SUMMARY:

The Automated Voting Machines General Local Elections bylaw determines various procedures and requirements to be applied in the conduct of local government elections and other voting regulated under the *Local Government Act*.

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CITY OF KELOWNA

BYLAW NO. 10970

REVISED: March 29, 2021

CONSOLIDATED FOR CONVENIENCE TO INCLUDE: BYLAW NO. 11569 and 12195

A Bylaw to provide for the procedures for the use of Automated Voting Machines General Local Elections and other voting

WHEREAS under the *Local Government Act*, the Council of the City of Kelowna 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 Kelowna wishes to establish various procedures and requirements under that authority;

BL12195 amended:
AND WHEREAS pursuant to Section 112 of the *Local Government Act*, the Council of the City of Kelowna may, by bylaw, provide for the use of automated voting machines, voting recorders, or other devices for voting in an election with the approval of the Minister of Community Services;

NOW THEREFORE the Council of the City of Kelowna, in open meeting assembled, enacts as follows:

1.   CITATION

1.1   This bylaw may be cited for all purposes as "Automated Voting Machines Authorization Bylaw No. 10970."

BL11569, 12195 amended Section 2:
2.   DEFINITIONS

2.1   In this bylaw, all definitions shall be in accordance with Part 3 of the *Local Government Act*, except for the following:

'**Acceptable mark**' means a completed oval which the **vote tabulating unit** is able to identify, which has been made by an **elector** in the space provided on the **ballot** opposite the name of any candidate or opposite either "yes" or "no" on any voting question;

'**Automated vote counting system**' means a system that counts and records votes and processes and stores election results which comprises:

(a)   a number of **ballot** scan **vote tabulating units**, each of which rests on a **ballot** box; and

(b)   a number of **portable ballot boxes** into which voted **ballots** are deposited where a **vote tabulating unit** is not functioning or being used which will therefore be counted after the close of voting on general voting day;

'**Ballot**' means a single automated **ballot** card designed for use in an **automated vote counting system**, which shows:

(a)   the names of all of the candidates for each of the offices of Mayor, Councillor, and School Trustee; and

(b)   all of the choices on all of the bylaws or other matters on which the opinion of, or assent of, the **electors** is sought;

'**Ballot return override procedure**' means the use, by an election official, of a device on a **vote tabulating unit**, which causes the unit to accept a **returned ballot**;

'**By-election**' means an election held under Section 54 of the *Local Government Act* or Section 36 of the *School Act*;

'**Election headquarters**' means Kelowna City Hall, 1435 Water Street, Kelowna;

'**Elector**' means a resident **elector** or property **elector** of the City as defined under the *Local Government Act*;

'**General local election**' means the election held for the Mayor, all Councillors and School Trustees of the City and any **other voting**;

'**Local government**' means the Council of the City of Kelowna;

'**Memory Card**' means the storage device which stores all the permanent results for the **vote tabulating unit**;

'**Other voting**' means voting on a matter referred to in Part 4 of the *Local Government Act*;

'**Portable ballot box**' means a **ballot** box which is used at a voting place in the election, where a **vote tabulating unit** is not being used or is not functioning;

'**Register tape**' means the printed record generated from a **vote tabulating unit** at the close of voting on general voting day, which shows the number of votes for each candidate for each of the office of Mayor, Councillor, and School Trustee, and the number of votes for and against each bylaw or other matter on which the assent of the electors is sought;

'**Returned ballot**' means a voted **ballot** which was inserted into the **vote tabulating unit** by the **elector**, but which was not accepted and which was returned to the **elector** with an explanation of the **ballot** marking error which caused the **ballot** not to be accepted;

'**Secrecy sleeve**' means an open-ended folder or envelope used to cover **ballots** to conceal the choices made by each **elector**; and

'**Vote tabulating unit**' means the device into which voted **ballots** are inserted and which scans each **ballot** and records the number of votes for each candidate and for and against each referendum question.

'**Voter Assist Terminal**' means an optical scan ballot-marking device used to assist an elector in marking their ballot.

BL12195 amended Section 3:
3.   USE OF VOTING MACHINES

3.1   Council hereby authorizes the conducting of **general local elections** and **by-elections** in the City of Kelowna using an **automated vote counting system**.

BL11569, BL12195 amended Section 4:
4.   AUTOMATED VOTING PROCEDURES

4.1   The presiding election official for each voting place and at each advance voting opportunity, shall, as soon as the **elector** enters the voting place, and before a **ballot** is issued, offer, and if requested, direct an election official to provide a demonstration to an **elector**, of how to vote using an **automated vote counting system**.

4.2   Upon completion of the voting demonstration, if any, the **elector** shall proceed as instructed, to the election official responsible for issuing **ballots**, who:

        (a)   shall ensure that the **elector**:

                (i)   is qualified to vote in the election; and
                (ii)   completes the voting book as required by the *Local Government Act*.

4.3   Upon being given a **ballot,** and **secrecy sleeve** if so requested, the **elector** shall immediately proceed to a voting compartment to vote.

4.4   An elector who is visually impaired or has physical impairments that would make it difficult or impossible to mark a ballot in the usual way may request use of the **voter assist terminal** at a voting location determined by the chief election officer.

        (a)   An elector who is visually impaired can choose to listen to the voting choices through provided headphones;

        (b)   An elector who is unable to touch the screen or pad may use the sip/puff tube to vote; or

        (c)   An elector who have vision limitations may use the zoom feature enabling the elector to have the font size on the screen enlarged.

        (d)   Use of the **voter assist terminal** in a **general local election** or **by-election** shall be determined by the chief election officer.

4.5   The **elector** may vote only by making an **acceptable mark** on the **ballot**:

        (a)   beside the name of each candidate of choice, up to the maximum number of candidates to be elected for each of the offices of Mayor, Councillor, and School Trustee; and

        (b)   beside either "yes" or "no" in the case of each bylaw or other matter on which the assent of the electors is sought.

4.6   Once the **elector** has finished marking the **ballot**, the **elector** must place the **ballot** into the **secrecy sleeve** and under the supervision of the election official in attendance, insert the **ballot** directly from the **secrecy sleeve**, if applicable, into the **vote tabulating unit** without the **acceptable marks** on the **ballot** being exposed.

4.7   If, before inserting the **ballot** into the **vote tabulating unit**, and **elector** determines that a mistake has been made when marking a **ballot** or if the **ballot** is returned by the **vote**

tabulating unit, the **elector** may request a replacement **ballot** by advising the election official in attendance.

4.8   Upon being advised on the replacement **ballot** request, the presiding election official shall issue a replacement **ballot** to the **elector** and mark the **returned ballot** "spoiled" and shall retain all such spoiled **ballots** separately from all other **ballots** and they shall not be counted in the election.

4.9   If the **elector** declines the opportunity to obtain a replacement **ballot**, and has not damaged the **ballot** to the extent that it cannot be reinserted into the **vote tabulating unit**, the election official shall, using the **ballot return override procedure**, reinsert the **returned ballot** into the voted tabulating unit to count any **acceptable marks** which have been made correctly.

4.10   Any **ballot** counted by the **vote tabulating unit** is valid and any **acceptable marks** contained on such **ballots** will be counted in the election, subject to any determination made under a judicial recount.

4.11   Once the **ballot** has been inserted into the **vote tabulating unit** and the unit indicates that the **ballot** has been accepted, the **elector** must immediately leave the voting place.

4.12   During any period that a **vote tabulating unit** is not functioning, the election official supervising the unit shall insert all **ballots** delivered by the **electors** during this time, into a **portable ballot box**, provided that if the **vote tabulating unit**:

(a)   becomes operational, or
(b)   is replaced with another **vote tabulating unit**,

the **ballots** in the **portable ballot box** shall, as soon as reasonably possible, be removed by an election official, and under the supervision of the presiding election official be inserted into the **vote tabulating unit** to be counted.

4.13   Any **ballots** which were temporarily stored in a **portable ballot box**, which are returned by the **vote tabulating unit** when being counted, shall, through the use of the **ballot return override procedure**, and under the supervision of the presiding election official, be reinserted into the **vote tabulating unit** to ensure that any **acceptable marks** are counted.

5.   ADVANCE VOTING OPPORTUNITY PROCEDURES

5.1   **Vote tabulating units** shall be used to conduct the vote at all advance voting opportunities, and voting procedures at the advance voting opportunities shall follow as closely as possible, those described in Section 4 of this bylaw.

5.2   At the close of voting at each advance voting opportunity the presiding election official in each case shall ensure:

(a)   that no additional **ballots** are inserted in the **vote tabulating unit**;
(b)   that the **portable ballot box** is sealed to prevent insertion of any **ballots**;
(c)   that the **register tapes** in the **vote tabulating unit** are not generated; and
(d)   that the **memory card** of the **vote tabulating unit** is secured.

5.3   The presiding election official shall, at the close of voting at the final advance voting opportunity:

(a)   ensure that any remaining **ballots** in the **portable ballot box** are inserted into the **vote tabulating unit**;

(b)   secure the **vote tabulating unit** so that no more **ballots** can be inserted; and

(c)   deliver the **vote tabulating unit** together with the **memory card** and all other materials used in the election to the chief election officer at **election headquarters**.

BL12195 amended Section 6:
6.   SPECIAL VOTING OPPORTUNITY PROCEDURES

6.1   Unless the Chief Election Officer determines it is practical to use a **vote tabulating unit** a **portable ballot box**, as defined herein, shall be used for all special voting opportunities. The presiding election official appointed to attend at each special voting opportunity shall proceed in accordance with Sections 4.2, 4.3, 4.4, and 4.5 so far as applicable, except that the voted **ballots** shall be deposited into the **portable ballot box** supplied by the presiding election official.

6.2   The presiding election official at a special voting opportunity shall ensure that the **portable ballot box** is secured when not in use and at the close of voting at the final special voting opportunity, the presiding election official shall seal the **portable ballot box** and return it, together with all other election materials, to the custody of the chief election officer.

6.3   If a **vote tabulating unit** is in use at a special voting opportunity, the presiding election official appointed to attend the special voting opportunity shall follow the procedures outlined in Section 5 of the Bylaw as if it were an advance voting opportunity.

6.4   For clarity, sections 6.1 to 6.3 only apply to a general local election or by-election that includes special voting opportunities.

7.   PROCEDURE AFTER THE CLOSE OF VOTING ON GENERAL VOTING DAY

7.1   After the close of voting on general voting day at voting opportunities where a **vote tabulating unit** was used in the election, but excluding advance special voting opportunities, each presiding election official shall:

(a)   ensure that any remaining **ballots** in the **portable ballot box** are inserted into the **vote tabulating unit**;

(b)   secure the **vote tabulating unit** so that no more **ballots** can be inserted;

(c)   generate three copies of the **register tape** from the **vote tabulating unit**; and

(d)   deliver one copy of the **register tape**, along with the **vote tabulating unit**, to the chief election officer at **Election headquarters**;

and each alternate presiding election official shall:

(e)   account for the unused, spoiled and voted **ballots**, and place them, packed and sealed separately, into the election materials transfer box along with one copy of the **register tape**;

(f)   complete the **ballot** account and place the duplicate copy in the election materials transfer box;

(g)   seal the election materials transfer box;

(h) place the voting books, the original copy of the **ballot** account, one copy of the **register tape**, keys and all completed administrative forms into the chief election officer portfolio; and

(i) transport all equipment and materials to **election headquarters**.

7.2 At the close of voting on general voting day the chief election officer shall direct the presiding election official for the advance voting opportunity and any special voting opportunities where **vote tabulating units** were used to proceed in accordance with Section 7.1(a) to (f) inclusive of this bylaw.

7.3 All **portable ballot boxes** used in the election will be opened, under the direction of the chief election officer at the close of voting on general voting day and all **ballots** shall be removed and inserted into a **vote tabulating unit** to be counted, after which the provisions of Section 7.1(a) to (f), so far as applicable, shall apply.

8. RECOUNT PROCEDURE

8.1 If a recount is required, it shall be conducted under the direction of the chief election officer, and using the **automated vote counting system** and generally in accordance with the following procedure:

(a) the **memory packs** of all **vote tabulating units** will be cleared;

(b) **vote tabulating units** will be designated for each voting place;

(c) all **ballots** will be removed from the sealed **ballot** boxes; and

(d) all **ballots**, except spoiled **ballots**, will be reinserted in the appropriate **vote tabulating units** under the supervision of the chief election officer.

9. GENERAL

9.1 Any enactment referred to herein is a reference to an enactment of British Columbia and regulations thereto, as amended, revised, consolidated or replaced from time to time.

9.2 If any part, section, sentence, clause, phrase or word of this bylaw is for any reason held to be invalid by the decision of any Court of competent jurisdiction, the invalid portion shall be severed and the decision that it is invalid shall not affect the validity of the remainder which shall continue in full force and effect and be construed as if the bylaw had been adopted without the invalid portion.

10. EFFECTIVE DATE

10.1 This bylaw shall take full force and effect upon the date of adoption.

Read a first, second, and third time by the Municipal Council this 23rd day of June, 2014.

Adopted by the Municipal Council of the City of Kelowna this 14th day of July, 2014.

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City Clerk