

CITY OF VAUGHAN

EXTRACT FROM COUNCIL MEETING MINUTES OF NOVEMBER 15, 2016

Item 4, Report No. 40, of the Committee of the Whole (Working Session), which was adopted without amendment by the Council of the City of Vaughan on November 15, 2016.

4 BILL 181 – THE MUNICIPAL ELECTIONS MODERNIZATION ACT

The Committee of the Whole (Working Session) recommends:

- 1) That the recommendation contained in the following report of the City Clerk, dated November 7, 2016, be approved; and
- 2) That Communication C3, presentation material titled “Bill 181 – The Municipal Elections Modernization Act”, dated November 7, 2016, be received.

Recommendation

The City Clerk recommends:

1. That this report be received for information.

Contribution to Sustainability

The *Municipal Elections Act* is part of a legislative framework which supports democracy, openness and transparency which, in turn, contribute to the sustainability of the City and good government.

Economic Impact

Any costs associated with the legislative changes will be covered through the election reserve.

Communications Plan

A copy of this report will be posted on the City’s website. Beginning in 2018, election information will be widely communicated to voters and candidates on the vaughan.ca/elections website in addition to newspaper advertising, in an election information brochure contained within a Recreation and Culture Guide, in City updates, and through social media opportunities.

Purpose

The purpose of this report is to provide an overview of significant changes to the *Municipal Elections Act* (MEA) contained in Bill 181, the *Municipal Elections Modernization Act, 2016* and to outline matters to be considered regarding the option of ranked ballot elections.

Background - Analysis and Options

Bill 181 - the *Municipal Elections Modernization Act* introduces several significant changes to the Municipal Elections Act (MEA) that will be in effect for the 2018 Municipal and School Board Elections.

Bill 181 – the *Municipal Elections Modernization Act*, which received Royal Assent on June 9, 2016, is the culmination of a year-long consultation process on reforms to the *Municipal Elections Act* (MEA). The Bill includes a number of significant amendments to the MEA that will be in effect for the 2018 Municipal and School Board Elections.

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Immediately following Royal Assent, consultation took place on several companion regulations to the Bill. The most recent regulation (Ontario Regulation 310/16) was approved on September 16, 2016 and contains substantive provisions governing the implementation of the option of ranked ballot elections.

A high level overview of the changes, including the ranked ballot election option, is outlined in this report.

Overview of Changes

Several changes have been made to the election calendar, the most significant of which is the shortening of the election campaign period.

In response to complaints concerning the length of municipal campaigns in Ontario, the election campaign period has been shortened by moving the first day to file a nomination paper from January 1 to May 1 in an election year. Nomination Day, the last day to file a nomination paper has moved from the second Friday in September to the fourth Friday in July. For the 2018 Municipal Elections, Nomination Day falls on July 27, 2018.

Other key dates have also changed:

- The deadline to enact a by-law to place a question on a ballot is March 1 in an election year which is a static day each election year and earlier than the previously required date of June 1;
- The deadline for other questions (e.g. a school board, a Minister's question) is May 1, which is a static day each election year and earlier than previously required date of June 1;
- The deadline to pass a by-law authorizing the use of alternative voting methods, such as telephone voting, mail or internet voting is May 1 in the year prior to an election, in this case May 1, 2017 for the 2018 elections rather than June of a regular election year;
- Procedures for the use of the alternative voting methods are required on or before December 31, 2017 rather than June of the regular election year.

Candidates for Council will be required to submit 25 endorsement signatures from eligible electors with their nomination paper.

Individuals providing the signatures must be qualified electors and would each be required to complete a declaration stating their eligibility to vote on the day that he or she signed the endorsement. If a candidate files their nomination for one office and then decides to change to a different office on the same Council, they would have to submit new signatures.

The requirement to provide signatures of endorsement applies to candidates running for Council only, not for candidates seeking a Trustee position.

Contributions by corporations and trade unions to Council candidates are banned.

An amendment to the MEA bans contributions by corporations and trade unions to Council candidates. Bill 181 initially proposed to provide municipalities with the option to prohibit contributions by corporations and trade unions, but this was changed after the Province announced it would pass legislation to prohibit corporate and union donations at the Provincial level.

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It should be noted that while union and corporate donations to candidates are prohibited, the legislation does permit corporate and union donations to individuals or organizations registered as third party registrants, subject to applicable contributions limits defined by regulation.

New provisions have been introduced aimed at improving compliance with campaign finance rules.

The Clerk will be required to publicly identify in a report to the public, the candidates and third parties who have failed to comply with the requirement to file a financial statement and who are prohibited from running or registering as a third party in the next election.

A candidate's nomination fee will only be refunded if a financial statement is filed on time. If a candidate doesn't file a financial statement on time and is willing to pay a \$500 late filing fee, the candidate will be provided an additional 30-day period to file the financial statement. In this instance, the candidate will not be refunded the nomination filing fee.

There have been no changes to the provision that candidates who fail to file a financial statement are automatically prohibited from being elected or appointed to any office to which the MEA applies until after the next regular election.

A new provision requires the Clerk to review all financial statements received to identify whether any contributor appears to have exceeded any of the contribution limits. If any contributor has exceeded the contribution limits, the Clerk is required to report this to the Compliance Audit Committee as soon as possible after the filing deadline. Within 30 days of receiving the Clerk's report, the Compliance Audit Committee must meet and decide whether to commence legal proceedings against a contributor. In addition, Compliance Audit Committees will now be required to provide brief written reasons for their decisions.

Other changes to the campaign finance rules include the following:

- A new spending limit for parties and expressions of appreciation after Voting Day will be implemented. The spending limit will be set out in a regulation (yet to be introduced);
- Candidates who do not accept any contributions of money or incur any expenses will no longer be required to open a campaign bank account;
- After the 2018 Municipal Elections, candidates will not be permitted to carry forward campaign deficits from the previous campaign;
- Candidates will be required to inform contributors of contribution limits. Contribution limits have not changed - a contributor is limited to a total of \$750 to any one candidate in an election (except in the case of the office of Mayor of the City of Toronto) and \$5,000 to two or more candidates for office on the same council or local board.
- Anonymous and cash contributions are now capped at \$25, an increase from the former limit of \$10.
- Candidates and third party advertisers are required to identify themselves on campaign advertising and signs so that it is clear who is responsible for each sign and advertisement that appears or is broadcast.

New rules have been added to regulate third party advertising, including contribution and spending limits.

Third party advertising is a message in any medium (billboard, newspaper, radio, pamphlet etc.) that supports or opposes a candidate or series of candidates or a "yes" or "no" answer for a referendum question.

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The absence of rules regarding third party advertising was seen as a gap that needed to be addressed. Third party advertisers will be required to register with the municipality where they want to advertise. If they want to advertise in more than one municipality they would be required to register in each of those municipalities. Registration would allow a third party advertiser to promote or oppose any candidate that the voters in a municipality can vote for both for council positions and school board positions as well as promote or oppose a “yes” or “no” answer for a referendum question.

Third party advertising must be done independently of candidates, who would not be able to direct a third party advertiser on where they should focus their efforts, or what the advertisement(s) should say. Candidates would not be able to register as third party advertisers. If a candidate wishes to promote or oppose a “yes” or “no” answer for a referendum question, it would be part of the candidate’s campaign.

Third party advertising does not include:

- An advertisement by or under the direction of a candidate;
- Where no expenses are incurred by the person/entity in relation to the advertisement; or
- Advertising or communication when given or transmitted by an individual to employees, by a corporation to its shareholders, directors, members, or employees or by a trade union to its members or employees.

The following are not permitted to register as a third party advertiser:

- Municipal election candidates;
- A federal party registered under the *Canada Elections Act* (Canada) or any federal constituency association or registered candidate at a federal election endorsed by that party;
- A provincial party, constituency association, registered candidate or leadership candidate under the *Election Finances Act*; and
- The Crown in right of Canada or Ontario, a municipality or local board.

Most campaign finance rules that apply to candidates apply to third party advertisers. Third party advertisers will have spending limits and there will be contribution limits for those wishing to contribute to a third party advertiser and a requirement to submit a financial statement.

The Clerk has been given greater authority and flexibility in the administration of the election, including the management of the Voters’ List.

The City Clerk is now responsible for determining the dates and times for Advance Voting and reduced voting in certain institutions and whether voting places will open earlier on Voting Day.

The City Clerk will have greater flexibility in determining how certain election documents may be submitted and how notices are sent out. For example, original signatures will be required only for nomination, third party registration and proxy appointment forms and registered mail will no longer be required as a method of notification.

An amendment to the MEA allows the City Clerk to accept revisions to the Voters’ List in alternate formats, such as electronic, rather than just in person or in writing. This will allow further enhancements to be made to the on-line revision service offered by the City of Vaughan in the 2018 Municipal Elections. In addition, the process to remove another person’s name from the list

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is simplified by allowing for the removal of a deceased person's name by application to the City Clerk. Applications for this purpose may be made starting September 1 up to the close of voting.

The Province has also established a stakeholder working group to look at systemic issues in the development of the Voters' List to identify solutions for long term improvements. The Deputy City Clerk is one of the participants in this stakeholder group through her involvement as a member of the AMCTO Election Advisory Group.

Campaigning provisions have been updated

Candidate access to condominiums is currently legislated under the *Condominium Act*. Under the new legislation, candidates are specifically allowed access to residential condominiums, apartment buildings, non-profit housing co-ops or gated communities from 9 a.m. to 9 p.m. in order to campaign. In addition, a landlord, person, condominium corporation or agent may set reasonable conditions relating to the size or type of signs in relation to an election that may be displayed on the premises and may prohibit the display of signs in relation to an election in common areas of the building.

While municipalities have always had the authority to remove illegal election signage under municipal sign by-laws, the Act now clearly states that municipalities have the authority to require the removal of election signage and other advertisements that violate municipal or provincial regulations.

Municipal Councils may adopt a policy addressing when an automatic recount will be conducted.

Previously, the ability to conduct a recount was limited to three circumstances:

1. Where the counting of ballots has resulted in a tie vote;
2. Where the Council or Minister of Municipal Affairs and Housing decides a recount is required;
3. Where an elector's request for a recount has been granted by the courts.

The new legislation provides Councils with the authority to adopt a policy dictating when an automatic recount will be conducted in circumstances other than those already set out in the Act. (For example, a council could decide that if two (2) candidates are within ten (10) votes of each other a recount would be held without the request of a candidate). A by-law adopting the policy must be passed on or before May 1 in the year of an election.

New requirements have been introduced related to accessibility reporting, the use of municipal and school board resources during an election, conduct in the voting place and offences under the Act.

In previous elections, the City Clerk had been required to prepare a post-election accessibility report outlining what was done to ensure the accessibility of the election. A pre-election accessibility plan is now required in addition to the post-election report and must set out measures for identifying, removing and preventing barriers that affect voters and candidates with disabilities.

A new requirement states that municipalities and school boards must set out policies on the use of municipal and school board resources by incumbents during an election year. Many municipalities, including the City of Vaughan, already have such policies in place.

Amendments to the Act make it clear that voters are prohibited from photographing or video recording their marked ballot and are prohibited from showing their marked ballot to any individual, except if they require assistance to mark their ballot in order to vote.

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Currently it is an offence to give, lend, offer or promise someone an office or employment in order to convince a person to run for office, not run for office or to withdraw from running for office. This is being expanded so that it is also an offence to give, lend, offer or promise someone money or other compensation in order to convince a person to run for office, not run for office or withdraw from running for office.

Ranked Ballots

Municipalities have the option of using ranked ballots as a method of electing members of Municipal Council. A by-law to authorize ranked ballots must be passed no later May 1, 2017 for the 2018 Municipal Elections.

All municipal councils in Ontario now have the option to pass a by-law to use ranked ballot elections in accordance with the following rules:

1. Voters vote by ranking candidates for an office in order of the voter's preference.
2. Votes are distributed to candidates based on the rankings marked on the ballots.
3. The counting of votes is carried out in one or more rounds, with at least one candidate being elected or eliminated in each round.

It should be noted that the ranked ballot system can only be considered for offices on municipal council and not for school board trustee positions. If ranked ballots are used, they must be used for all offices on municipal council.

The use of ranked ballots is governed by Ontario Regulation 310/16 which set out matters to be considered by Council before passing a by-law to authorize ranked ballots, the vote counting procedures, requirements for the statement of results, and recount procedures. Before passing a by-law, the municipality must hold an open house and public meeting to provide the public with information and answer questions concerning:

- How the elections would be conducted, including a detailed description of vote counting;
- The estimated costs of conducting the election;
- Any voting or vote-counting equipment being considered for use in the election; and
- Any alternative voting method being considered for use in the election.

In making its decision on whether to proceed with ranked ballot system, Council is required to consider the following matters:

- The costs to the municipality of conducting the elections.
- The availability of technology, such as voting equipment and vote-counting equipment and software, for conducting the elections.
- The impact the proposed by-law would have on election administration.

There are two types of ranked ballot elections: single-member ranked ballot elections and multi-member ranked ballot elections.

The details of how a ranked ballot election will work in practice are set out in Ontario Regulation 310/16. In a ranked ballot election, a candidate is required to cross a threshold of votes in order to be elected.

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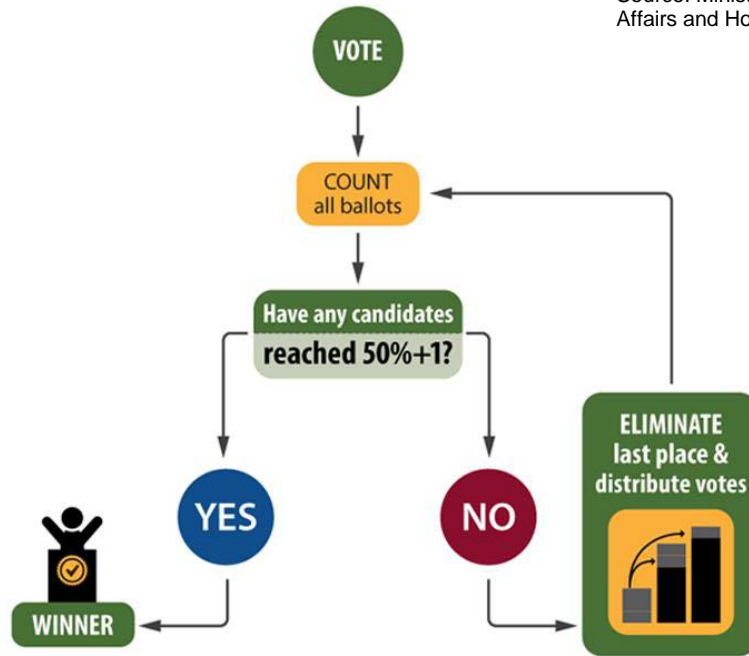
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For a **single-member** ranked ballot election, the threshold to be elected is 50 per cent plus one of the total number of votes received for the contest according to the following formula:

$$\text{Threshold} = \left(\frac{100\% \text{ of Votes Cast}}{1 \text{ candidate will be elected} + 1} \right) + 1$$

Source: Ministry of Municipal Affairs and Housing



For a **multi-member** ranked ballot election, the threshold to be elected is calculated as follows:

$$\text{Threshold} = \left(\frac{\text{Number of Votes Cast}}{\text{Number of candidates to be elected} + 1} \right) + 1$$

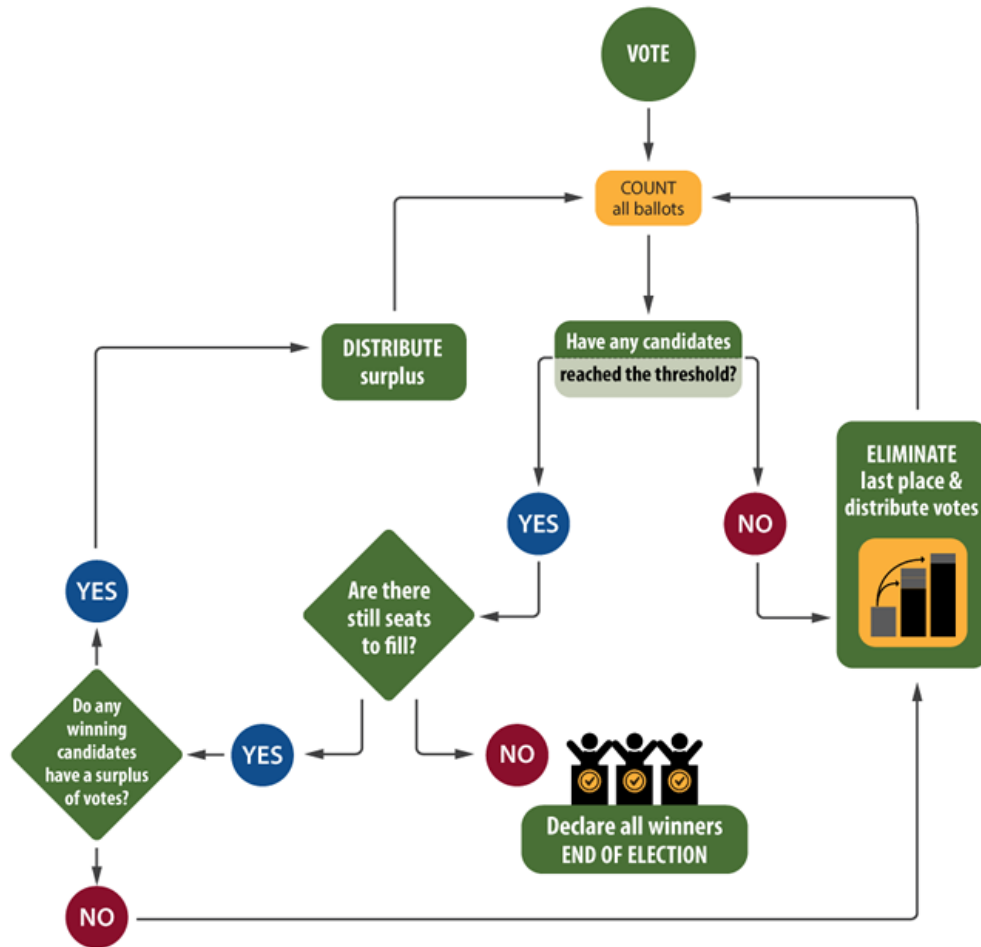
Multi-Member Ranked Ballot Election

Source: Ministry of Municipal Affairs and Housing

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In both a single and multi-member election, if the threshold is not reached in the first round of counting, there would be subsequent rounds of counting where the candidate with the lowest number of votes would be dropped from counting, and that candidate's votes would be redistributed based on the rankings assigned to other candidates on the same ballot. In the case of a multi-member election, a candidate who passes the threshold and is elected would have votes that were not needed to win redistributed to other candidates for the next round of counting. Based on the experience of election jurisdictions in the United States that have used ranked ballot voting, final election results may not be known until well after the close of voting, or even the following day, depending on the number of rounds of counting and redistribution of votes.

More details on ranked ballots are provided in the "Frequently Asked Questions" and the "Follow Your Ballot" examples provided by the Ministry of Municipal Affairs and Housing set out in Attachments 1 and 2 of this report.

As Table 1 shows, if a ranked ballot system were to be implemented in the City of Vaughan, three different methods would be employed in marking and counting the ballots. A single-member ranked ballot election would be used for the Office of Mayor and the Office of Ward Councillor, where only one is to be elected in each case. A multi-member ranked ballot election would be used for the office of Local and Regional Councillor, where three are to be elected. The First-Past-the-Post system would be used to elect the School Trustee.

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Table 1 - City of Vaughan Composite Ballot – Method of Election in a Ranked Ballot Election

Office	Method of Election
Mayor	Single-Member Ranked Ballot
Local & Regional Councillor	Multi-Member Ranked Ballot
Ward Councillor	Single-Member Ranked Ballot
School Trustee	First-Past-the-Post

Using a paper ballot and optical scan vote counting technology would require at a minimum the issuance of a larger, two-sided ballot to each voter (depending on the number of candidates), and likely multiple ballot papers in order to accommodate ranked ballot elections for three out of the four contests. To illustrate, a mock-up of ballots containing ranked ballot contests is included in Attachment 3.

Proceeding with the ranked ballot option for the 2018 Municipal Elections within the limited timeframe for implementation carries significant administrative and financial risks.

Staff is concerned about the administrative and financial risks of implementing ranked ballots, within the limited timeframe left before the 2018 Municipal Elections.

Staff will soon be releasing a Request for Proposal (RFP) for election equipment for the 2018 Municipal Elections as the previous contract has expired after two successful elections. The RFP will seek proposals to replace the previous vote tabulating equipment with an additional consideration of internet and telephone voting technology options. The results of the RFP will be brought forward to Council at the end of this year and a decision on voting technology will be made in early 2017. With the results of the ward boundary review also culminating at this time, staff resources will be focused on two major initiatives for the 2018 Municipal Elections: the selection and implementation of voting technology and ward boundary changes.

Staff is also strongly committed to introducing measures to improve the overall voting experience for the 2018 Municipal Elections, particularly in such areas as the quality of the voters' list and the processing of electors in the voting place. The addition of another major initiative in the form of ranked ballot voting would add significant risk to the administration of the election.

The implementation of ranked ballots would also involve additional cost and financial risk. Administrative and elector experience with ranked ballot elections is limited to a handful of jurisdictions in the United States; no jurisdiction in Canada uses a ranked ballot method of election. A ranked ballot system is a new method of voting and may be confusing for the voter. As illustrated by the "Follow Your Ballot" examples in Attachment 2, the rules governing ranked ballots and the distribution of first, second and third choice rankings are particularly complex for multi-member elections (more than one member to be elected).

In the public consultation materials distributed by the Ministry of Municipal Affairs (MAH) prior to the enactment of Bill 181, the following potential outcomes of ranked ballot elections were noted:

"Ranked ballots have the potential to give voters a greater say in who is elected and increase voter engagement.

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By giving voters more choice, ranked ballots may also:

- reduce strategic voting, which may occur when a voter decides not to pick their first choice candidate in an election because they think their first choice candidate may not win the election
- reduce negative campaigning — since voters can rank multiple candidates, there is an incentive for candidates to appeal to voters not just as a first preference vote, but also to gain a high ranking from supporters of other candidates
- encourage more candidates to remain in the race until voting day, since the threat of “splitting the vote” between like-minded candidates is reduced.”

Source: Ministry of Municipal Affairs and Housing – ‘Ranked Ballots’

<http://www.mah.gov.on.ca/Page11120.aspx>

Even if the implementation of ranked ballots were to be achievable, there is limited jurisdictional experience or evidence to demonstrate that these outcomes would be realized or that the quality of government would be improved as a result. Additional research and a comprehensive public consultation process are needed to fully explore both the potential benefits and risks of implementing ranked ballots.

With these considerations in mind, staff anticipate additional costs to support public consultation, public education, election worker training and staffing, ballots and technology support. The costs set out below are estimates only, given the limited time available to assess the new regulatory requirements and the limited experiences of other jurisdictions that have implemented this system of voting.

Public Consultation - \$100,000

In accordance with the requirements of the Act, if Council wishes to move forward with ranked ballot elections for the 2018 Municipal Elections, an open house and a public meeting are required to allow the public the opportunity to provide feedback. This process must be completed in advance of the May 1, 2017 legislated deadline for passage of a by-law authorizing ranked ballot elections. A consultant would be the preferred method to facilitate this review. Information to be made available to the public would include a detailed description of how the elections would be conducted, including a detailed description of vote counting, any voting or vote-counting equipment being considered and any alternative voting method being considered for use the election. The estimated cost for this component, which would include consultation, advertising and information to be provided to households, would be approximately \$100,000.

Public Education/Communications - \$250,000

To support the public in understanding the new method of voting, there would be a need to develop additional public education and communication materials beyond the existing resources allocated for this purpose. In 2010, for example, the City of Vaughan added a one-time increase of \$250,000 to its communications budget (approximately \$1 per voter) to promote the election and provide additional educational materials to electors. Staff estimate spending a similar amount for public education and communications related to ranked ballot voting.

Training and Staffing - \$50,000

Staff anticipate that due to the complexity of the ballot, it may take a voter more time to vote and, if explanations are required, additional staff to assist voters. To support voters and avoid additional line-ups, a minimum of one extra person would be required at most voting locations, for an estimated additional cost of \$50,000.

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Ballots - \$50,000

For ranked ballot voting, a larger, double-sized ballot and possibly multiple ballots per elector would be required. There would also likely be an increased in spoiled ballots resulting from voter errors in marking the ballot under the new system. The estimated additional cost for ballots is \$50,000.

Logic and Accuracy Testing - \$15,000

Whatever voting technology is selected, logic and accuracy testing must be conducted to ensure the accuracy of the equipment. The estimated additional cost of logic and accuracy testing, in the form of vendor and staffing support, is \$15,000.

Relationship to Term of Council Service Excellence Strategy Map (2014-2018)

This report is consistent with the priorities set out in the Term of Council Service Excellence Strategy Map: implement continuous improvement initiatives to improve our service and business processes.

Regional Implications

N/A

Conclusion

A substantial number of changes were made to the *Municipal Elections Act* that will require changes to current election administration and the voting experience. The successful implementation of these changes, along with improvements already earmarked for the 2018 Municipal Elections, will require significant advance planning and prudent resource allocation.

In addition to the changes in the MEA, staff is focusing on two major initiatives for the 2018 Municipal Elections: the selection and implementation of new voting technology and the implementation of new ward boundaries. To successfully manage these high profile initiatives, and minimize administrative and financial risk, staff recommend delaying consideration of the ranked ballot option until after the 2018 Municipal Elections. At that time, if Council chooses to explore the option of ranked ballots, additional research and a comprehensive public consultation process can be undertaken.

Attachments

Attachment 1: Ranked Ballots - "Frequently Asked Questions"

Attachment 2: Ranked Ballots – "Follow Your Ballot" examples

Attachment 3: Mock Ballots for Ranked Ballot Election

Report prepared by:

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(A copy of the attachments referred to in the foregoing have been forwarded to each Member of Council and a copy thereof is also on file in the office of the City Clerk.)