
TO: GENERAL COMMITTEE

SUBJECT: AMENDMENTS TO THE MUNICIPAL ELECTIONS ACT

WARD: ALL

PREPARED BY AND KEY CONTACT: D. MCALPINE, CITY CLERK/DIRECTOR OF LEGISLATIVE AND COURT SERVICES, EXT. #4421

SUBMITTED BY: D. MCALPINE, CITY CLERK/DIRECTOR OF LEGISLATIVE AND COURT SERVICES

GENERAL MANAGER APPROVAL: P. ELLIOTT-SPENCER, GENERAL MANAGER OF COMMUNITY AND CORPORATE SERVICES

CHIEF ADMINISTRATIVE OFFICER APPROVAL: C. LADD, CHIEF ADMINISTRATIVE OFFICER

RECOMMENDED MOTION

1. That Staff Report LCS007-16 concerning the Amendments to the *Municipal Elections Act, 1996*, be received for information purposes.

PURPOSE & BACKGROUND

Report Overview

2. The purpose of this staff report is to provide a review of the significant changes made to the *Municipal Elections Act, 1996*.

Background

3. On April 4, 2016, the Minister of Municipal Affairs and Housing (M.M.A.H.) tabled Bill 181, the *Municipal Elections Modernization Act* in the Legislature. It was introduced after consultation and input from a variety of stakeholders, including, amongst others, the Association of Municipalities of Ontario, the Association of Municipal Managers, Clerks and Treasurers of Ontario and members of the public.
4. On April 25, 2016, City Council adopted motion 16-G-080 concerning the *Municipal Elections Modernization Act*, as follows:

“MUNICIPAL ELECTIONS MODERNIZATION ACT

WHEREAS the Province of Ontario is introducing potential reforms to the *Municipal Elections Act*,

WHEREAS these legislative reforms, if passed, will allow municipalities to prohibit corporate and union donations in municipal elections;

NOW THEREFORE BE IT RESOLVED AS FOLLOWS:

1. That staff in the Legislative and Court Services Department review the legislative reforms and, if the legislation is passed, prepare a report to General Committee related to any recommended changes for the 2018 and/or subsequent municipal elections in Barrie;

2. That if the proposed legislative reforms allowing municipalities to ban corporate and union donations are passed, the necessary actions be undertaken to ban donations from corporations or unions in Barrie for the 2018 and subsequent municipal elections.”
5. Amendments to Bill 181, *Municipal Elections Modernization Act, 2016* were introduced in May and it received Royal Assent on June 9, 2016.
6. Bill 181 included a number of changes to the *Municipal Elections Act* that were intended to address issues that arose during the 2014 Municipal Elections across Ontario including:
 - Lack of regulation for third party advertising;
 - Challenges with compliance and enforcement of election rules;
 - Lack of clarity related to campaign financing;
 - The length of the campaign period; and
 - Areas where the Act could be updated and modernized.
7. The significant changes to the legislation may be grouped under the following major categories:
 - Election calendar;
 - Nomination period and process;
 - Campaign finance;
 - Third party advertising;
 - Ranked ballots;
 - Clerk’s authority;
 - Election signs and advertising; and
 - Recounts.
8. The details associated with changes related to each of the major topics will be discussed in the Analysis section.

ANALYSIS

9. The majority of the changes to the *Municipal Elections Act* only become effective as part of the 2018 Municipal Election. However, there are changes that become effective prior to the 2018 Municipal Election and would impact any by-elections held prior to the 2018 Municipal Election.
10. The changes to the *Municipal Elections Act* are relatively numerous. The intent of this Staff Report is to identify significant changes to the legislation. The significant changes to the legislation are identified in the paragraphs that follow, under major category headings.

Election Calendar

11. Changes to the election calendar are as follows (utilizing the 2018 Municipal Election as an example):

	Old legislation	New provisions
By-law - Use of Alternative Voting Methods	June 1, 2018	May 1, 2017
By-law - Use of Ranked Ballots	N/A	May 1, 2017*
Clerk's Policies & Procedures for voting/alternative voting	June 1 st , 2018	Dec. 31, 2017
Clerk determines single or batch elimination – ranked ballots	N/A	Dec. 31, 2017
Approval of Ballot Question:		
Approved by Council by-law	180 days prior to Voting Day	March 1 st , 2018
Ordered by upper-tier/minister	June 1 st , 2018	May 1 st , 2018
Opening of Nominations and registrations for third party advertisers	First day of business after January 1 st (January 2 nd , 2018)	May 1 st , 2018
Use of Corporate Resources Policy	Not previously required	May 1 st , 2018
Final date for Nominations (Nomination Day)	Second Friday in September (September 14 th , 2018)	4 th Friday in July (July 27 th , 2018)
Close of 3 rd party advertising registrations	N/A	Oct. 19, 2018

* Date based on draft regulation – not final at the time of report preparation.

12. The revised dates will be addressed in any advertising or the provision of documents, as required. Council has previously adopted a policy regarding the Use of Corporate Resources, which would address the new requirement for a specific policy. Staff are reviewing the policy and will provide a report if changes to the policy are recommended.
13. Staff is currently obtaining information related to alternative voting methods in preparation for the 2018 Municipal Election. By-law 95-171, adopted on July 24, 1995 authorized the use of voting machines, voting recorders, optical scanning vote tabulators or other voting devices for the purposes of voting or counting votes in all subsequent elections. Alternative voting methods such as unsupervised or remote voting provided through mail or internet/telephone would require a change to the By-law. Staff will report back on the results of its investigation should a change related to remote voting methods be proposed.

Nomination Process

14. As noted in the information contained above, the nomination period will be reduced from 37 weeks to 13 weeks, with the opening of nominations occurring on May 1 and ending on the 4th Friday in July (July 27, 2018).

15. Candidates will be required to obtain 25 endorsement signatures from eligible electors. The 25 endorsement signatures are required to be provided at the time a candidate files his/her nomination paper. A person providing an endorsement must be eligible to vote for the office on the day that the person endorses the nomination. Individuals will be permitted to endorse more than one nomination.
16. The Act has also been amended to clearly indicate that a candidate is eligible to be nominated for an office in any ward of the municipality – and not just the ward in which they reside. While this is not a change, given the number of inquiries the Ministry had received about this matter, the Act was amended to clarify that a candidate may run in a ward in which they do not live.
17. Bill 181 initially included identifying volunteer firefighters as employees and therefore ineligible to run for or hold office unless the volunteer firefighter was on a leave of absence or had resigned. An amendment was introduced to remove this provision.

Campaign Finance

18. In May of 2016, Bill 181 was revised to prohibit contributions from corporations and trade unions that hold bargaining rights for employees in Ontario. As a result of the revision to the legislation, this ban applies to all Ontario municipalities and no action is required by the City of Barrie to ban such contributions.
19. It is important to note that money, goods and services given to and accepted by a person for his or her election campaign, or given to and accepted by another person who is acting under the person's direction, are deemed to be contributions under the legislation. This means that all in-kind contributions or discounted pricing for goods and services by corporations or trade unions will be prohibited, such as space, equipment, advertising, brochures, signs, printing, website design/hosting, food, etc.
20. Candidates will be required to inform contributors of the contribution limits. 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.
21. Candidates will no longer be required to open a bank account if they do not receive contributions or incur expenditures related to their campaign.
22. After the 2018 Municipal Election, campaign deficits will not be carried forward from the previous election campaign.
23. A new spending limit for parties and expressions of appreciation after Voting Day will be implemented. The specific amount of the spending limit is to be set out in a regulation.
24. In terms of a candidate's campaign financial statements, a candidate will be permitted to resubmit a financial statement to correct an error, until the filing deadline. The nomination filing fee will only be refunded if a financial statement is filed on time. If a candidate doesn't file his/her 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. A candidate exercising this option will not be refunded his/her nomination filing fee.
25. As soon as possible after April 30, 2019, the Clerk will be required to provide a report and make it available on the City's website, setting out all candidates in an election and indicating whether each candidate complied with financial reporting requirements.

26. The Clerk will be required to review all of the financial statements received and identify whether any contributor appears to have exceeded any of the contribution limits. The Clerk will be required to report to the Compliance Audit Committee as soon as possible after the filing deadline regarding contributions made to candidates and third party advertisers in excess of the established limits. Within 30 days of receiving the report, the Compliance Audit Committee must consider the report and decide whether to commence a legal proceeding against a contributor for an apparent contravention.

Third Party Advertising

27. The amendments to the *Municipal Elections Act* will establish regulations related to third party advertisers. Third party advertising will be defined as “an advertisement in any medium that has the purpose of promoting or supporting or opposing a candidate or a “yes” or “no” answer to a question on the ballot”.
28. Although Bill 181 initially included references to supporting or opposing an issue, this portion of the definition was removed to reflect concerns of charities and organizations about being subjected to the third party framework, if the group was undertaking public outreach/advocacy during a campaign (examples might include advocacy related to environmental concerns or affordable housing). Third party advertising also 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
 - 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.
29. Individuals, corporations or trade unions will be eligible to be third party advertisers, if they formally register with the Clerk. The following are not permitted to register as a third party advertiser:
- Municipal election candidates;
 - A federal political 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 political party, constituency association, registered candidate or leadership contestant registered under the *Election Finances Act*, and
 - The Crown in right of Canada or Ontario, a municipality or local board.
30. Should a third party promote, support or oppose a candidate or a yes or no to a question on the ballot between May 1st and Friday before Voting Day (October 19, 2018), the third party must file a registration with the Clerk, using a prescribed form along with a declaration of qualification. A fee will not be applicable for the registration. Third party advertisers may register in multiple municipalities but it is a campaign for each, with its own spending limit.
31. Third party advertisers must be registered at the time an advertisement appears and the ad must contain the name of registered third party, the municipality where the third party is registered and a telephone number, mailing address or email address at which the third party may be contacted regarding the ad.

32. Similar to candidate advertising, a Broadcaster/publisher will be prohibited from causing an advertisement to appear if they have not been provided in writing with the information above. The broadcaster/publisher is required to retain records of the above, a copy of the ad or a means of reproducing it and the charge made for its appearance, for four years after the date of the ad appearing. The broadcaster/publisher must permit the public to inspect the records regarding the transaction during normal business hours.
33. The Clerk is required to be satisfied that the individual, corporation or trade union is qualified to be registered and that the notice of registration complies with *Municipal Elections Act* as amended. If the Clerk is satisfied that conditions have been met, he or she signs the registration and the date of Clerk's signature is deemed date that third party is registered. If the Clerk is not satisfied, he or she is required to reject the registration. The Clerk's decision is final.
34. Third party advertisers have similar campaign finance provisions as candidates. Contributions will not be able to be made or accepted unless the party is registered as a third party or made or accepted outside of the campaign period. Contributions may be made by an individual, corporation, trade union, registered third party or the spouse of a registered third party. Contributions are not permitted to exceed a total of \$750/registered third party or \$5,000 to two or more registered third parties. These limits do not apply to the third party itself.
35. Expenses will be subject to a maximum expense limit, calculated by the Clerk. Expenses are not permitted unless the party is registered as third party when the expenses are incurred and the ad appears. Third party advertisers will be required to record expenses and file a financial statement. The Clerk is required to review contributions and report apparent contraventions, similar to the new provision for candidate contributions. Third party advertisers will be subject to similar penalties as candidates for financial statement defaults.
36. Municipalities may require the following to remove or discontinue the advertising:
 - a person who contravened the provisions for third party advertisers or caused/permitted the contravention; or
 - the owner or occupier of the land on which the contravention occurred.

Ranked Ballots

37. In the past, municipalities were required to conduct elections using the plurality or first past the post system, where the candidate who receives the highest number of votes wins. This system does not require a certain percentage of votes to be achieved to win a contest.
38. Municipalities are being provided the option to pass a by-law to use ranked ballots to elect members of council starting in 2018. It is not an option for school board elections, at this time. Ranked ballots allow a voter to rank candidates in order of preference, instead of just voting for one candidate in the traditional first past the post system.
39. Ranked ballots are used (but called by different names) in approximately 10 municipalities in the United States, in various places in Europe and the United Kingdom and in Canada for political party leadership races. Ranked ballot elections have not been implemented in any municipal, provincial or federal elections in Canada.
40. The Province has announced that it may make regulations outlining:
 - rules governing ballots, voting procedures, the counting of votes, recounts and reporting results;

- conditions, limitations and procedural requirements for passing the by-law, including consultation requirements and timing; and
 - powers that the Clerk may exercise in administering a ranked ballot election.
41. At this time, two regulation summaries related to by-law authority and consultation requirements and vote counting and reporting requirements have been released as well as draft regulations for consultation purposes. The final regulations have not been posted at time of this report's preparation. The following information summarizes the draft regulation provisions:

Ranked Ballots By-law Authority and Consultation Requirements

42. If a by-law is passed by a Council to implement a ranked ballot election, ranked ballots would be required to be used to elect all of the members of Council. The by-law may specify the maximum number of rankings that an elector may make and may provide a different number of maximum rankings for each office. If the by-law does not specify the maximum number of rankings, the default maximum is three. If ranked ballots are authorized for a regular election, ranked ballots must also be used in any by-elections that are held to fill council vacancies during the council term.
43. Before passing a by-law, a single tier municipal Council will be required to give consideration to the following matters:
- The public interest;
 - 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; and
 - Administrative practices and procedures that would be required to conduct the elections.
44. In addition, before passing a by-law, a single tier municipality such as Barrie, would be required to hold an open house to provide the public with information and the opportunity to ask questions about:
- How elections would be conducted, including a detailed description of vote counting;
 - The estimated costs of conducting the election;
 - Any voting and vote-counting equipment that is being considered for use in the election; and
 - Any alternative voting method being considered for use in the election.
45. A municipality must also hold a public meeting to allow the public to speak to Council about the proposed by-law. The public meeting must be held at least 15 days after the open house is held. Notice of both the open house and public meeting must be issued 30 days prior to each event. The by-law must be passed no later than May 1 in the year before the year of the election (e.g. May 1, 2017 for the 2018 election).

46. While a referendum is not required for a municipality to move from the first past the post system to ranked ballots, it could form part of the municipal public consultation process. Some individuals feel that a referendum would be an important provision as it is a change to how the electors will vote. Others argue that municipalities have the authority to change the vote casting/counting method without a requirement for a referendum and that elected officials in Canada are elected to make decisions, rather than ask the electorate what decision is to be made. The last Ontario referendum related to electoral reform resulted in the majority of voters choosing to maintain a first past the post system. However, the referendum alternative was not specifically a ranked ballot system.

Ranked Ballots Vote Counting and Reporting Requirements

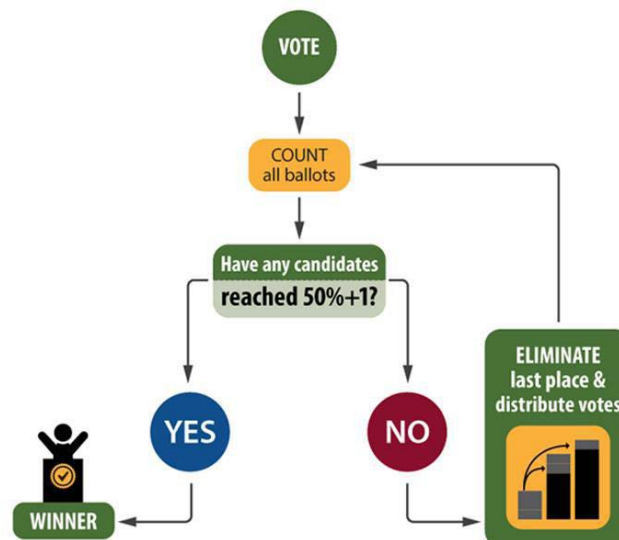
47. The general rules regarding what can appear on a ballot set out in the *Municipal Elections Act* would continue to apply to ranked ballots. In addition, ballots used in a ranked ballot election would also be required to contain the following information:

- The number of candidates to be elected for each office;
- Instructions to the voter on how to mark the ballot to rank their preferences; and
- The maximum number of preferences that may be ranked on the ballot for each office

48. In a single member ranked ballot election, each voter ranks the candidates on the ballot from most preferred to least preferred. The Clerk then calculates the threshold to be elected (50% plus one). If a candidate receives more than the threshold, the candidate is elected and voting ends.

49. If none of the candidates receive enough votes to meet or exceed the threshold, the candidate with the lowest number of votes is eliminated and the ballots of each voter who voted for the candidate with fewest first place votes are distributed to the voters' second choices. The Clerk then determines whether any candidate now meets or exceeds the threshold. If none of the candidates has received enough votes, the process of eliminating the candidate with the lowest number of votes and redistributing their votes is repeated until a candidate has enough votes to meet or exceed the threshold and is elected.

50. The following image provided by the Ministry of Municipal Affairs outlines the process:



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51. There may be multiple rounds of voting prior to a candidate being declared elected. As a result, the elected candidate in a race may not be determined on election night. Depending on the process prescribed by the Province and the votes cast, it may take several days for results to be determined in any particular race.
52. In addition to declaring the candidates who have been elected, the Clerk will be required to also report the following information to the public:
- the number of ballots cast;
 - the number of ballots that were declined or rejected;
 - the threshold for each office;
 - the number of votes each candidate received in the first round of vote counting; and
 - the results of each round of vote counting, including the number of votes received by each remaining candidate and the number of exhausted ballots.
53. The regulations related to ranked ballot vote counting procedures have not been made available at the time of the preparation of this staff report. Therefore, neither staff nor voting equipment/method vendors have a full understanding of the requirements and whether the technology can be modified in time to provide a secure and accountable 2018 Municipal Election.
54. As noted earlier in this report, staff are currently obtaining information related to alternative voting methods in preparation for the 2018 Municipal Election, including information related to the ability of any voting method/equipment to address the changes to the *Municipal Elections Act*. At that time, staff will provide further information related to ranked ballots. Given the planning requirements and current resources available for delivering a Municipal Election, it would be unlikely that staff would be in a position to deliver a ranked ballot election, particularly if a different method of voting was being utilized than in past elections.

Clerk's Authority

55. In the past, a by-law was required to establish advance voting dates and hours and reduced hours of voting at long term care facilities and hospitals. The Clerk will be provided the authority to determine these matters which will permit greater flexibility in responding to unforeseen circumstances that may arise throughout the election.
56. The Clerk will be provided with the authority to remove a person's name from the Voters' List if the Clerk is satisfied that the person has died (without an application to change the Voters' List). The Clerk will also be able to remove a deceased person's name from the Voters' List without a hearing, when an application has been filed.
57. The Clerk will be able to decide whether candidates are permitted to file financial statements electronically and any conditions or limits associated electronic filing. Previously, a municipal Council was required to pass a by-law to provide for electronic filing and the conditions/limits.

Election Signs and Advertising

58. An election campaign advertisement will be defined as an advertisement in any broadcast, print, electronic or other medium that has the purpose of promoting or supporting the election of a candidate.
59. Landlords and condominium corporations will no longer be able to prohibit their tenants from displaying campaign signs in their own unit. The condominium corporation/landlord will have the right to establish reasonable conditions related to the size or type of sign. Landlords and condominium corporations will still be able to prohibit the display of signs in relation in common areas of the building.
60. Any election campaign advertisement purchased by or under the direction of a candidate, will be required to identify the candidate. Candidates must also provide publishers/broadcasters with the candidate's name, as well as the name, business address and telephone number of the individual who deals with the broadcaster or publisher under the direction of the candidate.
61. Broadcasters and publishers will be prohibited from causing an election campaign advertisement to appear if the candidate's name, as well as the name, business address and telephone number of the individual who deals with the broadcaster or publisher hasn't been provided. In addition, broadcasters and publishers will be required to retain records of the information, a copy of the ad or means of reproducing it and the cost of the advertisement, for four years after the date of appearance and permit inspection of the records by the public at any time during normal business hours.
62. If a contravention of the provisions related to election campaign advertising occur, municipalities will have the authority to require the person who contravened the provision or the owner or occupier of land on which the contravention occurred, to remove the advertisement or discontinue the advertising.

Recounts

63. In the previous version of the legislation, the ability to conduct a recount was limited to three circumstances:
 - Where the counting of ballots resulted in a tie vote;
 - Where the Council, local board or Minister decides a recount is required when a resolution is passed within 30 days of the Clerk's declaration of the official results; and
 - Where an elector's request for a recount has been granted by the Superior Court of Justice.
64. Recounts are more often conducted where a count is conducted by hand or where the mark(s) on a ballot is/are questionable in terms of which candidate was selected by the elector.
65. The new legislation will provide Council with the authority to adopt a policy which dictates when recounts will be conducted in circumstances other than those permitted by the Act. A by-law adopting the policy must be passed on or before May 1 in the year of the election.

66. While a small number of Ontario municipalities had previously developed recount policies with defined thresholds for a close vote, even if a particular set of results met the policy parameters, the matter required Council approval prior to the recount commencing. The change in the legislation would allow for a “close vote” recount to be conducted if it fell within the policy parameters, without Council being required to respond within the 30 day window of the Clerk declaring the official results.
67. Some argue that adopting a “close vote” policy, would eliminate the need for Council to respond to calls for a recount within the 30 day window of the Clerk declaring the official results of an election as the specific circumstances for a recount would already be determined. However, Council could still receive a request for a recount which falls outside of the policy and Council would still be required to decide upon these types of requests.

Other changes

68. The amendments to the legislation included a number of other changes that may be of interest, including but not limited to:
- Prohibiting a person who is in control of an apartment building, condominium building, non-profit housing cooperative or gated community from preventing a candidate or his or her representative from campaigning between 9 a.m. and 9 p.m. at the doors to the apartments, units or houses;
 - Requiring the Clerk to prepare a plan regarding the identification, removal and prevention of barriers that affect electors and candidates with disabilities and make the plan available to the public before Voting Day (and instead of presenting the post-election report to Council, making it publicly available);
 - Prohibiting persons from taking a photograph or making a video recording of his or her marked ballot or showing a marked ballot to anyone;
 - Creating a new offence for any offer, promise or agreement intended to convince an individual to register, withdraw, or avoid becoming a candidate;
 - Requiring original signatures only for nominations and proxies;
 - Establishing both a minimum and maximum number of days before Nomination Day and Voting Day in a by-election;
 - Clarifying the requirements associated with Compliance Audit Committee meetings and decisions; and
 - Eliminating the requirement for the use of registered mail related to notifying candidates of financial statement filing requirements and penalties.

ENVIRONMENTAL MATTERS

69. There are no environmental matters related to the recommendation to receive the staff report regarding the changes to the *Municipal Elections Act*.

ALTERNATIVES

70. As this report is being presented for information purposes only, alternatives have not been presented.

FINANCIAL

71. There are no financial implications for the Corporation resulting from the recommendation to receive the staff report regarding the changes to the *Municipal Elections Act*. The changes to the legislation may require additional staff time or resources to address. Staff will identify the implications through a specific staff report or the budget process, depending on the magnitude of the financial implication.

LINKAGE TO 2014-2018 STRATEGIC PLAN

72. The recommendation(s) included in this Staff Report are not directly related to the goals identified in the 2014-2018 Strategic Plan.