

From: Paul Bigioni
Director, Corporate Services & City Solicitor

Subject: 2022 Municipal Election
- Approval of Voting Method and Changes to the *Municipal Elections Act*
- File: A-1440

Recommendation:

1. That Report CLK 02-21, regarding the 2022 Municipal Election, Approval of Voting Method and Changes to the *Municipal Elections Act* be received;
 2. That a hybrid solution including internet voting and paper ballots, using vote tabulation equipment, be approved as the voting method for the 2022 Municipal Election and any by-elections that may occur during the 2022-2026 Term of Council;
 3. That the draft By-law, included as Attachment #1, be forwarded to Council for enactment;
 4. That the City Clerk be directed to proceed with a Request for Proposal (RFP) for the approved voting method and associated services and report back to Council to award the voting contract to the most appropriate vendor(s); and,
 5. That the appropriate City of Pickering officials be authorized to take the necessary actions as indicated in this report.
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Executive Summary: The 2022 Municipal Election will take place on Monday, October 24, 2022. Section 42 of the *Municipal Elections Act, 1996, S.O. 1996, c. 32*, (the 'Act'), states that the council of a local municipality may pass by-laws, authorizing the use of voting and vote-counting equipment such as voting machines, voting recorders or optical scanning vote tabulators as well as authorizing electors to use an alternative voting method, such as voting by mail or by telephone, that does not require electors to attend a voting place in order to vote.

For the 2018 Municipal Election, Pickering Council approved the use of Internet and Telephone Voting for the first time. This method of voting proved to be successful overall aside from a technical problem that occurred in the last remaining hours of voting on Voting Day, the last day of the 8 day voting period. The technical issue was a result of human error by a third party internet colocation provider, that placed a limit on incoming voting traffic, restricting bandwidth to one-tenth of the system's needs, causing voters to experience slow response times and system timeouts. The issue impacted 51 municipalities across Ontario. Despite the unfortunate circumstances surrounding the bandwidth issue, there were no associated security concerns and no evidence of voter fraud or other issues that could have given cause for a controverted election.

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The lessons learned from 2018 have provided an opportunity to effectively administer alternative voting methods, and raise these, and other technical concerns with vendors in upcoming elections to ensure that measures are taken to avoid technical problems in the next election. Clerks and IT Staff will review the systems, security and network infrastructure to ensure there is adequate capacity in place to deal with any performance issues. Given that internet voting in 2018 proved successful overall, it is being recommended once again for the 2022 Municipal Election for use during the entire voting period, including Election Day.

In addition to the use of Internet Voting, a paper ballot component is also being recommended for the 2022 Pickering Municipal Election for Election Day only, being Monday, October 24, 2022. This hybrid approach will provide the convenience of internet voting for those who prefer using this method of voting, but will also provide for the more traditional in-person voting, using paper ballots and vote tabulators to compile the voting results, should some electors prefer this method. Additionally, the hybrid approach provides more options, given the unexpected challenges posed by the COVID-19 pandemic and its impact on a number of election initiatives.

To give effect to a hybrid approach, staff are proposing to have a limited number (no more than six) of “super” voting locations, which would be larger in size, and include more staff to facilitate the voting process. For the first 7 days of the voting period, when only internet voting would be offered, these voting locations will be open in a more limited capacity, to provide assistance to electors who may have difficulty using technology, did not receive a voter information package, or for those who do not have access to technology. On Election Day, these super voting locations will be more heavily staffed and will offer the paper ballot option in addition to internet voting. The voting period is proposed to be eight consecutive days beginning Monday, October 17 to Monday, October 24, 2022 inclusive.

Financial Implications: It is anticipated that a hybrid method of internet voting and paper ballots, using vote tabulators, will cost approximately \$190,000 to \$200,000 for the software, hardware and support services. In addition to these costs, there will be costs incurred to design, print, and mail individual voter packages to each elector, printing of paper ballots, hiring of election staff to assist at designated Voting Centres, as well as a robust communication plan to educate voters on all aspects of the Election, including any changes that may occur with the final recommendations from the Ward Boundary Review. The Treasurer has indicated that there are sufficient funds to cover these costs and other unanticipated costs from the Election Reserve.

Discussion: The City Clerk, as the Returning Officer for the City of Pickering under the *Municipal Elections Act*, has several criteria to consider before making a recommendation on vote-counting equipment and alternative voting methods. The first is whether a particular voting method upholds the principles of the Act and its Regulations. The guiding principles established by the case law are as follows:

- the secrecy and confidentiality of the voting process is paramount;

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

Since 1997, the City of Pickering has used paper ballots and vote tabulators to tabulate election results with the exception of the 2018 Municipal Election where internet and telephone voting were used for the first time. The number of eligible electors in 2018 was 68,494, and of those electors, 19,777 voted, resulting in a 28.8% turnout. Despite the technical issues that occurred in the final hours of voting in 2018, internet voting was well received overall by the majority of the electorate and 18,801, or 95% of electors who voted, used this voting method.

Telephone voting was also offered as an alternative to internet voting in 2018 for electors who did not have access to the internet or who were uncomfortable with the technology. In contrast to the number of electors who used internet voting, only 976 voters, or 5% of electors who voted, used telephone voting. This may be partly due to the cumbersome process required for telephone voting. Telephone voting required electors to make selections using a recorded message by working through a very detailed phone tree. The process was long, the digital pronunciation of candidate's names was at times difficult to understand, and it was difficult to return to previous selections to make changes prior to casting a ballot.

With the proposed use of paper ballots (in addition to internet voting) for the 2022 Election, and the arduous process involved with telephone voting, it is recommended that telephone voting not be used in 2022. Voters preferring not to vote using the internet will have access to voting by paper ballot on Election Day. It is also possible that some of those voters who used telephone voting in 2018 may have since become more comfortable with internet voting.

Various voting methods are used in municipal elections including traditional in-person voting with paper ballots, use of vote tabulating equipment, touchscreens, voting by mail, internet voting, and telephone voting. Of the various methods available, more and more municipalities are considering the use of internet voting. In 2003, approximately 12 municipalities used internet voting, and it has continued to become more and more popular over time. In 2018, 178 municipalities used internet voting. It is anticipated that the number of municipalities using internet voting will once again increase in 2022, especially in light of the physical restrictions imposed in response to the Covid-19 pandemic.

In addition to the increased use of internet voting, some municipalities have successfully utilized the hybrid method of both internet and paper ballots. Aurora, Brantford, Burlington, Kingston, Markham, Newmarket, Peterborough, and Thunder Bay have all used the hybrid

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method, and are all recommending the hybrid method again for their 2022 elections. In the Durham Region, the Town of Ajax has utilized internet and telephone voting for the last 2 elections, and the Municipality of Clarington has decided to use internet and telephone voting for the first time in 2022. Both of these municipalities are offering internet and telephone voting as the sole voting option with no paper ballot option. The northern Durham Region municipalities typically use vote by mail as their alternative voting method, although at the time of writing this report, they have not yet formally decided on their methods of voting. Oshawa and Whitby are using traditional in-person voting for their 2022 elections, with Whitby offering a special mail-in ballot as an alternative voting method in special circumstances.

Internet Voting offers several benefits to electors including:

- accessibility and the ability to access the ballot from different devices and from anywhere with an internet connection;
- the ability for electors with disabilities to vote independently, from the location of their choice, using any accessible devices that they may be accustomed to using;
- convenience for those less inclined to travel to a voting location to vote;
- removal of the need for voting proxies, which is a cumbersome process for both the elector and the proxy;
- faster tabulation of election results;
- fewer voting centers and staff, with a resulting reduction in administrative costs; and,
- more streamlined administrative processes.

Given what has transpired with the global Covid-19 pandemic, another major benefit of internet voting is that it removes the need for voters to congregate in a voting location to cast their ballots. As has been seen over the past year, many businesses have moved to virtual platforms, and families and loved ones have pivoted to more regular use of technology to keep in contact with family and friends during mandated lockdowns. This has resulted in more people becoming comfortable with the use of technology and may in turn result in even more people using internet voting than before. Enabling voting from remote locations addresses public health concerns by providing a safe and effective means for electors to cast their ballot without risking exposure to the Covid virus in a public setting. Internet voting would also provide for the continuation of the voting process should public health measures dictate that voting locations cannot be open to the public. Internet voting would become the emergency back-up solution to allow the election to continue as planned should voting locations offering paper ballots not be allowed to open. In contrast, should internet voting not be available for any reason on Election Day, electors can attend a voting location to cast a paper ballot allowing the voting process to continue without any delays.

With any alternative voting method, there is an associated level of risk. With internet voting, some of those risks include security, voter authentication, and reduced oversight of the casting

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of a ballot by election administrators and scrutineers. Despite these concerns, there has not been a single example of voter fraud or a security breach in Pickering or any other Ontario municipality that has used internet voting. It should also be noted that as internet voting has evolved over time, so have the security measures that have been put in place, as well as best practices and lessons learned from municipalities that have used this voting method. Currently there are no Provincial regulations or standards applicable to internet voting.

Until such regulations are put in place, staff will review best practices and lessons learned from other municipalities when preparing a Request for Proposal (RFP) for election services. Information Technology staff will also be directly involved in the drafting of the RFP and selection of the vendor, and will assist with ensuring that adequate security measures, including firewalls, encryption protocols and user authentication systems are in place. Testing and auditing will be performed throughout the various stages of implementation to ensure that the security of the system is maintained and that back up protocols will be in place in the event of a system failure. In addition to specific technical requirements in the RFP, the use of independent third-party cybersecurity audits will also be considered as another layer of due diligence to demonstrate and test the security measures within the voting system. In considering the various voting methods available, as well as the associated risks, the benefits of using internet voting, especially during the unpredictability of the current pandemic, outweigh those risks.

The benefits of offering a paper ballot include:

- the familiarity of the voting practice that electors have been accustomed to for many years in the City of Pickering;
- the ability to physically touch and mark a ballot, which is important to some electors;
- the symbolic significance (to some electors) of attending a voting location in person to perform their civic duty; and,
- paper ballots and vote tabulators provide a streamlined, in-person process for electors who prefer this method of voting.

One of the major success factors for voting is the quality and accuracy of the voters' list. Historically, the voters' list, provided by the Municipal Property Assessment Corporation (MPAC) has not been highly accurate given that the data is based on property owners in the municipality. Through Bill 204, which received royal assent on October 1, 2020, effective January 1, 2024, MPAC will no longer prepare the preliminary list of electors, and this responsibility will be moved to the Chief Electoral Officer for Elections Ontario. This will provide for consistency between the Provincial and Municipal Voters' Lists, and a more accurate list as Elections Ontario uses federal, provincial and municipal sources to form and update their voters' list. Until we can move to this more reliable data source for the 2026 Municipal Election, a robust communication plan will be launched to encourage voters to use the MPAC Voter Lookup tool to check if they are on the list. Once the list has been provided to the City, staff will review options for a convenient, electronic means for voters to check if they are on the list, or request they be added or that their information be updated. In addition to electronic options,

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voters will also be able to check if they are on the voters' list by attending City Hall and any of the City's Library branches.

In addition to Bill 204, Bill 218, which received royal assent on November 20, 2020, amended the Municipal Elections Act to remove the framework for conducting ranked ballot elections. Bill 218 also changed Nomination Day from the fourth Friday in July to the third Friday in August resulting in August 19, 2022 being Nomination Day for the 2022 Municipal Election. Other changes under Bill 218 include a change to the deadline to pass a by-law for the use of vote counting equipment and alternative voting methods to May 1 in the year of the election. This provision was previously required by May 1 in the year prior to the year of the election. Despite this elongated period to pass such by-laws, due to the limited number of vendors and the planning that needs to occur in the year prior to the Election, staff seek Council's approval of the method of voting as soon as possible in order that a vendor(s) may be secured. Lastly, Bill 218 changed the deadline for the Clerk to establish voting procedures from December 31st of the year prior to the election to before June 1st in the year of the election. This change will be beneficial to provide more time to include the necessary provisions into the procedures once a vendor is secured and the details of the voting process are established.

Planning for the 2022 Municipal Election has commenced in the Clerk's Office, and staff seek approval from Council for the voting method in order to continue the planning process. By employing a hybrid approach of internet and paper ballots with vote tabulators, the City will give electors the option to cast their ballot by their preferred voting method. It is therefore requested that Council approve the hybrid voting method as outlined in this Report for the 2022 Municipal Election. and for any by-elections that may occur in the 2022-2026 Term of Council.

Attachments:

1. Draft By-law to approve alternative voting method and vote-counting equipment for the 2022 Municipal Election
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Prepared By:

Original Signed By:

Susan Cassel
City Clerk

Prepared By:

Original Signed By:

Paul Bigioni
Director, Corporate Services & City
Solicitor

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Approved/Endorsed By:

Original Signed By:

Paul Bigioni
Director, Corporate Services & City Solicitor

SC:sc

Recommended for the consideration
of Pickering City Council

Original Signed By:

Marisa Carpino, M.A.
Chief Administrative Officer

The Corporation of the City of Pickering

By-law No. XXXX/21

Being a by-law to authorize the use of internet voting, paper ballots and vote tabulators for the 2022 Municipal Election

Whereas Section 42 of the *Municipal Elections Act, 1996, S.O. 1996, c. 32*, provides that the council of a local municipality may pass by-laws,

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

And Whereas Council has approved the use of internet voting, paper ballots and vote tabulators for the 2022 Municipal Election and for any by-elections in the 2022-2026 Term of Council;

And Whereas Section 42(5) of the *Municipal Elections Act* provides when a by-law authorizing the use of an alternative voting method is in effect, sections 43 (advance votes) and 44 (voting proxies) apply only if the by-law so specifies;

Now therefore the Council of The Corporation of the City of Pickering hereby enacts as follows:

1. That the use of internet voting, paper ballots and vote tabulators be authorized for the 2022 Municipal Election and for any by-elections in the 2022-2026 Term of Council;
2. That in accordance with the *Municipal Elections Act*, and due to the authorization of an alternative voting method, that proxy voting provisions not be applicable for the 2022 Municipal Election or for any by-elections in the 2022-2026 Term of Council; and,
3. That By-law 7549/17 is hereby repealed.

By-law passed this 25th day of May, 2021.

David Ryan, Mayor

Susan Cassel, City Clerk