

“GENERAL ELECTION BYLAW 2011 NO. 7129”

Consolidated Version

2022-JUL-04

Includes Amendment: 7129.01, 7129.02, 7129.03, 7129.04

CITY OF NANAIMO

BYLAW NO. 7129

A BYLAW TO PROVIDE FOR THE USE OF AN AUTOMATIC VOTING SYSTEM AND ESTABLISH VARIOUS PROCEDURES FOR THE CONDUCT OF LOCAL GOVERNMENT ELECTIONS AND OTHER VOTING

WHEREAS under the *Local Government Act*, the Council of the City of Nanaimo, may, by bylaw, determine various procedures and requirements to be applied in the conduct of local government elections and other voting; and

WHEREAS the Council of the City of Nanaimo, may, by bylaw, provide for the use of automated voting machines, voting recorders or other devices for voting in an election; and,

WHEREAS Council wishes to establish various procedures and requirements under that authority, and use automated voting machines in local government elections;

NOW THEREFORE the Council of the City of Nanaimo in open meeting assembled, ENACTS AS FOLLOWS:

1. Title:

This Bylaw may be cited for all purposes as the City Of Nanaimo "GENERAL ELECTION BYLAW 2011 NO. 7129".

2. Definitions:

In this bylaw:

"AUTOMATED
VOTING
SYSTEM"

means an automated system that records and counts votes and processes and stores election results. The system is housed in two hardware components, the vote tabulator and the ballot box and a number of portable ballot boxes into which voted ballots are deposited, where a vote tabulator is not functioning or being used and where the ballots will be counted after the close of voting on general voting day.

"BALLOT"

means a ballot card which may be a composite ballot for two or more elections to be voted for, and/or bylaws or other matters on which the assent of the electors is sought, including all choices available to the electors and containing spaces in which the electors mark their votes.

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| “BALLOT ACCOUNT” | means an account of ballots prepared in accordance with Section 141 of the <i>Local Government Act</i> . (Bylaw 7129.03) |
| “BALLOT BOX” | means the container for ballots that have been marked by electors. |
| “CHIEF ELECTION OFFICER” | means the election official appointed under Section 58 of the <i>Local Government Act</i> to conduct the election. (Bylaw 7129.03) |
| “DEPUTY CHIEF ELECTION OFFICER” | means the election official appointed under Section 58 of the <i>Local Government Act</i> to assist the Chief Election Officer in administering the conduct of the election. (Bylaw 7129.03) |
| "ELECTOR" | means a resident elector or a non-resident property elector of the City of Nanaimo as defined under the <i>Local Government Act</i> . |
| “ELECTION OFFICIALS” | means individuals appointed by the Chief Election Officer to assist the presiding election official at election proceedings and act as alternate presiding election official. |
| "GENERAL LOCAL ELECTION" | means the elections held for the mayor and all councillors of the municipality which must be held in the year 2014 and in every fourth year after that. (Bylaw No. 7129.01) |
| "GENERAL VOTING DAY" | means: a) for a general local election, the 3rd Saturday of October in the year of the election, b) for other elections, the date set under Sections 54(5), 55(1) or (3), or 152(5) of the <i>Local Government Act</i> , and c) for other voting, the date set under Section 174 of the <i>Local Government Act</i> . (Bylaw 7129.03) |
| “LEGIBLE MARK” | means a mark which fills in the oval provided on the ballot opposite a candidate’s name or opposite a question with either a "yes" or "no" oval, that the vote tabulator is able to read and count. |
| "LOCAL GOVERNMENT" | means, in relation to a municipality, the council. |
| “MEMORY CARD” | means a cartridge unit that plugs into the vote tabulator that contains: a) the names of the candidates or questions being voted on; b) the alternative “yes” and “no” for each bylaw or other matter on which the assent of the electors is being sought; and a mechanism to recover and retain information on the number of acceptable marks made for each. |
| “PORTABLE BALLOT BOX” | means a ballot box which is used at a voting place where a vote tabulator is not being used at the time of voting. |

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| “PRESIDING ELECTION OFFICIAL” | means the election official appointed by the Chief Election Officer to conduct election proceedings where the Chief Election Officer is not acting as presiding election official. |
| “RESULTS TAPE” | means the printed record generated from a vote tabulator at the close of voting on general voting day which shows: a) the number of ballots received; b) the number of ballots accepted; c) the number of ballots rejected; d) the number of votes for each candidate; and e) if applicable, the number of votes for and against each bylaw or other matter on which the assent of the electors is sought. |
| “SECRECY SLEEVE” | means an open-ended folder or envelope used to cover ballots to conceal the choices made by each elector. |
| “VOTE TABULATOR” | means the part of an automated voting system into which the ballots are inserted, scanned, and the number of votes for each candidate and for each referendum question are recorded. |
| “VOTING BOOK” | means the book for recording the names of electors. |

3. Use of Provincial List of Voters as the Register of Resident Electors:

- (1) For the purposes of all local elections and submissions to the electors under Parts 3 and 4 of the *Local Government Act*, the most current available Provincial list of voters prepared under the *Election Act*, shall become the register of resident electors on the 52nd day prior to the general voting day for such elections and submissions to the electors.
- (2) As authorized under section 71 of the *Local Government Act*, advance registration is available in the City of Nanaimo in accordance with section 71 of the *Local Government Act*. (*Bylaw 7129.03*)
- (3) Subsection (2) does not apply in the case of Assent Voting or other voting under Part 4 of the *Local Government Act* in which case registration of electors is limited to registration at the time of voting. (*Bylaw 7129.02*)

4. Access to Nomination Documents

As authorized by section 89 of the *Local Government Act* and in addition to access under section 89(7)(a), public access to nomination documents will be provided by posting the documents on the City website as soon as practicable after the time of delivery to the Chief Election Officer until 30 days after the declaration of the election results under section 146 of the *Local Government Act*. (*Bylaw 7129.03*)

4.1 Nomination Matters - Mayor Nomination Deposit (*Bylaw No. 7129.03*)

- (a) A person who submits nomination documents for mayor, must at the same time make a nomination deposit of \$100.00.

- (b) Nomination deposits will be returned or forfeited in accordance with section 88 of the Local Government Act, R.S.B.C. 2015, c.1, as amended from time to time.

4.2 Nomination Matters - Councillor Nomination Deposit (Bylaw No. 7129.03)

- (1) A person who submits nomination documents for councillor, must at the same time make a nomination deposit of \$100.00.
- (2) Nomination deposits will be returned or forfeited in accordance with section 88 of the Local Government Act, R.S.B.C. 2015, c.1, as amended from time to time.

4.3 Number of Nominators (Bylaw No. 7129.03)

- (1) The minimum number of qualified nominators for Mayor or Councillor is 10.

5. Mail Ballot Voting (Bylaw No. 7129.04)

5.1 As authorized under section 110 of the *Local Government Act* and in accordance with this Bylaw, voting and registration of election may be done by mail.

5.2 The time limits in relation to voting by mail ballot will be determined by the Chief Election Officer.

5.3 Mail Ballot Voting Application Procedure

- (1) An elector wishing to vote by mail shall apply, between the start of the nomination period and 4:00 p.m. on the Friday prior to general voting day, by giving their Application To Vote By Mail to the Chief Election Officer.
- (2) Upon receipt of a request for a mail ballot, the Chief Election Officer will, make available to an elector, either by hand or by mail, a mail ballot package which contains:
 - i. the content as specified in section 110 (7) of the *Local Government Act*;
 - ii. information advising the applicant elector how to vote by mail ballot; and
 - iii. a statement advising the elector that they must meet the eligibility to vote criteria and that the elector must attest to such fact.
- (3) The Chief Election Officer shall keep a register of mail ballots which includes the following:
 - i. the name and address of all electors who request and are issued a mail ballot and elector registration package;

- ii. the voter identification number of the elector where applicable; and
 - iii. any other information that the Chief Election Officer deems appropriate for maintaining the register of mail ballots; and
 - iv. upon request, the register of mail ballots must be made available for inspection.
- (4) At the elector's option, the Chief Election Officer may distribute the mail ballot package in any of the following ways:
- i. sending the mail ballot package by Canada Post;
 - ii. sending the mail ballot package by courier at the expense of the elector;
 - iii. having the mail ballot package picked up by the elector at a designated time and location; or
 - iv. having the mail ballot package picked up by a person authorized by the applicant elector on the applicant elector's behalf at a designated time and location.
- (5) The Chief Election Officer may request that the person authorized to pick up a mail ballot package on the elector's behalf show identification and sign a form before being provided the mail ballot package.

5.4 Mail Ballot Voting Procedure

- (1) To vote by mail ballot, the elector shall mark the ballot in accordance with the instructions contained in the mail ballot package provided by the Chief Election Officer.
- (2) After marking the ballot, the elector shall:
- i. place the ballot in the secrecy envelope provided and seal the secrecy envelope;
 - ii. place the secrecy envelope in the certification envelope, and complete and sign the certification printed on such envelope, and then seal the certification envelope;
 - iii. place the certification envelope, together with a completed elector registration application, if required, in the outer envelope, and then seal the outer envelope; and
 - iv. 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.
- (3) In accordance with section 110 (4) of the *Local Government Act*, electors who register by mail are not required to produce to an election official, copies of proof of their identity and place of residence; however, they must

attest to such fact in the presence of a witness and record having done so on the certification envelope.

5.5 Mail Ballot Acceptance or Rejection

- (1) Where a mail ballot and its contents are received by the Chief Election Officer before the close of voting on general voting day, the Chief Election Officer shall, upon receiving the returned mail ballot envelope and its contents:
 - i. immediately record the date of receiving the returned mail ballot in the register of mail ballots;
 - ii. open the outer envelope and remove and examine the certification envelope and, if applicable, the completed elector registration application and verify the completeness of same as follows:
 1. confirm the identity and entitlement to vote of the elector whose ballot is enclosed,
 2. determine the fulfillment of the requirements in section 70 of the *Local Government Act* and the completeness of any application to register, if required; and
 3. determine the completeness of the certification envelope.
- (2) If the Chief Election Officer is satisfied that the elector has met the requirements in section 5.5 (1) the Chief Election Officer shall:
 - i. mark the certification envelope as "accepted" and place the accepted and unopened certification envelope with the other accepted certification envelopes in a designated mail ballot box ("accepted certification envelopes").
- (3) The accepted certification envelopes shall be secured in a mail ballot box marked "accepted certification envelopes" until such time as decided by the Chief Election Officer in subsection (7) below or the close of voting. The Chief Election Officer will retain such mail ballot boxes in their possession.
- (4) If, on receiving a returned mail ballot envelope and its contents, the Chief Election Officer determines that:
 - i. the Chief Election Officer is not satisfied as to the identity of the elector; or
 - ii. the elector has not completed an application for registration in accordance with this Bylaw or the *Local Government Act*; or
 - iii. the returned mail ballot envelope is received by the Chief Election Officer after the close of voting on general voting day, the Chief Election Officer will mark such envelope as "rejected", noting the reasons for the rejection and shall set aside the rejected certification envelope.

- (5) Any certification envelopes and their contents rejected in accordance with this section will remain unopened and will be subject to the provisions of the *Local Government Act* regarding their destruction.
- (6) The Chief Election Officer will retain in their custody all accepted and rejected certification envelopes in order to manage any challenges made in accordance with this Bylaw.
- (7) At a place, date and time decided by the Chief Election Officer and before general voting day, the Chief Election Officer shall invite candidates or candidate representatives to observe the opening of the accepted certification envelopes received up to that point for the purpose of preparing the mail ballots for counting. At such time, the Chief Election Officer shall, in the presence of at least 1 other election official, and any candidate representatives:
 - i. open the accepted certification envelopes;
 - ii. remove the secrecy envelopes containing the ballots; and
 - iii. open the secrecy envelope containing the ballot and run the ballot through the vote tabulator.
- (8) Any returned mail ballots received after the date and time set out in section 5.5 (7) and until the close of general voting day, will be handled in accordance with section 5.5 (1) through (6).
- (9) As soon as practicable after the close of voting on general voting day, the unopened accepted certification envelopes received after the date and time set out in section 5.5 (7) will be opened and duly processed by the Chief Election Officer in the presence of at least 1 other election official, and any candidate representatives, and the accepted ballots contained therein will be run through the vote tabulator and counted in accordance with this Bylaw and the *Local Government Act*.

5.6 Challenge of Elector

- (1) A person who qualifies under section 126 of the *Local Government Act* may challenge the right of a person exercising the right to vote by mail ballot on the grounds set out in section 126 up until 4:30 pm two days before general voting day.

5.7 Elector's Name Already Used

- (1) If, 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 the elector's name, the Chief Election Officer shall comply with section 127 of the *Local Government Act*.

5.8 Spoiled Mail Ballot

- (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 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. The Chief Election Officer will, upon receipt of the spoiled ballot package and request for replacement, record such fact, and proceed in accordance with this section, so far as practicable within the applicable time limitations.

- 5.9 As provided in the *Local Government Act*, a mail ballot must be received by the Chief Election Officer before the close of voting on general voting day in order to be counted for an election.

6. Use of Automated Voting System

- (1) The Chief Election Officer is hereby authorized to conduct any local government election or other voting using an automated voting system.
- (2) The Chief Election Officer must conduct a test of the automated voting system before each local government election or other voting and must be satisfied that it is in good working order.
- (3) As soon as the test of the automated voting system is completed, the Chief Election Officer must secure the memory cards and ensure that they will remain secured until the election or other voting is complete. (*Bylaw 7129.04*)

7. Form of Ballot:

- (1) The Chief Election Officer may provide for use of composite ballots on which an elector's votes on two or more elections or other voting may be indicated.
- (2) If a ballot is in the form of a composite ballot, each portion of the ballot that deals with a single election is to be considered a separate ballot.
- (3) Each ballot shall contain a space for a "legible mark" opposite each candidate's name, or opposite "yes" or "no" when the vote is on a bylaw or other matter on which the assent of the electors is sought.

8. Voting Procedures:

- (1) The Chief Election Officer will select a presiding election official for each voting place whose duties are to ensure election officials demonstrate voting procedures, issue ballots and accept marked ballots at the vote tabulator and ballot box, in addition to other general responsibilities for the supervision and control of the voting place.

- (2) Each elector is entitled to a demonstration of voting procedures from an election official assigned to perform such demonstrations.
- (3) Upon completion of the voting demonstration, if any, the elector shall proceed as instructed, to the election official responsible for issuing ballots, who, upon fulfillment of the requirements of the *Local Government Act*, shall then provide a ballot to the elector, a secrecy sleeve if requested by the elector, and any further instructions the elector requests.
- (4) Immediately after receiving the ballot, the elector must proceed to a voting compartment to vote, or if the elector is unable to mark a ballot because of a physical disability or difficulties in reading or writing or is unable to enter the voting place because of physical disability or impaired mobility, he may vote in accordance with the procedures outlined in Sections 131 and 132 of the *Local Government Act*. (*Bylaw 7129.03*)
- (5) The elector shall vote by making a legible mark on each ballot beside the chosen candidate (or candidates, where there is more than one vacancy), or beside the “yes” or “no” when the vote is in relation to a bylaw or other matter on which the assent of the electors is sought. An elector may mark only up to the same number of spaces on the ballot as the number of vacancies in office and may not mark more than one space on a ballot in relation to a bylaw or other matter on which the assent of the electors is sought.
- (6) Once the elector has finished marking the ballot, the elector must either place the ballot into the secrecy sleeve, if one has been requested, or otherwise conceal the markings on the ballot and proceed to the vote tabulator.
- (7) Under the supervision of the election official in attendance, the elector must insert the ballot directly from the secrecy sleeve, if applicable, into the vote tabulator without the acceptable marks on the ballot being exposed.
- (8) If an elector has:
 - a) unintentionally spoiled a ballot or made a mistake before it is deposited in a ballot box; or
 - b) if the vote tabulator will not accept the ballot;the presiding election official must issue a new ballot to the elector and mark the returned ballot “spoiled”. Spoiled ballots must be retained and kept separately from all other ballots and must not be counted in the election results.
- (9) If a ballot is returned by the vote tabulator, the election official at the ballot box must advise the elector that they may request another ballot. If the elector refuses the opportunity to request another ballot, the election official will, using the ballot return override procedure, reinsert the returned ballot into the vote tabulator to count any acceptable marks which may have been made acceptably. (*Bylaw 7129.04*)
- (10) Any ballot counted by the vote tabulator is valid and will be counted in the election results, subject to any determination made by the Chief Election Officer on a recount.

- (11) Once the ballot has been inserted into the ballot box, the elector must immediately leave the voting place.
- (12) If the vote tabulator stops functioning, the election official at the ballot box must insert all ballots delivered by the electors while the vote tabulator is not working into the portable ballot box for inserting once a vote tabulator is available or counting at a later time.

9. Advance Voting Opportunities and Procedures:

- (1) As authorized under Section 107 of the *Local Government Act*, the following required advance voting opportunities are established for each election, to be held in advance of general voting day for each election: (*Bylaw 7129.03*)
 - (a) one on the tenth day before general voting day from 8:00 a.m. to 8:00 p.m.
 - (b) one on the third day before general voting day from 8:00 a.m. to 8:00 p.m.
- (2) As authorized under Section 108 of the *Local Government Act*, the Chief Election Officer is hereby authorized to establish dates for additional voting opportunities in advance of general voting day and designate the voting places and set the voting hours for these voting opportunities. (*Bylaw 7129.03*)
- (3) The vote tabulators and ballot boxes will be used to conduct advance voting opportunities unless the Chief Election Officer directs that portable ballot boxes be used.
- (4) The voting procedures at the advance vote will follow, as closely as possible, the procedures described in Section 8 of this Bylaw.
- (5) At the close of the advance voting opportunity, the presiding election official must ensure:
 - (a) that any portable ballot boxes are sealed;
 - (b) that no additional ballots are inserted in the vote tabulator;
 - (c) that the ballot boxes used are sealed to prevent insertion of additional ballots;
 - (d) that the results tapes for the advance voting opportunity are not generated;
 - (e) that the automated voting system, including the sealed memory cards and ballot boxes, and any portable ballot boxes are delivered to the Chief Election Officer for securing until general voting day.
- (6) The Chief Election Officer must ensure:
 - (a) that the ballot boxes and any portable ballot boxes used for the advance voting opportunity, remain sealed until 8:00 p.m. on general voting day;
 - (b) that the memory cards remain secure until 8:00 p.m. on general voting day; and
 - (c) that the results tapes for the advance voting opportunity are not generated until 8:00 p.m. on general voting day.

10. Additional Voting Opportunities and Procedures

- (1) As authorized under Section 106 of the *Local Government Act*, the Chief Election Officer is hereby authorized to establish additional voting opportunities for general voting day to designate the voting places and set the voting hours for these voting opportunities for each election. (*Bylaw 7129.03*)
- (2) The vote tabulators and ballot boxes will be used to conduct additional voting opportunities unless the Chief Election Officer directs that portable ballot boxes be used.
- (3) The voting procedures at the additional voting opportunity will follow, as closely as possible, the procedures described in Section 8 and Sections 9(5) and 9(6) of this Bylaw.

11. Special Voting Opportunities and Procedures:

- (1) Pursuant to Section 109 of the *Local Government Act*, the Council establishes special voting opportunities and hereby authorizes the Chief Election Officer to establish the date, time and place of the special voting opportunities in order to give electors who may otherwise be unable to vote, an opportunity to do so. (*Bylaw 7129.03*)
- (2) Special voting opportunities will be restricted to only residents, patients, visitors or staff of the location where the special voting opportunity has been established by the Chief Election Officer.
- (3) A presiding election official may attend at locations established under subsection (1) to take the elector's vote.
- (4) Portable ballot boxes will be used by the presiding election officials in which the ballots containing the votes at the pre-approved special opportunity voting places will be placed.
- (5) The presiding election officials appointed to attend at the special voting opportunity locations shall conduct the voting in accordance with the following:
 - (a) attending at those specific locations within the facility as determined to be reasonable after consultation with the facility staff;
 - (b) explain and demonstrate the voting procedures;
 - (c) have the elector sign the voting book;
 - (d) provide a ballot to the elector, along with a secrecy sleeve, if one has been requested, and any further instructions the elector requests;
 - (e) allow the elector to mark the ballot in private and place it into the secrecy sleeve, if applicable; and
 - (f) ensure that the ballot moves directly from the secrecy sleeve, if one has been requested, or otherwise conceal the markings on the ballot and deposit into the portable ballot box.

- (6) The presiding election official will ensure that the portable ballot box is secured. As soon as the presiding election official has attended all institutions as directed by the Chief Election Officer, the presiding election official must seal the portable ballot box and return it to the Chief Election Officer or designate.
- (7) The portable ballot box will be opened at a time determined by the Chief Election Officer and all ballots will be removed and inserted into the vote tabulator.

12. Post-vote Procedures: *(Bylaw 7129.04)*

- (1) Immediately after the close of voting on general voting day, the presiding election official must undertake the following, generally in the order stipulated:
 - (a) Direct that all unopened portable ballot boxes be opened;
 - (b) Ensure that any remaining ballots in the portable ballot boxes are inserted into the vote tabulator;
 - (c) Secure the vote tabulator so that no more ballots can be inserted;
 - (d) Generate two copies of the results tape from the vote tabulator;
 - (e) Complete the ballot account, attaching one copy of the results tape;
 - (f) Seal all voted ballots in the ballot box;
 - (g) Count the unused ballots, spoiled and rejected ballots and place them, packaged separately and sealed, in a ballot box along with the voting books, a copy of the results tape, a copy of the ballot account and all statements and voters lists;
 - (h) Seal and initial the box and deliver it to the election office; and
 - (i) Deliver the vote tabulator, the sealed ballot box, one copy of the results tape and the ballot account to the Chief Election Officer as soon as possible.
- (2) The results tapes from the vote tabulators, used at the advance voting opportunities, mail ballots and any special voting opportunities will be generated by the Chief Election Officer or designate after 8:00 p.m. on the general voting day in accordance with subsection (1) above.

13. Recount Procedure: *(Bylaw 7129.04)*

If in order to determine the results, in the Chief Election Officer's sole discretion, it is necessary or desirable to conduct a recount of the votes for any position or question, the Chief Election Officer may conduct a recount generally in accordance with the following procedure and that as set out in section 8 [Voting Procedure] in this Bylaw:

- a) The recount shall be conducted using the vote tabulators;
- b) The memory cards of all vote tabulators to be used will be cleared;
- c) Vote tabulators will be designated for each voting place;
- d) All voted ballots will be removed from the sealed ballot boxes, except spoiled or rejected ballots, and re-inserted in the vote tabulators under the supervision of the Chief Election Officer; and
- e) Any ballots returned by the vote tabulator during the recount process shall, through the use of the ballot return override procedure, be reinserted in the vote tabulator to ensure that any acceptable marks are counted; and

- f) To obtain the election results, the Chief Election Officer shall tally the votes and communicate the total election results.

14. Resolution of Tie Votes after Judicial Recount:

In the event of a tie vote after a judicial recount, the tie vote will be resolved by conducting a lot in accordance with section 151 of the *Local Government Act*. (Bylaw 7129.03)

15. Severance

If any section, subsection, paragraph or clause is found to be invalid by a Court of competent jurisdiction, it may be severed from the remainder of the Bylaw. (Bylaw No. 7129.01)

16. Repeal:

The City of Nanaimo "GENERAL ELECTION BYLAW 2008 NO. 7074 is hereby repealed. (Bylaw No. 7129.01)

PASSED FIRST READING 2011-JUN-27
PASSED SECOND READING 2011-JUN-27
PASSED THIRD READING 2011-JUN-27
ADOPTED 2011-JUL-11