



Committee of the Whole Report For the Meeting of February 11, 2021

To: Committee of the Whole **Date:** January 27, 2021
From: Chris Coates, City Clerk
Subject: 2020 By-Election – Lessons Learned

RECOMMENDATION

That Council endorse the following as minimum requirements for conducting a by-election:

1. One month of planning before appointing a Chief Election Officer
2. Hire one additional senior staff and one additional administrative staff
3. Establish at least 8 general voting day locations that are geographically distributed throughout the city
4. At least two advance voting locations
5. At least five advance voting days
6. Each voting location to have two voting machines
7. One accessible voting machine to be available during advance and general voting in a central location
8. Provide return postage-paid envelopes for requested vote by mail packages
9. Distribute election information materials to households using a voter card system and other standard engagement activities.

EXECUTIVE SUMMARY

Part of the City's continuous improvement strategy is to develop Lessons Learned Reports after completing major projects. The purpose of this report is to outline lessons learned in conducting the 2020 By-Election; recommend an approach for future by-elections; identify any changes that may be beneficial for the general election in 2022; and offer Council an opportunity to provide suggestions for improvements.

A by-election was scheduled for April 4, 2020 but was cancelled by an Order of the Minister of Municipal Affairs and Housing in late March due to the COVID-19 Pandemic. In the summer the Provincial Government indicated the municipalities requiring by-elections should plan to move them forward. Several less populous municipalities conducted by-elections over the following months. Then, Burnaby and Victoria were the most populous municipalities requiring by-elections. Burnaby has yet to conduct a by-election for two Council vacancies and will likely hold it in late spring 2021.

The by-election was conducted on December 12, 2020. There were eight advance voting opportunities, six voting locations on General Voting Day, and all eligible voters could choose to vote by mail. Voter turnout was 17.4% and 12,323 voters cast a ballot.

This by-election required extraordinary measures to protect public health and safety due to a provincial state of emergency and provincial orders imposing restrictions on most public events and gatherings. The City worked with the Ministry of Municipal Affairs and Housing to implement

changes to provincial and local rules to conduct voting in an appropriate manner. This included unprecedented and significant changes to voting in person and voting by mail.

On November 5, 2020, Council approved Ministerial Order 405/2020, attached as Attachment A, from the Minister of Municipal Affairs and Housing which changed local election rules allowing anyone to vote by mail in addition to other matters. The Local Government Act requires the candidate nomination process to be concluded before ballots can be ordered, printed, packaged, and delivered to voters as the names of the candidates are required to be printed on the ballots. Due to these limitations, the first vote by mail packages were sent on November 23. Further, due to mail delivery schedules, the City did not send packages after December 4 and advised eligible voters not to return their packages by mail after this date. Instead, eligible voters could pick up and drop off their vote by mail packages. 1030 mailed ballots were returned late that could not be counted because the Local Government Act requires that ballots be received by the close of voting on general voting day.

A safety consultant was engaged to create safety plans at each voting location. This made it possible for voters to safely and securely vote in person and for the City to comply with public health requirements. Voting in person was mostly unchanged except for those adjustments enabling physical distancing and reducing points of contact. This was important as each voting location was busy during advance voting opportunities and on General Voting Day. The use of two voting machines at each location expedited voting and supported health and safety of voters and staff.

Some challenges were lack of a comprehensive plan before appointing a Chief Election Officer which required trade-offs to administer the by-election on time; securing staff and adequate and additional voting locations; and developing and implementing a mail ballot process without changing the provincial legislated election timeline and requirements. Public feedback related to lack of mailed voter cards, the number and distribution of voting places, and time to return completed ballots by mail.

Despite the challenges of administering a by-election during the Covid-19 pandemic, some approaches that were beneficial were: proactive communication and coordination with the Ministry of Municipal Affairs and Elections BC; ensuring safe and secure ways to vote in person and by mail; additional voting machines at each voting location; and developing a policy and process to administer an unprecedented volume of mailed ballots.

While the Covid-19 pandemic impacted this by-election in unprecedented ways, lessons learned will be considered in future elections and by-elections. Election administration is complex under normal circumstances and amplified during the Covid-19 pandemic. Recommendations include:

- creating a standardized approach to by-elections that includes:
 - at least two voting locations for advanced voting opportunities;
 - at least two voting machines at each location;
 - increase the number of general voting day locations
 - mailing voter cards as a standard practice for by-elections.

Opportunities for further improvement will be assessed as part of the standard practice, along with any other suggestions in preparation for the next election.

PURPOSE

The purpose of this report is to review the 2020 by-election, present lessons learned and recommendations, and to provide Council with the opportunity to bring forward any issues.

BACKGROUND

The Province cancelled the by-election scheduled for April 4, 2020 upon the advice of the Medical Health Officer due to the Covid-19 pandemic. In the months to follow, staff worked with the Ministry of Municipal Affairs and other local governments to develop best practices about conducting a by-election in accordance with emerging provincial health restrictions. The Ministry of Municipal Affairs developed guidelines about how to appropriately conduct a by-election in this environment in July 2020 and began advising municipalities with vacant Council seats to hold by-elections as soon as practicable.

On October 1, 2020, Council received a report, attached as Attachment B confirming the technical feasibility of holding a by-election on December 12, 2020 and passed the following motion:

That Council:

- 1. Appoint Chris Coates as Chief Election Officer.*
- 2. Appoint Sonia Santarossa, Christine Havelka and Monika Fedyczkowska as Deputy Chief Election Officers.*
- 3. Authorize the Chief Election Officer to send a formal request to the Ministry of Municipal Affairs for a Ministerial Order to facilitate a by-election during the pandemic including legislative changes to respond to enhanced mail ballot voting, reduced touch points and other pandemic related matters that may be required.*
- 4. Approve a budget addition of up to \$350,000 from the Financial Stability Reserve for the by-election.*

Public health and safety concerns significantly impacted the typical local election processes and legislated requirements. In order to appropriately conduct a by-election on December 12, the Chief Election Officer (CEO) sent a request for a Minister's Order to seek exemptions from and modifications to provisions of both the Local Government Act and the City's Election Procedures Bylaw in an expeditious manner. The CEO requested the Minister's Order on October 9, 2020. Ministerial Order 405/2020 was published on October 29, 2020. The Order is attached as Attachment A. In order to implement the Order, the Ministry required that Council approve it by resolution, which occurred on November 5, 2020.

General voting was held on December 12, 2020 at six locations. Advancing voting opportunities were held December 1-5 and December 7-9 at Crystal Garden. There were two voting machines at each voting location, an accessible voting machine at Crystal Garden, and curbside voting at each voting location. In addition to this, the City offered vote by mail to all voters.

There are 70,812 eligible voters in Victoria. 12,323 eligible voters voted in this by-election. This is voter turnout of 17.4%. 1030 mailed ballots were returned after the close of voting day on December 12, 2020 and could not be counted in the election results given the legislated requirements of the Local Government Act that stipulates that ballots must be received by the close of voting on general voting day. The table provides a breakdown of the number of ballots cast at each voting location.

Voting Location	Votes Cast	% Turnout
Advanced voting at Crystal Garden	3,387	4.78%
Mail ballots	2,285	3.23%
Crystal Garden	879	1.24%

Davinci Centre	1,057	1.49%
James Bay School	963	1.36%
Oakland School	1,311	1.85%
Sir James Douglas School	1,730	2.44%
Vic High at SJ Willis	711	1.00%
Total:	12,323	17.40%

The last by-election was held on November 20, 2010 to fill one Council vacancy. At the same time, voters were asked to vote in a referendum on borrowing for the Johnson Street Bridge project. The combined by-election and referendum likely resulted in higher than average voter turnout for a by-election at 25.95%.

ISSUES & ANALYSIS

COVID-19 Pandemic

The by-election was impacted by new provincial health restrictions. The Public Health Officer issued province-wide restrictions on November 19, December 4, and December 9 related to public events and gatherings in response to an increase in Covid-19 infections. While these restrictions were clarified to not apply to federal, provincial, and municipal elections, staff were monitoring the evolution of these provincial directions for potential changes to the local election process and eligible voters may have adapted voting behaviour in response to these restrictions. Safety Plans considered these factors.

Challenges of Planning a By-Election

Local governments must follow a legislated local election process under the Local Government Act when conducting general local elections and by-elections.

In addition to the legislated local election process, a fundamental consideration was how to ensure ways for voters to vote both safely and securely by voting in person and voting by mail during a pandemic.

Temporary legislative changes to provincial and local elections rules were considered necessary to administer a by-election on December 12, 2020. Staff worked proactively with Ministry staff to request a Minister's Order to make exemptions and modifications to the processes that changed voting in person and voting by mail. Once appointed, the CEO sent a formal request on October 9, 2020. Despite working on an urgent basis, the Order was published two weeks after the formal request. Council approved the Order on November 5, as required by the Province, which then enabled staff to implement temporary legislative changes.

In October, staff presented a feasibility report, attached as Attachment B, identifying multiple dates for a potential by-election. This analysis combined milestones in the local election process and confirmation from the Ministry that the Order would be issued. This analysis indicated that the earliest potential date for a by-election was December 12. While a by-election on December 12 was technically feasible, limited planning time required trade-offs and for staff to focus almost exclusively on providing safe and secure options to vote.

The Local Government Act sets a date for general local elections. They are held on the third Saturday of October every four years. Unlike general local elections, by-elections must occur when there is a vacancy on Council. Once there is a vacancy, the Province requires the City to conduct a by-election as soon as practicable. Staff then bring a report to Council with potential by-election dates. Once a CEO is appointed by Council, a by-election must be held no later than in 80 days. While a by-election on December 12 was technically feasible, trade-offs were necessary to make it

possible to undertake the by-election process by adopting temporary changes to the standard local election process and additional considerations due to the pandemic. Staff recommend developing a standardized process to guide the selection of by-election dates and minimum requirements for by-elections in order to ensure consistency and voter satisfaction with future by-elections. This will help staff plan a by-election in advance of the legislated local election process.

Two additional staff were retained for the by-election. One administrative and one Deputy Chief Election Officer. Despite this, the planning window was sufficiently tight such that Legislative Services staff members were re-directed from their usual duties. This was especially challenging given that additional Council meetings held in connection with the 2021 financial planning process. Current workloads need to be carefully analysed in relation to a by-election and additional staff is required for by-elections going forward.

Staff recommend that:

- 1) at least one month of planning occur before appointing a Chief Election Officer.**
- 2) at least one additional senior staff and one additional administrative staff be retained.**

Voting Opportunities

Voting Locations on December 12

There were six voting locations that were selected due to geographic location, availability and ability to accommodate larger numbers of voters in consideration of public health and safety requirements for other public events and gatherings. Safety plans were developed for and implemented at each voting location.

Additional voting machines were beneficial. Each voting location had two voting machines to increase the speed with which voting could take place. Following the 2018 general local elections, Council directed staff to increase to two voting machines for each location based on recommendations from the Lessons Learned Report. This significantly reduced the amount of time that each voter spent at a voting location. There were line-ups at busier locations on general voting day but the time spent in line-ups was significantly less than in 2018. Additional voting locations in strategic geographical areas during a by-election would help to further reduce line-ups.

An accessible voting machine was available at Crystal Garden during advance voting opportunities and on general voting day. This was the first time that the City offered an accessible voting machine. One voter used the accessible voting machine. There was a technological issue in relation to a barrier for the visually impaired and staff have shared this feedback with technology provider.

Staffing was a challenge on general voting day. In addition to standard reasons for absences, staff were directed to stay at home if they were experiencing any flu-like symptoms. Standby staff were available to fill in and were fully utilized and despite that staff were also moved from less busy to more busy voting locations as needed throughout general voting day.

There was also some confusion for voters about voting place locations, in particular, Crystal Garden was confused with Crystal Pool. Voting locations typically do not change from one election to another. Some of the voting locations in previous general local elections were not selected as they were not as well suited to voting during a pandemic and to meet public health and safety guidelines. In the case of Vic High in Fernwood, the facility was under renovation and not available. As a result new voting locations were selected in some instances due to their size which enabled more voters to wait inside at a voting location while maintaining physical distancing. Staff worked to widely communicate information about voting locations this by-election voters.

A map of the voting location used is attached as Attachment C.

Staff recommend that:

- a) there are at least 8 general voting day locations for a by-election that are geographically distributed throughout the city.**
- b) each voting location to have two voting machines**
- c) one accessible voting machine be available during advance and general voting in a central location**

Advance Voting Opportunities – 27% of total votes

The Local Government Act mandates at least two advance voting opportunities. The Chief Election Officer has discretion to establish additional advance voting polls. Eight advance voting opportunities were held at Crystal Garden. In the 2018 election 5 advance voting opportunities were held at City Hall. The Crystal Garden was chosen due to its size, it was not in use due to the pandemic, and could be set up once for the duration of voting. Feedback received and voting patterns analyzed, suggest that an additional advance voting location may be helpful in providing easier access to advance voting in the future. Increasing advance voting opportunities is an evolving best practice.

Staff recommend a minimum of two advance voting locations over a minimum of five days for by-elections.

Vote by Mail – 18.5% of total votes

The Local Government Act enables municipalities to offer vote by mail under prescribed circumstances. Eligible voters may vote by mail if they are unable to attend in person at a voting place due to a physical disability, illness or injury, or are absent from the municipality on General Voting Day and at the times of all advance voting opportunities. The Order enabled the City to offer vote by mail to all eligible voters due to the Covid-19 pandemic.

In addition, the Order significantly changed vote by mail administration to enable staff to administer a higher volume of mailed ballots. Under the Order, staff could process returned mail ballots earlier despite provisions under the Elections Procedures Bylaw. This advance work enabled staff to obtain election results by 9:30 p.m. on general voting day. The Local Government Act requires a final declaration of election results four days after the close of voting on general voting day.

Other changes to the vote by mail process enabled staff to process a higher volume of mailed ballots, including: an online request portal for mail ballots, opening the request portal in advance of availability of ballots and advertising this to voters, processing ballots earlier than usual, and providing return postage for mail in Canada to reduce barriers for voting by mail.

Despite significant changes to vote by mail administration, there was insufficient time during the by-election process to send and receive many ballots by mail. This was a concern from the outset due to the increased opportunities for people to vote by mail. The local elections process legislated under the Local Government Act restricts when ballots can be sent to voters. Two requirements under the Local Government Act limit the time period for sending and receiving mail ballots. First, the challenge period for candidate nominations must end and ballots must be printed with names of candidates. Second, mailed ballots received after 8:00 p.m. on December 12 could not be counted in the election results. This concerned some voters who were able to send mailed ballots in the provincial election on October 24 after the general voting day but not able to do so for the local general election.

Engagement materials and staff communication advised voters to pick up or return ballots in person at City Hall or at voting locations after December 4 to prevent late mailed ballots; despite this, 1030 ballots were returned by mail in the week following the by-election.

Staff learned from Elections BC that there was a similar experience with their vote by mail process for the Provincial Election on October 24, 2020. 724,279 voters requested vote-by-mail packages in the Provincial Election. 596,287 voters returned their package by the close of voting, representing a return rate of 82.3%. This figure is still being determined, and will be reported on in the Chief Electoral Officer's report for the election (to be published in 2021).

In 2014 Council passed a motion to request the Province amend legislation to establish an earlier nomination period that would enable mail ballots to be made available earlier. The Province did not and has not made any changes to provide more time for votes by mail for a local election process.

The City offered vote by mail to care facility residents with over 50 residents instead of administering special voting opportunities. Due to strict public health and safety measures in place at residential care facilities, staff could not attend these facilities as is the normal practice.

As noted, the legislation does not permit voting by mail as a general opportunity only under the limited circumstances noted above. Under the current legislative requirements staff suggest that vote by mail for anyone is not an appropriate way in which to conduct voting under normal conditions without changes to the submission deadlines.

Staff recommend providing postage-paid return envelopes for requested vote by mail packages to eliminate barrier to voting using this method.

Voter Turnout

The City makes an ongoing effort to inform the public about voting opportunities with a view to increasing voter turnout. In 2018, voter turnout for the local general election was 43.5%. This was the highest turnout in the Province of any municipality with over 15,000 eligible voters. By-elections typically have lower voter turnout. The last Victoria by-election was in 2010 for one Council vacancy and included a referendum regarding borrowing for the Johnson Street Bridge. The voter turnout was 25.95%. Voter participation may have been higher than usual due to the borrowing referendum. By-elections in Vancouver and Saanich in 2017 had a voter turnout of 10.99% and 11.4% respectively. The Victoria by-election in 2020 had a voter turnout of approximately 17.4%. If this calculation included late mailed ballots, voter turnout could have been 18.9%. While there is room for improvement to increase voter turnout at future by-elections, the voter turnout at the last by-election was higher than for comparable by-elections.

Advertising and Engagement

The Province establishes mandatory advertising requirements in the Local Government Act. In addition to those, staff undertakes many additional engagement activities including:

- Maintaining an on-line registry of all candidate forums
- An on-line portal of candidate profiles and general election information
- Distributing voter cards by mail to all people on the list of electors
- Social media updates
- News releases

For this by-election, staff undertook mandated and the noted special engagement activities to inform voters about when and how to vote, and special measures taken to promote public health and safety.

The City did not send voter cards in advance of this by-election. In the cancelled April 4 by-election process, the city used Canada Post bulk mail distribution for election information. This was somewhat problematic as people in neighbouring municipalities were receiving the materials in addition to city addresses. There were concerns expressed by voters about not receiving the voting cards that they have become accustomed to. This is a labour and cost intensive exercise and the challenges around timing for planning and implementing the by-election made it impractical to undertake this.

Staff recommend that future by-elections include the distribution of election information materials to households using the voter card system and all other engagement activities.

OPTIONS AND IMPACTS

Option 1 – Develop a standardized by-election process and minimum requirements (Recommended)

This option would establish the following requirements

1. One month of planning before appointing a Chief Election Officer
2. Hire one additional senior staff and one additional administrative staff
3. Establish at least 8 general voting day locations that are geographically distributed throughout the city
4. At least two advance voting locations
5. At least five advance voting days
6. Each voting location to have two voting machines
7. One accessible voting machine to be available during advance and general voting in a central location
8. Provide return postage-paid envelopes for requested vote by mail packages
9. Distribute election information materials to households using a voter card system and other standard engagement activities

This option would result in a set of guidelines to support the selection of by-election dates and minimum requirements for by-elections. This will help staff plan a by-election in advance of the local election process legislated in the Local Government Act. It would also improve consistency voter satisfaction with future by-elections.

Option 2 – Continue planning by-election processes on a case by case basis

This option would be the continuation of the practice currently which is that there is no baseline established and decisions would be made at the time.

Accessibility Impact Statement

Legislative provisions permit assistance to voters who may have difficulty voting without assistance or entering the voting place. An Accessible voting machine was available at Crystal Garden at each advanced voting opportunities and on general voting day. One ballot was cast in this machine. Curbside voting was available at all voting locations. In addition, expanded vote by mail was available to all eligible voters so that voting could occur without attending a voting location. The City also provided postage for any mail to be returned in Canada so that voters would not be negatively

impacted by the requirement to pay for postage. Staff are recommending to continue offering an accessible voting machine and to provide postage-paid return envelopes for requested vote by mail packages.

Impacts on Financial Plan

The budget for the April 4 by-election was approved at \$170,000. The budgeted amount may have not been sufficient if the by-election proceeded to its conclusion. \$90,000 was spent up until the cancellation of the April 4 by-election. Some costs were transferable to the -by-election on December 12.

Council approved adding an additional \$350,000 to the budget to cover additional costs for a by-election on December 12. Overall costs were not yet fully assessed so the budget request was intended to be flexible. Additional staffing and supplies were necessary given the additional public health and safety measures taken in response to the Covid-19 pandemic. These costs were reduced by the generous loan of plexiglass for all voting locations from Elections BC.

The total cost attributable to both the cancelled April 4 by-election and the December 12 by-election was \$300,000.

The costs more directly associated with the December 12 by-election were \$265,000.

CONCLUSIONS

The by-election on December 12, 2020 faced unprecedented challenges due to the Covid-19 pandemic including planning and implementing it before the pandemic, having it cancelled by the Minister of Municipal Affairs and Housing, and re-starting it during the pandemic. Extraordinary measures were necessary to appropriately conduct a by-election in this environment and ensure public health and safety and to encourage voter participation. The lessons learned about the timing and provincially legislated timelines are most helpful to consider for future election and by-election administration. Developing a standard approach for a by-election will assist in the future to help staff prepare for voting in a more informed manner.

Respectfully submitted,

Monika Fedyczkowska
Legislation and Policy Analyst

Chris Coates
City Clerk

Susanne Thompson
Deputy City Manager

Report accepted and recommended by the City Manager.

List of Attachments:

Attachment A – Ministerial Order 405/2020

Attachment B – October 1 Election Feasibility Report

Attachment C – Map of Voting Locations