



LEGISLATIVE SERVICES

TO: Council
DATE: September 21, 2021 **DIVISION:** All
FILE: N/A **APPLICATION:** N/A
SUBJECT: Voter Identification for Rocky View County Municipal Elections

POLICY DIRECTION:

On January 12, 2021, Council directed Administration to create a bylaw stating that all Rocky View residents who are voting in municipal elections shall:

- a) provide one piece of government issued photo identification clearly showing the voter's name and current address, e.g. driver's license; or
- b) two pieces of identification, both of which must have the voter's name, one of which must be government issued and one of which must have the voter's name and current address. In the case of using two pieces of identification, the names on both pieces must match

Furthermore, a person who chooses to vouch for another elector must be able to prove their identity and address through the above-mentioned means. And lastly, consideration in the bylaw that an individual can vouch for only one person (except in long-term care institutions).

EXECUTIVE SUMMARY:

The purpose of this report is to update Council on the legal opinion provided to Administration on February 3, 2021 outlining Council's authority under the *Local Authorities Election Act* in drafting this bylaw and receive direction on next steps.

ADMINISTRATION RECOMMENDATION:

Administration recommends approval in accordance with Option #1.

DISCUSSION

On direction from Council to create a Voter Identification bylaw, Administration completed an analysis of the *Local Authorities Election Act*. A legal opinion was sought to clarify the legislative authority of Rocky View County in developing such a bylaw. This report identifies the key findings of the legal opinion for Council to consider.

The provisions of the *Local Authorities Election Act* provide direction regarding the types of identification an elector may use to validate the elector's identity and address. A purposive reading of the *Local Authorities Election Act* suggests that its provisions should be read in a way to enfranchise electors to vote, and not to restrict them from voting.

Section 53 of the *Local Authorities Election Act*, has been extracted for easy reference in Attachment A. While reviewing this section, it should be noted that contravention of the Local Authorities Election Act does carry significant risks, as outlined in Attachment B.

Administration Resources

Sherri Bureyko, Legislative Services



Photo identification cannot be made a mandatory requirement to prove an elector's identity or address because under section 53(3)(b)(ii), the identification currently authorized by the Chief Electoral Officer includes non-photo identification. See Attachment C for full list authorized by the Chief Electoral Officer.

Similarly, requiring two pieces of identification cannot be made a mandatory requirement to prove an elector's identity or address because under section 53(3)(b)(ii), the Chief Electoral Officer only requires one piece of identification from the approved list.

Vouching within *Local Authorities Election Act* is specific in that it provides that a voucher may vouch for more than one person if the persons all live in one place of residence. "Place of residence" is discussed in s. 48 of the *Local Authorities Election Act*, and is "the place where the person lives and sleeps and to which, when the person is absent, the person intends to return." The term "place of residence" is broader than "long term care institutions".

If the intention is to have the bylaw attempt to restrict a voucher to only those persons living in a long term care institution, such a bylaw is very likely beyond the County's authority.

When an elector uses the "vouching" method, a municipality, even with a bylaw, cannot compel the "vouched for elector" to show photo identification. An elector may be vouched for by another elector under s. 53(4) of the *Local Authorities Election Act*, and a municipality cannot prevent electors from using this option to validate their identity, address and age. Identification by vouching does not require photo identification.

Under s. 53.01(4) of the *Local Authorities Election Act*, if Council were to direct Administration to develop a Voter Identification Bylaw it would only be able to:

- expand on, but not limit, the types of identification required to validate identity and address; and
- prescribe the number and types of identification required to validate age.

It is important to note that if a bylaw were in place to prescribe the types of identification to validate age, the identification used for this purpose is not required to match exactly the identification used to validate identity and address. If someone were to use two different pieces of identification (both authorized under the bylaw), with one of them used to validate identity and address, and a second piece to validate age, the two pieces of identification might have different addresses. For example, a utility bill could be used to validate address, and a driver's license could be used to validate age. The purpose of the two pieces of identification are different, and each on its own is sufficient for its purpose. Given the language of the *Local Authorities Election Act*, a bylaw provision attempting to require the identification (for two separate purposes) to have the same address is likely outside a municipality's jurisdiction.

After reviewing the legal opinion and analyzing the legislation, Administration recommends that Council not pursue a Voter Identification Bylaw, as it would have minimal impact in achieving its intended purpose beyond what is already legislatively prescribed in the *Local Authorities Election Act*.

BUDGET IMPLICATIONS:

There are no budget implications at this time.



OPTIONS:

- Option #1: THAT Administration be directed to discontinue the development of a Voter Identification Bylaw for Rocky View County Municipal Elections.
- Option #2: THAT Administration be directed to create a Voter Identification Bylaw for Rocky View County Municipal Elections in accordance with s. 53 of the *Local Authorities Election Act*.
- Option #3: THAT alternative direction be provided.

Respectfully submitted,

Concurrence,

“Amy Zaluski”

“Kent Robinson”

Director, Legislative Services

Acting Chief Administrative Officer

ATTACHMENTS:

- ATTACHMENT ‘A’: Extracts from the Local Authorities Election Act, RSA 2000, c L-21
- ATTACHMENT ‘B’: Legal Implications
- ATTACHMENT ‘C’: Approved Voter Identification Requirements