

## **The Corporation of the City of Temiskaming Shores**

### **By-law No. 2022-041**

#### **Being a by-law to authorize the use of a hybrid system using vote tabulators for the 2022 Municipal Election and the use of internet and telephone voting for the 2022 Municipal & School Board Elections**

**Whereas** Section 42(1)(a) of the Municipal Elections Act, 1996, provides that the Council of a municipality may, by by-law, authorize the use of voting and vote-counting equipment such as vote tabulators; and

**Whereas** Section 42(1)(b) of the Municipal Elections Act, 1996, provides that the Council of a municipality may, by by-law, authorize electors to use an alternative voting method, such as voting by mail or by telephone, that does not require electors to attend at a voting place in order to vote; and

**Whereas** the Council of The Corporation of the City of Temiskaming Shores considers it desirable to utilize vote tabulators and such alternative methods at the 2022 Municipal Elections, to ensure greater accessibility of all voters to exercise their individual and democratic right; and

**Whereas** Council considered Administrative Report CS-011-2022 at the March 1, 2022 Regular Council meeting, and directed staff to prepare the necessary by-law to authorize the use of a hybrid system using vote tabulators for the 2022 Municipal Election and the use of internet and telephone voting for the 2022 Municipal and School Board Elections, for Council consideration at the March 1, 2022 Regular Meeting.

**Now therefore** the Council of The Corporation of the City of Temiskaming Shores hereby enacts the following as a by-law:

1. That Council hereby authorizes the use of vote tabulators for the purpose of counting votes at the 2022 Municipal Election as per Section 42 of the Municipal Elections Act, 1996 and the procedures for the use of vote-counting equipment is hereto attached as Schedule "A" and forms part of this by-law.
2. That the use of Internet and Telephone voting as an alternative voting method that does not require electors to attend a voting place to vote is hereby authorized for the Municipal and School Board Elections to be held in 2022.
3. That the use of vote tabulators and the alternative voting methods of internet and telephone will be used for the advanced voting period and on Voting Day.
4. No proxy voting provisions are applicable at the Municipal and School Board Elections conducted in accordance with this by-law.

**Read a first, second and third time and finally passed** this 1<sup>st</sup> day of March, 2022.

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Mayor

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Clerk

## Procedure for use of Vote Tabulators

### 1. Definitions

In this procedure:

- 1.1 **Memory Pack** means a cartridge that is a removable, battery-sustained memory where all tabulated totals are stored with the subdivision program;
- 1.2 **Security Folder** means an apparatus in which a ballot can be placed so as to conceal the names of the candidates and the marks upon the face of the ballot and so as to expose the initials of the Deputy Returning Officer (“DRO”);
- 1.3 **Vote Tabulator** means an apparatus that optically scans a specified area on the ballots to read the votes and tabulate the results.

### 2. General Provision

This procedure applies to an election conducted by a municipality that has passed a by-law under section 42 of the *Municipal Elections, Act 1996* (the “Act”) authorizing the use of vote tabulators at voting places.

Where this procedure does not provide for any matter, an election to which this procedure applied shall be conducted in accordance with the principles of the Act.

### 3. Election Officers

The Municipal Clerk may appoint election officers for the purposes of this procedure and may designate their titles and duties.

### 4. Voting Subdivisions

The Municipal Clerk may divide the municipality into voting subdivisions. There will be various voting subdivisions for the 2022 Municipal Election.

### 5. Ballot

There shall appear on the ballot to the right of each candidate’s name a space suitable for the marking of the ballot in the shape of an oval.

### 6. Vote Tabulators

The Municipal Clerk shall provide a vote tabulator at each of the voting places.

### 7. Programming of Vote Tabulators

- 7.1 The vote tabulator shall be programmed so that a printed record of the number of votes cast for each candidate can be produced.
- 7.2 The vote tabulator shall be programmed so that the following ballots are returned to the Deputy Returning Officer (“DRO”) as described:

- (a) a ballot with votes in excess of the number of specified voting spaces required as determined by a vote tabulator with the message “Over Voted”;
- (b) a ballot that is damaged or defective or has been marked in such a way that it cannot be properly processed by a vote tabulator with the message “Ballot Misread”.

## **8. Testing of Vote Tabulators**

- 8.1 Within twenty-one (21) days before voting day, the Municipal Clerk shall test the vote tabulators to ensure that they will accurately count the votes cast for all candidates.
- 8.2 When testing the vote tabulator, adequate safeguards shall be taken to ensure that the system, or any part of it, that is used for processing and tabulating votes is isolated from all other applications or programs and that no remote devices are capable of gaining access to the vote tabulator.
- 8.3 The test shall be conducted by:
  - (a) loading the memory into the vote tabulators;
  - (b) tabulating a pre-audited group of ballots including ballots that fall into each of the categories of ballots described in clause 9.12 (f) (ii) to (v) and ballots on which are recorded a predetermined number of valid votes for each candidate; and
  - (c) comparing the output of the tabulation against the pre-audited results.
- 8.4 The Municipal Clerk shall, at the successful completion of the test, seal the memory pack of the vote tabulator.
- 8.5 If the Municipal Clerk detects an error in the test, the cause of the error shall be ascertained and corrected and the test repeated until an errorless count is made.

## **9. Procedure at the Voting Place**

- 9.1 If a vote tabulator is to be used in a voting place, the Accu Vote Tabulator Clerk (“AVT Clerk”) or election officer shall, in the presence of all scrutinizers, if any, cause the vote tabulator to print a copy of all totals in its memory pack one hour or less before the opening of the voting.
- 9.2 If the total are zero for all candidates, the AVT Clerk or election officer shall ensure that the zero printout remains affixed to the vote tabulator until the results are printed by the vote tabulator after the close of the vote.
- 9.3 If the totals are not zero for all candidates, by-laws and questions, the AVT Clerk or election officer shall, immediately notify the Municipal Clerk and shall conduct the vote using the back-up compartment of the ballot box until the vote tabulator

- is made operational or the Municipal Clerk provides a back-up tabulator to the voting location.
- 9.4 The Municipal Clerk may assign an election assistant, in addition to the DRO, to initial a ballot before the ballot is delivered to a voter.
- 9.5 The DRO or an election officer shall provide a secrecy folder to each person to whom a ballot is provided at the same time as the ballot is provided.
- 9.6 After marking the ballot in the voting compartment, the voter shall:
- (a) insert the ballot into the secrecy folder;
  - (b) leave the compartment without delay; and
  - (c) deliver the secrecy folder containing the ballot to the AVT Clerk.
- 9.7 The AVT Clerk shall verify the initials of the DRO in the presence of the voter without removing the ballot from the secrecy folder or if the ballot presented is not in a secrecy folder, ask the voter to hand the ballot face down, in order to conceal his choices, and
- (a) if a vote tabulator is available in the voting place, insert the secrecy folder containing the ballot, with the initials of the DRO face down, into the feed area of the vote tabulator until the vote tabulator draws the ballot from the secrecy folder in full view of the voter, or
  - (b) if a vote tabulator is not available in the voting place, place the ballot with the initials of the DRO face down, directly into the ballot box from the secrecy folder in full view of the voter.
- 9.8 If a vote tabulator is available in the voting place but fails to operate, the AVT Clerk shall:
- (a) insert the ballot into the back-up compartment of the ballot box; and
  - (b) subject to subsection 9.13 insert the ballots into the feed area of the vote tabulator after the close of the voting.
- 9.9 If a ballot described in subsection 7.2 (i.e. over voted ballot or damaged or defective ballot) is returned by the vote tabulator and the voter who delivered the ballot is present, the AVT Clerk shall:
- (a) in the case of an over voted ballot direct the elector back to the DRO and the DRO shall mark the ballot “cancelled”, place the ballot in the cancelled ballot envelope and provide another ballot to the voter;
  - (b) in the case of a damaged or defective ballot direct the elector back to the DRO and the DRO shall mark the ballot “cancelled”, place the ballot in the cancelled ballot envelope and provide another ballot to the voter.

- 9.10 If a ballot described in subsection 7.2 (i.e. over voted ballot or damaged or defective ballot) is returned by the vote tabulator and the voter who delivered the ballot is present and declines to accept another ballot, the AVT Clerk shall override the ballot so that the AccuVote accepts the ballot. If the ballot cannot be overridden the AVT Clerk will mark the ballot “declined” and return it to the DRO who issued it.
- 9.11 If a ballot described in subsection 7.2 (i.e. over voted ballot or damaged or defective ballot) is returned by the vote tabulator and the voter who delivered the ballot is not present, the AVT Clerk shall make the ballot “defective” and insert the ballot into the back-up compartment of the ballot box. After the close of the voting, and in conjunction with the Poll Supervisor:
- (a) where there are no marks in the specified voting spaces, the AVT Clerk will override the ballot for acceptance by the tabulator. Should the tabulator still fail to accept the blank ballot in override mode, the AVT Clerk shall mark the blank ballot “declined” and return it to the DRO who assigned it for accounting purposes;
  - (b) where there are marks in the specified voting spaces:
    - (i) prepare a replacement ballot for the defective ballot by duplicating the marks shown on the defective ballot to the replacement ballot. The replacement ballot shall be clearly labeled “replacement” and given a serial number which number shall also be recorded on the defective ballot;
    - (ii) substitute the replacement ballot for the defective ballot and tabulate it;
    - (iii) for accounting purposes, give the defective ballot to the DRO who provided the replacement ballot. The DRO will place the defective ballot in the appropriate envelope.
- 9.12 If a vote tabulator has been used to tabulate the votes cast in a voting place, the AVT Clerk shall, after the close of the voting, check the back-up compartment of the ballot box for ballots to ensure all votes are tabulated. Once all votes are tabulated including those noted in Section 9.11, the AVT Clerk shall:
- (a) secure the vote tabulator against receiving any more ballots;
  - (b) obtain a printed record of the votes given for each candidate;
  - (c) sign the certificate portion of the printed record along with the Poll Supervisor and any scrutinizers who are present and wish to sign;
  - (d) remove the printed record from the vote tabulator and place it in the statement envelope;
  - (e) provide printouts for any scrutinizer upon request;
  - (f) under supervision of the Poll Supervisor collect all completed DRO Statements of Ballot Account for return to the Municipal Clerk which define:

- (i) ballots received from the Municipal Clerk;
  - (ii) cancelled ballots;
  - (iii) declined ballots;
  - (iv) defective ballots;
  - (v) ballots unused;
- (g) report the ballots counted by the vote tabulator on the AVT Clerk Statement and attach the DRO Statements to it;
- (h) place the original copy of the DRO and AVT Clerk Statements in the Statements Envelope as well as the Vote Summary Totals Tape from the AccuVote Tabulator;
- (i) place a duplicate copy of the statements and all ballots that have been counted by the vote tabulator in a ballot transfer container provided by the Municipal Clerk to ensure the safe transfer of the ballots and seal it;
- (j) place in a separate envelope:
- (i) cancelled ballots;
  - (ii) declined ballots;
  - (iii) defective ballots;
  - (iv) unused ballots;
- (k) seal the envelopes;
- (l) place all remaining supplies and sealed envelopes, excluding the Statement Envelope, in a transfer carrier and seal the transfer carrier; and
- (m) the AVT Clerk shall personally deliver the transfer carrier, ballot transfer container, vote tabulator and the Statement Envelope to the Office of the Municipal Clerk or to such other place as the Municipal Clerk has directed in writing.
- 9.13 If a vote tabulator has been used to tabulate votes cast in a voting place but the tabulation of the votes cannot be completed because the vote tabulator is not operating or cannot be made to operate within a reasonable time following the close of the voting, the AVT Clerk or an election assistant shall, after the close of the voting and after determining that the tabulation cannot be completed:
- (a) seal the ballot box in such a manner that it cannot be opened or any ballots be deposited in it without breaking the seal;
  - (b) secure the vote tabulator against receiving any more ballots;
  - (c) place all supplies and all cancelled, declined, defective and unused ballots in the transfer carrier and seal it;

- (d) personally deliver the ballot box, **transfer carrier, ballot transfer container** and vote tabulator to a place designated by the Municipal Clerk where a back-up vote tabulator is located;
  - (e) follow the procedures set out in Sections 9.1 to 9.3 to ensure that the totals of the back-up vote tabulator are zero for all candidates;
  - (f) insert all the ballots from the ballot box into the back-up vote tabulator; and
  - (g) follow the procedures in subsection 9.12.
- 9.14 If a vote tabulator has been provided and has not been used to tabulate votes in a voting place:
- (a) the DRO or election assistant shall, immediately after the close of voting, follow with necessary modifications the procedures in clauses 9.13 (a), (c) and (d); and
  - (b) the Municipal Clerk, or a person designated by the Municipal Clerk, shall with necessary modifications follow the procedures in clauses 9.13 (e) to (g).
- 9.15 If, at the close of the voting, the Municipal Clerk is of the opinion that it is impracticable to count the votes with the vote tabulators, he/she may direct that all the votes cast in the election be counted manually following as far as practicable the provisions of the Act governing the counting of the votes.
- 9.16 The Municipal Clerk shall, at the completion of the count, retain the programs, memory packs, test materials and ballots in the same manner as is provided for in the Act for the keeping of ballots.
- 9.17 The Municipal Clerk shall retain and may have access to the pre-audited group of ballots referred to in clause 8.3 (b) and other materials used in the programming of vote tabulators.
- 9.18 The Municipal Clerk shall not alter or make changes to the materials referred to in Section 1.

## **10. Advance Voting and early closing of Voting Places**

The total of the votes at an advance voting location or at a voting location that closes early under subsection 46(3) of the Act shall not be printed and the procedures under Section 9 shall not be followed until after 8:00 p.m. on the voting day.

## **11. Recounts**

Subject to the order of a judge under section 58 of the Act, if a recount of votes is held, the votes shall be recounted in the same manner as the votes were counted on voting day.

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- 11.1 A vote tabulator shall be tested before the recount in accordance with Section 8.
- 11.2 The recount officer shall attend the recount and bring the transfer carriers, ballot transfer containers, vote tabulators, statement envelopes and all documents that, in the opinion of the recount officer, are relevant to the recount.
- 11.3 If a vote tabulator is used for a recount, the recount is limited to the ballots tabulated by the vote tabulator on voting day.
- 11.4 For the purposes of subsection 11.2, “results of the election” means,
- (a) in the case of an election to an office, which candidate or candidates have been declared elected;
  - (b) in the case of an election to obtain the assent of the voters on a by-law, whether the affirmative or negative received the greatest number of votes; and
  - (c) in the case of a question submitted to the voters, which answer received the greatest number of votes.
- 11.5 The results of a recount using a vote tabulator is final and no further recount shall take place, unless:
- (a) the recount changes the results of the election, as declared by the Municipal Clerk under section 55 of the Act, or
  - (b) a judge makes an order under section 58 of the Act requiring a recount to be held.
- 11.6 If clause 11.5 (a) applies, the recount officer shall conduct a manual recount following as far as practicable the provisions of the Act governing the counting of votes and subject to a judge’s order, shall recount only those voting subdivisions where the count at the recount differed from the count on voting day.
- 11.7 The manual recount shall be a recount of all the original ballots received from the voters in those voting subdivisions.