

Report to Corporate Services Committee

To: Chair and Members
Corporate Services Committee
From: Cathy Saunders, City Clerk
Subject: 2022 Municipal Election Update
Date: May 31, 2021

Recommendation

That, on the recommendation of the City Clerk, the following actions be taken with respect to the 2022 Municipal Election:

- a) the City Clerk **BE DIRECTED** that as elementary and secondary schools are used as voting locations the local school boards be requested to consider scheduling a Professional Development on Voting Day, October 24, 2022;
- b) the attached proposed by-law (Appendix "A") **BE INTRODUCED** at the Municipal Council meeting to be held on June 15, 2021 to establish the following advance voting dates and times:

Saturday, October 8, 2022 from 10:00 AM to 8:00 PM

Tuesday, October, 11, 2022 to Saturday, October 15, 2022, inclusive, from 10:00 AM to 8:00 PM; and
- c) the attached proposed by-law (Appendix "B") **BE INTRODUCED** at the Municipal Council meeting to be held on June 15, 2021 to authorize the use of poll optical scanning vote tabulators, voting by mail, and proxy voting for the 2022 Municipal Election; and
- d) **NO FURTHER ACTIONS BE TAKEN** with respect to adopting a candidate contribution rebate by-law or implementing internet voting in advance of the 2022 Municipal Election; and
- e) the staff report dated May 31, 2021 entitled "2022 Municipal Election Update" **BE RECEIVED** for information.

Executive Summary

To review and receive direction on upcoming 2022 Municipal Election programs and initiatives including advance voting dates, alternative voting methods, proxy voting, and candidate contribution rebate program.

Analysis

1.0 Background Information

1.1 Previous Reports on this Matter

Corporate Services Committee – January 24, 2017 – Municipal Election Campaign Contributor Rebate By-law

Corporate Services Committee – February 20, 2018 – 2018 Municipal Election Update

Corporate Services Committee – March 19, 2019 – 2018 Municipal Election

1.2 Legislative Context – Bill 218, *Supporting Ontario’s Recovery and Municipal Elections Act, 2020*

On November 20, 2020, Bill 218, *Supporting Ontario’s Recovery and Municipal Elections Act, 2020* received Royal Assent. Bill 218 enacts several amendments to the *Municipal Elections Act, 1996* (MEA), the most significant being the removal of sections that permit municipalities to offer a ranked ballot election. Bill 218 also amended the MEA to place Nomination Day on the third Friday in August (Friday, August 19, 2022).

The timeline for passing a by-law authorizing the use of voting and vote-counting equipment or alternative voting methods is now May 1 in the year of an election (previously May 1 in the year before an election). The deadline for clerks to establish procedures for voting and vote-counting equipment, including alternative voting methods is now June 1 in the year of an election (previously December 31 in the year of an election).

1.3 Voters’ List – Bill 204, *Helping Tenants and Small Businesses Act, 2020*

As outlined in the March 29, 2019 staff report entitled “2018 Municipal Election”, the Civic Administration spent significant time and resources cleansing Voters’ List data after it was received from the Municipal Property Assessment Corporation (MPAC). This issue is not unique to the City of London. To address these issues, on October 1, 2020 the Province passed Bill 204, *Helping Tenants and Small Businesses Act, 2020*. This Bill confirms that Elections Ontario will be providing the Voters’ Lists to municipalities for the 2026 Municipal Election. However, it will not address data accuracy issues in time for 2022.

Bill 204 amended the MEA, by moving the responsibility for preparing the preliminary Voters’ List in municipal elections from MPAC to the Chief Electoral Officer, beginning in 2024. The responsibilities of the Clerk regarding updating the Voters’ List are adjusted accordingly, as are the dates regarding the calculation of contribution and spending limits. The *Assessment Act* is also amended to reflect that MPAC will no longer be carrying out enumerations for the purposes of the MEA. It will still carry out other enumerations required by the Minister.

Voters’ List next steps

A communication strategy for the 2022 Municipal Election will be developed through collaboration between City Clerk’s and Communications staff. The focus of the strategy will build on MPAC’s online enumeration efforts, encourage electors to check if they are on the Voters’ List through a variety of avenues, and will be targeted to tenants of rental properties and areas in the City that are known to have gaps in voter information.

1.4 Voting Locations

Properly managed and efficient voting locations are essential in conducting an election. With the impact of COVID-19, selecting the right voting locations is now more important than ever to ensure proper social distancing and adequate safety protocols. Voting locations must be located in close proximity to electors, large enough to properly channel electors physically through the voting process and be accessible to all electors. There are legislative requirements for voting locations. Under section 45(1) of the MEA, “the clerk shall establish the number and location of voting places for an election as he or she considers most convenient for the electors” and under section 45(2) “voting locations are accessible to electors with disabilities”. The following criteria and best practices are applied when establishing voting locations in municipal elections:

- convenience and proximity to electors;
- accessibility;
- on or close to transit routes;

- walkability; and
- sufficient parking.

In the most recent elections, the Civic Administration has experienced difficulty in securing locations that meet these criteria. Schools are typically used along with city facilities, libraries, and churches. In previous elections, schools were largely used as polling locations throughout the City of London and the Province of Ontario. This is widely accepted practice throughout Ontario, Canada, and the United States. Schools, as public buildings, meet all legislative requirements and are convenient for electors as they are located centrally in neighbourhoods, most often within walking distance, on bus routes and meet accessibility requirements. The Civic Administration has found that although schools have been ideal for voting locations, there have been concerns raised regarding the placement of a polling station within schools during school hours. The concerns that arise with each election are parking issues, school safety, disruption to regularly scheduled programming and curriculum, traffic congestion in the morning and at the close of school. COVID-19 introduces the added difficulty of ensuring social distancing and safety protocols in a public building.

Preparations for the next municipal and school board elections are now underway. There is a great probability that the Civic Administration will be utilizing schools as voting locations throughout the city. In 2018, on Voting Day, there was 201 voting locations across the city, with 35 locations dedicated only to residents of retirement communities or nursing homes. The remaining 166 voting locations were placed throughout the community, keeping in mind the number of electors within the ward and the number of poll assigned to them. From the 166 voting locations, 49 were schools. Schools account for 30% of Voting Day community voting locations. Of the 49 schools, 34 were elementary and 2 were secondary schools within the Thames Valley District School Board, and 12 schools within the London District Catholic School Board, with 2 being secondary schools and 10 being elementary schools. The 1 remaining elementary school was with the Conseil scolaire catholique Providence. It is important to have an open communication between the Civic Administration and school board administrators to discuss, mitigate, and navigate through any issues that may arise, while providing minimal disruption to the education and curriculum of students in the schools.

This issue is not necessarily unique to the City of London. Some other jurisdictions plan a Professional Development day where students would not be present at the school during Voting Day, mitigating the concerns mentioned above. In accordance with section 7 of the MEA, the City of London incurs the cost of the municipal and school board elections and section 45(4)(6) provides that upon notice school boards are required to provide the space free of charge.

The Civic Administration will be reaching out to the impacted school boards to share information on the operation and conduct of our next election, particularly with the use of schools as voting locations on October 24, 2022. The hope is to identify previous issues and strategies to improve the election experience in advance of the 2022 municipal election.

The Civic Administration is requesting support from the Municipal Council for a letter to be sent to each school board from the City Clerk requesting that consideration be given to scheduling a Professional Development day for October 24, 2022 (Voting Day), as many voting locations will be within schools.

1.5 Accessibility

Under section 12.1 of the MEA, the Clerk is required to prepare a plan regarding the identification, removal and prevention of barriers that affect electors and candidates with disabilities and shall make the plan available to the public before Voting Day. After Voting Day, the Clerk is required to prepare a report regarding the identification,

removal and prevention of barriers that affect electors and candidates with disabilities and shall make the report available to the public. Consistent with the previous two elections, the City of London plans to utilize accessible voting devices at advance voting locations to alleviate potential barriers to voting. Accessible devices include a tactile handheld touch pad, “yes/no” paddles and a sip and puff machine. These devices give the voter the opportunity to listen to an audio ballot with candidate options read out over headphones. As with previous municipal elections, the Civic Administration will consult with and seek input from the City’s Accessibility Advisory Committee on the 2022 Accessible Election Plan.

1.6 Advance Voting and Proxy Voting

The MEA states that all municipalities must have an advance vote on one or more dates and that the Clerk shall establish the dates, the number and location of voting places, and the hours the voting places will be open. Both advance voting and proxy voting will be available for the 2022 Municipal Election. The appointment time for a proxy vote will begin after the close of nominations (2:00 PM, Friday, August 19, 2022), until the close of voting on Voting Day (8:00 PM, October 24, 2022).

The advance vote dates and times are proposed to be Saturday, October 8, and Tuesday, October 11 to Saturday, October 15, 2022, inclusive, from 10:00 AM to 8:00 PM.

Attached as Appendix “A” to this report is a by-law to approve the above-noted advance vote days for the 2022 Municipal Election.

1.7 Tabulation and Voting Equipment

Subsection 42(1)(a) of the MEA, makes provision for the Municipal Council to pass a by-law authorizing the use of voting and vote-counting equipment, such as voting machines, voting recorders or optical scanning vote tabulators. The City of London began using optical scanning voting tabulators at the 1991 Municipal Election and has used similar equipment for each subsequent Municipal Election.

On Voting Day, electors will mark their paper ballot at the poll, the marked ballot will immediately be fed through the optical scanning vote tabulator and then be deposited into a ballot box. The elector will then receive confirmation that their ballot has been counted. When the polls close, the results will be uploaded and provided to the public as soon as possible.

Subsection 42(5) of the MEA, provides that when a by-law authorizing the use of an alternative voting method is in effect, sections 43 (advance vote) and 44 (voting proxies) of the MEA apply only if the by-law so specifies.

Attached as Appendix “B” to this report is a by-law to approve vote-counting equipment and alternative voting methods for the 2022 Municipal Election. The by-law must be approved by Council by May 1, 2022.

1.8 Candidate Contribution Rebate By-law

In the staff report dated January 24, 2017 entitled “Candidate Contribution Rebate By-law” the City Clerk provided information on a rebate of contributions to candidates’ program in London. On January 30, 2017, the Municipal Council resolved that no action be taken with respect to the establishment of a rebate of contributions to candidates’ program. The City Clerk continues to recommend that a candidate contribution rebate by-law for 2022 not be enacted, as the program requires a significant amount of staff time and resources to administer. If the decision of Municipal Council is to implement this program, the Civic Administration will bring forward a staff report with financial impacts, proposed eligibility criteria and the necessary by-law.

2.0 Discussion and Considerations

2.1 Remote Voting

The current climate of the COVID-19 Pandemic has highlighted the need for alternative voting options. The City Clerk's Office has been carefully monitoring how provincial and municipal elections have been offered safely in accordance with public health requirements during the Pandemic.

Vote by Mail

An overwhelming shift to mail-in voting as the primary alternative to in-person voting has been observed in many jurisdictions running elections during the Pandemic. The City of London has used mail-in voting since the 2010 Municipal Election. Subsection 42(1)(b) of the MEA, as amended, includes provisions for the Municipal Council to pass a by-law authorizing the electors to use an alternative voting method, such as voting by mail.

This process has been refined over the past few elections and is an accessible and secure voting method. The City Clerk recommends that this option continue for the 2022 Municipal Election.

A vote by mail ballot kit is mailed to those voters in the City who have prequalified and preregistered to vote by mail. Voters have the option of returning the Ballot Return Envelope containing the sealed Ballot Secrecy Envelope and Voter Qualification Form, to the Municipal Elections' Office via Canada Post or by hand delivering it to the Municipal Elections' Office at City Hall up to and including Voting Day. The convenience and accessibility of vote by mail can provide enhanced opportunity for all voters to safely participate in the local election process.

Some of the benefits of vote by mail include increased accessibility, less voter traffic at the polls and reduction of proxy voting. Some of the challenges identified with a vote by mail process include, the timeframe required for the mail-out and return of ballots, which is reliant on Canada Post and the accuracy of the Voters' List.

The cost to undertake voting by mail is approximately \$2.00 per voter, excluding the cost to produce the ballot. This cost is already accounted for in the Elections budget. Vote by mail is a low cost, safe and reliable alternative for voters who would not be able to vote at an advance poll, a voting day poll, or by proxy.

Attached as Appendix "B" to this report is the by-law to approve alternative voting methods (including vote by mail) for the 2022 Municipal Election. The by-law must be approved by Council by May 1, 2022.

2.2 Internet Voting

The Civic Administration is committed to exploring technical and other solutions that improve voter engagement and accessibility, however, the future of internet voting is uncertain. Recent data and security breaches in both the public and private sectors have highlighted the continued challenge of maintaining internet security and vote integrity given the number of cyber-attacks directed towards governments, including Canadian municipalities. For these reasons the Civic Administration does not recommend that Municipal Council adopt internet voting. This report advises that there have been insufficient advances in internet security to accept the risks of implementing internet voting for the 2022 Municipal Election. Internet voting continues to be vulnerable to security threats and attacks while raising concerns about secrecy of the vote and integrity of the results. The Civic Administration must strike a balance between accessibility, safety and security while ensuring the secrecy of the vote and the integrity of the election. Failure to conduct an election in a manner consistent with the principles of the MEA could result in a legal challenge.

The City Clerk has the statutory obligation to ensure that any alternative voting method adheres to the following principles of the MEA:

- the secrecy and confidentiality of the individual votes is paramount;
- the election should be fair and non-biased;
- the election should be accessible to the voters;
- the integrity of the process should be maintained throughout the election;
- there be certainty that the results reflect the votes cast; and
- voters and candidates should be treated fairly and consistently within a municipality.

The security risks associated with internet voting make it difficult to maintain the integrity of the guiding principles. In the fall of 2019, the City of Toronto released a report produced by the Auditor General entitled, “Cyber Safety: A Robust Cybersecurity Program Needed to Mitigate Current and Emerging Threats”. This report raised significant concerns with cybersecurity given the number of cyber-attacks directed towards government. The Auditor General's report noted that a single data breach could have a devastating effect on a city the size of Toronto's, particularly given the vast amount of confidential and sensitive information that the City stores, including election data.

There has been significant analysis conducted of methods used by municipalities in 2018. Of Ontario's 444 municipalities, there were 391 elections involving 9,444,628 eligible voters. Of the 391 municipalities where the method could be identified, 214 or 54% of municipalities continued to use paper ballot only. 71% (6,702,533) of the total eligible voters used a paper ballot only to participate in the 2018 municipal elections. 177 municipalities offered an online voting option, of which 131 were completely paperless.¹

On October 22, 2018, approximately 51 Ontario municipalities using Dominion's Internet Voting portal experienced traffic slow down and system time-outs that caused a disruption to voting services on Election night. Dominion was able to quickly identify the source of the issue and work with the provider to resolve all issues with the system service by 7:30 PM. Unfortunately, the 90-minute slowdown and resulting bandwidth issue caused a varying number of voters to experience slow response times and system time-outs.² As a result of the slow-down, most municipalities had to extend voting hours – some up until 8:00 PM the following day – to ensure the vote would not be compromised due to the disruption.

Even a minor technical issue that gets resolved could still have the effect of making voters wary of the process, distrustful of the results, or could cast doubt on the integrity of the election. Any failure of a voting system that has the effect of violating the principles of the MEA could result in a controverted election.

Additionally, as identified in section 1.2 of this report, the Civic Administration expect to see similar issues with the Voters' List for 2022 as experienced in 2018. These issues have been addressed with Bill 204 and are expected to significantly improve the accuracy of information on the list for the 2026 Municipal Election. This would make offering alternative voting a more viable option in the future. However, it would not address data accuracy issues in time for 2022.

If Municipal Council wishes to consider the introduction of internet voting for any future municipal elections, the Civic Administration recommends a minimum of 3 years

¹ Pg. 12, Cardillo A., Akinyokun N., Essex A. (2019) Online Voting in Ontario Municipal Elections: A Conflict of Legal Principles and Technology?. In: Krimmer R. et al. (eds) Electronic Voting. E-Vote-ID 2019. Lecture Notes in Computer Science, vol 11759. Springer, Cham. https://doi.org/10.1007/978-3-030-30625-0_5

² “Dominion Voting Statement Regarding Internet Voting Service Slowdown Affecting Ontario Municipalities”, October 22, 2018

preparation time to provide sufficient time to work with the Information Technology Services to develop requirements, issue a Request for Proposal (RFP), award a contract, test and implement a fully integrated and secure internet voting solution.

3.0 Financial Impact/Considerations

Significant additional costs would be incurred, outside of the approved budget, should a decision be made to proceed with internet voting. In a report to their municipal council in 2016, staff of the City of Toronto estimated the cost of implementing an internet voting system to be \$3.1M, which would include the licensing/hosting of the internet voting system, staff training and support, and the hiring of external consultant to comprehensively test and review the voting system. Internet voting costs for the City of London are currently unknown, however it is known that there will be cost increases related to staffing and communication/outreach budgets as well as vendor services, expert consultants/auditor, and technology costs. Preliminary costs would be determined with the information gathered through a formal RFP process. It is important that any decision to proceed with internet voting be made as early as possible to give ample time to develop and issue an RFP for a risk assessment, as well as for system development, security, and accessibility testing. If Council decides to proceed with internet voting in 2022, the Election Reserve Fund would likely be depleted after the 2022 election. The Civic Administration would work to determine strategies to replenish the Election Reserve Fund moving forward.

In 2018, Dominion Voting Systems was awarded the contract to provide Vote Tabulation System and Election Software for the Municipal and School Board Elections, with the option for the City to extend the contract for services for any by-elections and the 2022 and 2026 elections. To reduce costs, a 20% discount, was negotiated with Dominion for a multi-election agreement that includes both the 2018 and 2022 Municipal and School Board Elections. The contract includes:

- Vote Tabulators – 225 units
- Accessible Voting Ballot Marker Device – 12 units (Advance Vote)
- Ballots
- Election Products and Supplies
- Election Management Software System
- Professional Services and Support

For vote tabulators, election services and equipment, the City can continue the 2018 contract with Dominion Voting Services at an estimated cost of \$477,651³.

4.0 Key Issues and Considerations

4.1. COVID-19 Pandemic Impact on Municipal Elections

The COVID-19 Pandemic remains an ongoing concern, and health experts believe there may be additional waves of the virus for months or years to come. All aspects of 2022 election planning must shift to accommodate the reality of this global Pandemic, which will have significant effects on programs, procedures, and technology. Planning is underway to revisit and rethink the concept of voting so that electors feel safe when casting their ballot. Jurisdictions that have run elections through the Pandemic are being examined to identify best practices within the voting place. With respect to in-person voting, the Civic Administration is working to re-imagine polling stations with a pandemic health and safety lens. A review of current voting procedures to reduce touchpoints and determine what Personal Protective Equipment (PPE) or other tools may be needed to protect both electors and election workers is ongoing.

³ This includes \$12,125 reduction in cost due to the removal of the Ranked Choice Voting Module.

4.2 Next Steps

Over the next eighteen months, the Civic Administration will be updating policies, procedures, and by-laws to ensure compliance with the amendments to the MEA, including such tasks as:

- Review of the current Election Sign By-law.
- Review and update of Municipal Election Compliance Audit Committee By-law and Terms of Reference.
- Review and update of all Municipal Election procedures, policies, and forms to reflect changes to the MEA.

Conclusion

The Municipal Election preparation is well under way for 2022. The Civic Administration will continue to monitor legislative activity at the provincial level and will continue to undertake due diligence to improve its processes. The steps the City Clerks' Office has taken towards a responsive and staged implementation of new voting options will place the City of London in a good position for success for 2022.

These next steps and future Municipal Council considerations are ensuring that the challenges posed by the COVID-19 Pandemic are integrated and addressed within election programs, procedures, and technology. Election practices across the world continue to be monitored to learn from the new and varying approaches to voting in a pandemic.

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Submitted by: Sarah Corman, Manager II, Licensing and Elections

Recommended by: Cathy Saunders, City Clerk

APPENDIX “A”

Bill No.
2021

By-law No.

A by-law to establish the dates for advance voting and the hours during which voting places shall be open on those dates for the 2022 Municipal Election.

WHEREAS subsection 43(1) of the *Municipal Elections Act, 1996*, as amended, provides that before voting day, each local municipality shall hold an advance vote on one or more dates.

AND WHEREAS subsection 43(2) of the *Municipal Elections Act, 1996*, as amended, provides that subject to subsection 43(3), the clerk shall establish, the date or dates on which the advance vote is held; the number and location of voting places for the advance vote; and the hours during which the voting places shall be open for the advance vote, which may be different voting places.

NOW THEREFORE the Municipal Council of The Corporation of the City of London enacts as follows:

1. The following advance voting dates and times are hereby established for the October 24, 2022 Municipal Election:
 - a) Saturday, October 8, 2022 from 10:00 AM to 8:00 PM
 - b) Tuesday, October 11, 2022 to Saturday, October 15, 2022, inclusive, from 10:00 AM to 8:00 PM;
2. This by-law comes into force and effect on the day it is passed.

PASSED in Open Council on

Ed Holder
Mayor

Catharine Saunders
City Clerk

First Reading –
Second Reading –
Third Reading –

APPENDIX “B”

Bill No.
2021

By-law No.

A by-law to authorize the use of poll optical scanning vote tabulators, voting by mail, advance voting and proxy voting for the 2022 Municipal Election; and to repeal By-law No. E.-182-116 entitled “A by-law to authorize the use of touchscreen voting machines, poll optical scanning vote tabulators, voting by mail, advance voting and proxy voting for the 2018 Municipal Election.”

WHEREAS subsection 42(1)(a) of the *Municipal Elections Act, 1996*, as amended, provides that the council of a local municipality may pass a by-law authorizing the use of voting and vote-counting equipment such as voting machines, voting recorders or optical scanning vote tabulators;

AND WHEREAS subsection 42(1)(b) of the *Municipal Elections Act, 1996*, as amended, provides that the council of a local municipality may pass a by-law authorizing electors to use an alternative voting method, such as voting by mail, that does not require electors to attend at a voting place in order to vote;

AND WHEREAS subsection 42(5) of the *Municipal Elections Act, 1996*, as amended, provides that when a by-law authorizing the use of an alternative voting method is in effect, sections 43 (advance vote) and 44 (voting proxies) apply only if the by-law so specifies;

NOW THEREFORE the Municipal Council of The Corporation of the City of London enacts as follows:

1. The use of poll optical scanning vote tabulators for the purpose of counting votes at Municipal Elections is hereby authorized.
2. Sections 43 (Advance Votes) and 44 (Voting Proxy) of the *Municipal Elections Act, 1996*, as amended, apply to the City of London 2022 Municipal Election.
3. The use of voting by mail be provided upon request to qualified voters as an alternative voting method that does not require electors to attend at a voting place in order to vote at Municipal Elections is hereby authorized.
4. By-law No. E.-182-116 passed by the Municipal Council on April 4, 2017 is hereby repealed.
5. This by-law comes into force and effect on the day it is passed.

PASSED in Open Council on

Ed Holder
Mayor

Catharine Saunders
City Clerk

First Reading –
Second Reading –
Third Reading –