

2022 Engagement on *Local Authorities Election Act* (LAEA) – City of Calgary Returning Officer Recommendations

The table below outlines the Returning Officer's recommendations on various topics related to the themes of Enhanced Councillor Accountability, Protecting Voters and Strengthening Democracy identified in the Province of Alberta's engagement on the LAEA (see [Attachment 1 – Engagement Summary](#)).

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Additionally, the Returning Officer's recommendations related to administrative matters (pgs. 10-13) and a summary of public feedback received by Elections Calgary during the 2021 General Election (pg. 14) are attached. The public feedback received by Elections Calgary relates to the following Engagement Summary questions posed by the province:

1. Are the eligibility criteria for an individual to be nominated as a municipal candidate adequate? a. If not, please provide your suggestions for improvement.

2. Should candidates be able to request access to the list of electors?

Returning Officer Recommendations

Enhanced Councillor Accountability

Item	Topic	LAEA and/or form reference(s)	Returning Officer recommendation(s)	Rationale
1	Returning officer acceptance of nominations	Sec. 22(1.2) Ineligibility Sec. 28 Nominations Sec. 147.4 Candidate Disclosure Statements	<p>Background: If a candidate fails to file disclosure statements by March 11 in the year following the general election, their name will be included in the secretary’s report to council or a school board. In keeping with section 22(1.2) of the LAEA, by being included in this report, the candidate is restricted from filing a nomination for:</p> <ul style="list-style-type: none"> • eight years if they never file a disclosure; or • three years from the date that they file a disclosure. <p>The returning officer does not have authority to refuse a nomination form from a candidate who failed to file their disclosure statement and who has not received relief from the court. Under the current legislative framework, the local jurisdiction or an elector will be required to seek recourse through law enforcement to enforce the restrictions placed on candidates who did not file a disclosure statement within the statutory timeframe (and have not received relief from the court).</p> <p>Recommendation: Provide authority for the returning officer to refuse a nomination paper in section 28(4) of the LAEA if a candidate is restricted from filing under section 22(1.2) of the LAEA.</p>	<p>Closes gap in ineligibility provisions with respect to section 147.4.</p>
2	Withdrawal form	Sec. 32 Withdrawal of nomination	<p>Background: There is currently no prescribed form for withdrawing a nomination. Elections Calgary received 15 candidate withdrawals in the 2021 General Election.</p> <p>Recommendation: Create a prescribed form for withdrawal of nominations.</p>	<p>Regulates a consistent form of notice for a candidate’s withdrawal of their nomination.</p>

Item	Topic	LAEA and/or form reference(s)	Returning Officer recommendation(s)	Rationale
3	Identification requirement for candidates filing nomination papers	Sec. 28 Nominations	<p>Background: The LAEA requires that candidates must be eligible to vote and reside in the local jurisdiction at the time they submit their nomination papers. Electors are required to show identification confirming their residence when they vote, but candidates are not required to show identification confirming their residence when they file their nomination papers.</p> <p>Recommendation: Require candidates to present identification showing their name and residence, mirroring requirements for electors.</p>	Creates enhanced accountability in candidate nomination filing procedure.
4	Collusion between candidates and third party advertisers	Sec. 166 Collusion	<p>Background: The LAEA prohibits collusion between candidates and third party advertisers to contravene, or to attempt to contravene an expense limit. Elections Calgary received a number of inquiries from candidates and third party advertisers seeking guidance on campaign activities and communications which comply with sec. 166.</p> <p>Recommendation: Provide legislative guidance on permissible campaign activities and communications between candidates and third party advertisers in compliance with sec. 166 of the LAEA.</p>	Supports candidate and third party advertiser compliance with sec. 166 of the LAEA.

Protecting Voters

Item	Topic	LAEA and/or form reference(s)	Returning Officer recommendation(s)	Rationale
5	Candidate, scrutineer or official agent objections to electors	Sec. 54 Person objected to Form 13 (Elector Register)	<p>Background: Where an elector register (Form 13) is used, to receive a ballot, an elector is required to present identification showing their name and residence and sign Form 13, which is a statement that they are eligible to vote and have not previously voted. A candidate, scrutineer or official agent may object to an elector at the time they make their statement. The reasons for the objection are noted on Form 13, but the elector is not prevented from voting because of the objection.</p> <p>Objections from candidates, scrutineers and official agents have been generally rare in Calgary’s municipal elections.</p> <p>Recommendation: If scrutineer objections are to remain, further legislative guidance about scrutineer, candidate, or official agent access to electors’ personal information is needed. This could include an elector’s identification, completed Form 13, or conversation between the elector and the deputy returning officer. As well, additional legislative guidance on the reasons a scrutineer, candidate, or official agent may make an objection would provide greater clarity for protecting voters and maintaining integrity of the voting process.</p>	Supports protection of personal information and process integrity.
6	Identification requirement where a list of electors is used	Sec. 53 Proof of elector eligibility	<p>Background: The City of Calgary uses an elector register (Form 13), which requires electors to present identification showing their name and address. Electors also complete Form 13 which is a statement that they are eligible to vote and have not previously voted. Currently, the legislation provides that if an elector is on the electors’ list, they are not required to present identification.</p> <p>Recommendation: Require an elector to present identification showing their name and address where a list of electors is used.</p>	Consistency in voting process.

Item	Topic	LAEA and/or form reference(s)	Returning Officer recommendation(s)	Rationale
7	Updating a list of electors	Sec. 50 List of electors	<p>Background: Currently, no provisions exist to update a list of electors once created.</p> <p>Recommendation: Provide legislative guidance or a prescribed form to revise elector data contained on a list of electors (additions, edits and deletions).</p>	Supports privacy of information on a voters list.
8	Protection of personal information (i.e., names and addresses) contained on nomination forms	Sec. 28 Nominations Sec. 147.4 Campaign disclosure statements	<p>Background: Personal information must be provided on nomination papers and disclosure statements. Bill 21 amendments to the LAEA requires street addresses to be redacted on disclosure statements.</p> <p>Recommendation: Personal information on nomination forms (i.e., street addresses) be redacted to align with Bill 21 amendments to the LAEA requiring redaction of personal information contained on disclosure statements.</p>	Addresses concerns expressed by candidates and public of nefarious use of personal information contained on nomination forms.

Strengthening Democracy

Item	Topic	LAEA and/or form reference	Returning Officer recommendation(s)	Rationale
9	Judicial recount where tabulator is used	<p>Sec. 84 Alternative Voting Equipment</p> <p>Sec. 103 to 115 Recount Procedures</p>	<p>Background: Elections Calgary received four (4) applications for recounts. Some candidates were disappointed that they were unable to apply for a judicial recount.</p> <p>When elections are conducted with alternative voting equipment, such as tabulators, an elector is given an opportunity to correct or confirm their voting intent on the ballot in the voting station if the tabulator rejects their ballot. A hand count may have a different result due to a judge’s interpretation of valid markings on a ballot rather than the elector’s intent at the time of voting in the voting station.</p> <p>Recommendations: Elections conducted with electronic voting equipment are recommended to be eligible for a judicial recount. Allow candidates, scrutineers or official agents to apply for a judicial recount when electronic voting equipment is used and require the judicial recount to be conducted in the same manner as the election.</p> <p>If a hand count is contemplated, consideration should be given to the practicality and timelines associated with a recount in a large jurisdiction such as the city of Calgary. Consideration should also be given to the current recount provisions set out in sec. 98 of the LAEA to ensure alignment in timelines and recount decisions.</p>	<p>Supports an independent recount process.</p> <p>Ensures recount procedures are consistent with those used in the election and efficient for the court to administer.</p>

Item	Topic	LAEA and/or form reference	Returning Officer recommendation(s)	Rationale
10	Recounts for close vote results	Sec. 98 Recount	<p>Background: Currently, the LAEA does not provide authority for the returning officer to initiate a recount based on a close vote. Some candidates were disappointed that there was no provision for a recount based on a close vote.</p> <p>Recommendation: Authorize the local jurisdiction to enact a bylaw to trigger a returning officer-initiated recount under section 98 of the LAEA for close vote results based on official results. Provide that the bylaw prescribe the vote margin that will trigger a recount based on local circumstances (e.g., number of votes or % difference in votes).</p>	Provides a routine and transparent process where a close vote result occurs.

Item	Topic	LAEA and/or form reference	Returning Officer recommendation(s)	Rationale
11	Returning officer-initiated recount	<p>Sec. 98 Recount</p> <p>Sec. 103 to 115 Recount Procedures</p>	<p>Background: In addition to conducting a post-election review to determine if a returning officer-initiated recount is required, the returning officer must also consider recount applications from candidates, scrutineers and official agents within a four-day period, if received. The returning officer may only consider a recount from a candidate, scrutineer or official agent where the number of valid ballots objected to and rejected ballots (other than blank ballots) was sufficient to affect the result of the election. A recount may also be conducted if the returning officer is of the opinion that there may have been an administrative or technical error in the count of the votes.</p> <p>Where a tabulator is used and no administrative or technical errors which compromise the integrity of the vote count are present, a recount of the votes is not conducted.</p> <p>The ability to apply for concurrent judicial and returning officer recounts may create confusion and would be impractical to administer (i.e., only one set of marked ballots exists).</p> <p>Recommendation: Recount applications from candidates, scrutineers and official agents should be considered by a judge only under section 103 of the LAEA. Continue to provide authority for the returning officer to determine whether a recount under section 98 of the LAEA is required based on their assessment of administrative or technical errors based on official results.</p>	<p>Supports an independent recount process.</p>

Item	Topic	LAEA and/or form reference	Returning Officer recommendation(s)	Rationale
12	Returning officer-initiated recount timelines	Sec. 98 Recount	<p>Background: The timeframe for the returning officer to consider an application for a recount (44 hours after the close of voting stations), give notice (12 hours before the recount) and conduct a recount before declaring official results (noon on the fourth day following the election) is far too short, particularly for a large jurisdiction like Calgary and when multiple recount requests are received for different elections. In the case of the 2021 General Election, the Returning Officer received one recount request in each of the following elections: mayoral, Ward 3 Councillor, Ward 4 Councillor, and Ward 9 Councillor.</p> <p>If recount applications from candidates, scrutineers and official agents continue to be considered by the returning officer in section 98, changes are required to the timeframes to ensure due diligence and fairness.</p> <p>Recommendation: Applications for recounts from candidates, scrutineers and official agents should be based on official results, not unofficial results. It is recommended that recount applications under section 98 of the LAEA be received by 12 pm on the 7th day after Election Day, following the declaration of official results. Recount(s) to be scheduled before the organizational meeting as set out in the <i>Municipal Government Act</i>.</p>	<p>Ensures recount applications are based on official results, not unofficial results.</p> <p>Ensures capacity, integrity and due diligence by the returning officer when considering recount applications.</p>
13	Issue-based third party advertising	Part 8 Third Party Advertising	<p>Background: The LAEA only applies to third parties that are advertising in support or opposition to a candidate. Issue-based third party advertising (e.g., the subject of a vote or issues raised by candidates) are not addressed in the LAEA.</p> <p>Recommendation: Should issue-based third party advertising (e.g., the subject of a vote or issues raised by candidates) be regulated, provide a clear definition and guidelines.</p>	<p>Ensures a transparent process should issue-based third party advertising be regulated.</p>

Item	Topic	LAEA and/or form reference	Returning Officer recommendation(s)	Rationale
14	Routine public access to third party advertiser registration and disclosure documents	Part 8 Third Party Advertising Form 27 Registration of a Third Party Form 28 Third Party Advertising Contribution Statement	<p>Background: The LAEA does not require routine public access to third party advertiser registration forms (Form 27) or disclosure statements (Form 28) and advertising returns.</p> <p>Elections Calgary received many requests for public access to third party advertiser registrations, disclosure statements and advertising returns.</p> <p>Recommendations: Require routine public access to third party advertiser registration forms (Form 27), disclosure statements (Form 28) and advertising returns during regular business hours, with similar considerations to protecting personal information as outlined for nomination forms (see Item 8). Prescribe a public access period for third party advertiser registration forms (Form 27), disclosure statements (Form 28) and advertising returns (i.e., whether they are to be made available to the public until the next general election).</p>	Mirrors routine public access to candidate nomination and disclosure statements and provides a timeframe which they are to be made available to the public.

Administrative Matters

Item	Topic	LAEA and/or form reference	Returning Officer recommendation(s)	Rationale
15	Move nomination day	Sec. 25 Nomination day	<p>Background: There were 197 candidates in the 2021 General Election. Additional candidates affect the complexity of logistical preparations including production of ballots and scope of vote tabulator testing. Municipalities that use vote tabulators must wait for ballots to be printed before mail-in ballot packages can be sent to electors. This reduces the amount of time available for the delivery and return of mail-in ballots, especially for electors who are out of town on election day.</p> <p>Recommendation: Move Nomination Day from 4 weeks before Election Day to 6 weeks before Election Day.</p>	<p>Integrity and logistics of ballot supply.</p> <p>Better enfranchises out of town electors who request a special ballot.</p>

Item	Topic	LAEA and/or form reference	Returning Officer recommendation(s)	Rationale
16	Open special (mail-in) ballot requests	Sec. 77.1 Vote by special ballot	<p>Background: Currently, the LAEA provides that an elector who is unable to vote at an advance vote or at the voting station on Election Day because of (a) physical disability, (b) absence from the local jurisdiction, or (c) being a returning officer, deputy returning officer, substitute returning officer, constable, candidate, official agent or scrutineer who may be located on Election Day at a voting station other than that for the elector’s place of residence may apply to vote by special (mail-in) ballot.</p> <p>Elections Calgary received many questions and complaints around the restrictions for eligibility to apply for a special (mail-in) ballot, and electors expressed concern about disclosing information about their physical disability.</p> <p>Recommendation: Eliminate the criteria required to apply for a special (mail-in) ballot or permit local jurisdiction authority to enact a bylaw to eliminate criteria (but not expand on it).</p> <p>If no change is made, provide guidance to voters on what constitutes “physical disability”.</p>	Provides an alternative voting opportunity for those who may not be able to vote in a voting station.
17	Nomination deposit payment	Sec. 29 Deposit	<p>Background: A ministerial order was issued during COVID-19 pandemic to accept debit and credit card payment options for 2021 General Election. This was the most popular method of payment by candidates.</p> <p>Recommendation: Provide authority to accept debit/credit card payments option for nomination deposit.</p>	Modernizes the LAEA to more commonly used payment options.

Item	Topic	LAEA and/or form reference	Returning Officer recommendation(s)	Rationale
18	Enumeration	Sec. 50 List of electors	<p>Background: Currently, the LAEA provides that if a list of electors is used, an enumeration of eligible electors is required to be undertaken, even where an agreement with Elections Alberta to access their elector data is executed. Elections Alberta has access to numerous data sources and continually updates their elector data. An enumeration conducted by the City of Calgary may be less accurate than the data provided by Elections Alberta because participation in an enumeration is discretionary.</p> <p>Elections Calgary did not conduct an enumeration prior to the 2021 General Election. Anonymous elector counts from Elections Alberta, civic and federal census population and other City datasets were used to inform planning for the 2021 General Election.</p> <p>Recommendation: Where a list of electors is used, remove the requirement to conduct an enumeration where an agreement with Elections Alberta to access their elector data is executed.</p>	Where a list of electors is used, requiring an enumeration may be redundant and costly where an agreement with Elections Alberta to access their elector data is executed.
19	Electors residing in correctional facilities	Sec. 80 Institutional vote location, eligibility, and appointments	<p>Background: Currently, the LAEA does not provide any direction or guidance on the administration of the vote for electors residing in correctional institutions. Currently, there is no provision to allow special (mail-in) ballots for electors residing in correctional institutions.</p> <p>Recommendation: Provide guidance on the administration of the vote for electors residing in correctional institutions (e.g., residency status).</p>	Process integrity.

Item	Topic	LAEA and/or form reference	Returning Officer recommendation(s)	Rationale
20	Permitting electors remaining in line at the close of voting on Voting Day to enter the voting station to vote	Sec. 46(4) Voting Hours	<p>Background: The LAEA requires electors to be inside the voting station at the close of voting (8 p.m.) on Voting Day to vote. During the 2021 General Election, the Minister issued Ministerial Order Number MSD:103/21 which directed that due to the COVID-19 pandemic requirement to socially distance, electors waiting in line at the close of voting be permitted allowed to enter the voting station to vote.</p> <p>Social distancing continues to be practiced by many persons in large gatherings and line-ups at grocery stores and sporting events, for example. Additionally, line-ups outside voting stations may occur where there is a larger turnout.</p> <p>Recommendation: Permit electors remaining in line at the close of voting on Voting Day to enter the voting station to vote.</p>	Accommodates social distancing practices and large turnouts at voting stations on Voting Day.

Public Feedback

Item	Topic	LAEA and/or form reference	Feedback Received
1	Candidate ineligibility	Sec. 22 Ineligibility	<p>Background: Currently, individuals are ineligible from being nominated if convicted of an offence under the LAEA, Election Act, Election Finances and Contributions Disclosure Act or Canada Elections Act within the previous 10 years.</p> <p>Feedback: Approximately 500 emails from the public were received by Elections Calgary regarding a candidate's eligibility to be nominated based on various charges and convictions made public.</p>
2	Candidate access to a list of electors	Sec. 50 List of Electors	<p>Background: Currently, if a list of electors is used, Elections Calgary is required to provide the list (including names and addresses of electors) to candidates. A list of electors was not directed by Council for use in the 2021 October 18 General Election.</p> <p>Feedback: Although a list of electors was not directed by Council for use in the 2021 October 18 General Election, Elections Calgary received over 500 complaints from the public regarding candidate access to a list of electors containing personal information of electors including names and addresses. The public sentiment was that candidates should not have access to electors' personal information contained on a list of electors.</p>

Local Elections and Councillor Accountability

Local Authorities Election Act and Municipal Government Act Engagement

Preamble

Municipal Affairs is exploring amendments to the *Local Authorities Election Act (LAEA)* and *Municipal Government Act (MGA)* to enhance accountability and public trust in local elections and local elected officials.

The *LAEA* establishes the framework for the conduct of elections in Alberta municipalities, school divisions, and Metis Settlements.

The *MGA* includes rules governing the conduct of those elected officials once on council, including code of conduct requirements and councillor disqualification.

Reviews of the *LAEA* typically occur following each municipal general election. The most recent election in October 2021 resulted in a number of citizen concerns regarding privacy of information on voter lists and the appropriateness of the current eligibility criteria for candidates.

Recent code of conduct violations in some Alberta municipalities and sanctions that were perceived as too weak or too punitive have also caused varying degrees of public concern.

As such, Municipal Affairs is looking at legislative amendments to improve the election process as well as enhance the public's trust in their local councils once elected.

Background

The scope of the engagement will focus on the following topics:

Topic	Current State
<p>Enhanced Councillor Accountability</p> <ul style="list-style-type: none"> • Eligibility criteria for candidates • Disqualification rules for councillors • Code of conduct 	<p>The <i>LAEA</i> sets out eligibility requirements to run for council. There is no opportunity to challenge eligibility of candidates under the <i>LAEA</i>. Eligibility Criteria (<i>LAEA</i> Section 21)</p> <ul style="list-style-type: none"> - Must be eligible to vote in that election. - Must be a resident of jurisdiction for the previous six months. - Cannot owe \$50 in taxes to the local authority or have owed over \$500 in the previous 90 days. - Must not have been convicted of election finance violations in the past 10 years. - Must file appropriate finance disclosure forms in the previous eight or three years, depending on type of disclosure.

	<p>The <i>MGA</i> outlines criteria that can result in the disqualification of a councillor.</p> <p>The <i>MGA</i> requires councils to pass a bylaw establishing a councillor code of conduct, and provides discretionary authority to establish a code of conduct for council committees and other bodies. The Code of Conduct for Elected Officials Regulation lists topics that must be included in the bylaw as well as possible sanctions. Each code of conduct must include a complaint system, and a bylaw review is required at least every four years. A councillor cannot be disqualified or removed from office for a breach of conduct.</p>
<p>Protecting Voters</p> <ul style="list-style-type: none"> • Objecting to electors • Privacy of information on voter lists 	<p>If the returning officer believes a person is not eligible to be an elector, they must make a note in the elector register that includes the rationale. The elector is still permitted to vote.</p> <p>Under Section 49 of the <i>LAEA</i> a municipality may, by bylaw, prepare a permanent electors register.</p> <ul style="list-style-type: none"> • The permanent electors register may contain electors' name, residential address, phone number, gender, and birthdate. • The register is not distributed to candidates; it is intended to assist the municipality in running the election. <p>Section 50 of the <i>LAEA</i> also allows a municipality to, by bylaw, direct the returning officer to prepare a list of electors who are entitled to vote in the municipal election. This list must be provided to a candidate upon request after the close of nomination day.</p> <ul style="list-style-type: none"> • The candidate must only use the list of electors for the purpose of campaigning for the election. • Misuse of the information on the list is an offence under Section 158. A person found guilty is liable to a fine of not more than \$100,000, or imprisonment for one year, or both.
<p>Strengthening Democracy</p> <ul style="list-style-type: none"> • Judicial recount rules • Third-party issues, advertising rules 	<p>Elections that use alternative voting equipment, such as voting machines or tabulators, are not eligible for judicial recount.</p> <p>The <i>LAEA</i> regulates third-party advertising for or against a candidate during the election advertising period. Third-party advertisers who address an issue, and do not state support or opposition to a candidate, are not subject to any provisions in the <i>LAEA</i>.</p> <p>Registration as a third party advertiser will mean that the provisions of the <i>Local Authorities Election Act</i> apply, including donations to that organization are limited to Alberta residents as well as corporations and trade unions that ordinarily do business in Alberta.</p>

Discussion Questions

Enhanced Councillor Accountability

1. Are the eligibility criteria for an individual to be nominated as a municipal candidate adequate?
 - a. If not, please provide your suggestions for improvement.
2. Are the criteria and process for disqualifying a councillor appropriate?
 - a. If not, please provide your suggestions for improvement.

Protecting Voters

1. Should candidates, their scrutineers, or their official agent continue to have the opportunity to object to an individual who has shown up to vote?
2. Should candidates be able to request access to the list of electors?

Strengthening Democracy

1. Should elections conducted with electronic voting equipment be eligible for judicial recount, where the judge can order the votes be recounted by hand or run through the electronic tabulator again?
2. Should third parties advertising for or against an issue that is the subject of a vote (e.g., municipal referendum question) be required to register?
3. Should third parties advertising any issues that have been raised by candidates in a municipal election be required to register?

Do you have any additional comments or considerations on these topics?

*An online survey will also be published on the alberta.ca website in summer 2022 for your input. Feedback may also be sent to Municipal Affairs, Municipal Policy and Engagement, at ma.engagement@gov.ab.ca by **July 11, 2022**.*