



Committee of the Whole Report For the Meeting of October 1, 2020

To: Committee of the Whole
From: Chris Coates, City Clerk
Subject: By-election Report Back

Date: September 28, 2020

RECOMMENDATION

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.
5. Forward the by-election motions to the October 1, daytime Council meeting for ratification.

EXECUTIVE SUMMARY

The purpose of this report is to provide further information as directed by Council on September 17, 2020 in relation to a motion for staff to work towards the re-start of a by election on December 12, 2020 to fill the vacant position on Council. At the September 17th meeting, planning had not been completed to a point where staff could confirm that a by-election in December could be successfully undertaken with the additional impacts of doing so during a pandemic.

Since that council direction, staff in Legislative Services focused on evaluating the feasibility of administering a by-election on December 12, 2020, and concluded that it is technically possible to deliver the by-election without negative process impacts. With the appropriate safety precautions, staffing, legislative changes and budget, it is possible to address public health concerns related to voting. Instrumental to that will be adapting typical voting procedures at voting locations and expanding mail ballot voting to ensure that voters who are not comfortable attending in person have another option. Safety and operational plans will provide safeguards for in-person voting for electors and election workers.

A provincial election has been scheduled for October 24, 2020. The regulations for provincial elections are significantly different from those that govern local government elections. A Provincial election can occur within a 32-day period, whereas a local government election process takes approximately 70 days to adhere to the provincially legislated requirements under the Local Government Act. The City cannot deviate from those prescribed timelines, therefore the timing for a by-election is significantly longer.

A provincial election adds complexity around receiving a Ministerial Order to expand mail ballot voting and adapt the City's Election Procedures Bylaw established processes accordingly. Staff are actively seeking clarity with Ministry staff, and hope to have more information by October 1st when Council considers this report.

If Council makes the appointment of elections officials recommended in this report, general voting day would be December 12, 2020.

PURPOSE

The purpose of this report is to report back to Council with information regarding the potential to conduct a by-election on December 12, 2020 during the COVID-19 pandemic.

BACKGROUND

The Minister of Municipal Affairs cancelled the by-election scheduled for April 4, 2020 by way of a Ministerial Order dated March 18, 2020. The report to the September 17, 2020 Committee of the Whole meeting, attached as Appendix A, outlines the chronology of events since the by-election was cancelled and provided an update on re-starting the process.

After receiving the report, Council made the following motion:

- 1. That Council direct staff to report back with a budget request and process for conducting a by-election during the pandemic once the planning has occurred.*
- 2. That Council request the Minister of Municipal Affairs and Housing for a Ministerial Order to expand Mail Ballot Voting opportunities for anyone interested in using that option.*
- 3. That Council request that Elections BC share any information with respect to safety plans for particular voting locations, plexiglass dividers and any other relevant or available infrastructure that will assist the City of Victoria in carrying out a byelection.*
- 4. Direct staff to work towards a December 12th election date subject to advice from the Provincial Public Health Officer and/or sufficient information and safety plans to ensure participation and public safety.*
- 5. That Council direct staff to engage with Elections BC and report back on the possibility of holding the by-election concurrently with a potential Provincial election including opportunities for safety improvements, cost savings, and expediting the City of Victoria's by-election timeline.*

ISSUES & ANALYSIS

Staff in Legislative Services examined many planning and resourcing issues over the past ten days to inform this report and the recommendations.

Staffing

Early indications are that voting place staffing in place for the April 4th by-election is substantively available for December 12th and during the advance voting days. Additional staffing will be required to administer adapted voting systems and practices resulting from the pandemic. An externally sourced Deputy Chief Election Officer is again required, in particular due to the additional pandemic related actions and requirements. Staff from Legislative Services, Facilities, and IT play prominent roles in facilitating a by-election. Regular work in these departments will be impacted as staff will be redirected to conducting the by-election. .

Voting Locations and Headquarters

Staff confirmed that external voting locations selected for the April 4th by-election are available. In addition to these voting locations, staff are seeking additional and significantly larger venues to accommodate larger indoor gatherings given the likelihood of inclement weather in December. This work is ongoing.

City Hall will be the Headquarters as well as a voting location for 8 advance voting opportunities and on general voting day. Current plans for HVAC replacement in City Hall in December will need to be delayed as staff relocation during administration of a by-election would not be feasible.

Safety Plans

Staff are moving forward to develop safety plans for each location as required under Work Safe BC regulations. While these plans will be informed by other similar plans, Work Safe BC requires the City to have its own plan for each venue.

Public Health Information

Since the Province cancelled the April 4th by-election, staff have relied on direction from Public Health Officials regarding the optimal times for conducting a by-election to ensure that public safety during voting is a priority.

Staff will meet with Public Health Officials on September 30th seeking information on planning windows for a by-election. It is expected that Public Health Officials will provide advice on conducting voting during a pandemic but are not likely to recommend a specific time period. Staff will report verbally on this meeting during the discussion of this report.

Legislative Changes due to Pandemic.

The Province is responsible for the local elections legislative framework that local governments are required to follow under the *Local Government Act* and the *Local Elections Campaign Financing Act* when conducting general local elections and by-elections.

The City's *Election Procedure Bylaw*, attached as Appendix B, sets additional requirements for general local elections and by-elections. The Bylaw sets out requirements for general voting days,

advance voting opportunities, and special voting opportunities, in addition to use of automated voting, voting procedures, and mail ballots.

Given the unusual circumstances created by the pandemic, the Bylaw does not currently contemplate measures required to deliver a physically distant election with a high volume of mail ballot requests. Changes are needed to reduce touch points, increase hours at voting locations in order to prevent crowds, and mail ballot voting in order to enable staff to deliver a high volume of ballots in a timely way, increase mail ballots that are returned complete and on time, and reduce mail ballot supply costs. Specific Bylaw sections that would be impacted by these changes are noted below.

As the statutory timeline no longer permits the City to make amendments to the Bylaw that would be effective for a by-election on December 12th, Legislative Services staff are working with the Ministry of Municipal Affairs to bring forward a Minister's Order. Once appointed, the CEO would send a formal request to the Ministry for a Minister's Order that overrides sections of the Bylaw. In addition, the Ministry may advise with respect to sections to be included in the Minister's Order and provide exemptions to *Local Government Act* requirements.

The Bylaw sections included in the formal request will include:

- Section 3(2) – number of qualified nominators
- Section 9(3) – voting hours and special voting locations
- Section 11, 12(2), 13(2) – automated voting procedures
- Section 14, 15, 16, 17, and 18 – mail ballot voting administration

Elections BC

Elections BC's role in a local election process is limited to campaign financing. The Province had not yet called a provincial election when Council directed staff on September 17th to discuss with BC Elections the possibility of a joint election. Following the announcement on September 21st of the upcoming provincial election on October 24th, staff decided not to discuss a joint election with Elections BC because the *Local Government Act* establishes a significantly longer period for the start to finish of the local election process compared to the 32 day minimum for the upcoming provincial election.

Staff have reached out to initiate information sharing and conversations about joint efforts and assistance and expect those conversations to occur over the coming days although not in the immediate term.

Budget

The original by-election budget was \$170,000. Approximately \$90,000 was spent up to the point where the by-election was cancelled by the Ministerial Order.

At this time, planning remains at a higher level such that precise costs are not yet known at this time. The pandemic will result in extra costs in the following areas:

- Safety Plans and associated implementation costs
- Additional staffing
- Additional voting machines
- Additional voting venues
- Personal protective equipment
- Sanitation supplies

In addition to the \$80,000 remaining from the existing budget and at this time, staff are advising that up to an additional \$350,000 may be required to conduct voting under these conditions. These costs will be refined as planning continues to evolve and staff have built a contingency into this to be comfortable that costs estimated will not be exceeded.

Accessibility Impact Statement

Election processes are not yet barrier free. However, Council's direction to employ an accessible voting machine, mail ballot voting, and curbside voting add to the statutory requirement to permit assistance in ballot marking to occur, and provide a way to accommodate different accessibility considerations to enable most interested electors to vote in this by-election.

Council gave direction at the September 17, 2019 Council meeting to

1. Make an accessible voting machine available for the next municipal election or by-election on polling day and that it be located at City Hall or another equally central polling location.
2. Widely publicize these accessibility options well in advance of polling day. This will be undertaken.

In addition, expanded mail ballot voting will provide a new opportunity to request a ballot to anyone who wishes to should the Ministerial Order request be approved.

Impacts to Financial Plan

Up to an additional \$350,000 from the Financial Stability Reserve is required to conduct the by-election.

CONCLUSIONS

A by-election in a larger municipality such as the City of Victoria during Covid-19 is possible on December 12, 2020 but will require additional resources and adapted voting systems and practices that have budgetary and legislative implications in order to safeguard public safety and reduce risk of transmission. The was concern that there may have been some barriers to a by-election, including availability of planned and additional staff and voting locations, ability to adapt voting systems and practices that will be effective on general voting day, budget, and impact on other City projects. In taking the time to review these issues, staff are able to conclude that a by-election on December 12, 2020 can be appropriately undertaken. Staff will continue working with other jurisdictions in order to develop voting systems and practices and share equipment whenever possible in order to conduct a by-election during Covid-19.

Respectfully submitted,



Chris Coates
City Clerk



Susanne Thompson
Deputy City Manager/CFO



Report accepted and recommended by the City Manager:

Date: September 28, 2020

List of Attachments:

Attachment A – September 17, 2020 Committee of the Whole Report

Attachment B – Election Procedures Bylaw