

To: Council in Committee of the Whole

From: Mary Medeiros, City Clerk,
Corporate Services Department
Tracy Adams, Commissioner,
Corporate Services Department

Report Number: CNCL-21-101

Date of Report: December 8, 2021

Date of Meeting: December 13, 2021

Subject: Vote-by-Mail on-Request - Supplementary Voting Option for the
2022 Municipal and School Boards Elections

Ward: All Wards

File: 03-05

1.0 Purpose

On October 26, 2020 Council adopted the recommendation contained in Item CORP-20-20 to approve the same method of voting used in the last election be used for the 2022 Municipal and School Board election (“2022 Municipal Election”). At the same meeting, Council passed By-law 92-2020 to authorize the use of optical scan vote tabulators and accessible voting equipment for the purpose of counting votes for Advance Voting Days and Voting Day in the 2022 Municipal Election.

The purpose of this report is to request Council reconsider its October 26, 2020 decision to use the same method of voting as in the 2018 Municipal and School Board Elections exclusively, and instead provide Vote-by-Mail on-Request as a supplementary option to voting in-person in light of the City’s ongoing efforts to ensure accessibility for voters as well as address the health and safety concerns of residents related to the COVID-19 pandemic. This matter is being reported directly to Council as Standing Committees cannot reconsider a decision made by Council.

Attachment 1 is the proposed By-law to allow for a Vote-by-Mail on-Request option.

2.0 Recommendation

It is recommended to City Council:

1. That Council reconsider its decision of October 26, 2020 directing that the same method of voting used in the last election be used for the 2022 Municipal and

- School Board elections in order to add Vote-By-Mail on-Request as a supplementary option; and,
2. That based on Report CNCL-21-101, dated December 8, 2021, Vote-by-Mail on-Request be added as a supplementary voting option for the 2022 Municipal and School Board Elections in addition to in-person voting; and,
 3. That the proposed by-law as set out in Attachment 1 to this Report be passed to permit Vote-by-Mail on-Request.

3.0 Executive Summary

Due to the ongoing COVID-19 public health measures, it is prudent for Council to consider adding an alternative voting method to the 2022 Municipal and School Board Elections in order to provide those Voters who may not be comfortable attending in-person voting or who may have an accessibility need, equal opportunity to cast their ballot.

In 2018, voter turnout for the Municipal and School Board Elections was only 24.1 per cent, one of the lowest turnout percentages in Oshawa's recent history. During the 2021 Federal Election, Vote by Mail on Request was offered with 7.3 per cent of Oshawa voters choosing to vote with this method, higher than the national average of 5 per cent; demonstrating that there is interest by the Oshawa electorate to participate in a Vote by Mail method of Election. It is also important to note that the Provincial Election in 2022 will be offering a Vote by Mail option.

It is incumbent on the City Clerk to deliver an election that ensures the integrity of the process, the accessibility of the election, and addresses the health and safety of voters, Election Officials and City staff. Providing Vote by Mail on Request as an option will offer voters a safe, accessible alternative voting option while ensuring a fair, secure and democratic election process.

4.0 Input From Other Sources

- Facilities Management Services
- Legal Services
- Finance Services
- Elections Canada
- Elections Ontario
- Datafix
- Ontario Municipalities who have used or plan to use Vote by Mail:
 - Toronto
 - Ottawa
 - London
 - Bancroft
 - Guelph-Eramosa

- Scugog
- Hamilton

5.0 Analysis

5.1 Municipal Elections Act, 1996

Section 42(1) of the *Municipal Elections Act, 1996, S.O. 1996, c. 32, Sched.* (“the Act”) provides that the Council of a local municipality may pass by-laws to:

- a) authorize the use of voting and vote-counting equipment such as voting machines, voting recorders or optical scan vote tabulators; and,
- b) authorize 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.

In accordance with Section 42(2) of the Act, a by-law under subsection 42(1) must be passed on or before May 1 in the year of the election. As the 2022 Municipal Election will take place on Monday, October 24, 2022, the by-law to decide on the method of election must be passed before May 1, 2022. As supply chains are unpredictable for many products, the decision to use alternative methods of voting must be determined now to ensure delivery of necessary materials (i.e. secure ballot boxes, paper products, etc.). Should any issue impact the ability to deliver Vote-by-Mail, staff will provide a subsequent report.

Section 42 further states that the Clerk shall establish procedures and forms for the use of any voting and vote-counting equipment authorized by by-law, and the procedures and forms must be established by June 1 in the year of the election. Therefore, the City must have its procedures and forms finalized by June 1, 2022.

In establishing these procedures and forms, the Clerk must ensure they are consistent with the following principles of the Act:

- The election should be fair and non-biased.
- The integrity of the process should be maintained throughout the election.
- Voters and candidates should be treated fairly and consistently within a municipality.
- The election should be accessible to all voters.
- The secrecy and confidentiality of the individual votes is paramount.
- There is certainty that the results of the election reflect the votes cast.
- A proper majority vote decides the election by ensuring, so far as reasonably possible, that valid votes be counted and invalid votes be rejected.

5.2 Vote-by-Mail on-Request

With the 2022 Municipal Election less than a year away, the course of the COVID-19 pandemic remains uncertain. In light of this, the City Clerk and City Election Officials must deliver an election that ensures the integrity of the process, the accessibility of the election, and address the health and safety of voters, Election Officials and City staff.

As we prepare for future elections during the pandemic or in a post-pandemic environment, an alternative voting option will enable a more flexible election administration without the need for the Clerk to declare an emergency under Section 53 of the Act where circumstances have arisen that would prevent the election from being conducted.

Vote-by-Mail (“VbM”) is a non-electronic, alternative voting method utilizing paper ballots made available to qualified voters on the voters’ list. With VbM on-request, a package is mailed to qualified voters who request to vote by mail. The VbM package includes instructions, a ballot, a ballot secrecy envelope, a declaration form, and a pre-paid return envelope. VbM ballots are counted through optical scan vote tabulators at the close of voting on Voting Day.

VbM on-Request has been used successfully as a supplementary option to in-person voting in the 2021 Federal Election, the City of Toronto’s 2021 by-election and the City of Ottawa’s 2020 by-election. In each instance, voters had the option to vote in-person or request a ballot to vote by mail. In the City of Ottawa’s October 2020 by-election, 14 per cent of voters voted by mail. In the City of Toronto’s January 2021 by-election, 29 per cent of voters voted by mail. Finally, in the September 2021 Federal Election, five per cent of voters used VbM. This change in usage is likely explained by changes in the number of vaccinated persons, the number of active cases, and weather conditions.

Locally, in the 2021 Federal Election, an average of 6.3 per cent of voters voted by mail in the ridings of Ajax, Durham, Oshawa, Pickering-Uxbridge, and Whitby, which represents a total of nearly 18,309 voters or an average of 3,662 voters per riding. In the Oshawa riding, 7.3 per cent of voters voted by mail for a total of 4,144 voters.

The Province will also be offering VbM on-Request in the 2022 provincial election. Voting trends throughout Canada during the pandemic have shown more people are voting early, either by mail or during advance voting. This represents a shift from voters waiting until Voting Day to cast a ballot. However, there is no evidence that an alternative voting method increases overall voter turnout.

Given the uncertainty faced during the COVID-19 pandemic, when it will end or what the public health guidelines will include in October 2022, it is important that the City plan for additional options for voting in light of the ongoing efforts to address the health and safety of residents and to ensure the election is accessible to all voters.

5.3 Benefits of Vote-by-Mail on-Request

As a result of the 2021 Federal Election, many Oshawa residents are already familiar with the option to vote-by-mail especially as presented during the COVID-19 pandemic. By offering VbM as a supplementary option to voting in-person, the City would ensure that

voters experience the same level of service they have become accustomed to during the pandemic.

VbM on-request is helpful to reduce attendance and person-to-person contact at voting locations. This further helps ensure social distancing can be maintained, and can reduce line-ups that occur outside voting locations due to capacity restrictions.

Voters who are immunocompromised or uncomfortable with group settings during and after the pandemic may use VbM to vote safely from home. Voting by mail is also beneficial for voters with mobility or transportation issues who may experience challenges accessing an in-person voting place. This ensures the City is meeting the principle of the Act that the election should be accessible to all voters.

VbM on-Request reduces the cost of a traditional vote by mail as the City only pays for packages that are requested and envelopes that are returned via Canada Post.

VbM on-Request does not require extensive training or additional elections personnel. The method works in tandem with the City's existing elections infrastructure allowing the City to use the same ballots, vote tabulators and elections supplies.

Ultimately, introducing VbM on-Request as a supplementary option to voting in-person will allow the City to maintain flexibility in light of ever-changing conditions due to the COVID-19 pandemic and provide a more accessible election while addressing health and safety concerns of Oshawa residents and voters.

5.4 The Vote-by-Mail on-Request Process

5.4.1 Requesting to Vote by Mail

Eligible voters can request a VbM package online, in-person or over the phone. Voters must request the VbM package prior to a date specified by the City Clerk, otherwise they may vote in-person. Only the voter may request a VbM package. Candidates and third party advertisers cannot request VbM packages on behalf of voters.

City Staff, designated as Election Officials, will review requests by voters to VbM. If the voter is found on the voters' list and all the voter's details are correct, the voter's request will be approved and a package mailed to them. If the voter requests the VbM package over the phone, they will be instructed to include a scanned copy of their identification in their return envelope. If the voter requests the VbM package over the internet they will be required to upload a photo of their identification through the City's online secure portal for review by Election Officials.

If the voter's information is incorrect or they are not on the list, the voter will be directed to add or update their information on the voters' list. Voters requesting a VbM package who must add or update their information on the voters' list, will be provided with a VbM package provided they make the correction prior to the date specified by the City Clerk. Election Officials will note on the voters' list when a voter has been sent a VbM package to ensure that a duplicate vote is not cast in-person. City Clerk Services will contact each

voter that has been sent a VbM package to ensure receipt and provide additional information as needed.

5.4.2 Casting a Vote by Mail

VbM packages will be sent in batches on dates determined by the City Clerk to voters who have had their requests approved. Each package will include instructions and dates for the voter to successfully cast their ballot.

To vote, the voter will mark the ballot for their preferred candidate and:

- 1) Place the marked ballot in the blank secrecy envelope and seal the envelope;
- 2) Sign the declaration form; and,
- 3) Place the signed declaration form and sealed secrecy envelope into the pre-paid return envelope and seal the return envelope.

The voter will return their completed VbM package by either:

- a) Placing the pre-paid return envelope in any Canada Post mailbox prior to a specified date (before Voting Day) for receipt by the City by on a day designated by the Clerk prior to Voting Day; or
- b) Placing the return envelope in a secure ballot drop box located at one of the six designated City-owned facilities before 4:30 p.m. on a day designated by the Clerk prior to Voting Day.

Only the elector may return a completed mail-in voting package. Candidates and third party advertisers cannot collect or return completed mail-in voting packages on behalf of electors.

Additional communication will be sent to voters who have requested VbM ballots reminding of the deadlines for returning VbM envelopes in order to ensure ballots are received by the City prior to the deadline. Late ballots will not be counted.

5.4.3 Processing Ballot Return Envelopes

Mailed return envelopes will be addressed to the City Clerk and delivered by Canada Post to City Hall. The return envelopes are coloured yellow and clearly marked. As the mailed return envelopes are received, City Staff will separate them into a secure drop box. On a daily basis, a City Staff member designated as an Election Official in the presence of an additional City Staff member designated as an Election Official will collect the return envelopes from the secured and monitored drop box and move them to a secure storage location in City Hall as designated by the City Clerk. A form including the location, date and time, names of personnel, and number of envelopes received will be completed for each transfer of mailed return envelopes to the secure storage location. In addition, collections will be witnessed by Corporate Security Services, being an independent third party.

On a daily basis, a City Staff members designated as an Election Officials in the presence of Corporate Security will collect return envelopes that have been deposited into secured and monitored ballot drop boxes located in one of the six designated City-owned facilities (Delpark Homes Centre, Northview Community Centre, Donovan Recreation Complex, Civic Recreation Complex, South Oshawa Community Centre and City Hall). The Election Officials will transfer the collected envelopes to a sealed ballot box and deliver the box to the secure storage location in City Hall as designated by the City Clerk for storage. A form including the location, date and time, personnel, and number of envelopes received will be completed for every transfer of return envelopes from each drop box location to the secure storage location.

On dates pre-determined by the City Clerk, designated Election Officials will open the return envelopes. Election Officials will use the declaration form to find the voter on the voters' list. If the voter has not yet voted and their declaration form is signed, the Election Official will cross the voter off and place the package in a secure container marked 'Approved – VbM Packages.' If the voter is marked as having already voted or if the voter has not signed the declaration form, the Election Official will place the package in a secure container marked 'Rejected – VbM Packages' and the ballot will not be counted. When the Election Officials have completed processing the return envelopes, the secure containers and all other election supplies will be returned to secure storage. Candidates or their designated scrutineers may attend on each date determined by the City Clerk where the return envelopes are processed.

5.4.4 Counting Mailed In Ballots

On additional dates predetermined by the City Clerk, designated Election Officials will retrieve the ballot secrecy envelopes from the secure container marked 'Approved – VbM Packages,' open each envelope, and feed each ballot through the vote tabulator. When all ballots have been fed through the vote tabulator, all tabulators, memory cards, ballots, and other election supplies will be returned to secure storage.

Candidates or their designated scrutineers may attend on each date determined by the City Clerk where the mailed in ballots are counted.

The VbM results will not be accessed or generated until after the close of voting on Voting Day at the City Clerk's designated location. Election results will not be delayed. Results will be available, including the VbM votes, on Voting Day.

5.5 Communications and Access

In addition to the traditional notifications voters receive regarding the Municipal and School Board Elections and their assigned voting places, voters will be notified of the option to vote by mail. Additional information on voting options will be included on the City's website so that voters may make an informed decision.

As noted, voters that choose to vote by mail will receive their VbM package with detailed instructions as well as deadlines for mailing and locations for dropping off their completed ballot. Any voters whose ballot is not received within the specified time period prior to Voting Day will be contacted by an Election Official to remind them that they must drop off

their ballot at one of the six designated drop box locations prior to the close of voting on Voting Day. Voters may drop off their ballot at any designated location regardless of what ward they are voting in. Drop box locations will not require voters to check-in, wait in line or deal with elections personnel, helping to reduce person-to-person contact.

5.6 Voter Fraud and Risk Mitigation

Section 89 of the Act provides that a person is guilty of an offence if they:

- vote without being entitled to do so;
- vote more times than this Act allows;
- induce or procure a person to vote when that person is not entitled to do so;
- without authority, supply a ballot to anyone; or,
- at an election, take, open or otherwise deals with a ballot, a ballot box, or a book or package of ballots without having authority to do so.

The VbM process allows Election Officials to track which voters have requested to vote by mail and which voters have been sent a VbM package. If a voter attends a voting place in-person during the advance vote, the voters' list will indicate to the Election Official at the voting place that the voter has already requested or been sent a VbM package. The voter will need to advise the Election Official that they are voting in person instead and take an oath that they have not already voted in the election. The Election Official will note on the voters' list that the voter voted in person and took the oath.

When Election Officials process return envelopes they will check the voters' list to see that the voter who mailed in the ballot did not already vote in-person at an advanced voting location. If the voter voted in-person, the mailed-in ballot will be rejected. If the voter has not voted in-person, they will be crossed off the voter's list when their ballot is received.

All ballots cast via VbM are due prior to Voting Day. By Voting Day, every voter that has submitted their ballot by mail or drop-off prior to the deadline will be crossed off on the Voters' List. Election Officials will use this updated voters' list on Voting Day in order to ensure voters have not already voted by mail.

In the event of a Canada Post strike, the City Clerk will make alternative arrangements for delivering the ballots. Voters will still be able to return the ballots to secure drop box locations.

6.0 Financial Implications

Financial implications are dependent on the method of voting selected, and given their variable nature, estimations are based on quoted service costs as well as uptake of VbM on-request in other elections.

The anticipated total cost of voting in-person using optical scan vote tabulators and accessible voting equipment in tandem with VbM on-request is approximately \$946,050 inclusive of HST depending on number of voting locations established throughout the city and use of VbM.

The separated, estimated cost for VbM on-request is approximately \$46,050 based on five per cent of eligible voters requesting to vote-by-mail. This can be accommodated in the Elections Reserve.

7.0 Relationship to the Oshawa Strategic Plan

This report supports the strategic goals of Accountable Leadership and Environmental Responsibility.



Mary Medeiros, City Clerk,
Corporate Services Department



Tracy Adams, Commissioner,
Corporate Services Department



**By-law -2021
of The Corporation of the City of Oshawa**

being a by-law to authorize the use of Vote by Mail on Request for voting in the 2022 Municipal and School Board Election.

Whereas Section 42(1)(b) of the *Municipal Elections Act, 1996*, S.O. 1996, c. 32, Sched. ("Municipal Elections Act, 1996") provides that the Council of a Municipality may, by by-law, authorize 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 Section 42(5) of the Municipal Elections Act, 1996 provides when a by-law authorizing the use of an alternative voting method is in effect, Section 43 (advance votes) applies only if the by-law so specifies.

Therefore, the Corporation of the City of Oshawa by its Council enacts as follows:

1. That the use of Vote by Mail on Request for the purpose of voting in the 2022 Municipal and School Board Election is hereby authorized in accordance with Section 42(1)(b) of the Municipal Elections Act, 1996.
2. That the use of Vote by Mail on Request as authorized via this By-law shall apply to Advance Votes under Section 43 of the Municipal Elections Act, 1996.
3. This by-law shall come into force and take effect on the date it is passed.

By-law passed this day of , 2021.

Mayor

City Clerk