



The Impact of COVID-19 on 2022 Election Preparation Activities

Date: September 9, 2020

To: Executive Committee

From: City Clerk

Wards: All

SUMMARY

The purpose of this report is to update City Council on the planning and preparation underway in advance of the October 2022 municipal election, particularly as it relates to the unexpected challenges posed by the COVID-19 pandemic and its impact on a number of election initiatives.

COVID-19 remains an ongoing concern, and health experts believe there may be additional waves of the virus for months or years to come. All aspects of 2022 election planning must shift to accommodate the reality of this global pandemic, which will have significant effects on programs, procedures, and technology. This report focuses on the pandemic's impact on election initiatives that may require Council consideration, including the acquisition of new voting equipment, preparation for Ranked Ballot Elections, and the exploration of alternative methods of voting.

The City's current vote counting equipment has reached the end of its life and a competitive procurement process is underway to acquire new equipment for use in the 2022 election. The City Clerk will further report to Council with recommendations resulting from this process. However, the pandemic has introduced new risks that may impact the acquisition of new equipment in time for its use in the 2022 general election and short-term options are therefore also being explored to mitigate these risks, if required.

This report also describes how the delays and risks introduced by the pandemic now mean that the pre-conditions required for Council to authorize Ranked Ballot Elections can no longer be fulfilled in accordance with the legislative and regulatory requirements for implementation in the 2022 election. The report therefore recommends that Council request the City Clerk to cease work on fulfilling the pre-conditions required to allow for possible Ranked Ballot Elections in 2022. If Council wishes to implement Ranked Ballots in the 2026 general election, Council can direct the City Clerk to begin fulfilling the legislative pre-conditions immediately following the 2022 election for possible implementation in 2026.

The COVID-19 pandemic is likely to have long-term impacts on the ways in which electors feel comfortable voting, and the report describes how the City Clerk is undertaking research into leading practices on safe voting during a pandemic. This includes rethinking the function and operation of voting places during an election and exploring alternative methods of voting that allow electors to cast ballots without having to attend at a voting place. Should alternative methods of voting be pursued, the City Clerk will report back to Council to ensure that any necessary by-laws are passed in time for their implementation in the 2022 general election.

Finally, the report notes that there is still uncertainty about the City's future ward structure. The Supreme Court of Canada has agreed to hear the City's legal challenge to Bill 5, Better Local Government Act, 2018—which reduced the number of Toronto wards from 47 to 25—but a decision is not expected until mid- to late 2021. Election planning for 2022 must therefore account for both 25 and 47 ward scenarios, adding further complexity to COVID-19 contingency planning.

RECOMMENDATIONS

The City Clerk recommends that:

1. City Council direct the City Clerk to cease any further work on Ranked Ballot Elections for the 2022 Municipal Election, as previously directed in Item GV5.1 on November 26 and 27, 2019.
2. City Council request the City Clerk to evaluate alternative voting methods used in other jurisdictions that may provide electors with additional options during a pandemic, and to report back to City Council by May 1, 2021 as required.

FINANCIAL IMPACT

Funding for the 2022 municipal election will be included in the City Clerk's Office 2021 Operating Budget submission and is fully recovered from the Election Reserve Fund with net zero impact.

The funding strategy for new vote counting equipment will depend on whether it is a buy or lease option and will be determined when the City Clerk brings forward the results of the Negotiable Request for Proposal (nRFP) to City Council for award. A buy option would be funded by the capital budget, and a lease option would be funded from the operating budget. Funding will be included in the 2021 City Clerk's Capital Budget submission and considered through the 2021 budget process.

City Council increased the City Clerk's Office 2020 Operating Budget by \$1.1 million gross, \$0 net, to undertake public consultation and outreach related to Ranked Ballot. A total of \$8,145.89 was spent on an external advertising agency prior to the emergence of Covid-19 and the subsequent lockdown of most services in April 2020 has hindered any further work on it.

The Chief Financial Officer and Treasurer has reviewed this report and agrees with the financial implications as identified in the Financial Impact section.

DECISION HISTORY

Vote Counting Equipment

Executive Committee, at its meeting on June 30, 2015, referred item EX 7.3 back to the City Clerk with the request that she report back to the Committee with an analysis of the election technology marketplace.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2015.EX7.3>

City Council, at its meeting of December 13, 14 and 15, 2016, authorized the City Clerk to negotiate and enter into an agreement with Election Systems and Software Inc. for the supply and installation of new modems and associated software in the City's vote counting equipment to allow for the continued wireless transmission of election night results for the 2018 election.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.EX20.5>

City Council, at its meeting on October 2, 3 and 4, 2017, authorized the City Clerk to negotiate and enter into an agreement with Election Systems and Software Inc. for the maintenance and support of vote counting equipment, as well as the supply of associated goods and services, over a four year period covering January 1, 2018 to December 31, 2021. The report also noted that the City Clerk would report to Council after the 2018 municipal election on replacement options for vote counting equipment for the 2022 municipal election.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.EX27.3>

Ranked Ballot Elections

City Council, at its meeting on November 26 and 27, 2019, instructed the City Clerk to initiate the process to pass a by-law allowing for a Ranked Ballot Election in the 2022 municipal election by undertaking the required steps set out in Ontario Regulation 310/16.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.GV5.1>

Internet Voting

City Council, at its meeting on June, 11, 12 and 13, 2013, requested the City Clerk form a working group to implement internet voting for persons with disabilities for the 2014 Municipal Election, and report back with recommendations as to whether internet voting should be adopted in the 2018 City-wide municipal election.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.GM22.15>

City Council, at its meeting on February 19 and 20, 2014, authorized the use of internet and telephone voting as alternative voting methods for persons with disabilities during the advance vote period in the 2014 Municipal Election and authorized the City Clerk to negotiate and execute an agreement with ScytI Canada Inc.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2014.CC48.4>

The City Clerk, at the Council meeting on July 8, 9, 10 and 11, 2014, advised Council of her decision to cancel the internet voting project for the 2014 municipal election.
<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2014.CC54.5>

The City Clerk, at the Council meeting on December 13, 14 and 15, 2016, advised Council that there had been insufficient advances in internet security to accept the risks of implementing internet voting for the 2018 general election.
<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.EX20.5>

City Council, at its meeting on October 29 and 30, 2019, considered the Auditor General's report "Cyber Safety: A Robust Cybersecurity Program Needed to Mitigate Current and Emerging Threats" and directed the Chief Technology Officer to take on an expanded City-wide scope and mandate providing support, oversight and direction on standards, practices and policies to all City divisions with respect to all technology assets, goods, and services.
<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.AU4.1>

Bill 5, Better Local Government Act, 2018

City Council, at its meeting on January 30 and 31, 2019, instructed the City Solicitor to oppose the Province's appeal relating to Bill 5, Better Local Government Act, 2018 at the Court of Appeal and pursue a leave to appeal application to the Supreme Court of Canada in the event the Province is successful on its appeal at the Court of Appeal.
<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.CC2.2>

COMMENTS

1. COVID-19 has significantly impacted general election planning for 2022

Planning for municipal elections begins years in advance so that programs and practices can be safely implemented by voting day, and preparation is well underway for the next City of Toronto general election in October 2022. At the same time, the COVID-19 pandemic presents an ongoing concern and health experts believe there may be additional waves of the virus for months or years to come. Given the continued impact on public health and civic participation, election planning for 2022 must now shift to acknowledge and accommodate the reality of COVID-19.

The pandemic introduces new challenges and complexities into nearly all election processes, including the availability and acquisition of voting technology, the possibility of alternative voting methods, the safe operation of voting locations, and the hiring of Election Day staff.

Since many of the pandemic's long-term effects are difficult to forecast, significant contingency planning will be required to cover a range of possible pandemic scenarios that may exist through to October 2022.

2. The pandemic has introduced additional risk into the planned procurement of new voting equipment for the 2022 election

The City of Toronto's vote counting equipment, originally purchased in 2000, has reached the end of its life. In anticipation of this, the City Clerk retained an external consultant in June 2019 to conduct a detailed analysis of the election technology marketplace and provide recommendations on replacing the City's election equipment. The consultant's report examined a number of acquisition options and recommended that the City pursue either a 'lease' or 'buy' option for procuring new equipment.

As a result, a procurement process for new equipment has begun and the City Clerk has retained the services of a Fairness Monitor, cyber-security professionals specialized in voting equipment, and an accessibility expert who can evaluate adherence to the Accessibility for Ontarians with Disabilities Act (AODA). The Clerk has also engaged with the Purchasing & Materials Management Division and a Negotiable Request for Proposal (nRFP) will be issued in the fall of 2020 seeking new vote counting equipment and related products and services, beginning with the 2022 general election. The Clerk will report to Council with the results of the nRFP and related recommendations in the second quarter of 2021.

The onset of COVID-19 may introduce risks to the procurement process. Governments across the world are responding to the pandemic with their own sudden shifts in election planning and practices, and an influx of demand could possibly affect the ability of vendors to supply the necessary voting equipment or technical support. The pandemic may also have impacts at the manufacturing level. These unforeseen risks introduce some uncertainty into the plan to replace the City's vote counting equipment for the 2022 election and the City Clerk is therefore exploring alternative, short-term options for voting equipment in 2022 should the pandemic lead to obstacles or delays in the planned nRFP.

3. Delays caused by the pandemic no longer allow for a Ranked Ballot Election in 2022

In November 2019, Council directed the City Clerk to initiate the process to fulfil the pre-conditions outlined under Ontario Regulation 310/16 that are required before Council can pass a by-law authorizing a Ranked Ballot Election in 2022. These pre-conditions include, among other things, public education on how a Ranked Ballot Election would be conducted and the voting equipment being considered, as well as a requirement that the City hold at least one public meeting and one open house.

Following this directive, the City Clerk assembled a Ranked Ballot Election team for jurisdictional research, public outreach, proposal evaluation, and project oversight. A third party firm was contracted to lead the development and design of public education materials such as flyers, advertisements and videos.

To ensure the objectivity of the public consultation process—and maintain the City Clerk's neutrality in administering the 2022 municipal election—the Clerk also sought an external vendor to develop the consultation strategy and facilitate the public education and engagement components.

A competitive procurement process was implemented to select this vendor, requiring applicants to propose a detailed public education and consultation strategy that included multiple methods of engagement and outreach that would generate meaningful input reflective of Toronto's diversity. This contract was to begin in April 2020, with broad education and outreach initiatives occurring through spring and summer and in-person public consultation meetings held throughout the city in September. However, the City Clerk cancelled this procurement process on March 24, 2020 after concluding that the specific requirements outlined in the issued call document—including the proposal and delivery of a comprehensive workplan centred around public meetings—could no longer be fairly or accurately assessed in the context of an unfolding global pandemic.

The deadline for a by-law authorizing a Ranked Ballot Election in the 2022 general election is May 1, 2021. With the pandemic having remained a significant public health concern for months, the pre-conditions necessary to authorize Ranked Ballot Elections can no longer be achieved in a way that ensures meaningful public education and consultation within the tight timelines necessary for its implementation in 2022.

Furthermore, the City's Clerk's ability to fulfil part of Ontario Regulation 310/16 requiring that the public be informed of the vote counting equipment intended for use in a Ranked Ballot Election is affected by the uncertainty in acquiring new voting equipment in time for the 2022 election, as described in the previous section. The City's current vote counting equipment cannot facilitate Ranked Ballot Elections and it is therefore currently unknown whether Ranked Ballots will be technologically feasible in 2022.

For these reasons, the City Clerk recommends that Council direct that work cease on the pre-conditions for Ranked Ballot Elections as set out in Ontario Regulation 310/16. If Council wishes to implement Ranked Ballots in the 2026 general election, Council can direct the City Clerk to begin fulfilling the pre-conditions of Ontario Regulation 310/16 immediately following the 2022 election for a possible implementation in 2026.

4. Changes to how electors vote are expected for the 2022 election

Significant planning is underway to revisit and rethink the concept of voting in the advent of a pandemic so that electors feel safe when casting their ballot. Jurisdictions that have run elections through the pandemic are being examined to identify leading practices in ensuring elector safety within the voting place and in providing alternative voting options.

With respect to in-person voting, work is underway to reimagine voting places with a social distancing lens, review current voting procedures to reduce touchpoints, and determine what Personal Protective Equipment (PPE) or other tools may be needed to protect both electors and voting place staff. The City Clerk is also undertaking due diligence in exploring alternatives to in-person voting in anticipation of increased demand for alternative voting methods in 2022.

Continued research on internet voting has made clear that the significant security vulnerabilities and technical challenges identified in past staff reports remain innumerable and unresolved.

There continues to be no fully accessible internet voting service that can guarantee security, ballot secrecy and vote integrity, and it is therefore not an option for the 2022 election. The Auditor General, in her fall 2019 report to City Council titled *Cyber Safety: A Robust Cybersecurity Program Needed to Mitigate Current and Emerging Threats*, raised significant concerns with cybersecurity given the number of cyber-attacks directed towards governments, including Canadian municipalities. The Auditor General's report noted that a single data breach could have a devastating effect on Toronto, particularly given the vast amount of confidential and sensitive information that the City stores, including election data. Consultation with the City of Toronto's Chief Technology Officer and Chief Information Security Officer also confirms that the City has neither the technological capacity nor resources to implement internet voting in time for the 2022 election, especially in light of the significant resources currently devoted to accelerating the digitization of City services in response to the pandemic. If City Council wanted to consider introducing internet voting—notwithstanding the vulnerabilities and risks that continue to exist—a minimum of 3-4 years would be required for a jurisdiction the size of Toronto to give staff enough time to develop requirements, issue an RFP and award a contract, and test and implement the commercial off-the-shelf internet voting solution and related components.

However, an overwhelming shift to mail-in voting as the primary alternative to in-person voting has been observed in many jurisdictions running elections during the pandemic, including within Canada. A preliminary assessment makes clear that mail-in voting is possible using the City's current vote counting equipment, and further research is underway to determine the overall feasibility of mail-in voting in the City of Toronto. The City Clerk will complete a feasibility assessment of mail in voting for the 2022 election and report back to Council as required for approval of a by-law authorizing it in accordance with the Municipal Elections Act.

5. There is continued uncertainty about the number of wards under which the 2022 Election will be administered

In November 2016, City Council approved a new 47-ward model for Toronto, to be implemented through the 2018 general election. The 2018 election period had already begun under this 47-ward model when the Province of Ontario introduced Bill 5, Better Local Government Act, 2018 to reduce the number of Toronto wards from 47 to 25.

The introduction of Bill 5 resulted in a series of legal challenges and appeals that briefly reinstated the 47-ward model before ultimately upholding the reduction to 25 wards, and the 2018 City of Toronto election was finally run on the basis of 25 wards. However, Council directed the City Solicitor to exhaust all legal avenues in challenging the legality of Bill 5, and the appeal regarding its constitutionality will now be heard by the Supreme Court of Canada. It is anticipated that a Supreme Court decision may not be rendered until mid- to late 2021.

The ongoing legal challenge to Bill 5 has meant continued uncertainty about which ward model will be in place for the 2022 election and planning must therefore take place for both scenarios. The additional work required by this dual planning is now compounded by the new complexities resulting from the COVID-19 pandemic.

6. Next steps and future Council considerations

Planning continues for the 2022 general election, ensuring that the challenges posed by the COVID-19 pandemic are integrated and addressed within election programs, procedures, and technology. Election practices across the world continue to be monitored to learn from the new and varying approaches to voting in a pandemic.

The City Clerk will issue a Negotiable Request for Proposal (nRFP) in the fall of 2020 to acquire new vote counting equipment and services for use in the 2022 general election, and will report back to Council with nRFP results and recommendations in Q2 2021.

Research will continue into possible alternative voting methods for the 2022 election, particularly the feasibility of implementing a mail-in voting program in the City Toronto. The City Clerk will further report to Council as necessary to ensure that any required alternative voting method by-laws are passed before the May 1, 2021 legislative deadline.

All election planning will continue to accommodate the possibility of either a 25- or 47-ward model while awaiting the City Solicitor to report back with updates relating to the Supreme Court decision on Bill 5, Better Local Government Act, 2018.

CONTACT

Fiona Murray, Deputy City Clerk, City Clerk's Office, Election Services
416-392-8019, Fiona.Murray@toronto.ca

SIGNATURE

Ulli S. Watkiss
City Clerk