THE CORPORATION OF THE DISTRICT OF OAK BAY

BYLAW NO. 4284
(**Amended by Bylaw No. 4419, 4544, 4713, 4810, and
4815)

CONSOLIDATED FOR CONVENIENCE TO JUNE 27, 2022

A Bylaw to provide for various procedures governing the
conduct of local government elections and other voting in Oak Bay

The Municipal Council of The Corporation of The District of Oak Bay, in open meeting assembled, enacts as follows:

Whereas the *Local Government Act* provides local governments with the authority to determine various procedures and requirements to be applied in the conduct of local government elections and other voting;

Therefore, the Municipal Council of The Corporation of the District of Oak Bay, in open meeting assembled enacts as follows:

1   (1)   In this Bylaw, the expressions used shall have the respective meanings assigned to them in the *Local Government Act*, except as specifically set forth in this Section or where the context otherwise requires.

    (2)   Definitions

        In this Bylaw:

        "Acceptable mark" means a completed mark which the vote counting 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 other voting question.
                                                    (Bylaw No. 4815, adopted June 27, 2022)

        "Automated vote counting system" means a system that counts and records votes and processes and stores election results, and which comprises a number of vote counting units, each of which rests on a two-compartment ballot box, one compartment of which is for voted ballots inserted into the vote counting unit while it is functioning, and the other for the temporary storage of voted ballots during such time as the vote counting unit is not functioning.

        "Ballot" means a single 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 to be filled; and

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

"Ballot return override procedure" means the use, by an election official, of a device on a vote counting unit, which causes the unit to accept a returned ballot.

"Chief Election Officer" means the Chief Election Officer appointed by a resolution of Council for an election or other voting.

"Council" means the Municipal Council of The Corporation of the District of Oak Bay;

"Elector" means a resident elector or property elector of the Municipality.

"Election" means a general local election or a by-election held in accordance with the *Local Government Act*.

"Election headquarters" means the District of Oak Bay office, located at 2167 Oak Bay Avenue, Victoria, British Columbia.

"General Voting Day" means,

(a)   for a general local election, the third Saturday in October in the year of the election;

(**Bylaw No. 4713, adopted June 25, 2018)

(b)   for by-elections or elections ordered by the Minister, the date set in accordance with the appropriate provisions of the *Local Government Act*;

(c)   for other voting, the date set in accordance with Section 162 of the *Local Government Act*;

"Memory pack" means a computer software cartridge which is inserted into the vote counting unit and into which is pre-programmed the names of all the candidates for each of the offices to be filled, and the alternatives of "yes" or "no" for each question on the ballot, and which records and retains information on the number of acceptable marks made for each.

"Municipality" means the area within the geographic boundaries of the District of Oak Bay.

"Other Voting" means voting on a matter for which assent of the electors is required by the *Local Government Act* or any other Act of the Province of British Columbia.

"Portable ballot box" means a ballot box, for use in the election, where a vote counting unit is not being used at the time of voting.

"Results tape" means the printed record generated from a vote counting unit at the close of voting on general voting day, which shows the number of votes for each candidate for each of the offices to be filled, and the number of votes for and against each bylaw or other matter on which the assent or opinion of the electors is sought.

"Returned ballot" means a ballot marked by an elector, which was inserted into the vote counting unit, 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.

"Storage ballot compartment" means a designed compartment in the ballot box under each vote counting unit into which voted ballots are temporarily deposited in the event that the unit ceases to function.

"Vote counting 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 other voting question.

"Voted ballot" means a ballot which has been marked by an elector:

(a)   in a manner that can be accepted by a vote counting unit without the use of the ballot return override procedure, other than such a ballot which is the subject of a ballot replacement request under Section 7(6);

(b)   in a manner that cannot be accepted by a vote counting unit without the use of the ballot return override procedure but which on the instruction of the elector or pursuant to Section 7(8), 7(12) or 7(13) is fed into the vote counting unit by an election official using that procedure;

(c)   which is temporarily deposited into a storage ballot compartment; or

(d)   which is deposited into a portable ballot box.

(**Bylaw No. 4419, adopted June 23, 2008)

2   Registration of Electors

(1)   The register of resident electors for elections and other voting is deemed to be the most current Provincial list of voters for the Municipality prepared under the *Election Act* and which is available at the time an election or other voting is to be held.

(2)   The Provincial list of voters shall become the register of resident electors no later than 52 days before general voting day for any election or other voting held in the Municipality.

3   Advance Voting Opportunities

(1)   In accordance with Section 107 of the *Local Government Act*, there shall be two advance voting opportunities at all elections and other voting, to be held at the Oak Bay Municipal Hall, 2167 Oak Bay Avenue, Victoria, B.C., or an alternate location

designated by the Chief Election Officer, to be held:

(a)   on the 10th day before general voting day; and

(b)   on the 3rd day before general voting day except where that day coincides with a statutory holiday, in which case the advance voting opportunity shall be 4 days before general voting day.

(**Bylaw No. 4815, adopted June 27, 2022)

(2)   As authorized under Section 108 of the *Local Government Act*, the Chief Election Officer is authorized to establish additional advance voting opportunities for each election or other voting to be held in advance of general voting day and to set the date, place and voting times for those advance voting opportunities.

(**Bylaw No. 4815, adopted June 27, 2022)

4   Special Voting Opportunities

(1)   In order to give electors who may otherwise be unable to vote an opportunity to do so, where in the opinion of the Chief Election Officer a special voting opportunity is required, the Chief Election Officer is authorized, in accordance with Section 109 of the *Local Government Act*, to establish a special voting opportunity and to set the date, place and voting times for that special voting opportunity for each election or other voting.

(**Bylaw No. 4544, adopted July 18, 2011)
(**Bylaw No. 4815, adopted June 27, 2022)

(2)   The Chief Election Officer is authorized to limit the number of candidate representatives present at Special Voting Opportunities.

(**Bylaw No. 4815, adopted June 27, 2022)

5   Tie Vote After Judicial Recount

(1)   If at the completion of a judicial recount the results of the election cannot be declared because there is an equality of valid votes for 2 or more candidates, the results will be determined by lot in accordance with Section 151 of the *Local Government Act*.

(**Bylaw No. 4815, adopted June 27, 2022)

6   Use of Voting Machines

(1)   Council hereby provides for the use of an automated vote counting system for the conduct of elections and other voting that may, from time to time, be required.

(**Bylaw No. 4419, adopted June 23, 2008)

7   Automated Voting Procedures

(1)   The presiding election official or an election official for each voting place shall offer, and if requested, ensure that a demonstration of how to vote using a vote counting unit is provided to an elector, as soon as such elector enters the voting place and before a ballot is issued.

(2)   Upon completion of the voting demonstration, if any, the elector shall proceed as instructed, to the election official responsible for issuing ballots, who, upon fulfilment of the requirements of the *Local Government Act*, shall then provide a ballot to the elector, a secrecy sleeve if requested by the elector, the ballot marking instrument, and any further instructions the elector requests.

(3)   Upon receiving a ballot the elector shall immediately proceed to a voting compartment to vote.

(4)   The elector may vote only by making an acceptable mark on the ballot:

(a)   opposite the name of each candidate of choice, up to the maximum number of candidates to be elected for each of the offices to be filled; and

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

(5)   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 turn the ballot upside down and proceed to the vote counting unit, and under the supervision of the election official in attendance, insert the ballot directly from the secrecy sleeve, if applicable, into the vote counting unit without the acceptable marks on the ballot being exposed.

(6)   If, before inserting the ballot into the vote counting unit, an elector determines that a mistake has been made when marking the ballot, or if the ballot is returned by the vote counting unit, the elector may return to the voting compartment to correct the ballot, or the elector may request a replacement ballot by informing the election official in attendance and may then return to the voting compartment to mark the replacement ballot.

(7)   Upon being informed of 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.

(8)   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 counting unit, the election official shall, using the ballot return override procedure, reinsert the returned ballot into the vote counting unit to count any acceptable marks which have been made correctly.

(9)   Any ballot counted by the vote counting 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.

(10)   Once the ballot has been inserted into the vote counting unit and the unit indicates that the ballot has been accepted, the elector must immediately leave the voting place.

(11)   During any period that a vote counting unit is not functioning, the election official supervising the unit shall insert all ballots delivered by the electors during this time, into the storage ballot compartment, on the understanding that if the vote counting unit:

   (a)   becomes operational, or

   (b)   is replaced with another vote counting unit,

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

(12)   Any ballot temporarily stored in the storage ballot compartment during a period when the vote counting unit was not functioning, which is returned by the vote counting 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 counting unit to ensure that any acceptable marks are counted.

(13)   Any ballot deposited into a portable ballot box, which is returned by the vote counting 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 counting unit to ensure that any acceptable marks are counted.

*(**Bylaw No. 4419, adopted June 23, 2008)*

8   Advance Voting Opportunity Procedures

(1)   Vote counting units shall be used at all advance voting opportunities and voting procedures at the advance voting opportunities shall follow, as closely as possible, those described in Section 7 of this Bylaw.

(2)   At the close of voting at each advance voting opportunity, the presiding election official in each case shall ensure that:

   (a)   no additional ballots are inserted in the vote counting unit;

   (b)   the storage ballot compartment is locked to prevent insertion of any ballots;

   (c)   the results tapes in the vote counting unit are not generated; and

   (d)   the memory pack of the vote counting unit is secured.

(3) At the close of voting at the final advance voting opportunity, the presiding election official shall:

(a) ensure that any remaining ballots in the storage ballot compartment are inserted into the vote counting unit;

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

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

(**Bylaw No. 4419, adopted June 23, 2008)

9 Special Voting Opportunity Procedures

(1) Unless the chief election officer determines it is practical to use a vote counting 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 Section 7 of this Bylaw so far as applicable, except that the voted ballots shall be deposited into the portable ballot box supplied by the presiding election official.

(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.

(3) If a vote counting 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 8 of this Bylaw as if it were an advance voting opportunity.

(**Bylaw No. 4419, adopted June 23, 2008)

10 Mail Ballot Voting

(1) As authorized under section 110 of the *Local Government Act*, voting may be done by mail ballot and registration of election may be done by mail in conjunction with mail ballot voting.

(2) The Chief Election Officer may establish the time limits in relation to voting by mail that are not otherwise established in this Bylaw.

(3) Sufficient record will be kept by the Chief Election Officer so that changes of the elector's right to vote may be made in accordance with the intent of section 116 of the *Local Government Act.*

(4) A person exercising the right to vote by mail may be challenged in accordance with and on the grounds specified in section 126 of the *Local Government Act*.

(5)   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)   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.*

(Bylaw No. 4815, adopted June 27, 2022)

16   Replacement of Spoiled 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 or designated election official 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 or designated election official.

(2)   The Chief Election Officer shall, upon receipt of the spoiled ballot package, record such fact, and shall proceed to issue a replacement mail ballot in accordance with Section 11(2) of this bylaw.

*(**Bylaw No. 4544, adopted July 18, 2011)*

17   Procedures After Close Of Voting On General Voting Day

(1)   After the close of voting on general voting day, each presiding election official, except those responsible for advance and special voting opportunities, shall undertake all of the following, generally in the order stipulated:

(a)   ensure that any remaining ballots in the storage ballot compartment are inserted into the vote counting unit;

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

(c)   generate three copies of the results tape from the vote counting unit;

(d)   telephone the result to election headquarters immediately;

(e)   account for the unused, spoiled and voted ballots and place them, packaged and sealed separately, together with the memory pack from the vote counting unit and one copy of the results tape, into the ballots and results box;

(f)   complete the ballot account and place the duplicate copy in the ballots and results box;

(g)   seal the ballots and results box;

(h) place the voting books, list of electors, the original copy of the ballot account, one copy of the results tape, completed registration cards, keys and all completed forms into the election materials box; and

(i) deliver, or have available for pick-up, the sealed ballots and results box, vote counting unit and the election materials box, to the chief election officer at election headquarters.

(2) At the close of voting on general voting day, the chief election officer shall direct the presiding election official for the advance voting opportunities and any special voting opportunities where vote counting units were used, to proceed in accordance with Section 17(1) of this Bylaw.

(**Bylaw No. 4544, adopted July 18, 2011)

(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 counting unit to be counted, after which the provisions of Section 17(1), so far as applicable, shall apply.

(**Bylaw No. 4419, adopted June 23, 2008)

(**Bylaw No. 4544, adopted July 18, 2011)

18   Recount Procedure

(1) If a recount is requested by a candidate after the preliminary election results are announced, it shall be conducted under the direction of the chief election officer using the automated vote counting system and generally in accordance with the following procedure:

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

(b) a vote counting unit will be designated for each voting place;

(c) all voted ballots will be removed from the sealed election materials boxes, and reinserted in the appropriate vote counting unit under the supervision of the chief election officer;

(d) any ballots returned by the vote counting unit during the recount process shall, through the use of the ballot return override procedure, be reinserted in the vote counting unit to ensure that any acceptable marks are counted; and

(e) to obtain election results, the chief or deputy chief election officer shall place the results of each voting place on spreadsheets so as to tally the total election results.

(**Bylaw No. 4419, adopted June 23, 2008)

19   General

    (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.

    (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.

(**Bylaw No. 4419, adopted June 23, 2008)

20   Repeals

    (1)   The following Bylaws are hereby repealed except insofar as they repeal any other Bylaw:

        (a)   Bylaw No. 3767, "Elections and Voting Bylaw, 1993".

21   This Bylaw may be cited as the "Elections and Voting Bylaw, 2005".

READ a first, second and third time by the Municipal Council on June 13, 2005

RECONSIDERED, ADOPTED and FINALLY PASSED by the Municipal Council on June 27, 2005

_____   _____
Mayor   Municipal Clerk

Sealed with the Seal of The Corporation of the District of Oak Bay.