standard needs to be periodically evaluated by the Elections Office to determine if it meets current needs. The poll size could be evaluated to determine if additional electors could be handled by each location. This is also supported by the community survey results where 86% of voters said they were able to cast their ballot in ten minutes or less. Potentially, the standard could be informed by what other election jurisdictions use, such as Elections Ontario, or other municipalities. Once those are in place they could also be used in analyzing and evaluating the opportunities that exist for poll consolidation.

Setting Standards for Long Term Care and Retirement Institution Voting

196 Voting at Retirement and Long-Term Care facilities was managed differently in the 2022 municipal election than in previous elections due to the ongoing impact of the COVID-19 pandemic. A vote by mail process was used and the vote by mail ballots from these types of locations accounted for about 50% of vote by mail ballots that were ultimately tabulated. During our audit work, we were unable to find evidence that Hamilton has formally documented standards that would be based on some objective standard such as number beds and/or residents that is used for establishing the number of hours that poll workers attend a facility.

- 197 Provincially there are standards for voting hours at these types of locations. A standard should be established for Hamilton municipal elections and consistently applied to ensure fairness and consistency.

Evaluation of Voting Methods and Advance Polls

- 198 Vote by Mail (VbM) is an alternative voting method. There are no Provincial regulations governing the use of this voting method. Municipalities must develop their own policies/procedures. Hamilton did develop both.

Application Process

- 199 There was an online application process for VbM. The application could also be completed over the phone with the Elections Office. The applications were reviewed by Election Officers. If the person's name was found on the voters' list, generally the application was approved electronically. VbM electors also had to have a completed and signed "declaration form" for the ballot to be counted. If the person was not found on the list, the individuals needed to take steps to add their name to the list. For the 2022 municipal election, authentication of applications via review of qualifying identification (ID) was not completed. For the 2026 municipal elections, this is something that could be considered. It would consist of the uploading of qualifying ID required under the legislation. This is what the Province does for their VbM process. This is something that could be considered if Hamilton decided to do vote by mail again. IT security risks would need to be carefully assessed as part of this decision-making process.

Accepting "Vote By Mail" Ballots

- 200 VbM ballots could be mailed, dropped off at City of Hamilton Municipal Service Centres, or the City of Hamilton Elections Office at City Hall. Voters were advised to mail ballots by October 13 to ensure they arrived by Voting Day on October 24, 2022. Municipal Service Centres accepted ballots until Friday October 21, and someone from the Election Office drove around and collected ballots on that day. Ballots could be dropped off at the City of Hamilton Office until 8:00 p.m. on Voting Day. Some people took their ballot to the polls on Voting Day. The voters' name on the Voters' List would have the name struck off, but the Elections Office had developed a process to allow the person to vote. At the poll the vote by mail ballot was cancelled and placed in a special envelope for return to the city. The voter was then issued a new ballot at the poll. It is the OAG's opinion that the Elections Office provided the voter multiple ways to return their ballot.

201 Vote by Mail (VbM) and Ballot on Demand (BoD) were used in Hamilton municipal elections for the first time in 2022. It is important that these new methods of voting, and all voting methods be evaluated regularly to consider if they achieved their intended purpose. Consideration also needs to be given to if these methods could be expanded upon to provide even more opportunities for voting. While consideration for online voting has been discussed, one additional voting option that needs to be given serious consideration and evaluation is vote by home visits, in order to provide an additional accessible voting option for persons with disabilities and other accessibility needs.

Processing and Counting "Vote By Mail" Ballots

- 202 Vote by Mail ballots were processed as they were received at the Elections Office. There were two envelopes in each VbM package, a secrecy envelope for the actual ballot and an outer envelope. The secrecy envelope was to be placed inside the outer envelope with the signed declaration form. The outer envelope contained information about the elector. This envelope was scanned, and the voter's name was struck off the voters' list electronically. The ballot envelope was placed inside a ballot box to be counted. In some instances, the voter did not return both envelopes, so when the first envelope was opened to retrieve the ballot envelope, the ballot was not in its secrecy envelope. Per Clerks, in these instances, the ballot was placed in a secrecy envelope for tabulation on Voting Day.
- 203 The processing of vote by mail ballots started on October 21 and concluded on October 24 (Voting Day). Using a high-volume scanner/tabulator, the available ballots were processed in batches. Very few ballots were not read, however some voters had used pencil or a light-coloured pen to mark their ballots and these were not read. These ballots were put aside for adjudication on Voting Day. Adjudicators re-marked those rejected ballots exactly using a black marker and the ballots were put through the scanner again. The same tabulator was used to process ballots as they were received throughout the day. The results from the tabulator were not finalized (tabulator summary produced and closed) or released until after the close of polls.

Institutions

- 204 Since Long Term Care facilities and assistive living Retirement Residences had used a vote by mail process, these ballots also had to be processed. Ballots from these institutions were picked up on Voting Day. These ballots were also run through a tabulator using a different memory card. The processing of these ballots commenced at approximately 3:00 p.m. on Voting Day. The final tabulator tape was not produced until after the close of polls (as outlined above).

Vote by Home Visit

- 205 A vote by home visit program was successfully piloted by the Town of Oakville in 2018 and was approved again for the 2022 municipal elections. In 2022, the City of Markham also

offered this. The Province of Ontario also offers vote by home visit for Provincial elections (<https://www.elections.on.ca/waystovote>).

206 Provincially, you can request to vote by home visit if:

- you are unable to go to your voting location because of a disability;
- you are unable to read or write;
- you are unable to complete an application form; and/or
- you are someone who requires assistance.

207 The two main risks are resources (and associated cost), and security concerns for staff visiting private domiciles. Typically, for security reasons, 2 people are sent on a home visit.

208 The way it works is that two election officials bring a voting kit to the approved elector at their domicile to assist in voting. The voter needs to show one piece of ID and complete the application form before receiving the ballot. The ballot, when completed, is sealed and brought back by the election officials.

209 Regular consideration needs to be given towards and evaluation of the use of accessible voting in Hamilton to ensure there are sufficient options for persons with disabilities and other accessibility needs.

Ballot on Demand (BoD)

210 In the 2022 election Hamilton used a new voting process called Ballot on Demand. According to the Elections Office, this program was offered in an attempt to increase voter turnout in specific underrepresented segments of the population, remove barriers and engage voters where most convenient. BoD provides an opportunity for a potential elector to vote in a space where they are comfortable. The sites used for this voting process were at post-secondary institutions, shelter locations and the Hamilton Regional Indian Centre for Indigenous voters.

211 Specialized equipment prints the required ballot based on the elector's qualifying address. This method allowed election officials to have ballots created at the moment rather than to bring all 75 ballot faces to each voting location. According to the Elections Office, this method was successful at these chosen locations. It did however create a longer wait for voters to receive their ballots. Some of these voting locations had very short voting times and required additional training to set up the equipment for the voting officials.

212 There were seven BoD locations. Three (3) locations operated for 9 hours, one (1) location operated for 10 hours and the remaining three (3) locations 2-3 hours. Three hundred and twenty-five (325) electors used this process.

213 BoD provides additional opportunities for voting. Election Staff should evaluate whether BoD could be used for additional polls or potentially some advance polls. There may be a potential that the equipment could be utilized at a regular advance poll to allow electors at

some locations to vote anywhere. The cost effectiveness of any proposal would need to be evaluated.

Advance Poll Voting

- 214 The City of Hamilton held 4 days of advance poll voting, Friday October 7, Saturday October 8, Friday October 14 and Saturday October 15. Fifteen (15) locations were used, one for each ward. Number of ballots cast was 31,748, representing 22.14% of the voter turn out. Poll hours for advance poll voting was Fridays 10:00am to 8:00 pm, Saturdays 10:00am – 5:00pm.
- 215 Advance polls can be very popular. Elections Canada and Elections Ontario both saw an increase in the number of voters who attended advance polls. Covid may have been a contributing factor in this increase. There is no legislation or regulation that stipulates how many advance polls a municipality must have. The Clerk is responsible for determining the number of days and the times required.
- 216 Before the next election, Election staff should evaluate the use of advance polls and determine whether additional days and/or additional hours should be added to increase voter turnout. Some municipalities run advance polls for a number of consecutive days from 10:00 a.m. to 8:00 p.m. (standard voting day hours). Elections Ontario, in its process, requires that at least 1 advance poll in each Electoral District is open for 10 consecutive days. The cost effectiveness of any proposal would need to be evaluated.

Voting anywhere, anytime

- 217 The concept of voting anywhere at any time is not realistic when using traditional voting methods. Hamilton however has experimented with different voting methods during this past election. Vote by mail, ballot on demand, and advance poll voting all provide opportunities for the voter. Internet voting may get Hamilton closer to this concept of voting anywhere at anytime however there are many risks that need to be overcome. City staff should continue explore new methods of voting.

Time Between Nomination Day and the Commencement of Voting

- 218 Prior to the 2022 election, a legislative change by the Province moved the final day for nominations to be registered from July 31 to August 19. This eliminated approximately 14 business days (or 19 calendar days) traditionally used to prepare for the election from the calendar. This negatively impacted the time available to prepare ballots and created a real "pain point" in the process. Ballot vendors like Dominion Voting were pressing for candidate names on Nomination Day, August 19, even prior to the candidates being certified on August 22. Dominion Voting was doing so because it was preparing hundreds of different ballots across the province in this very short space of time.
- 219 Hamilton had 75 different ballots (less acclamations) that were required for the 2022 municipal election. To provide context regarding the number of ballots, in the 2022 Provincial election, there were 124 different ballots, one for each electoral district. However, when it

comes to municipal elections, three to four municipalities could easily eclipse this total making it more complex and demanding. An example would be Hamilton at up to 75 different ballots plus Guelph at 30 different ballots and a small municipality like Woolwich Township had 15 unique ballots. One additional municipality would push the total over the number of ballots managed during the Provincial election. When one takes account of all municipalities finalizing their ballots at the same time, it is considerably more than in a provincial election.

- 220 Many Ontario municipalities use the very same vendors, and this puts a great deal of pressure on the vendor who is responsible for the ballot printing and the staff who need to review that all the ballots are correct.
- 221 The change to the election timeline described above, depending somewhat on when a municipality commenced their advanced polls, leaves approximately six weeks between the final nomination day and the start of advance polls.
- 222 The nomination day for the next election remains unchanged and is set for the third Friday of August.

Legal Interpretations under the Municipal Elections Act

- 223 One issue raised with our team in the course of discussions with the Clerk was how often they have need of legal advice in administering an election. On some occasions it is worthwhile to have the perspective of other municipalities who have faced a similar issue, or the Province that is the overseer of the *MEA*. We note that Elections Canada issues guidelines and interpretation notes on the application of the Canada Elections Act. However, no such guidance is provided for the *Municipal Elections Act*, which would presumably come from the Province. We were advised by the Clerk that the Province has resisted providing formal interpretive guidance, and they tend to refer municipalities back to a City's own legal teams.
- 224 In our opinion, there is a potential wasted opportunity because what one municipality experiences as an interpretive conundrum might very well present the same way or reflect similar circumstances at another municipality. With the assistance of guidance from the Province and the sharing of such information amongst all municipalities there is an opportunity to improve the efficiency and effectiveness of the electoral process. Further, with certain types of situations and guidance, the Province may be in a better position to provide direct assistance, for example with respect to candidate financial requirements. Accordingly, we recommend this be an area that the Clerk consider for advocacy to the Province.

Use of Schools on Voting Day

- 225 Under the *MEA*, School Boards are required to provide their facilities free of charge for voting purposes. Using schools as polling locations has become much more difficult over the past several years. Legislation such as the *Safe Schools Act*, limit access to schools during teaching hours. This results in voting place challenges because doors may be locked and the route to a poll location inside a school may have accessibility concerns.

- 226 Another common problem is access to parking. While parking may be available on site, during school hours this parking may not be available to voters. This has been a frustration. For the 2022 municipal election, the City of Hamilton faced this challenge early on and went to the School Boards to ask them to have a Professional Development (PD) Day on Voting Day. Both English School Boards agreed to this proposal for 2022.
- 227 Many municipalities across Ontario have made this request of their local School Boards only to be turned down. There is no consistency across the Province about this issue and municipalities are at the mercy of the School Boards. There is also no guarantee that Hamilton will be successful in getting a PD day in 2026 for the next municipal election.
- 228 This was also a request made by the Chief Electoral Officer, Elections Ontario. He recommended to the Province that there be a mandatory PD day across the province on Voting Day or that Voting Day be moved to a day when the School was not in session such as a Saturday. His recommendation has not been implemented by the Province.

Third Party Advertisers

- 229 A third-party advertisement is an advertisement in broadcast, print, electronic or other medium that has the purpose of promoting, supporting, or opposing a candidate, and is carried out by a third party that is not under the direction of the candidate.
- 230 According to the *MEA*, no individual, corporation or trade union may incur expenses for third-party advertising during what is called the "restricted period" leading up to the election without registering with the municipal Clerk. When a party registers, they become subject to rules limiting or capping the advertising expenses they may incur, and they are required to comply with the disclosure of certain information with each advertisement. For the 2022 municipal election the restricted period began on May 1, 2022 and ended on election day.
- 231 The purpose of these rules and restrictions is to ensure an even playing field for candidates in an election, balanced against an individual's constitutional right of freedom of expression.
- 232 The process for becoming a third-party advertiser begins with the filing of a notice of registration ("notification") with the municipal Clerk. If satisfied that the person or entity is qualified under the *MEA* to be a third-party advertiser, the Clerk certifies the notification and the filing party officially becomes a third-party advertiser subject to the obligations under the Act.
- 233 From this point on our understanding is that the Clerk has no role in the enforcement or investigation or disposition of complaints they may receive about non-compliance by a third-party advertiser. Complaints could potentially be about third-parties that engage in and incur advertising expenses such as the purchase of broadcast time, or social media ads whilst being unregistered, or not yet registered. Complaints could also be about exceeding the limits of spending required under the Act, not following the rules of disclosure with their advertising, and/or not making the required filing of financial statements by the post-election deadline.

- 234 In our view, under the current system, it is not transparent to members of the public, who is supposed to have regulatory oversight of third-party advertisers from the perspectives of monitoring and enforcement – in other words, who monitors and checks for compliance, how do individuals proceed if they have complaints, who investigates, who lays charges etc. In the case of the 2022 municipal election, Hamilton had three third-party advertisers that had properly registered as third-party advertisers. However, we found that one of them did not meet the obligation of submitting their financial statements by the required deadline.
- 235 Accordingly, we recommend that the City advocate to Elections Ontario and/or the Province of Ontario about the need for clarity regarding the responsibility for regulatory oversight of third-party advertisers, and following that determination, the Clerk should ensure it is being communicated so that third-party advertisers and the public understand the roles and procedures for cases of suspected non-compliance.

Recommendations

- 236 Please refer to Appendix "D" to Report AUD23008 for a list of Recommendations and the related Management Response that will strengthen the administration of and improve the candidate and voter experience for the 2026 Municipal Elections administered by the City of Hamilton.

Conclusion

- 237 The OAG has brought forward 50 observations and recommendations to strengthen compliance, improve process efficiency and effectiveness, enhance the candidate and voter experience, and identified areas where the City can advocate to the Province of Ontario.
- 238 The OAG would like to thank the Office of the City Clerk's staff and other participants in this audit (including Legal, Procurement, Finance, By-law, etc.). We look forward to following up with management in the future to see the progress of their action plans and their impact on improving municipal election administration.

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