TITLE: BY-LAW NO. 6976 – USE OF VOTE COUNTING MACHINES FOR CITY COUNCIL AND SCHOOL BOARD ELECTIONS	
PRESENTER: H. Ewasiuk	**AGENDA NO:**
DEPARTMENT: City Clerk's Office	**DATE: March 29, 2010**
CLEARANCES:	**ATTACHMENTS:** By-law No. 6976 (# of pages = 4) Amended Schedule "A" (# of pages = 1)

APPROVALS:

Original Signed By
C. R. Arvisais   **6/4/10**
Department Head   **Date**

Original Signed By
B. MacRae   **06/04/10**
City Manager   **Date**

SUMMARY OF HISTORY/BACKGROUND:

City Council at its meeting held March 22, 2010 gave consideration to second and third readings of By-law No. 6976 whereby the following resolution was adopted:

> "That third reading of By-law No. 6976 to authorize the use of vote-counting machines for City Council and School Board elections be held in abeyance pending further review and report by Administration on the concerns expressed by members of City Council."

The following information is being provided to address those concerns raised:

The Vote Counting System:

The concept of utilizing vote counting machines was originally considered following the 2006 municipal election in response to issues that arose with the length of time required to tabulate the vote by hand, and the number of spoiled ballots which resulted in a judicial recount in the election of school trustees. Section 62 of The Municipal Councils and School Boards Elections Act permits the use of vote counting machines for City Council and School Board elections provided that a by-law is passed authorizing same.

The former Senior Election Official, Mrs. Joni Swidnicki, had an opportunity to view the use of vote counting machines during the municipal election held in St. Albert, AB in October of 2007 and a request for proposals (RFP) was issued for the lease of portable vote counting machines in February, 2008. Dominion Voting Systems submitted a proposal that met all of the criteria outlined in the RFP, and in order to guarantee 2008 rates for the 2010 election, an agreement was entered into with Dominion Voting System Corp on June 16, 2008. The cost of the lease is $63,165.00 (net of the GST rebate). In preparation for the lease of these machines, the yearly appropriation to the Election Reserve was reviewed to ensure that there would be sufficient funds to cover the cost of same. The lease of the machines was also included in the 10 year capital budget and was recently approved as part of the Election Operating budget for 2010.

Dominion Voting will provide thirty (30) optical scan ballot tabulators with battery back-up units, ballot boxes, secrecy folders, marking pens and memory seals. They will provide all server and user licensing required, programming and installation of the software required for results accumulation and tally, training and election day on-site support and a review of the process with election officials post-election.

Dominion Voting has provided similar services to numerous jurisdictions of various sizes throughout British Columbia, Alberta, Ontario, Quebec and Newfoundland and will be supplying the City of Winnipeg with similar equipment for their municipal election in October.

The Voting Process:

Electors can expect a voting process very similar to previous elections. The voter will receive a paper ballot and will enter the voting booth. Once the voter has made his/her choice(s) for mayor, councillor and school trustee and marked the ballot with a special pen, they will take the ballot in the secrecy folder provided to the election official in charge of the vote tabulator. The folder is placed on the tabulator and the ballot is scanned, tabulated by the machine and deposited in the secured ballot box. It will be immediately determined if there are any errors or irregularities with the ballot.

The machine will provide a read-out of why a ballot is rejected, such as an insufficient mark, more candidates selected that required, etc. At that time, the voter will be given the opportunity to correct their ballot or submit it "as is. The ballot will be accepted at that point.

At end of voting day, the results are uploaded from each tabulator to a central computer through a memory card transfer. Each tabulator will be brought to Election Headquarters at City Hall after the close of polls whereby the memory cards will be removed and inserted in the reader for direct upload to the City's computer. Results from advance polls can be reported as early as 8:01 on Election night, but there will be some time involved in the transport of tabulators to City Hall and the actual download of each polls data. It is estimated that all results can be reported within minutes of the last memory card arrival – typically between 8:30 and 8:45 p.m. The results can be reviewed by election officials before releasing them and the flow of data to candidates, media and the public can be controlled.

Form of Ballot:

It has been confirmed with the supplier of the vote counting machines that the ballot design can easily accommodate any marking area preferred. Upon review, it has been determined that voters are most familiar with marking a box and a revised Schedule "A" to By-law No. 6976 has been attached for consideration that provides a more accurate sample of what the actual ballot will look like.

A public notice illustrating the sample ballot has been published in the City page of the Brandon Sun on April 4, 2010 and detailed information on vote counting machines and the ballot are available on the election website at **www.brandonvotes.ca.**

The tabulators are programmed to look specifically at the marking area of the ballot and determine if a preselected area is filled in. The standard criteria is between 15% and 18%, but can be modified to whatever level deemed necessary. If this criteria is met, it is considered a valid vote, whether the mark be an X, check-mark, scribble or shading in of the entire marking area.

Accuracy and Reliability:

Each optical scan ballot tabulator unit contains a battery back-up unit that will provide power to the machine for a minimum of two hours if there is a failure in the electrical power supply. The system uses a patented watermarking technology which makes the tabulation process completely accountable and transparent. A complete image of each and every ballot cast is stored in the tabulator along with a watermark that is superimposed onto the image of the ballot that denotes how the tabulator interpreted that ballot.

By viewing this image, one can easily verify that the tabulator has assigned the correct interpretation to the voter marks on the ballot. This allows for a complete and full audit of the tabulation process if required.

A full mock election will be carried out as part of training provided by Dominion Voting Systems. This will allow election officials to experience the results processing component by uploading the results files generated by running test ballots through the tabulators.

Following the close of the nomination period, once the final set of candidates has been established, formal logic and accuracy testing will be conducted on each tabulator in the system to ensure that all components are functioning properly.

The Senior Election Official is also investigating the possibility of conducting an "open-house" session(s) for the general public to see the vote tabulators in action.

Voter Assistance:

As with previous elections, special accommodations can be made to assist persons with disabilities to vote in an election. Polling locations will be accessible to all voters. A voter may request the assistance of another person in marking his/her ballot in the voting compartment. The voter may be assisted by an election official or another person as long as the person takes an oath, is at least 18 years of age, does not attempt to influence how the voter votes, marks the ballot as directed by the voter and does not disclose how the voter voted.

Dominion Voting Systems provides a special audio vote feature for visually impaired voters. Those voters will be encouraged to attend the advance polling days to utilize this special system. However, if a voter is unable to attend the advance polling days, a template will be available to assist the voter at the regular polls.

The Senior Election Official may also appoint a language interpreter to assist election officials to communicate voting instructions to voters. Discussions are underway with Brandon Community Language Centre to determine whether this is feasible.

Information on the election website will also be available in French, Ukrainian, Chinese, German, Spanish, Filipino and Russian.

Benefits to the Process:

The use of vote counting machines for the upcoming elections this fall is being recommended to ensure that:

- voters who take the time and make the effort to come out and vote are provided with a greater degree of assistance when casting their ballots;

- all ballots cast on Election Day have been completed properly and not subsequently questionable during the counting of ballots following the closing of the polls or during a judicial recount if one is requested or required;

- the onerous manual tabulation of the election results for all candidates running for Mayor, Councillor or School Trustee by election staff at the end of a 12 hour Election Day is eliminated; and

- such tabulation is carried out accurately and promptly allowing election results to be released much earlier on Election night;

<u>**RECOMMENDATION**</u>**:**

That By-law No. 6976 to authorize the use of vote-counting machines for the City Council and School Board elections in the City of Brandon be amended by deleting therefrom Schedule "A" in its entirety, and substituting therefor the revised Schedule "A" attached to the report of the City Clerk dated March 29, 2010.

That By-law No. 6976, as amended, be read a third and final time.

BEING A BY-LAW OF The City of Brandon to authorize the use of vote-counting machines in the City Council and School Board elections in the City of Brandon.

WHEREAS The Municipal Councils and School Boards Elections Act, SM 2005 c.27 provides for the holding of local elections by municipalities;

AND WHEREAS Section 62 of The Municipal Councils and School Boards Elections Act permits the use of vote-counting machines as provided therein;

NOW THEREFORE the Council of The City of Brandon in regular session assembled, enacts as follows:

<u>Short Title</u>

1.   This by-law shall be referred to as the "Vote-Counting Machines By-law".

<u>Definitions</u>

2.   In this by-law, all definitions shall be in accordance with The Municipal Councils and School Boards Elections Act, except the following:

"Acceptable Mark" means any mark made by an elector on a ballot in the space provided opposite the name of any candidate, which the vote tabulator unit is able to record.

"Automated Vote Counting System" means a system that counts and records votes and processes and stores election results which is comprised of:

(a)   ballot scan vote tabulator(s) which rest(s) on a two compartment ballot box, one compartment of which is for voted ballots, and the other for the temporary storing of voted ballots during such time as the vote tabulator unit is not functioning; and

(b)   a number of portable ballot boxes into which voted ballots are deposited where a vote tabulator is not being used, for counting after the close of voting on election day.

"Ballot" means a single automated ballot card designed for use in an automated vote counting system, which shows the names of all of the candidates for each of the offices contested.

"Ballot Marking Device" means the pen or other instrument, approved by the Senior Election Official, for the use in marking ballots by the elector.

"Blank Ballot" means a ballot without votes in any of the specified voting areas as determined by a vote tabulator.

"Election Headquarters" means the Civic Administration Building, 410 – 9th Street, Brandon, Manitoba.

"Election Official" means a person appointed as the Senior Election Official, or an assistant senior election official or any election official or supervising election official appointed by the Senior Election Official.

"Emergency Ballot Compartment" means one of two separate compartments in the ballot box under each vote tabulator unit into which voted ballots are temporarily deposited in the event that the unit ceases to function.

"Memory Pack" means a computer software cartridge which plugs into the vote tabulator and into which is pre-programmed the names of all of the candidates for each of the offices contested and a mechanism to record and retain information on the number of votes for each candidate.

"Overvoted Ballot" means a ballot in which contains votes for more candidates that are to be elected to an office.

"Portable Ballot Box" means a ballot box which is used at a voting place in the election, where a vote tabulator is not being used.

"Register Tape" means the printed record generated from a vote tabulator at the close of voting on election day which shows the number of votes for each candidate for each office contested.

"Returned Ballot" means a ballot which was inserted into the vote tabulator 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.

"**Voting Official**" means an election official who is responsible for the conduct of voting at a voting station.

"**Voting Record**" means the register of electors who have cast their vote and contains the voters list and information relating to the ballot.

"**Vote Tabulator**" means the device into which voted ballots are inserted and which scans each ballot and records the number of votes for each candidate.

Form of Ballot

3.   The ballot shall contain the names listed in an order determined by random lot of the duly nominated candidates for Mayor and Councillor and, where the elector is eligible to vote for School Trustee, shall contain the names of the duly nominated candidates for School Trustee. The ballot shall be a reasonable facsimile of the sample attached hereto as Schedule "A".

Vote Tabulator

4.   The vote tabulator shall be programmed to, upon insertion of the ballot:

(a)   alert the elector to blank ballots, overvoted ballots and a ballot that has been incorrectly printed, cut, or has been marked outside the voting area or inserted into a vote tabulator in such a way that the vote tabulator is unable to identify the markings on the ballot; and

(b)   print out a message corresponding to the reason for the returned ballot

whereby the elector can decide whether to cast a ballot "as-is", or return the ballot for further review.

Pre-Vote Procedure

5.   (a)   No vote tabulator nor any memory pack shall be used in an election unless it is first tested successfully in accordance with this section and is attested to by an election official signing the register tape showing test results that match the pre-audited results.

(b)   The test of a vote tabulator and memory pack shall be conducted by

(i)   inserting the memory pack into the tabulator;
(ii)   using the vote tabulator to count a pre-audited group of ballots including ballots that fall into the categories referred to in subsection 4(a) and ballots on which are marked a predetermined number of votes for each candidate eligible for votes at the poll or polls for which the memory pack has been programmed;
(iii)   generating a register tape of the results; and
(iv)   comparing the tabulated results with the pre-audited results to ensure accuracy.

(c)   Each vote tabulator or memory pack must be tested within 45 days prior to use.

(d)   Upon request, each candidate is to be provided with evidence of the testing procedure.

(e)   Prior to 8:00 a.m. on election day, the election official shall cause the vote tabulator to print a copy of all totals in the memory pack and ensure that all totals indicate zero. The election official shall then certify by signature on the printout that the totals so indicate zero and shall ensure that such printout is provided to the Senior Election Official at Election Headquarters.

Voting Procedures

6.   (a)   Upon ensuring that:

(i)   the elector is qualified to vote in the election;
(ii)   the elector is voting in the correct voting station; and
(iii   the elector's name is contained in the voting record and any other related information regarding objections, and affidavits is recorded therein;

the voting official shall provide a ballot, bearing his or her initials to the elector along with a secrecy sleeve.

6. **(b)** Upon receiving the ballot and secrecy sleeve, the elector shall immediately proceed to a voting compartment to vote.

(c) The elector may vote only by making an acceptable mark on the ballot beside the name of each candidate of choice, up to the maximum number of candidates to be elected for each of the offices contested.

(d) Upon having marked the ballot, the elector shall place the ballot into the secrecy sleeve and deliver same to the voting official designated who shall;

(i) in the presence of the elector, and before removing the ballot from the secrecy sleeve, confirm that the ballot bears the initials of the voting officials; and

(ii) remove the ballot from the secrecy sleeve , ballot face down, and insert the ballot directly into the vote tabulator.

(e) If, before delivery of the ballot to the voting official, the elector determines that an error may have been made in marking the ballot or if the ballot is rejected by the vote tabulator, the elector may request a replacement ballot from the voting official.

(f) Upon a request pursuant to subsection (e) above, the voting official shall issue a replacement ballot to the elector and mark the returned ballot "spoiled" and retain such spoiled ballots separately from all other ballots and same shall not be counted in the election.

(g) If the elector wishes to decline the ballot, the elector may write "declined" anywhere on the back of the ballot and deliver it to the voting official for insertion into the vote tabulator.

(h) If the vote tabulator does not allow a ballot to be processed, the elector will be alerted of the overvoted or blank ballots, and the elector can decide to cast the ballot "as-is" or return it for further review.

(i) During any period that the vote tabulator is not functioning, the voting official supervising the unit shall insert all ballots presented by electors during that period into the emergency ballot compartment, and the ballots in that compartment shall, after the poll closes, be removed by the voting official and inserted into the vote tabulator to be counted.

(j) Any ballots which were temporarily stored in the emergency ballot compartment, which are overvoted or blank ballots and are not processed by the vote tabulator, will be determined by the voting official to have been cast "as-is".

(k) Any ballot which does not bear the initials of the voting official or which is damaged to the extent that it cannot be inserted into the vote tabulator and for which no replacement ballot was provided shall be marked "spoiled" and not counted in the election.

Alternative Voting Opportunities

7. **(a)** Alternative voting opportunities, including advance voting, mobile voting and voting by sealed envelope may be provided in accordance with The Municipal Councils and School Boards Elections Act.

(b) Vote tabulators must be used to conduct the vote at all alternative voting opportunities as identified by the Senior Election Official and voting procedures shall be in accordance with the provisions of Section 6 herein, but not every voting station must be equipped with a vote tabulator.

(c) Every ballot marked by a vote must be placed in either a vote tabulator or a temporary ballot box.

(d) A vote tabulator must be used to count the ballots that are placed in every temporary ballot box.

(e) At the close of voting each day at an alternative voting station, the voting official in each case shall ensure that:

(i) no additional ballots are inserted into the vote tabulator or temporary ballot box;

(ii) the emergency ballot compartment's slot is taped up to prevent insertion of ballots;

(iii) the register tapes in the vote tabulator are not generated; and

(iv) the memory pack in the vote tabulator is secured.

7.   (f)   The voting official at each alternative voting station shall, at the close of voting on the final voting day:

               (i)   ensure that any remaining ballots in the emergency ballot compartment are inserted into the vote tabulator;
               (ii)   secure the vote tabulator so that no more ballots can be inserted; and
               (iii)   ensure delivery of the vote tabulator or ballot box together with the memory pack and all other materials used in the election to the Senior Election Official at Election Headquarters.

       (g)   The Senior Election Official shall input all ballots from any ballot boxes used into the vote tabulator upon receipt.

Procedures After the Close of Voting on Election Day

8.   After the close of voting on election day, the voting official shall:

       (a)   ensure that any remaining ballots in the emergency ballot compartment are inserted into the vote tabulator;

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

       (c)   generate two (2) copies, or other such number as directed by the Senior Election Official, of the register tape from the vote tabulator;

       (d)   ensure delivery of one copy of the register tape and the memory pack from the vote tabulator unit to the Senior Election Official at Election Headquarters;

       (e)   complete a ballot statement accounting for the unused, spoiled and voted ballots and return it and the unused and spoiled ballots to the Senior Election Official; and

       (f)   ensure the delivery of the voting record and all other election materials to the Senior Election Official.

Election Headquarters Procedures

9.   After the close of voting on Election Day, the Senior Election Official shall:

       (a)   generate copies of the register tape from the vote tabulator for alternative voting stations;

       (b)   cause all election results to be tabulated and displayed at Election Headquarters; and

       (c)   ensure the transport and security of all election equipment, ballots, and other materials to a designation election storage facility.

Enactment

10.   This by-law shall come into full force and effect on the date following its final passage.

DONE AND PASSED by the Council of the City of Brandon in regular session assembled this day of   A.D. 2010.

_____   _____
              MAYOR   CITY CLERK

              Read a first time this   8th   day of   March   A.D. 2010
              Read a second time this   22nd   day of   March   A.D. 2010
              Read a third time this   day of   A.D. 2010

SCHEDULE "A"

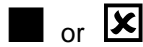## Sample Ballot

CITY OF BRANDON

Municipal and School Board Election – October 27, 2010

TO VOTE, COMPLETELY FILL IN THE BOX NEXT TO YOUR CHOICE(S) LIKE:

■ or ☒

Use only the pen provided.

For the Office of **MAYOR**	For the Office of **COUNCILLOR**	For the Office of **SCHOOL TRUSTEE**
Vote for One (1) Person Only	Vote for One (1) Person Only	Vote for Not more than Four (4) Persons
CANDIDATE ONE ☐	CANDIDATE JOE ☐	CANDIDATE ALPHA ☐
CANDIDATE TWO ☐	CANDIDATE BOB ☐	CANDIDATE BRAVA ☐
CANDIDATE THREE ☐	CANDIDATE ANN ☐	CANDIDATE CHARLIE ☐
CANDIDATE FOUR ☐		CANDIDATE DELTA ☐
		CANDIDATE ECHO ☐
		CANDIDATE FOXTROT ☐