

**CAPE BRETON REGIONAL MUNICIPALITY
BY-LAW NUMBER A- 100
RESPECTING ALTERNATIVE VOTING**

BE IT ENACTED by the Council of the Cape Breton Regional Municipality, under the authority of Section 146A of the *Municipal Elections Act*, 1989 R.S.N.S. c. 300, as amended, as follows:

Short Title

1. This By-law shall be known as By-law Number A – 100 and may be cited as the “Alternative Voting By-law”.

Interpretation

2. In this by-law:
 - (a) “Act” means the *Municipal Elections Act*, 1989 R.S.N.S. c. 300, as amended;
 - (b) “Advance poll” means the Tuesday immediately preceding ordinary polling day; and either:
 - (i) one other day fixed by the Council by resolution that is either Thursday the ninth day before ordinary polling day or Saturday, the seventh day before ordinary polling day; or
 - (ii) if Council has delegated its authority to fix a day to the Returning Officer, one other day fixed by the Returning Officer that is either Thursday, the ninth day before ordinary polling day, or Saturday the seventh day before ordinary polling day;
 - (c) “alternative polling days” means any hours and dates fixed by a resolution of Council for alternative voting;
 - (d) “alternative voting” means voting by telephone or via the internet and includes a combination of telephone and internet voting;
 - (e) “ballot box” means a computer database in the system where cast internet ballots and telephone ballots are put;
 - (f) “candidate” means a person who has been nominated as a candidate pursuant to the *Act*;
 - (g) “Council” means the Council of the municipality;

- (h) “Deputy Returning Officer” means a person appointed under the Act to preside over a polling station;
- (i) “Education (CSAP) Act” means the *Education (CSAP) Act*, 1995-1996 S.N.S. c. 1, as amended;
- (j) “election” means an election held pursuant to the *Act*, including a CSAP school board election, a special election and a plebiscite;
- (k) “Election Officer” means an “election official” under the *Act*;
- (l) “elector” means a person:
 - (i) qualified to vote pursuant to the Act and the *Education (CSAP) Act*; and
 - (ii) entitled to vote for an election pursuant to section 7 of this by-law;
- (m) “friend voter” means a friend who votes for an elector pursuant to section 9 of this by-law;
- (n) “internet ballot” means an image of a ballot on a screen of a personal computing device, including all the choices available to an elector and the spaces in which an elector marks a vote;
- (na) “list of electors” means:
 - (i) prior to the list of electors being completed and certified by the Returning Officer pursuant to section 50A of the Act, the list of electors that has been amended and corrected by the Returning Officer pursuant to subsections 2 and 3 of section 38 of the *Act*; or
 - (ii) the list of electors that has been completed and certified by the Returning Officer pursuant to section 50A of the *Act*;
- (o) “municipality” means the Cape Breton Regional Municipality;
- (p) “normal business hours” means the time between 8:30 a.m. and 4:30 p.m. Monday through to and including Friday;
- (q) “ordinary polling day” means the third Saturday in October in a regular election year and in the case of any other election means the Saturday fixed for the election;
- (r) “PIN” means a Personal Identification Number issued to:
 - (i) an elector for alternative voting on alternative voting polling days; or
 - (ii) to a System Elections Officer;

- (ra) “personal computing device” means an electronic device that may access the internet (including, but not limited, to a computer, laptop, tablet, gaming device or smart phone).
- (raa) “plebiscite” means a plebiscite directed to be held by the Council pursuant to section 53 of the *Municipal Government Act* or section 56 of the *Act*;
- (rb) “procedures and forms” means the procedures and forms established by the Returning Officer pursuant to subsection 146A(4) of the *Act*.
- (s) “proxy voter” means an elector who votes by a proxy pursuant to the *Act*;
- (t) “regular election year” means 2012 and every fourth year thereafter;
- (u) “rejected ballot” means refusal by an electoral officer to accept a ballot in a race;
- (v) “Returning Officer” means a Returning Officer who is appointed pursuant to the *Act*;
- (w) “seal” means to secure the ballot box and prevent internet and telephone ballots from being cast;
- (wa) “special election” means a special election held pursuant to the *Act*, including a special election for a vacancy on the CSAP school board;
- (wb) “spoiled ballot” means an internet ballot or telephone ballot that is accepted by the elector that:
 - (i) is not marked for any candidate in a race;
 - (ii) is marked by an elector indicating a refusal to cast a vote for any candidate in a race;
- (x) “system” means the technology, including software, that:
 - (i) records and counts votes: and
 - (ii) processes and stores the results of alternative voting during alternative polling days;
- (y) “System Elections Officer” means:
 - (i) a person who maintains, monitors, or audits the system, and
 - (ii) a person who has access to the system beyond the access necessary to vote by alternative voting.

- (z) “telephone ballot” means:
 - (i) an audio set of instructions which describes the voting choices available to an elector; and
 - (ii) the marking of a selection by an elector by depressing the number on a touch tone keypad.

Alternative Voting Permitted

- 3. (1) Subject to this by-law, alternative voting shall be permitted on alternative polling days.
- (2) Council may, by resolution, provide that voting by a telephone or by a personal computing device shall be the only means of voting for an election.

Notification of Electors

- 4. (1) The Returning Officer shall cause notice of alternative polling days to be published in a newspaper circulating in the municipality.
- (2) The notice of alternative polling days shall:
 - (a) identify the alternative polling days for alternative voting; and
 - (b) inform the elector that telephone voting and internet voting is permitted during alternative polling days.
- (3) The notice may include any other information the Returning Officer deems necessary.

Form of Telephone and Internet Ballots

- 5. (1) A telephone ballot and internet ballot shall:
 - (a) identify by the title “Election for Mayor” or “Election for Councillor” or “Election for CSAP School Board Member”, as the case may be;
 - (b) identify the names or names by which they are commonly known of the candidates with given names followed by surnames, arranged alphabetically in order of their surnames and, where necessary, their given names; and
 - (c) warn the elector to “vote for one candidate only” or “vote for not more than (the number of candidates to be elected) candidates”, as the case may be.

- (2) No title, honour, decoration or degree shall be included with a candidate's name on an internet ballot or telephone ballot.

Oath

- 6. Any oath that is authorized or required shall be made:
 - (i) in the form specified by the procedures and forms; or
 - (ii) if the form is not specified by the procedures and forms; in the form required by the *Act*.

Electors

- 7. No person shall vote by alternative voting unless:
 - (a) the person's name appears on the applicable list of electors; or
 - (b) the person is added to the applicable list of electors pursuant to section 36 of the Act or section 7A of the By-law.
- 7A. (1) Notwithstanding sections 33 and 38 of the Act, in addition to section 36 of the Act, a person may apply for an amendment to any list of electors by telephone after the first notice of the preliminary list of electors is given pursuant to Section 34 of the Act and before the end of alternative polling days and such amendment may be made by a revising officer or the Returning Officer in accordance with subsection 2.
- (2) Notwithstanding subsection 36(2) of the Act, an application by telephone to be added to any list of electors shall be sufficiently detailed to allow the revising officer or Returning Officer to determine whether the information can be verified from other sources available to the revising officer or Returning Officer and, if the revising officer or Returning Officer determines that this is not possible, then the applicant shall be required to personally appear, at the location and time determined by the revising officer or Returning Officer, and make application accompanied by a declaration under oath administered by the revising officer or Returning Officer of the facts that support the application.

Polling Station for Alternative Voting

- 7B. (1) If Council decides that voting by telephone and by a personal computing device are the only means of voting for an election, the Returning Officer shall establish

at least one polling station for alternative voting and each polling station established shall be equipped with at least one device that is capable of casting either an internet ballot or telephone ballot.

- (2) The polling station for alternative voting shall be:
 - (a) available for electors who are voting with friend voters and for any other electors; and
 - (b) open on each advance polling day and on ordinary polling day; and
 - (c) on such other days and times as decided by the Returning Officer.

Polling Locations for Alternative Voting

- 7C. (1) In addition to establishing at least one polling station, the Returning Officer may establish one or more polling locations for alternative voting during alternative polling days.
- (2) A polling location may be at such places and during such times as may be determined by the Returning Officer and such location shall be equipped with at least one device that is capable of casting either an internet ballot or telephone ballot.
- (3) A polling location established by the Returning Officer is not a polling station within the meaning of the Act.

Notification and Attendance at Polling Location

- 7D. (1) The Returning Officer shall provide each candidate with at least forty-eight (48) hours' notice of a polling location.
- (2) A candidate officially nominated or their official agent may appoint one or more agents to represent the candidate at each polling location.
- (3) An agent may absent himself or herself from and return to a polling location from time to time while the polling location is open.
- (4) Only one agent for each candidate shall be entitled to remain in the polling location at any one time while the polling location is open.
- (5) Upon exhibiting the appointment to the deputy returning officer or Returning Officer and without taking an oath, the official agent, other than a candidate acting as official agent, may represent a candidate in any polling location in the same manner as, and in addition to, an agent.

Proxy Voting

8. A proxy voter shall not vote for an elector by alternative voting.

Friend Voting

9. (1) A friend voter shall only vote for an elector by alternative voting if:
- (a) an elector is unable to vote because:
 - (i) the elector is blind
 - (ii) the elector cannot read; or
 - (iii) the elector has a physical disability that prevents him or her from voting by alternative voting.
 - (b) the elector and the friend appear, in person, before the Returning Officer or the Deputy Returning Officer and take the prescribed oaths.
- (2) A candidate shall not act as a friend voter unless the elector is a child, grandchild, brother, sister, parent, grandparent, or spouse of the candidate.
- (3) The elector shall take an oath in the prescribed form to this by-law providing that he or she is incapable of voting without assistance.
- (4) The friend of the elector shall take an oath in the prescribed form to this by-law that:
- (a) the friend has not previously acted as a friend for any other elector in the election other than an elector who is a child, grandchild, brother, sister, parent, grandparent, or spouse of the friend of the elector.
 - (b) the friend will mark the ballot as requested by the elector; and
 - (c) the friend will keep secret the choice of the elector.
- (5) The Returning Officer shall enter in the poll book:
- (a) the reason why the elector is unable to vote;
 - (b) the name of the friend; and
 - (c) the fact that the oaths were taken.

System Elections Officer

- 9A. (1) A System Elections Officer shall have access to the system prior to the commencement of alternative voting to verify the count for each candidate is zero.
- (2) Notwithstanding the day and time set for alternative voting, alternative voting shall not commence until the counts for each of the candidates is zero.
- 9B. A System Elections Officer shall comply with the procedures and forms established by the Returning Officer pursuant to subsection 146A(4) of the Act.

Voting

10. (1) The system shall put internet ballots and telephone ballots cast by an elector in the ballot box.
- (2) The system shall put spoiled ballots in the ballot box.

Seal

11. (1) Where alternative voting closes before the close of the polls on ordinary polling day, the system shall seal the ballot box until after the close of the poll on ordinary polling day.
- (2) The system shall seal the ballot box even where fewer than ten persons from any polling district voted for a candidate during alternative polling days.

List of persons who voted

12. Where alternative voting closes before the close of the polls on ordinary polling day, the system shall:
- (a) generate a list of all electors who voted by alternative voting; and
- (b) on the applicable list of electors, cause a line to be drawn through the name of all the electors who voted during alternative polling days.
13. A printed and electronic copy of the lists under Section 12 shall be delivered to the Returning Officer within 24 hours of the close of alternative voting.
- 13A. Where alternative voting closes at the close of the polls on ordinary polling day, the system shall generate a list of all electors who voted by alternative voting.

Counting

14. (1) At the close of ordinary polling day, the system shall generate a count of the telephone ballots and internet ballots in the ballot box that were cast for each candidate during the alternative polling days.
- (2) In counting the votes that were cast for each candidate during alternative polling days, the system shall count spoiled ballots and shall not count rejected ballots.

Tallying of Spoiled Ballots

15. At the close of ordinary polling day, the system shall tally the number of spoiled ballots that were cast during alternative polling days and the tally shall be delivered to the Returning Officer.

Recount by System

16. In the event of a recount, the system shall regenerate the election count and a printed copy of the regenerated count shall be given to the Returning Officer.
17. If the initial count and the regenerated count match, the regenerated count shall be the final count of the votes cast by alternative voting.
18. (1) If the regenerated count and the initial count do not match, the Returning Officer shall:
 - (a) direct one final count be regenerated by the system of the votes cast by alternative voting, and
 - (b) attend while the final count is being regenerated.
- (2) The regenerated final count pursuant to Subsection (1) shall be the final count of the votes cast by alternative voting.

Recount by Court

19. (1) For elections for which there is no voting by paper ballot, there shall be no recount by a judge.
- (1a) For elections for which there is voting by paper ballot and alternative voting, in respect of alternative voting, the judge shall only consider the final count by the system, as determined by Section 17 or 18, of the total number of votes that were cast by alternative voting for each candidate.

- (2) The final count by the system, as determined by Section 17 or 18, of the total number of votes that were cast by alternative voting for each candidate shall be added to the judge's count of the number of votes for each candidate cast by non-alternative voting.

Secrecy

20. An election officer and system election officer shall maintain and aid in maintaining the secrecy of the voting.
21. Every person in attendance at a polling station, or at the counting of the votes, shall maintain and aid in maintaining the secrecy of the voting.

Other Methods of Voting

22. (1) If voting via the Internet through the unsupervised use of a personal computing device is permitted during an election, voting shall be permitted by some other means on each advance polling day and on ordinary polling day.
- (2) Council may, by resolution, provide that voting by a telephone and by a personal computing device shall be the only means of voting for an election.

Severability

23. If a court of competent jurisdiction should declare any section or part of a section of this by-law to be invalid, such section or part of a section shall not be construed as having persuaded or influenced Council to pass the remainder of the by-law and it is hereby declared that the remainder of the by-law shall be valid and shall remain in force.

Prohibitions

24. No person shall:
 - (a) use another person's PIN to vote or access the system unless the person is a friend voter;
 - (b) take, seize, or deprive an elector of his or her PIN; or
 - (c) sell, gift, transfer, assign or purchase a PIN.
25. No person shall:
 - (a) interfere or attempt to interfere with an elector who is casting an internet ballot or telephone ballot;

- (b) interfere or attempt to interfere with alternative voting; or
 - (c) attempt to ascertain the name of the candidate for whom an elector is about to vote or has voted.
- 26. No person shall, at any time, communicate or attempt to communicate any information relating to the candidate for whom an elector has voted.
- 26A. No
 - (a) candidate,
 - (b) recognized agent, or
 - (c) person acting on behalf or in support of a candidate,shall provide a person with a personal computing device or telephone for the purposes of casting an internet ballot or telephone ballot.

Offences and Penalty

- 27. (1) A person who:
 - (a) violates any provision of this by-law; or
 - (aa) makes a false statement in a declaration; or
 - (b) permits anything to be done in violation of any provision of this by-law;is guilty of an offence.
- (2) A person who contravenes subsection (1) of this section is guilty of an offence and is liable, on summary conviction, to a penalty of not less than five thousand dollars and not more than ten thousand dollars and in default of payment, to imprisonment for a term of two years less a day, or both.
- (3) In determining a penalty under subsection (2), a judge shall take into account:
 - (a) the number of votes attempted to be interfered with;
 - (b) the number of votes interfered with; and
 - (c) any potential interference with the outcome of an election.
- (4) Pursuant to Section 146A of the *Act*:

- (a) the limitation period for the prosecution of an offence under this by-law is two years from the later of the date of the commission of the offence and the date on which it was discovered that an offence had been committed; and
- (b) *The Remission of Penalties Act*, 1989 SNS c. 397, as amended, does not apply to a pecuniary penalty imposed by this by-law.

PASSED AND ADOPTED by a majority of the whole Council at a duly called meeting of the Cape Breton Regional Municipality held on the 15th day of May, 2012, and amended by Council on the 21st day of June, 2016, and on the 9th day of June, 2020.

Mayor Cecil P. Clarke

Municipal Clerk – Deborah Campbell Ryan

I, Deborah Campbell Ryan, Municipal Clerk of the Cape Breton Regional Municipality, hereby certify that the above noted by-law was passed at a meeting of the Cape Breton Regional Municipal Council on May 15th, 2012, and amended on the 21st day of June, 2016, and on the 9th day of June, 2020.

Municipal Clerk – Deborah Campbell Ryan

Publication Date: June 12, 2020