

CORPORATION OF THE TOWNSHIP OF ESQUIMALT

**BYLAW NO. 2928**

A Bylaw to authorize an automated vote counting system and to provide for procedures for the conduct of elections and assent voting

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WHEREAS under the *Local Government Act*, the Council may, by bylaw, provide for the use of automated voting machines, voting recorders or other devices for voting in elections or assent voting;

AND WHEREAS the Council of the Corporation of the Township of Esquimalt wishes to establish various procedures and requirements under that authority;

NOW THEREFORE, the Council of the Corporation of the Township of Esquimalt, in open meeting assembled, enacts as follows:

**1. CITATION**

1.1 This Bylaw may be cited as "*Election Procedures and Automated Vote Counting System Authorization Bylaw, 2018, No. 2928.*"

**2. DEFINITIONS**

2.1 In this Bylaw all definitions shall be in accordance with the *Local Government Act*, except for the following:

**Acceptable mark** means a completed oval which the **vote tabulating unit** is able to identify, which has been made by an elector in the space provided on the **ballot** opposite the name of any candidate or opposite either 'yes' or 'no' on any other voting question.

**Automated vote counting system** means a system that counts and records votes and processes and stores election results and is comprised of the following:

- (a) a number of **ballot scan vote tabulating units**, each of which rests on a two compartment **ballot box**, one compartment of which is for:
  - (i) voted ballots, and
  - (ii) returned ballots that have been reinserted using the **ballot override procedure**;

and the other compartment is for the temporary storing of voted ballots during such time as the **vote tabulating unit** is not functioning; and

- (b) a number of **portable ballot boxes** into which voted **ballots** are deposited where a **vote tabulating unit** is not being used, for counting after the close of voting on general voting day.

**Ballot** means a single automated ballot card designed for use in an **automated vote counting system**, which shows:

- (a) the names of all of the candidates for each of the offices to be filled; and
- (b) all of the choices on all of the bylaws, questions or other matters on which the opinion or assent of the electors is sought.

**Ballot return override procedure** means the use, by an election official, of a device on a **vote tabulating unit** that causes the unit to accept a **returned ballot**.

**Election headquarters** means the Township of Esquimalt Municipal Hall, 1229 Esquimalt Road, Esquimalt, BC.

**Emergency ballot compartment** means one of two separate compartments in the ballot box under each **vote tabulating unit** into which voted **ballots** are temporarily deposited in the event that the unit ceases to function.

**Memory pack** means a computer software cartridge that plugs into the **vote tabulating unit** and into which is pre-programmed:

- (a) the names of all of the candidates for each of the offices to be filled; and
- (b) the alternatives of 'yes' or 'no' for each bylaw, question or other matter on the ballot on which the opinion or assent of the electors is being sought;

and which records and retains information on the number of **acceptable marks** made for each.

**Portable ballot box** means a ballot box for use in the election where a **vote tabulating unit** is not being used at the time of voting.

**Register tape** means the printed record generated from a **vote tabulating unit** at the close of voting on general voting day which shows the number of votes for each candidate for each of the offices to be filled and the number of votes for and against each bylaw, question or other matter on which the opinion or assent of the electors is sought.

**Returned ballot** means a voted **ballot** that was inserted into the **vote tabulating unit** but was not accepted and was returned to the elector with an explanation of the **ballot** marking error which caused the **ballot** not to be accepted.

**Secrecy sleeve** means an open-ended folder or envelope used to cover **ballots** to conceal the choices made by each elector.

**Vote tabulating unit** means the device into which voted **ballots** are inserted and that scans each **ballot** and records the number of votes for each candidate and for and against each bylaw, question or other matter on which the opinion or assent of the electors is sought.

### 3. USE OF VOTING MACHINES

- 3.1 Council hereby authorizes the use of an **automated vote counting system** for the conduct of elections and voting on bylaws, questions or other matters on which the opinion or assent of the electors is sought.

### 4. AUTOMATED VOTING PROCEDURES

- 4.1 The presiding election official for each voting place and at each advance voting opportunity shall, offer and if requested, direct an election official to provide a demonstration to an elector of how to vote using an **automated vote counting system** as soon as the elector enters the voting place and before a **ballot** is issued.

- 4.2 Upon completion of the voting demonstration, if any, the elector shall proceed as instructed, to the election official responsible for issuing **ballots**, who, upon fulfillment of the requirements of the *Local Government Act*, shall then provide a **ballot** to the elector, a **secrecy sleeve** if requested by the elector, and any further instructions the elector requests.
- 4.3 Upon receiving a **ballot** and **secrecy sleeve** if so requested, the elector shall immediately proceed to a voting compartment to vote.
- 4.4 The elector may vote only by making an **acceptable mark** on the **ballot**:
- (a) beside the name of each candidate of choice up to the maximum number of candidates to be elected for each of the offices to be filled; and
  - (b) beside either 'yes' or 'no' in the case of each bylaw, question or other matter on which the assent or opinion of the electors is sought.
- 4.5 Once the elector has finished marking the **ballot**, the elector must place the **ballot** into the **secrecy sleeve**, if one has been requested, or turn the ballot upside down and proceed to the **vote tabulating unit** and, under the supervision of the election official in attendance, insert the **ballot** directly from the **secrecy sleeve**, if applicable, into the **vote tabulating unit** without the **acceptable marks** on the **ballot** being exposed.
- 4.6 If, before inserting the **ballot** into the **vote tabulating unit**, an elector determines that a mistake has been made when marking a **ballot** or if the **ballot** is returned by the **vote tabulating unit**, the elector may return to the voting compartment to correct the ballot or request a replacement **ballot** by informing the election official in attendance.
- 4.7 Upon being informed of the replacement **ballot** request, the presiding election official shall issue a replacement **ballot** to the elector and mark the **returned ballot** "spoiled" and shall retain all such spoiled **ballots** separately from all other **ballots** and they shall not be counted in the election.
- 4.8 If the elector declines the opportunity to obtain a replacement **ballot** and has not damaged the **ballot** to the extent that it cannot be reinserted into the **vote tabulating unit**, the election official shall, using the **ballot return override procedure**, reinsert the **returned ballot** into the **vote tabulating unit** to count any **acceptable marks** that have been made correctly.
- 4.9 Any **ballot** counted by the **vote tabulating unit** is valid and any acceptable marks contained on such **ballots** will be counted, subject to any determination made under a judicial recount.
- 4.10 Once the **ballot** has been inserted into the **vote tabulating unit** and the unit indicates that the **ballot** has been accepted, the elector must immediately leave the voting place.
- 4.11 During any period that a **vote tabulating unit** is not functioning, the election official supervising the unit shall insert all **ballots** delivered by the electors during this time, into the **emergency ballot compartment**, provided that if the **vote tabulating unit**:

- (a) becomes operational, or
- (b) is replaced with another **vote tabulating unit**,

the **ballots** in the **emergency ballot compartment** shall, as soon as reasonably possible, be removed by an election official and, under the supervision of the presiding election official, shall be inserted into the **vote tabulating unit** to be counted.

- 4.12 Any **ballots** that were temporarily stored in the **emergency ballot compartment** and are returned by the **vote tabulating unit** when being counted shall, through the use of the **ballot return override procedure** and under the supervision of the presiding election official, be reinserted into the **vote tabulating unit** to ensure that any **acceptable marks** are counted.
- 4.13 A sample **ballot** that may be used in an **automated vote counting system** is attached as Schedule "A" to this Bylaw.

## 5. ADVANCE VOTING OPPORTUNITIES

- 5.1 Advance voting opportunities will be held at the Township of Esquimalt Municipal Hall on:
- (a) the 3<sup>rd</sup> day before general voting day, between the hours of 8:00 a.m. and 8:00 p.m., and
  - (b) the 10<sup>th</sup> day before general voting day, between the hours of 8:00 a.m. and 8:00 p.m.

## 6. ADVANCE VOTING OPPORTUNITY PROCEDURES

- 6.1 **Vote tabulating units** shall be used at all advance voting opportunities and voting procedures at the advance voting opportunities shall follow as closely as possible those described in Section 4 of this Bylaw.
- 6.2 At the close of voting at each advance voting opportunity, the presiding election official in each case shall ensure that:
- (a) no additional **ballots** are inserted in the **vote tabulating unit**;
  - (b) the **emergency ballot compartment** is sealed to prevent insertion of any **ballots**;
  - (c) the **register tapes** in the **vote tabulating unit** are not generated; and
  - (d) the **memory pack** of the **vote tabulating unit** is secured.
- 6.3 At the close of voting at the final advance voting opportunity, the presiding election official shall:
- (a) ensure that any remaining **ballots** in the **emergency ballot compartment** are inserted into the **vote tabulating unit**;
  - (b) secure the **vote tabulating unit** so that no more **ballots** can be inserted; and

- (c) deliver the **vote tabulating unit** together with the **memory card** and all other materials used in the election to the Chief Election Officer at **election headquarters**.

## 7. SPECIAL VOTING OPPORTUNITY PROCEDURES

- 7.1 As authorized under section 109 of the *Local Government Act*, a special voting opportunity will be provided at Sunset Lodge, 925 Arm Street, and the Chief Election Officer is hereby authorized to establish the date, location and voting hours within the limits set out in section 99 of the *Local Government Act* for the special voting opportunity, and provided that:
- (i) only electors who are residents at this location may vote at the special voting opportunity; and
  - (ii) the Chief Election Officer is authorized to limit the number of candidate representatives who may be present at the special voting opportunity.
- 7.2 Unless the Chief Election Officer determines it is practical to use a **vote tabulating unit**, a **portable ballot box** shall be used for all special voting opportunities. The presiding election official appointed to attend at each special voting opportunity shall proceed in accordance with Sections 4.2, 4.3, 4.4 and 4.5 of this Bylaw so far as applicable, except that the voted **ballots** shall be deposited into the **portable ballot box** supplied by the presiding election official.
- 7.3 The presiding election official at a special voting opportunity shall ensure that the **portable ballot box** is secured when not in use and at the close of voting at the final special voting opportunity, the presiding election official shall seal the **portable ballot box** and return it together with all other election materials to the custody of the chief election officer at **election headquarters**.
- 7.4 If a **vote tabulating unit** is in use at a special voting opportunity, the presiding election official appointed to attend the special voting opportunity shall follow the procedures outlined in Section 6 of this Bylaw as if it were an advance voting opportunity.

## 8. PROCEDURES AFTER THE CLOSE OF VOTING ON GENERAL VOTING DAY

- 8.1 After the close of voting on general voting day at voting opportunities where a **vote tabulating unit** was used, but excluding advance and special voting opportunities, the Chief Election Officer shall:
- (a) ensure that any remaining **ballots** in the **emergency ballot compartment** are inserted into the **vote tabulating unit**;
  - (b) ensure that any **ballots** in each **portable ballot box** used for all special voting opportunities are inserted into the **vote tabulating unit**;
  - (c) secure the **vote tabulating unit** so that no more **ballots** can be inserted;
  - (d) generate two (2) copies of the **register tape** from the **vote tabulating unit** for each **memory pack** used on general voting day and at the advance voting opportunities;
  - (e) remove the **memory pack(s)** from the **vote tabulating unit**;

- (f) account for the unused, spoiled and voted **ballots** and place them, packaged and sealed separately, into the ballots and results box along with one copy of the **register tape**;
  - (g) complete the ballot account and place the duplicate copy in the ballots and results box;
  - (h) seal the ballots and results box;
  - (i) place the vote registration books, list of electors, the original copy of the ballot account, one (1) copy of the **register tape**, and all completed administrative forms into the election materials box; and
  - (j) deliver or have available for pick-up, the sealed ballots and results box, vote tabulating units and election materials box to the Chief Election Officer at **election headquarters**.
- 8.2 At the close of voting on general voting day, the Chief Election Officer shall, for any advance and special voting opportunities where **vote tabulating units** were used, proceed in accordance with Section 8.1 of this Bylaw.
- 8.3 All **portable ballot boxes** used in the election will be opened, under the direction of the Chief Election Officer, at the close of voting on general voting day and all ballots shall be removed and inserted into a **vote tabulating unit** to be counted, after which the provisions of Section 8.1(a) to (h), so far as applicable, shall apply.
- 8.4 Upon the fulfilment of the provisions of Sections 8.1 to 8.3 inclusive, the Chief Election Officer shall, to obtain the election results, place the results in a spreadsheet, which may be used for display at the voting place, indicating the total election results.
- 9. RECOUNT PROCEDURE**
- 9.1 If a recount is required it shall be conducted under the direction of the Chief Election Officer using the **automated vote counting system** and generally in accordance with the following procedure:
- (a) the **memory packs** of all **vote tabulating units** will be cleared;
  - (b) **vote tabulating units** will be designated for each voting place;
  - (c) all voted **ballots** will be removed from the sealed ballot boxes;
  - (d) all **ballots**, except spoiled **ballots**, will be reinserted in the appropriate **vote tabulating unit** under the supervision of the Chief Election Officer;
  - (e) any **ballots** returned by the **vote tabulating unit** during the recount process shall, through the use of the **ballot return override procedure**, be reinserted in the **vote counting unit** to ensure that any **acceptable marks** are counted; and
  - (f) to obtain election results, the Chief Election Officer shall place the results in spreadsheet, indicating the total election results.

9.2 If at the completion of a judicial recount the results of the election cannot be declared because there is a tie vote for two (2) or more candidates, the results will be determined by conducting a lot in accordance with the *Local Government Act*.

**10. ELECTOR REGISTRATION**

10.1 As authorized under section 76 of the *Local Government Act*, for all elections and assent voting the most current available Provincial list of voters prepared under the *Election Act*, shall become the register of resident electors on the 52<sup>nd</sup> day prior to general voting day.

**11. GENERAL**

11.1 The order of names of candidates on the ballot will be determined by conducting a lot in accordance with the *Local Government Act*.

11.2 Any enactment referred to herein is a reference to an enactment of British Columbia and regulations thereto, as amended, revised, consolidated or replaced from time to time.

11.3 If any part, section, sentence, clause, phrase or word of this Bylaw is for any reason held to be invalid by the decision of any court of competent jurisdiction, the invalid portion shall be severed and the decision that it is invalid shall not affect the validity of the remainder which shall continue in full force and effect and be construed as if the Bylaw had been adopted without the invalid portion.

**12. REPEAL OF PREVIOUS BYLAW**

12.1 Bylaw No. 2617 cited as "*Election Procedures and Automated Voting Machines Authorization Bylaw, 2005, No. 2617*" and all amendments thereto, are hereby repealed.


READ a first time by the Municipal Council on the 7<sup>th</sup> day of May, 2018.

READ a second time by the Municipal Council on the 7<sup>th</sup> day of May, 2018.

READ a third time by the Municipal Council on the 7<sup>th</sup> day of May, 2018.

**ADOPTED** by the Municipal Council on the 28<sup>th</sup> day of May, 2018.

  
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BARBARA DESJARDINS  
MAYOR

  
ANJA NURVO  
CORPORATE OFFICER