

Vote By Mail

A Guide to Crafting Your 2021 VBM Regulations

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Vote By Mail: A Guide to Crafting Your 2021 VBM Regulations

Introduction

Municipal governments are important. They collect taxes and provide key services to residents. They are active on the front lines of addressing big issues ranging from climate change to sustainable economic development, even while they look after potholes and garbage collection.

Our municipal elections are important because they determine who will be making key decisions on behalf of roughly 90% of this residents of Newfoundland and Labrador for the next four years. Ensuring that all eligible municipal voters have the opportunity to be counted is a big democratic responsibility. And in 2021, this also means that we need to think about voting safely during a pandemic.

COVID-safe Elections in Newfoundland and Labrador

Newfoundland and Labrador’s *Municipal Elections Act (MEA)*¹ is a highly prescriptive piece of legislation. This is recognized to be the case for most of the legislation currently governing our local government sector. A review of the *Municipalities Act* is already underway, but we will have to work with the current version of the *MEA* this fall. Clearly, the *MEA* was not designed with a pandemic in mind, but “Ballot By Mail” (*MEA Part V, Sec. 54*) does provide a relatively robust alternative to in-person voting (**Table 1**). In particular, voting by mail (VBM) affords both a lengthening of the time available to complete the voting process, and allows for contingency plans should a return to a COVID-related lockdown in all or part of the Province occur during the elections.

Since the spring of 2020, COVID precautions have been tied to a five-level alert system ranging from full-lockdown (5) to a “new normal” (1), with adjustments made by the Office of the Chief Medical Officer of Health as circumstances and science have required. Dr. Janice Fitzgerald and her team have worked with MNL to address questions and concerns from municipalities respecting everything from the safe operation of public facilities to the measures outside workers should take when traveling to worksites. There is much in the guidance material already provided to municipal staff and officials that readily translates into election-period precautions, particularly with respect to managing public gatherings, enhanced hygiene and disinfection, and the use of PPE². Tweaks to address the risks of the more contagious COVID variants can be expected to continue as we collectively aim to stay at Level 2 with heightened vigilance and adherence to precautionary basics (“*People – Space – Time – Place*”). Specific public health input will be continue to be sought by MNL and PMA as our countdown this fall’s municipal elections proceeds.

Table 1: Available electoral options by Alert-level

Election Measure	Possible in Alert Levels					Notes
	1*	2	3	4	5	
In-Person Voting	x	x	?			*Level 1 is considered a “new normal” following the vaccination of most of the population. No detailed public health measure guidance has been released for it as yet.
Mail-in Ballot	x	x	x	x	x	It is recommended that municipalities seek approval to use mail-in ballots to secure the best COVID-safe range of election options available in 2021.

¹ <https://www.assembly.nl.ca/legislation/sr/statutes/m20-2.htm>

² MNL (2020-2021). *COVID-19* (webpage). <https://municipalnl.ca/covid-19/>

As of Municipal and Provincial Affairs' (MAPA) circular of April 14th, the Department has joined MNL and PMA in recommending that towns seek Ministerial approval for the use of a mail-in ballot. That circular, the toolkit materials on MNL's Municipal Elections page³ and MAPA's own recently launched election page⁴ detail the procedural steps a municipality must follow to implement vote by mail. In the supplementary MAPA circular of June 9th, the first three key VBM actions for a Council were summarized as follows:

- **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.

This Guide and the template VBM Regulations it accompanies are meant to help your municipality with getting to **Motion 3**.

Please note that this Guide and its accompanying template materials have been designed with smaller community circumstances in mind. **They reflect a "barebones" VBM approach** which capitalizes on things that can be done in-house to keep costs low and otherwise facilitate the implementation of this unfamiliar election practice.

These templates have received a **legal review** but completing them means that you are customizing them to suit your town's election plans. Keep in mind that the further your edits may depart from the content of the basic template, the more you may need to consider obtaining a second legal review.

This Guide and the templates it refers to were designed with the assumption that **no electronic voting supports** are planned.

In the event your town's election plans *DO* entail a contractor using electronic means for voter identification, real-time voter list updating, ballot counting and tabulation, please consult them on your Vote By Mail Regulations, Procedures and Forms.

As the one electronically-supported VBM process example in NL to date, you might also consult the City of St. John's. Their standing Municipal Elections legislation, including their Vote By Mail By-Law 1441, is available to view here:

<http://www.stjohns.ca/city-hall/municipal-election/voter-information/election-overview>

Similarly, if your town chooses to contract **Canada Post** for either or both of the distribution and return of your ballot kits, the St. John's By-Law contains suitable legal references to their requirements. Canada Post service levels vary across the Province so you will need to work closely with them to determine your local election timeline. Remember that mailed ballots received after 8 p.m. on Election Day will not be counted.

³ <https://municipalnl.ca/municipal-elections/>

⁴ <https://www.gov.nl.ca/mpa/local-governance-division/municipal-elections/>

The Vote By Mail Regulations

The template VBM Regulations described here are structured by **three key parts**: (1) the Regulations; (2) their appended VBM Procedures; and, (3) VBM Voter Kit Components and Forms. Once assembled with reference to the guidance provided here, **Parts 1, 2 and Appendices B and C from Part 3** will comprise the Vote By Mail Regulations package the Town will adopt in principle and submit for review by MAPA.

Editable versions of these template files will be posted on the MNL Municipal Elections page in .docx (Word) format.

We have also assembled tips for adapting the use of MAPA's required 2021 *Municipal Elections Forms* (their MEF-series), where appropriate, alongside of a series of our own VBM-series municipal election forms in Part 3.

This Guide also contains procedural descriptions/overviews to aid in the selection of the approaches municipalities need to decide on for their VBM Voter Kit handling.

Part 1 - Regulations

As crafted, the template Regulations address the cross-cutting requirements for VBM administration pursuant to the *MEA* and recognized best practices. As such, other than inserting the town name, they should remain much the same for most municipalities. For example, the Returning Officer roles and responsibilities section echoes the requirements stated in the *Act*, but the statement respecting their responsibility for a voter information program recognizes the need to consider how best to educate their electorate on unfamiliar VBM procedures.

NOTE: Since the VBM option affords eligible voters both access to a Voter Kit and a period of time for voting from the time of ballot kit availability through to the end of election day, **Section 26, Advance Poll** and **Section 27, Voting by Proxy** of the *MEA* are not generally required. This is reflected in the template VBM Regulations.

Part 2 - VBM Procedures

The template treats VBM Procedures as **Appendix A** to the *Regulations*. The diversity of approaches a municipality may opt to take to the distribution and return of their VBM Voter Kits will be reflected in this portion of the VBM *Regulation* package. This section receives most of the attention in the remainder of this Guide.

Part 3 - Voter Kit and VBM Election Forms

The procedural decisions made by a municipality will influence the design and nature of their Voter Kit components and some of the forms needed to administer and track election activities. A list of these items is provided by Part 3 along with a series of templates. In some instances, a hybrid version of these forms might be required. For example, the **Return Envelope** design for Voter Kits in towns that choose to have Canada Post involved in returning their completed Kits would require the addition of both a destination address and a business account identifier so the postage may be tracked and billed to the town. The "barebones" Return Envelope design in our template, however, bears much less information as it assumes voters will return their ballots to the Town Offices or a dropbox, or in-person to a designated poll or drop-off location on Election Day.

Care has been taken to design these simplified templates with accessibility in mind, i.e. using plain language, larger font sizes and colour coding and labeling to guide the voter through the completion of their Voter Kit.

Introducing the VBM Voter Kit

All voting requires checks and balances; they just look a bit different when you Vote By Mail. The most obvious difference in the VBM process is the replacement of a simple ballot with an official **Voter Kit**.

A typical VBM Voter Kit contains the following:

- **The ballot (or ballots)** your eligible voters use to choose their Council representatives. Many towns just use one ballot to elect their Council members, and they sort out their Mayor and Deputy Mayor later. Others - like the City of St. John's - can have separate votes for each of their Mayor, Deputy Mayor and for Ward and At-Large Councillors.

Municipality of _____ Municipal Election

Ballot – Councillors

Vote for up to _____ candidates.

#	Candidate	Mark an "X"
1		
2		
3		
4		
5		
6		
7		

Municipality of _____ Municipal Election

Ballot - Mayor

Vote for one candidate only.

#	Candidate	Mark an "X"
1		
2		
3		
4		
5		
6		
7		

Declaration Form

I, the undersigned, declare that I am a Canadian Citizen, 18 years of age or older, eligible to vote in this election, and that I have not already voted for any office on this ballot.

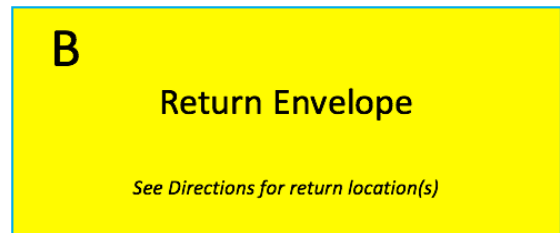
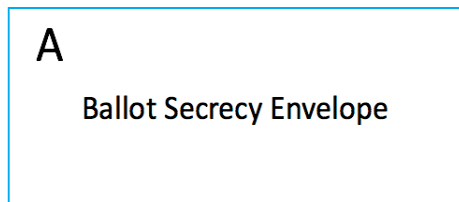
Signature _____

Print name _____

Serial numbering here

- **The Declaration Form** needed to both confirm the identity of the voter and ensure that they are eligible to vote. In our VBM Voter Kit, the Declaration Form is also the “controlled” or serially-numbered part of the voting materials, replacing the serially-numbered ballots the *MEA* calls for when elections are conducted by in-person voting only.

- **Two envelopes***:
 - One to put just the completed ballots in. Once sealed, this **Secrecy Envelope** won't be opened until ballot counting begins. As they contain just the ballots and no identifying information, this envelope ensures each voter's choices remain secret.
 - A second, larger envelope that is used to enclose both the sealed Ballot Secrecy Envelope and the completed Voter Declaration. This **Return Envelope** is sealed and then returned to a specified local return location. You might affix a label with the Voter name and civic address to this one too to streamline distribution and voter list updates upon the return of the completed kit.



- **Voting Directions.** Few towns have tried Vote By Mail before, so voters need clear instructions on how to complete their Voter Kit and return it so that their vote will count. Remembering that some people will not be able to complete their vote without assistance or additional accommodations, the directions must include information on how they may obtain that help. You'll also want a “Plan B” - alternative Directions to use in the event of an emergency involving a suspension of in-person voting activities.

* **NOTE:** A third envelope will definitely be needed if you opt to distribute any of these kits by Canada Post.

Your Municipal Vote by Mail Procedures

The “devil is in the detail” of the procedures you need to think through as part of compiling your VBM *Regulations*. To help you do this, there are a series of key questions this portion of the guide will pose.

Now that you’ve seen each of the pieces in the basic **Vote by Mail Voter Kit**, let’s see how much more you can do with it than conventional in-person ballots let you do.

Why a “Kit”?

The Voter Kit design serves the dual functions of establishing the eligibility of and granting a vote to a given voter, while also preserving the secrecy of that individual’s voting choice.

The full function of the VBM option is distinguished in its:

- **Distribution** – the Voter Kit may be provided to eligible voters via “mail” (either by Canada Post or some other door-to-door distribution arrangement the municipality may arrange), by pick-up during the voting period (by visiting a designated location, e.g. Town Offices during regular business hours), and parts of it can also be distributed in support of a more familiar, in-person voting practice on Election Day;
- **Return** – the Voter Kit may be completed and returned by eligible voters during the election period via “mail” (Canada Post in the event that means has been negotiated by the municipality), secured dropbox (something many communities now have on their premises, especially to facilitate COVID-period operations), or by in-person return to designated locations during the voting period, including a polling station on Election Day;
- **Flexibility** – in addition to affording the administrative and voter choices above, VBM provides voting *period* of about two weeks from the time Voter Kits can be distributed through to and including Election Day. This provides much more time to look after individual voter circumstances requiring accommodations, enhancing access and potentially increasing voter participation rates; and,
- **Safety** – under the particular circumstances of the COVID-19 pandemic and ongoing variant-driven flare-ups, the VBM option is the only means available under the current *Municipal Elections Act* to allow voting to proceed under lockdown alert level scenarios. Even without a lockdown, however, by allowing voters to vote anytime during the designated voting period, the VBM option reduces the potential for peak Election Day gathering at conventional poll locations, making physical distancing and other standard COVID precautions easier to manage then.

As you can probably see each of these functional themes present their own questions and procedural solutions or choices, as follows:

- How will you distribute your VBM Voter Kits?
- How will you have voters return their completed Kits?
- How will you plan for voters requiring accommodations?
- What if your town or region goes into a state of lockdown during the election period?
- Where can I get all these new election supplies?

Let’s work through these questions one by one.

Key Question 1: How will you distribute your VBM Voter Kits?

Under VBM, towns need to decide which way of distributing their Voter Kits best meets their needs. In general, there are two main options, as follows:

(1) **Automatically to all voters registered** on the updated Voter List

This is what the City of St. John's does. This option depends on as accurate a Voters List as possible in order to ensure that the Voter Kits are received by the voters they are meant for, whether they are distributed by Canada Post or perhaps dropped door-to-door by election staff or a local contractor.

Automatic Distribution - Sample VBM Procedure statement:

The official Voter Kit will be distributed to the listed civic addresses of all voters on the Voter List no later than ten (10) days after the close of the nomination period.

(2) **On Demand** to just those eligible voters requesting a VBM ballot kit

This scenario is what many towns are referring to as a "blended option": If the Town also plans to provide suitable poll locations, it means that voters who do not elect to obtain a VBM Voter Kit in advance may be assumed to be planning to vote in a conventional in-person fashion on Election Day.

On demand arrangements require that the Town decide how the process of requesting a kit will be administered. In some cases, the process of requesting a VBM kit is done over the period for creating the updated Voter List, as is the case in many large communities opting to work with an election services contractor that sets up an electronic portal residents can use to check if they are on the list. An alternative in smaller communities, may be that Returning Officers (ROs) set times that voters can visit the Town Offices or another specified location to both request and collect their VBM Voter Kits.

On Demand Distribution - Sample VBM Procedure statement:

The official Voter Kit will be available for pick-up by all voters on the Voter List commencing no later than ten (10) days after the close of the nomination period [*insert details*, e.g. during regular working hours at the Town Offices and at such other times and locations as may be determined by the Returning Officer]. Remaining Voter Kit materials will be employed for in-person voting as of 8 a.m. on Election Day.

NOTE: Neither automatic nor on-demand distribution address the circumstances of every eligible voter.

From the standpoint of democratic rights, elections staff always need to plan for individuals missed by the updating of their Voter List (e.g. individuals recently moved to the community and meeting the 30-day residency requirement) and who will be added upon swearing an oath up to and including Election Day. Similarly, elections staff need to anticipate reasonable accommodations for voters with special needs.

Provisions made for these kinds of exceptions are part of the reason Vote By Mail often gets referred to as a "blended" scenario. Planning on giving residents a last chance to complete their voting process in-person on Election Day as part of a town's Vote By Mail process provides for the greatest degree of voter access and simply makes good sense.

Do-It-Yourself Voter Kit Distribution Tips

Whether you opt to distribute ballot kits by pick-up or drop-off, remember that they must be treated as **controlled materials**. That means you must know how many you have produced of each part of the Voter Kit, how many have been distributed and to whom, and how many are left over *at all times*.

Remember to securely store any and all ballot kit materials not yet distributed.

No matter how you distribute them, you will need a system to keep track of who has received a Voter Kit. Especially in the event of an emergency that requires a suspension of in-person election activities, this record would be used to distribute Voter Kits to any eligible voters who have not previously obtained one.

Your official Voters List is your master record for these tracking purposes. It will need a column where you can indicate if a kit drop-off was requested (if applicable), and a column to record when one has been delivered or picked up.

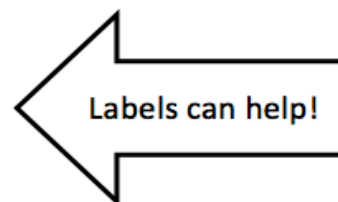
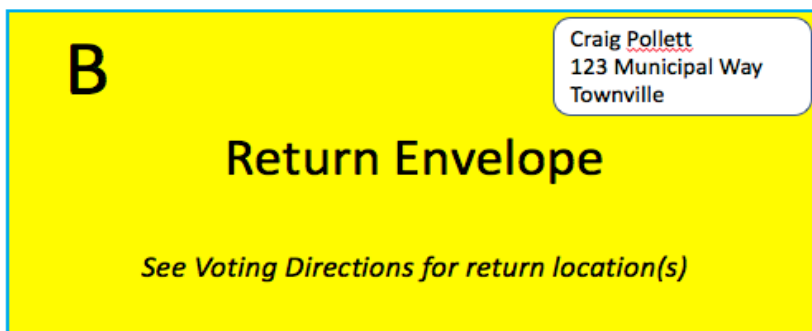
In the event that your town is considering undertaking a substantial **drop-off** component as part of your Voter Kit distribution, here are a few things to keep in mind:

When a drop-off is undertaken - and especially in the event of a town-wide drop-off blitz - copies of voter list information **by area** will be needed for by election staff undertaking the drop-off to record where kits have been successfully delivered. ***This is considered an allowable use of a Voters List.*** This use of Voter List information is similar to the way candidates may use their copy of the Voter List to compile street by street record sheets for use by campaign canvassers.

Once a drop-off effort for an area is concluded, the staff involved would return their drop-off record sheets to the Returning Officer. The RO would be responsible for ensuring their master Voter List is updated accordingly.

Provided it is safe to do so, an alternative to house-to-house, street-by-street drop-offs, is to arrange for a series of **Voter Kit pick-up events**. These could either replace or supplement Voter Kit pick-up arrangements at the Town Offices during regular working hours. Keep in mind that a special pick-up event would be considered a gathering, requiring a suitably accessible venue, set-up and COVID precautions (e.g. physical distancing, sanitation measures, symptom checklist signage) similar to a polling station on Election Day. The RO would need to plan accordingly for suitable staffing and directional signage, especially where a Voters List for a larger town needs to be subdivided among several polling divisions to manage potentially high numbers of attendees.

Whether distributing house-to-house or by pick-up, consider producing simple **labels** for each eligible voter and their civic address. These can be put on your Return Envelopes to facilitate both your Voter Kit distribution and your voter identification upon the return of a completed Kit.



Key Question 2: How will you have voters return their completed VBM Kits?

There are a few scenarios for how the VBM ballots may be returned but they once again fall broadly into one of the following two categories:

(1) Where a registered voter's VBM ballot is returned in-person prior to Election Day, or received via a designated drop-off location or dropbox up to 8 p.m. on Election Day:

- The voter shall employ the **full, double-envelope mode of return** – i.e. the completed ballot(s) will be contained in the sealed, non-identifying Ballot Secrecy Envelope; the sealed Ballot Secrecy Envelope together with the completed voter Declaration Form will then be enclosed in the (outer) Return Envelope.
- All completed Voter Kits received are stored securely as per the *VBM Regulations*.
- At regular intervals during the voting period to be determined by the RO, received Voter Kits will be processed one-by-one by designated election staff and the Voters List updated as follows:
 - The outer Return Envelope will be opened and discarded.
 - The enclosed Voter Declaration will be checked against the Voters List to ensure the identified voter is (a) registered, (b) has not previously voted, and (c) to determine which poll division they fall in.
 - Once confirmed, the registered voter's name is struck off the voters list and their unopened Ballot Secrecy Envelope is deposited in the sealed ballot box for their poll division.
 - Voter Declarations will be retained, secured with the other completed election kit materials in an envelope/envelopes labeled for this purpose.

(2) Where used for in-person voting at a poll in a designated location on Election Day:

- The voter will be confirmed as on the existing Voter List or, upon being determined eligible, swearing an Oath/Affirmation and being added to said list, they will receive just the required ballot(s) and a Ballot Secrecy Envelope.
- The Voter will proceed to the voting screen to complete their ballot(s) and enclose it/them in the Ballot Secrecy Envelope.
- The voter shall deposit their sealed Ballot Secrecy Envelope in the poll ballot box and the poll staff will strike their name from the Voter List.

Key Question 3: How will you plan for voters requiring accommodations?

MNL and PMA have worked with a variety of organizations to assemble basic accessibility guidance and supports, which will launch with our **Accessible Elections webinar** scheduled in late June. We also will be providing the option to consult directly with our **Municipal Elections Access Advisory Team** members. We look forward to answering any questions you might have about providing for voters with special needs in your community.

Check our Municipal Elections page for these details in coming weeks.

In the meantime, our Access Advisors have already reviewed the basic **Voter Kit** design and their modifications have been incorporated in our VBM Voter Kit templates in Part 3.

You may also want to look at the Voter Accessibility section of the **Elections NL** website (<https://www.elections.gov.nl.ca/elections/voters/access.html>). They have a series of captioned videos there produced by the Coalition of Persons with Disabilities (COD-NL) with American Sign Language (ASL) interpretation that illustrate some of the kinds of accessibility troubleshooting you may want to prepare for.

Finally, you should keep in mind that any of the physical accessibility provisions you might previously have considered for polling locations (e.g. directional signage, accessible parking, level entry or appropriate access ramps, barrier-free path of travel...), will now extend to any other locations you employ as part of your VBM distribution and return plans. Does your Town Office meet the test? How about your dropbox location?

We'll have an checklist you can use to do your own access audit but you should start thinking about those kinds of provisions now as you look ahead to designating your various election-related venues.

Key Question 4: What if your town or region goes into a state of lockdown during the election period?

As will every municipal member, MNL and PMA will be monitoring public health guidance in the period counting down to the elections and will ensure useful information is passed along as it becomes available. For the purposes of the VBM *Regulations*, however, it is necessary to examine your procedures from the standpoint of what you will do in a worst-case scenario of a lockdown that would prevent any in-person voting activities. In those instances, towns that have opted for the so-called "blended option" available under the VBM provisions, will need to have a mechanism to distribute those VBM kits not already picked up or distributed to voters on demand.

To this end, you should have a contingency plan. The most straightforward way to incorporate this in your election materials is to have a second **Voting Directions** sheet drafted that is specific to a COVID Emergency (See *Appendix B2 - Emergency Update Voting Directions* in our Part 3 Voter Kit templates).

Key Question 5: Where can I get all these new election supplies?

Recognizing the **Voter Kit** represents a series of new purchasing details and decisions for towns, MNL has done some groundwork to remove obstacles and ensure that adopting VBM is as straightforward an exercise as possible.

With smaller towns in mind, the templates provided for in our Voter Kit make it possible to do as much as possible *in-house*. Provided that you have access to a photocopier, the Voting Direction sheets and Ballots are basic black and white copies. These are the Voter Kit components that will vary between towns and that would also be the most time-sensitive so it makes sense that they stay “closer to home” if circumstances permit.

MNL is sourcing the Ballot Secrecy Envelopes, the Return Envelopes and will have arrangements in place for the Voter Declarations as well (the serially-numbered element of your Voter Kit). All of these can be produced well in advance but do involve special printing arrangements. We will also provide options for optional distribution envelopes and coloured paper stock that may be used to distinguish between ballots for multiple votes (e.g. if you vote for a Mayor in addition to Council Members).

Once again, details will be posted soon on our Municipal Elections page.

A Few Closing Thoughts

This VBM *Regulations* effort is special. It’s the first time we’re tackling this work on behalf of smaller communities in the Province. While this guidance material and our templates have had the benefit of a thorough legal review, we can expect that there will be plenty of things we will still want to tweak in weeks and months to come.

Please treat all these materials as living documents. Bring us your questions, concerns and ideas! We look forward to continuing to research and improve these resources to help you run a COVID-Safe and Accessible Municipal Election this fall.

Reach out to us with your municipal election questions at:

info@municipalnl.ca

1-800-440-6536 (toll-free)