NO.  02-13

**ELECTION PROCEDURES BYLAW**

A BYLAW OF THE CITY OF VICTORIA

The purpose of this Bylaw is to consolidate, clarify and update the Election Procedures Bylaw's provisions for the conduct of City elections and other voting, including the use of automated voting machines.

PART 1 – INTRODUCTION

PART 2 – CONDUCT OF ELECTIONS & OTHER VOTING

PART 3 – AUTOMATED VOTING AND MAIL BALLOT VOTING

PART 4 – GENERAL

Under its statutory powers, including section 139 of the *Community Charter* of British Columbia, and in accordance with the City of Victoria Consolidation Authorizing Bylaw No. 01-108, the Council of the Corporation of the City of Victoria enacts the following provisions:

## PART 1 – INTRODUCTION

**Title**

**1**      This Bylaw may be cited as the "ELECTION PROCEDURES BYLAW."

**Definitions & Interpretation**

**2**      (1)      In this Bylaw,

"acceptable mark"

means a completed oval that

(a)      is identifiable by a vote tabulating unit, and

(b)      is made by an elector in the space provided on a ballot opposite the name of a candidate or opposite either 'yes' or 'no' on a question;

"automated vote counting system"

means a system that counts and records votes, processes and stores election results, and is comprised of the following equipment having the functions indicated:

(a)      a number of ballot-scanning vote tabulating units, each of which rests on a ballot box, and

(b)      a number of portable ballot boxes;

"ballot"

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

(a)    the names of all the candidates for the office of Mayor and each office of councilor, and

(b)    all of the choices on all of the questions 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 City Hall, located at #1 Centennial Square, Victoria, British Columbia;

"election"

means an election for the number of persons required to fill an office on the City Council;

"elector"

means a resident elector or non-resident property elector of the City;

"general local election"

means the election held in 2002 and in every 3rd year after 2002 for the mayor and all councilors of the City;

"general voting day"

means

(a)    for a general local election, the 3rd Saturday of November in the year of the election,

(b)    for elections other than a general local election, the date set under sections 37(5), 38(1), or (3), or 142(5) of the *Local Government Act*, and

(c)    for other voting, the date set under section 162 of the *Local Government Act*;

"memory card"

> means the storage device that stores all of the permanent results for the vote tabulating unit;

"other voting"

> means voting on a matter referred to in section 158 of the *Local Government Act*;

"portable ballot box"

> means a ballot box that is used at a voting place where a vote tabulating unit is not being used or is not functioning;

"question"

> means the bylaw or other matter on which the assent or the question of the electors is sought by other voting;

"register tape"

> means the printed record, generated from a vote tabulating unit at the close of voting on general voting day, that shows the number of votes
>
> (a)    for each candidate for the office of Mayor and each of councilor, and
>
> (b)    for and against each question;

"returned ballot"

> means a voted ballot, inserted by an elector into a vote tabulating unit, that is not accepted and is returned by the unit to the elector with an explanation of the marking error that caused the ballot to be unacceptable;

"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 a 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 question.

(2) Each provision of this Bylaw is intended to be independent of all other provisions to the extent that if any provision is declared invalid for any reason by a court of competent jurisdiction, all other provisions of this Bylaw remain valid and enforceable.

## Application

**3** This Bylaw applies to all elections and all other voting.

## Nomination deposits

**3.1** (1) A nomination for election to hold office as a member of Council must be accompanied by the following nomination deposits:

 (a) $100.00 for each candidate for the office of Mayor;

 (b) $100.00 for each candidate for the office of councillor.

(2) A nomination deposit must be held and dealt with by the chief election officer in the following manner in accordance with section 72.1 of the *Local Government Act*:

 (a) if the person nominated is not declared to be a candidate under section 74 of the *Local Government Act [declaration of candidates],* the deposit is to be returned to the person or to the financial agent of the person;

 (b) if the person nominated files a disclosure statement as required by section 90 of the *Local Government Act* or as the requirements of that section are modified by court order under section 91 *[court order for relief]*, the deposit is to be returned to the person or the financial agent of the person;

 (c) in other cases, the deposit is forfeited and is to be paid to the City.

## Number of nominators

**3.2** A nomination for election to hold office as a member of Council must be made by at least the following number of qualified nominators:

(1)     25 for each candidate for the office of Mayor;

(2)     25 for each candidate for the office of councillor.

## PART 2 – CONDUCT OF ELECTIONS & OTHER VOTING

**Provincial list of voters**

**4**    (1)    As authorized under section 59 of *Local Government Act*, the most current Provincial list of voters prepared under the *Election Act*, available at the time an election or other voting is to be held, is the register of resident electors for the City.

    (2)    The Provincial list of voters becomes the register of resident electors no later than 52 days before general voting day for each election or other voting.

    (3)    A person who, on the basis of the Provincial list of voters, appears to meet the qualifications to be registered as a resident elector of the City is deemed to be registered as a resident elector of the City.

**Voter identification**

**5**    (1)    The chief election officer or the presiding election official is authorized to require an elector to produce identification in the form of any class of document set out in section 3 of B.C. Regulation 380/93 [*Local Government Elections Regulation*].

    (2)    The chief election officer or the presiding election official may take other reasonable precautions to ensure that an elector is qualified to vote and votes only once in an election.

**Additional general voting opportunities**

**6**    As authorized under sections 96, 158, and 163 of the *Local Government Act*, the Council authorizes its chief election officer to

    (a)    establish additional voting opportunities for general voting day for each election and other voting; and

    (b)    designate the voting places and voting hours, within the limits set out in subsection 96(2) of the *Local Government Act* for the additional general voting opportunities.

**Required advance voting opportunities**

**7**    As required under section 97(2), 158(2) and 163 of the *Local Government Act*, advance voting opportunities must be held, for each election and for other voting, on the following days before general voting day:

(a)    on the 10th day before general voting day; and

(b)    on the Monday immediately preceding general voting day.

## Additional advance voting opportunities

**8**    As authorized under section 98, 158 and 163 of the *Local Government Act*, the chief election officer, in addition to the dates referred to in section 7 of this bylaw, is authorized to establish dates for additional advance voting opportunities and to designate the voting places and set the dates and voting hours for those additional advance voting opportunities.

## Special voting opportunities

**9**    (1)    As authorized under section 99, 158 and 163 of the *Local Government Act*, the chief election officer must establish the dates and voting hours when and the places where special voting opportunities will be conducted for each election or other voting.

(2)    The only electors who may vote at a special voting opportunity are electors who, on the date on which the special voting opportunity is held and before the end of the voting hours for that special voting opportunity, have been admitted as patients to the hospital at which the special voting opportunity is held.

(3)    The voting hours for a special voting opportunity must not be earlier than 9:00 a.m. or later than 4:00 p.m. of the day on which the special voting opportunity takes place.

(4)    Subject to section 99(3) of the *Local Government Act*, the Council authorizes the chief election officer to limit the number of candidates' representatives who may be present at a special voting opportunity.

## PART 3 – AUTOMATED VOTING

## Use of voting machines

**10**    Voting may be conducted in a general local election and other voting in the City by using an automated vote counting system.

**Automated voting procedures**

**11** (1) As soon as an elector enters a voting place, including those for advanced voting opportunities, and before a ballot is issued to the elector, the presiding election official for that voting place must offer and, if requested by the elector, must direct an election official to provide a demonstration to the elector of the method for voting by using an automated vote counting system, including the use of a secrecy sleeve.

(2) After declining the offer or receiving a demonstration under subsection (1), an elector must proceed as instructed to the election official responsible for issuing ballots.

(3) The election official responsible for issuing a ballot to an elector

   (a) must ensure that the elector

      (i) is qualified to vote in the election, and

      (ii) completes the voting book as required by the *Local Government Act*; and

   (b) after satisfying paragraph (a), must give to the elector a ballot, a secrecy sleeve if the elector requests it, and any further instructions requested by the elector.

(4) After receiving a ballot, an elector

   (a) must proceed immediately to a voting compartment;

   (b) may vote only by making an acceptable mark on the ballot

      (i) beside the name of each candidate of choice up to the maximum number of candidates to be elected for the office of mayor and for each office of councilor, and

      (ii) beside either 'yes' or 'no' in the case of each question;

   (c) must place the marked ballot into a secrecy sleeve, if applicable, proceed to the vote tabulating unit, and under the supervision of the election official in attendance insert the ballot directly into the vote tabulating unit without exposing the acceptable marks on the ballot; and

(d)     may request a replacement ballot from the election official in attendance if

    (i)     before inserting a ballot into the vote tabulating unit the elector decides that she or he made a mistake when marking the ballot, or

    (ii)     a ballot is returned by the vote tabulating unit.

(5)     The presiding election official or alternate presiding election official must carry out the following procedures if an elector requests a replacement ballot in accordance with subsection (4)(d):

    (a)     issue the replacement ballot to the elector;

    (b)     mark as "spoiled" the ballot that is being replaced; and

    (c)     retain all spoiled ballots separately from all other ballots.

(6)     Spoiled ballots must not be included in the counting of votes on ballots.

(7)     For the purpose of counting acceptable marks, the presiding election official must reinsert a returned ballot into the vote tabulation unit by using the ballot return override procedure if the elector

    (a)     has not damaged the returned ballot to the extent that it cannot be reinserted; and

    (b)     does not want a replacement ballot.

(8)     A ballot counted by the vote tabulating unit is valid and all acceptable marks contained on that ballot must be counted subject to a determination made under a judicial recount.

(9)     An elector must immediately leave the voting place after the vote tabulating unit indicates that the elector's ballot has been accepted.

(10)     The election official supervising a vote tabulating unit must insert into a portable ballot box all ballots delivered by electors during a time when the vote tabulating unit is not functioning and is not replaced.

(11)     An election official must carry out the following procedures under the supervision of the presiding election official as soon as is reasonably possible after a nonfunctioning vote tabulating unit becomes operational or is replaced with another vote tabulating unit:

(a) remove the ballots contained in the portable ballot box that temporarily replaced the nonfunctioning vote tabulating unit; and

(b) insert into the functioning vote tabulating unit the ballots removed under paragraph (a).

(12) For the purpose of counting acceptable marks after the close of voting on general voting day for an election, and under the supervision of the presiding election official, an election official must use the ballot return override procedure to reinsert into a vote tabulating unit ballots that were temporarily stored in a portable ballot box under subsection (10) and that are treated as returned ballots by the vote tabulating unit into which they were placed under subsection (11).

(13) A ballot used in an automated vote counting system may be in the form set out in Schedule A.

**Advance voting opportunity procedures**

**12** (1) Vote tabulating units must be used to conduct the vote at all advance voting opportunities.

(2) Voting procedures at advance voting opportunities must follow as closely as possible those described in section 11.

(3) At the close of voting at each advance voting opportunity the presiding election official must ensure that

(a) no additional ballots are inserted in the vote tabulating unit;

(b) the portable ballot box is sealed to prevent insertion of any ballots;

(c) the register tapes in the vote tabulating box are not generated; and

(d) the memory card of the vote tabulating unit is secured.

(4) At the close of voting at the final advance voting opportunity the presiding election official must

(a) ensure that any remaining ballots in the portable ballot box 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.

## Special voting opportunity procedures

**13**  (1)  A portable ballot box must be used for all special voting opportunities unless the chief election officer determines that it is practical to use a vote tabulating unit.

(2)  The presiding election official at a special voting opportunity must proceed in accordance with

(a)  sections 11(2), (3), and (4) (a), (b) and (c) to the extent that they are applicable when a portable ballot box is being used; and

(b)  section 12 when a vote tabulating unit is being used.

(3)  The presiding election official at a special voting opportunity

(a)  must ensure that a portable ballot box is secured when not in use; and

(b)  at the close of voting at the final special voting opportunity must seal a portable ballot box and return it together with all other election materials to the chief election officer.

## Mail ballot voting and registration authorized

**14**  (1)  Voting by mail ballot and elector registration by mail in conjunction with mail ballot voting are authorized.

(2)  In accordance with the provisions of section 100(2) of the *Local Government Act* the only electors who may vote by mail ballot are:

(a)  persons who have a physical disability, illness or injury that affects their ability to vote at another voting opportunity, and

(b)  persons who expect to be absent from the municipality on general voting day and at the times of all advance voting opportunities.

(3)  Once a mail ballot package has been accepted by the chief election officer, that voter may only vote by mail ballot.

**Application procedure for mail ballot**

**15**  (1)  A person wishing to vote by mail ballot must apply by providing their name and address to the chief election officer or to an election official designated by the chief election officer for such purposes, during the period commencing fourteen (14) days before the first day of advance voting, and ending at 4:00 p.m. on the Thursday two days before general voting day.

(2)  Upon receipt of a request for a mail ballot, the chief election officer or designated election official must, between the first day of advanced voting and 4:00 p.m. on the Thursday two days before general voting day:

(a)  make available to the applicant, a mail ballot package as specified in section 100(7) of the *Local Government Act*, together with:

(i)  a statement advising the elector that the elector must meet one or more of the mail ballot requirements specified in subsection 14(2) of this bylaw, and that they must attest to such fact; and

(ii)  where required, an elector registration application;

(b)  immediately record and, upon request, make available for inspection:

(i)  the name and address of the person to whom the mail ballot package was issued; and

(ii)  information as to whether or not the person is registered as an elector.

**Voting procedure for mail ballot**

**16**  (1)  In order to vote using a mail ballot, the elector must mark the ballot in accordance with the instructions contained in the mail ballot package provided by the chief election officer.

(2)  After marking the mail ballot, the elector must:

(a)  place the mail ballot in the secrecy envelope provided, and seal the secrecy envelope;

(b)     place the secrecy envelope in the certification envelope, and complete and sign the certification printed on such envelope, and then seal the certification envelope;

(c)     place the certification envelope, together with a completed elector registration application, if required, in the outer envelope, and then seal the outer envelope; and

(d)     mail, or have delivered, the outer envelope and its contents to the chief election officer at the address specified so that it is received no later than the close of voting on general voting day.

## Mail ballot acceptance or rejection

**17**     (1)     Until 4:00 p.m. on the Thursday two days before general voting day, upon receipt of the outer envelope and its contents, the chief election officer or designated election official must immediately record the date of such receipt and must then open the outer envelope and remove and examine the certification envelope and the completed elector registration application, if applicable, and if satisfied as to:

(a)     the identity and entitlement to vote of the elector whose mail ballot is enclosed; and

(b)     the completeness of the certification; and

(c)     the fulfillment of the requirements of section 55 of the *Local Government Act* in the case of a person who is registering as a new elector;

the chief election officer or designated election official must mark the certification envelope as "accepted", and must retain all such certification envelopes in custody to deal with any challenges made in accordance with section 18 of this bylaw.

(2)     The unopened certification envelopes must remain in the secure custody of the chief election officer or designated election official until 4:00 p.m. on the Thursday two days before general voting day, at which time the certification envelopes containing the secrecy envelopes must be opened in the presence of at least one other person, including any scrutineers present.

(3)     At 4:00 p.m. on the Thursday two days before general voting day, the chief election officer or designated election official must place all secrecy envelopes received up until that time into a ballot box specified for such

purpose, where such secrecy envelopes were received from persons whose right to vote using a mail ballot has not been challenged, or where such challenge has been resolved and the challenged person permitted to vote.

(4)     Where an outer envelope and its contents are received by the chief election officer or designated election official between 4:00 p.m. on the Thursday two days before general voting day and the close of voting on general voting day, the provisions of section 17(1) of this bylaw with regard to ballot acceptance apply and the chief election officer or designated election official must retain such envelope in custody until the close of voting and at that time must open such certification envelopes in the presence of at least one other person, including any scrutineers present, and place the secrecy envelopes containing the ballot into the ballot box containing the other unopened secrecy envelopes.

(5)     After all of the secrecy envelopes have been placed in the ballot box designated for that purpose, and following the close of voting on general voting day, the following procedures must be followed:

(a)     under the direction of the chief election officer the ballot box containing the secrecy envelopes must be opened;

(b)     the secrecy envelopes must be removed and opened and the ballots contained in those envelopes inserted for counting into a vote tabulating machine; and

(c)     after the procedures set out in paragraphs (a) and (b), the procedures set out in section 21(1) must be followed to the extent that they are applicable.

(6)     Where:

(a)     upon receipt of an outer envelope, the chief election officer is not satisfied as to the identity of the elector whose mail ballot is enclosed; or

(b)     in the case of a person required to complete an application for registration as an elector, such application has not been completed in accordance with section 55 of the *Local Government Act*; or

(c)     the outer envelope is received by the chief election officer after the close of voting on general voting day,

the certification envelope must remain unopened, and the chief election officer must mark such envelope as "rejected", and must note his or her reasons for doing so, and the mail ballot contained in such envelope must not be counted in the election.

(7)     Any certification envelopes and their contents rejected in accordance with section 17(6) of the bylaw must remain unopened and are subject to the provisions of section 150(6) of the *Local Government Act* with regard to their destruction.

## Challenge of elector

**18**     (1)     A person exercising the right to vote by mail ballot may be challenged in accordance with, and on the grounds specified in section 116 of the *Local Government Act* until 4:00 p.m. on the Thursday two days before general voting day.

(2)     The provisions of section 116(2) to (5) of the *Local Government Act* apply, so far as applicable, where a challenge of an elector voting by mail ballot has been made.

## Elector's name already used

**19**     Where, upon receiving a request for a mail ballot, the chief election officer determines that another person has voted or has already been issued a mail ballot in that elector's name, the provisions of section 117 of the *Local Government Act* apply, so far as applicable.

## Replacement of spoiled ballot

**20**     (1)     Where an elector unintentionally spoils a mail ballot before returning it to the chief election officer, the elector may request a replacement ballot by advising the chief election officer or designated election official of the ballot spoilage and by mailing or otherwise delivering by any appropriate means, the spoiled ballot package in its entirety to the chief election officer or designated election official.

(2)     The chief election officer must, upon receipt of the spoiled ballot package, record such fact, and must proceed to issue a replacement mail ballot in accordance with section 15(2) of this bylaw.

## Procedures after close of voting on general voting day

**21** (1) After the close of voting on general voting day, each presiding election official at a voting opportunity, other than advance and special voting opportunities, where a vote tabulating unit was used in an election must

(a) ensure that any remaining ballots in the portable ballot box are inserted into the vote tabulating unit;

(b) secure the vote tabulating unit so that no more ballots can be inserted;

(c) generate three copies of the register tape from the vote tabulating unit; and

(d) deliver one copy of the register tape together with the vote tabulating unit to the chief election officer at election headquarters.

(2) After the close of voting on general voting day, each alternate presiding election official at a voting opportunity, other than advance and special voting opportunities, where a vote tabulating unit was used in an election must

(a) account for the unused, spoiled and voted ballots and place them, packaged and sealed separately, into the election materials transfer box along with one copy of the register tape;

(b) complete the ballot account and place the duplicate copy in the elections materials transfer box;

(c) seal the elections materials transfer box;

(d) place the voting books, the original copy of the ballot account, one copy of the register tape, completed registration cards, keys and all completed administrative forms into the chief election officer portfolio; and

(e) transport all equipment and materials to election headquarters.

(3) At the close of voting on general voting day the chief election officer must direct the presiding election official for the advance voting opportunity and any special voting opportunities where vote tabulating units were used, to proceed in accordance with subsections (1) and (2).

(4) At the close of voting on general voting day the following procedures must be followed:

(a)    under the direction of the chief election officer all portable ballot boxes used in the election must be opened;

(b)    all ballots in portable ballot boxes must be removed and for counting be inserted into a vote tabulating unit;

(c)    after the procedures set out in paragraphs (a) and (b), the procedures set out in subsections (1) and (2) must be followed to the extent that they are applicable.

## Recount procedure

**22**    If a recount is required it must 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 cards of all vote tabulating units must be cleared;

(b)    vote tabulating units must be designated for each voting place;

(c)    all ballots must be removed from the sealed ballot boxes; and

(d)    all ballots, except for spoiled ballots, must be reinserted in the appropriate vote tabulating units under the supervision of the chief election officer.

## PART 4 - GENERAL

## Tie Votes after Judicial Recount

**23**    A tie vote that exists after a judicial recount will be resolved by conducting a lot in accordance with section 141 of the *Local Government Act.*

**24**    Bylaw No. 93-146, the Election Procedures Bylaw, is repealed.

This Consolidation is:

i)      a copy of a bylaw consolidated under the authority of section 139 of the *Community Charter* of British Columbia; and

ii)     printed by authority of the Corporate Administrator of the Corporation of the City of Victoria.

**"ROBERT G. WOODLAND"**                              **August 23, 2010**
CORPORATE ADMINISTRATOR                              DATE