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SUPPLEMENTAL CIRCULAR TO MUNICIPALITIES

Municipal Elections Act: Mail-In Voting

Following the Department of Municipal and Provincial Affairs ("MAPA")'s previous Circular on Mail-In Voting, we have become aware that municipalities still have questions on the vote by mail process. This Circular is intended to provide guidance to those municipalities planning to use the vote by mail option in the upcoming general municipal election.

The *Municipal Elections Act* (the "Act"), is prescriptive in nature, which means if something is not set out in the Act, a municipality cannot do it. Therefore, municipalities cannot use drive-through voting, or any other manner of voting not set out in the Act.

Section 54 of the Act, sets out the requirements for mail-in voting. Municipalities can only engage in mail-in voting with prior written Ministerial approval under subsection 54(1) of the Act. Once a municipality has obtained written Ministerial approval for vote by mail under subsection 54(1), Council must then fulfill the other requirements set out in section 54. Of particular note is subsection 54(5), which provides: "(5) The procedures and forms established by the returning officer, **if they are consistent with the principles established under this Act** and the required form of documents established by the minister, shall be considered to have been established under this Act." This means that the Minister can only approve regulations for vote by mail that are consistent with the Act.

All mail-in ballots must be received by the municipality prior to 8pm, September 28, 2021. Any mail-in ballots received after 8pm, September 28, 2021, cannot be counted, no matter whether they were postmarked September 28, or earlier. Drop off locations can be used as long as they are secure and approved via mail-in voting regulations.

Municipalities intending to provide mail-in voting regulations for Ministerial approval, are strongly recommended to have their solicitors review their proposed regulations to ensure they are consistent with the Act, prior to submitting them for approval. All proposed regulations are required to be submitted and receive Ministerial approval at least 60 days prior to Election Day.

With respect to ensuring accessibility and inclusivity, sections 48 and 49 the Act address these matters. They allow for assistance with voting in-person, the suspension of voting to bring a ballot box outside to someone, and the ability to establish mobile polls in places such as nursing homes, hospitals, etc.

If a municipality chooses to have a hybrid election, that includes both in-person voting and mail in voting, they should use the same ballot for both forms of voting.

With respect to counting the ballots, mail-in voting does not exempt municipalities from complying with section 51 of the Act. Section 51 mandates that after the polls close at 8pm, the returning officer must certify the vote, and only then can the ballots be counted.

Important Dates and Requirements for Mail-In Voting

- **Motion 1 (Excludes Cities)**: Council of a municipality passes a motion to request that the Minister of MAPA grant approval for mail-in voting in the upcoming general election.
- **Motion 2**: Council must pass resolution to authorize voters to vote by mail in the upcoming general election.
- **Motion 3**: Council, must by resolution, adopt the mail-in voting regulations and forward them to the Minister for approval at least 60 days prior to election day.
 - The Department will review the regulations to determine whether they are in compliance with the Act.
 - Municipalities are recommended to have their solicitor review their regulations for legislative compliance prior to submitting them to the Minister for approval.
 - The regulations do not come into force until the Minister approves them in writing.
 - Should a municipality who has adopted mail-in voting wish to participate in proxy voting, advanced polling, and time-off to vote, then these regulations must reflect this process in accordance with subsection 54(6) of the Act.
 - If not approved by the Minister, the municipality will have to redraft the regulations, conduct another motion to accept the revisions and send them back to the department for re-evaluation.
 - Mail-in voting regulations must be in place **prior to July 30, 2021**, as the Returning Officer must provide the regulations and any associated forms to each candidate on July 30, 2021. Therefore, all municipalities should submit mail-in voting regulations no later than **June 30, 2021**, to ensure sufficient time for departmental review and Ministerial approval.
 - The nomination period for mail-in voting is extended by a week in accordance with subsection 14(4). Nominations for mail in voting shall be received between the hours of 9:00 a.m. and 4:00 p.m. on any of the days, excluding Saturdays, Sundays and public holidays from the thirty-fifth to the twenty-eighth day immediately before the election. Thirty-Five days from September 28, 2021, is August 24, 2021.

- **Potential Motion:** Should a municipality that has approval for mail-in voting ultimately decide not to pursue that option, Council must pass a motion not to proceed with mail-in voting.

The department, in consultation with the Department of Health and Community Services, intends to provide a further circular prior to the election with pertinent COVID-19 information and guidelines.

I encourage any municipality to contact your regional support team if you have any questions regarding the above.

Eastern: (709) 729-5020

Central: (709) 256-1061

Western/Labrador: (709) 637-8010

Sincerely,

A blue ink signature of Ted Lomond, written in a cursive style.

TED LOMOND

Deputy Minister