CORPORATION OF THE TOWNSHIP OF ESQUIMALT

BYLAW NO. 3069

A Bylaw to authorize an automated vote counting system and procedures.

WHEREAS under the *Local Government Act*, the Council may enact a bylaw to provide for the use of automated voting machines, voting recorders or other devices for voting in an election or assent voting;

AND WHEREAS the Council 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 *"Automated Vote Counting System Authorization and Procedures Bylaw, 2022, No. 3069."*

2.   DEFINITIONS

2.1   In this Bylaw,

Acceptable mark means a mark 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 which the vote counting unit is able to identify and count.

Automated vote counting system means a system that counts and records votes and processes and stores election or any voting results which comprises:
a) a number of **ballot** scan vote counting units, each of which rests in a two-compartment **ballot box**, one compartment of which is for:
   i.   voted **ballots**; and
   ii. **returned ballots** which have been reinserted using the **ballot return override procedure**; and
   iii. the other compartment is for the temporary storage of voted **ballots** during any such time as the vote counting unit is not functioning; and

b) a number of storage ballot compartments into which voted **ballots** are deposited where a vote counting unit is not functioning or being used which will therefore be counted after the close of voting on **general voting day**.

Ballot means a single ballot card which may be a composite ballot for two or more elections to be voted for, designed for use in an **automated vote counting system**, in 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 or other matters on which the opinion or assent of the electors is sought.

Ballot Account means an account of ballots prepared in accordance with Section 141 of the *Local Government Act*.

Ballot Box means the container for **ballots** that have been marked by electors.

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

Council means the Council of the Township of Esquimalt.

Election Headquarters means the Township of Esquimalt Municipal Hall, 1229 Esquimalt Road, or other location within the boundary of the Township of Esquimalt designated by the Chief Election Officer and used for the preparation and operation of the election.

Election Official means individuals appointed by the Chief Election Officer to assist the **presiding election official** at election proceedings and act as alternate presiding election official.

Elector means a qualified resident elector or non-resident property elector of the municipality.

General Voting Day means:
a) For a general local election, the 3rd Saturday of October in the year of the election,
b) For other elections, the date set under sections 54, 55, or 152 of the *Local Government Act,*
c) For assent voting, the date set under section 174 of the *Local Government Act.*

Memory Pack means a computer software cartridge which is inserted into the **vote counting unit** and into which is pre-programmed the names of all the candidates for each of the offices to be filled, and the alternatives of "yes" or "no" for each question on the **ballot**, and which records and retains information on the number of **acceptable marks** made for each.

Other voting means voting on a matter referred to in section 170 of the *Local Government Act.*

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

Presiding election official means the **election official** appointed by the Chief Election Officer to conduct election proceedings where the Chief Election Officer is not acting as presiding election official.

Results tape means the printed record generated from a **vote counting 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 or other matters on which the opinion or assent of the electors is sought.

Returned ballot means a voted **ballot** which was inserted into the **vote counting unit**, but was not accepted, and which 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 which may be used to cover **ballots** to conceal the choices made by each **elector**.

Storage ballot compartment means a **ballot box** under each **vote counting unit** into which voted **ballots** are temporarily deposited in the event that the unit ceases to function.

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

3. USE OF VOTING MACHINES

3.1   The Chief Election Officer may use an automated vote counting system for the conduct of elections and voting on bylaws or other matters on which the opinion or assent of the electors is sought.

4. FORM OF BALLOT

4.1   The Chief Election Officer may provide for use of composite ballots on which an elector's votes on two or more elections may be indicated. If a ballot is in the form of a composite ballot, each portion of the ballot that deals with a single election is to be considered a separate ballot.

4.2   Each ballot shall contain a space for an acceptable mark opposite each candidate's name, or opposite "yes" or "no" on a voting question.

5. AUTOMATED VOTING PROCEDURES

5.1   An election official for each voting place shall offer, and if requested, ensure that a demonstration of how to vote using a vote counting unit is provided to an elector as soon as such elector enters the voting place and before a ballot is issued.

5.2   Upon completion of the voting demonstration, if any, the elector shall proceed as instructed, to the election official responsible for issuing ballots, who, upon fulfilment of the requirements of the *Local Government Act,* shall then provide a ballot to the elector, a secrecy sleeve if requested by the elector, the ballot marking instrument, and any further instructions the elector requests.

5.3   Upon receiving a ballot the elector shall immediately proceed to a voting compartment to vote.

5.4   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 or other matter on which the assent or opinion of the electors is sought.

5.5   Once the elector has finished marking the ballot, the elector must either place the ballot into the secrecy sleeve, if one has been requested, or turn the ballot upside down and proceed to the vote counting unit, and under the supervision of the election official in attendance, insert the ballot directly from the secrecy sleeve, if applicable, into the vote counting unit without the acceptable marks on the ballot being exposed.

5.6   If, before inserting the ballot into the vote counting unit, an elector determines that a mistake has been made when marking the ballot, or if the ballot is returned by the vote counting 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.

5.7   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.

5.8   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 counting unit, the election official shall, using the ballot return override procedure, reinsert the returned ballot into the vote counting unit to count any acceptable marks which have been made correctly.

5.9   Any ballot counted by the vote counting unit is valid and any acceptable marks contained on such ballots will be counted, subject to any determination made under a judicial recount.

5.10   Once the ballot has been inserted into the vote counting unit and the unit indicates that the ballot has been accepted, the elector must immediately leave the voting place.

5.11   During any period that a vote counting unit is not functioning, the election official supervising the unit shall insert all ballots delivered by the electors during this time into the storage bin compartment, on the understanding that if the vote counting unit:
        a) becomes operational, or
        b) is replaced with another vote counting unit,
the ballots in the storage 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 counting unit to be counted.

5.12   Any ballots which were temporarily stored in the storage ballot compartment during a period when the vote counting unit was not functioning, which are returned by the vote counting 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 counting unit to ensure that any acceptable marks are counted.

6.   ADVANCE VOTING OPPORTUNITY PROCEDURES

6.1   Vote Counting Units and regular ballot boxes will be used to conduct advance voting opportunities and voting procedures shall follow as closely as possible those described in Part 4 of this Bylaw unless the Chief Election Officer directs that portable ballot boxes be used.

6.2   At the close of voting at each voting opportunity, the presiding election official in each case shall ensure that
        a) no additional ballots are inserted into the vote counting unit;
        b) the storage ballot compartment is sealed to prevent insertion of any ballots;
        c) the results tapes in the vote counting unit are not generated; and
        d) the memory pack of the vote counting unit is secured at the direction of the Chief Election Officer.

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 storage ballot compartment are inserted into the vote counting unit;
   b) secure the vote counting unit so that no more ballots can be inserted; and deliver the vote counting unit together with the memory pack and all other election materials to the custody of the Chief Election Officer.

7.   SPECIAL VOTING OPPORTUNITY PROCEDURES

7.1   Unless the Chief Election Officer determines it is practical to use vote counting units, 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 Part 4 of this Bylaw as far as applicable, except that the voted ballots shall be deposited into the portable ballot box supplied by the presiding election official.

7.2   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.

7.3   If a vote counting 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 Part 6 of this Bylaw as if it were an advance voting opportunity.

8.0   PROCEDURES AFTER CLOSE OF VOTING ON GENERAL VOTING DAY

8.1   After the close of voting on general voting day, the presiding election official, except those responsible for advance and special voting opportunities, shall undertake all of the following, generally in the order stipulated:
   a) ensure that any remaining ballots in the ballot storage compartment are inserted into the vote counting unit;
   b) secure the vote counting unit so that no more ballots can be inserted;
   c) generate three copies of the results tape from the vote counting unit;
   d) remove the memory pack from the vote counting unit and deliver it along with one copy of the results tapes to the custody of the Chief Election Officer;
   e) complete the ballot account to account for the voted ballots, unused ballots, spoiled ballots, and attach one copy of the results tape and place one copy of the ballot account in the Chief Election Officer Envelopes;
   f) seal the Chief Election Officer Envelopes;
   g) place the voting books, list of electors, the original copy of the ballot account, one copy of the results tape, completed registration forms, keys, and all administrative forms into the Secure Items and Documents Transfer Box; and
   h) deliver, or have available for pick-up, the sealed Chief Election Officer Envelopes, secured vote counting unit, and the sealed Secure Items and Documents Transfer Box, to the custody of the Chief Election Officer.

8.2   The results tapes from the memory packs used in vote counting units at the advance voting opportunities and any special voting opportunities, if applicable, will be generated after 8:00 p.m. on general voting day at the direction of the Chief Election Officer.

8.3 The portable ballot boxes used in the election, if applicable, will be opened, at 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 counting unit to be counted.

9. RECOUNT PROCEDURE

9.1 Any recount after the preliminary election results are announced shall be conducted under the direction of the Chief Election Officer using the automated vote counting system and generally in accordance with the following procedures:
   a) The memory packs of the applicable vote counting units will be cleared;
   b) A vote counting unit will be designated for each voting place;
   c) All voted ballots for the applicable vote counting units will be removed from the sealed ballots boxes, except spoiled ballots, and reinserted in the vote counting unit under the supervision of the Chief Election Officer;
   d) Any ballots returned by the vote counting 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
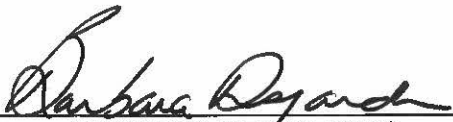
10. GENERAL

10.1 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.

10.2 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.

READ a first time by the Municipal Council on the 25th of April, 2022.

READ a second time by the Municipal Council on the 25th of April, 2022.

READ a third time by the Municipal Council on the 25th of April, 2022.

ADOPTED by the Municipal Council on the 2nd day of May, 2022.

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BARBARA DESJARDINS   DEBRA HOPKINS
MAYOR   CORPORATE OFFICER