

Staff Report

Report To: City Council

Report From: Kristen Van Alphen, City Clerk

Meeting Date: January 10, 2017

Report Code: CR-17-001

Subject: Election 2018 – Changes to the Municipal Elections Act

Recommendations:

That in consideration of Staff Report CL-17-001 respecting the 2018 municipal election, the Corporate Services Committee recommends that City Council:

1. Receives the report for information purposes; and
2. Provides direction to staff in the event that Council would like any election related matters discussed in the report brought forward for further consideration.

Strategic Initiative:

Strengthening our community through sound leadership.

Background:

On April 4, 2016, the Minister of Municipal Affairs and Housing tabled Bill 181, the *Municipal Elections Modernization Act, 2016* in the Legislature. It was introduced after consultation and input from a variety of stakeholders, including, amongst others, the Association of Municipalities of Ontario, the Association of Municipal Managers, Clerks and Treasurers of Ontario and members of the public.

City Council received a report at its meeting held on July 20, 2015 respecting the review of the legislation and directed staff to submit certain comments to the Ministry of Municipal Affairs and Housing. These comments are attached as Attachment #1 to this report.

Bill 181, *Municipal Elections Modernization Act, 2016* received Royal Assent on June 9, 2016.

Bill 181 included a number of changes to the *Municipal Elections Act, 1996* (MEA) that were intended to address issues that arose during the 2014 Municipal Elections across Ontario including:

- Lack of regulation for third party advertising;
- Challenges with compliance and enforcement of election rules;
- Lack of clarity related to campaign financing;
- The length of the campaign period; and
- Areas where the MEA could be updated and modernized.

The significant changes to the legislation may be grouped under the following major categories:

- Election calendar;
- Nomination period and process;
- Campaign finance;
- Third party advertising;
- Ranked ballots;
- Clerk's authority;
- Election signs and advertising; and
- Recounts.

The details associated with changes related to each of the major topics will be discussed in the Analysis section.

Analysis:

The changes to the MEA are numerous. The intent of this staff report is to identify changes to the legislation that are noteworthy for the City of Owen Sound and City Council. The significant changes to the legislation are identified in the paragraphs that follow, under major category headings.

Election Calendar

Changes to the election calendar are as follows (utilizing the 2018 Municipal Election as an example):

Subject	Old legislation	New provisions
By-law - Use of Alternative Voting Methods	June 1, 2018	May 1, 2017
By-law - Use of Ranked Ballots	N/A	May 1, 2017
Clerk's Policies & Procedures for voting/alternative voting	June 1 st , 2018	Dec. 31, 2017
Clerk determines single or batch elimination – ranked ballots	N/A	Dec. 31, 2017
Approval of Ballot Question:		
Approved by Council by-law	180 days prior to Voting Day	March 1 st , 2018
Ordered by upper-tier/minister	June 1 st , 2018	May 1 st , 2018
Opening of Nominations and registrations for third party advertisers	First day of business after January 1 st (January 2 nd , 2018)	May 1 st , 2018
Use of municipal resources policy	Not previously required	May 1 st , 2018
Final date for Nominations (Nomination Day)	Second Friday in September (September 14 th , 2018)	4 th Friday in July (July 27 th , 2018)
Close of 3 rd party advertising registrations	N/A	Oct. 19, 2018

The revised dates will be addressed in any advertising or the provision of documents, as required. Council has previously adopted Policy CrS-C39 – Use of City Resources during Elections which addresses the new requirement for a specific policy. Staff are reviewing the policy and will provide a report if changes to the policy are recommended.

Nomination Process

As noted in the table above, the nomination period will be reduced from 37 weeks to 13 weeks, with the opening of nominations occurring on May 1 and ending on the 4th Friday in July (July 27, 2018).

Candidates will be required to obtain 25 endorsement signatures from eligible electors. The 25 endorsement signatures are required to be provided at the time a candidate files his/her nomination paper. A person providing an endorsement must be eligible to vote for the office on the day that the person endorses the nomination and must provide a prescribed declaration. Individuals are permitted to endorse more than one nomination.

Campaign Finance

The MEA will prohibit contributions to candidates from corporations and trade unions that hold bargaining rights for employees in Ontario. It is important to note that money, goods and services given to and accepted by a person for his or her election campaign, or given to and accepted by another person who is acting under the person's direction, are deemed to be contributions under the legislation. This means that all in-kind contributions or discounted pricing for goods and services by corporations or trade unions will be prohibited, such as space, equipment, advertising, brochures, signs, printing, website design/hosting, food, etc.

Candidates will be required to inform contributors of the contribution limits. A contributor is limited to a total of:

- \$750 to any one candidate in an election; and
- \$5,000 to two or more candidates for office on the same council or local board.

Candidates will no longer be required to open a bank account if they do not receive contributions or incur expenditures related to their campaign.

After the 2018 Municipal Election, campaign deficits will not be carried forward from the previous election campaign.

A new spending limit for parties and expressions of appreciation after Voting Day will be implemented. The specific amount of the spending limit is to be set out in a regulation.

In terms of a candidate's campaign financial statements, a candidate will be permitted to resubmit a financial statement to correct an error, until the filing deadline. The nomination filing fee will only be refunded if a financial statement is filed on time. If a candidate doesn't file his/her financial statement on time and is willing to pay a \$500 late filing fee, the candidate will be provided an additional 30 day period to file the financial statement. A candidate exercising this option will not be refunded his/her nomination filing fee.

As soon as possible after April 30, 2019, the Clerk will be required to provide a report and make it available on the City's website, setting out all candidates in an election and indicating whether each candidate complied with financial reporting requirements.

The Clerk will be required to:

- review all of the financial statements received;
- identify whether any contributor appears to have exceeded any of the contribution limits; and
- report to the Compliance Audit Committee as soon as possible after the filing deadline regarding contributions made to candidates and third party advertisers in excess of the established limits.

Within 30 days of receiving the report, the Compliance Audit Committee must consider the report and decide whether to commence a legal proceeding against a contributor for an apparent contravention.

Third Party Advertising

The amendments to the MEA will create a framework for third party advertising which will be defined as "an advertisement in any medium that has the purpose of promoting or supporting or opposing a candidate or a "yes" or "no" answer to a question on the ballot".

Individuals, corporations or trade unions will be eligible to be third party advertisers, if they formally register with the Clerk.

Third party advertisers must file a registration with the Clerk, using a prescribed form along with a declaration of qualification. A fee will not be applicable for the registration.

Third party advertisers must be registered at the time an advertisement appears and the ad must contain:

- the name of the registered third party;
- the municipality where the third party is registered; and
- a telephone number, mailing address or email address at which the third party may be contacted regarding the advertisement.

A broadcaster/publisher will be prohibited from causing an advertisement to appear if they have not been provided in writing with the information above and must permit public inspection of records related to the advertisement.

Third party advertisers have similar campaign finance provisions as candidates:

- Contributions will not be able to be made or accepted unless the party is registered as a third party or made or accepted outside of the campaign period;
- Contributions may be made by an individual, corporation, trade union, registered third party or the spouse of a registered third party
- Contributions are not permitted to exceed a total of \$750 per registered third party or \$5,000 to two or more registered third parties. These limits do not apply to the third party itself.

Expenses will be subject to a maximum expense limit, calculated by the Clerk. Third party advertisers will be required to record expenses and file a financial statement. The Clerk is required to review contributions and report apparent contraventions. Third party advertisers will be subject to similar penalties as candidates for financial statement defaults.

Respecting contraventions, municipalities may require a person who contravened the provisions for third party advertisers or caused/permitted the contravention or the owner or occupier of the land on which the contravention occurred to remove or discontinue the advertising.

Ranked Ballots

Municipalities are being provided the option to pass a by-law to use ranked ballots to elect members of Council starting in 2018. It is not an option for school board elections, at this time. Ranked ballots allow a voter to rank candidates in order of preference, instead of voting for one candidate in the traditional first past the post system.

→ Ranked Ballots By-law Authority and Consultation Requirements

In order to implement ranked ballots Council must pass a by-law establishing ranked ballot use and ranked ballots must be used for all the elected offices for Council and all by-elections during the Council term.

The by-law may specify the maximum number of rankings that an elector may make and may provide a different number of maximum rankings for each office - the default maximum is three.

Before passing a by-law, Council will be required to give consideration to the following matters:

- the costs to the municipality of conducting the elections;
- the availability of technology, such as voting equipment and vote counting equipment and software, for conducting the elections; and
- the impact the proposed by-law would have on election administration.

In addition, before passing a by-law, the City would be required to hold an open house to provide the public with information and the opportunity to ask questions about the process. After the open house, a public meeting must be held respecting the proposed by-law. The by-law must be passed no later than May 1, 2017 for the 2018 election.

→ Ranked Ballots Vote Counting and Reporting Requirements

The general rules regarding what can appear on a ballot would continue to apply to ranked ballots and additional information would also be required.

A guide to ranked ballot vote counting is provided as Attachment #2 to this report.

In addition to declaring the candidates who have been elected, the Clerk will be required to also report on the elements of the ranked system such as the threshold for each office.

If the Committee or Council are considering ranked ballots a more fulsome report can be provided.

Clerk's Authority

In the past, a by-law was required to establish advance voting dates and hours and reduced hours of voting at long term care facilities and hospitals.

The Clerk will be provided the authority to determine these matters which will permit greater flexibility in responding to unforeseen circumstances that may arise throughout the election.

The Clerk will be provided with the authority to remove a person's name from the Voters' List if the Clerk is satisfied that the person has died (without an application to change the Voters' List). The Clerk will also be able to remove a deceased person's name from the Voters' List without a hearing, when an application has been filed.

The Clerk will be able to decide whether candidates are permitted to file financial statements electronically and any conditions or limits associated with electronic filing. Previously, a municipal Council was required to pass a by-law to provide for electronic filing and the conditions/limits.

Election Signs and Advertising

An election campaign advertisement will be defined as an advertisement in any broadcast, print, electronic or other medium that has the purpose of promoting or supporting the election of a candidate.

Landlords and condominium corporations will no longer be able to prohibit their tenants from displaying election signs in their own unit. The condominium corporation/landlord will have the right to establish reasonable conditions related to the size or type of sign. Landlords and condominium corporations will still be able to prohibit the display of signs in relation in common areas of the building.

Any election campaign advertisement purchased by or under the direction of a candidate, will be required to identify the candidate. Candidates must also provide publishers/broadcasters with the candidate's name, as well as the name, business address and telephone number of the individual who deals with the broadcaster or publisher under the direction of the candidate.

Broadcasters and publishers have similar requirements for candidate advertising as for third party advertising (outlined on page 6 of this report). Municipalities also have the same authority to address contraventions of the provisions related to election campaign advertising as for third party advertising.

Recounts

In the previous version of the legislation, the ability to conduct a recount was limited to three circumstances:

- Where the counting of ballots resulted in a tie vote;
- Where the Council, local board or Minister decides a recount is required when a resolution is passed within 30 days of the Clerk's declaration of the official results; and
- Where an elector's request for a recount has been granted by the Superior Court of Justice.

Recounts are more often conducted where a count is conducted by hand or where the mark(s) on a ballot is/are questionable in terms of which candidate was selected by the elector.

The new legislation will provide Council with the authority to adopt a policy which dictates when recounts will be conducted in circumstances other than those permitted by the Act. A by-law adopting the policy must be passed on or before May 1 in the year of the election.

Other changes

The amendments to the legislation included a number of other changes that may be of interest, including but not limited to:

Prohibiting a person who is in control of an apartment building, condominium building, non-profit housing cooperative or gated community from preventing a candidate or his or her representative from campaigning between 9 a.m. and 9 p.m. at the doors to the apartments, units or houses;

Requiring the Clerk to prepare a plan regarding the identification, removal and prevention of barriers that affect electors and candidates with disabilities and make the plan available to the public before Voting Day (and instead of presenting the post-election report to Council, making it publicly available);

Prohibiting persons from taking a photograph or making a video recording of his or her marked ballot or showing a marked ballot to anyone;

Creating a new offence for any offer, promise or agreement intended to convince an individual to register, withdraw, or avoid becoming a candidate;

Requiring original signatures only for nominations, proxies and registrations of third party advertisers;

Establishing both a minimum and maximum number of days before Nomination Day and Voting Day in a by-election;

Clarifying the requirements associated with Compliance Audit Committee meetings and decisions; and

Eliminating the requirement for the use of registered mail related to notifying candidates of financial statement filing requirements and penalties.

Financial/Budget Implications:

There are no financial implications resulting from this report. Ranked ballots, if implemented, could impact the amount of staff training and public education required which would impact the election budget.

Communication Strategy:

Any applicable changes to the MEA will be communicated through the election pages on the City's website, the candidate guide and other avenues as appropriate.

Consultation:

Dawn McAlpine, City Clerk, Barrie; Ministry of Municipal Affairs

Attachments:

1. City Comments for submission on the MEA review
2. Guide to counting votes in a ranked ballot election

Prepared By:	Kristen Van Alphen	<u>signature on file</u>
Reviewed By:	Kate Allan	<u>signature on file</u>
Submitted By:	Wayne Ritchie	<u>signature on file</u>

Attachment 1 - Table: City Comments on Municipal Elections Act Review

Theme	Question	Recommendation
Voting in Elections	From your experience, what parts of municipal elections in Ontario currently work well?	The City of Owen Sound believes that municipal elections work well when they allow for the flexibility for municipalities to tailor a municipal election to local needs and circumstances.
	From your perspective, what parts of municipal elections in Ontario should be changed?	The City of Owen Sound believes that the beginning of the campaign period should be changed from January 1 of the election year to June 1st of the election year, for a campaign period of approximately 150 days rather than the existing campaign period lasting approximately 300 days.
Third Party Advertising	Should there be rules for third party advertising? If so, what should these rules require?	The City of Owen Sound encourages adopting rules for third party advertising that are similar rules for registrants campaigning for or against a question on the ballot.

Attachment 1 - Table: City Comments on Municipal Elections Act Review

Theme	Question	Recommendation
Ranked Ballots	What are your thoughts on using ranked ballots for Ontario municipal elections?	The City of Owen Sound encourages providing the option for a municipal council to choose whether or not to use ranked ballots for the local election.
	Should municipalities be able to use ranked ballots for certain offices and not others? For example, only for mayor?	The City of Owen Sound encourages allowing municipal councils to determine the offices for which ranked ballots would or would not be used.
	Should public consultation by a municipality be required before implementing ranked ballots or before changing from ranked ballots back to the current system? What form should that consultation take?	The City of Owen Sound encourages requiring public consultation in the form and manner determined to be appropriate for the local needs and circumstances as determined by the local Council before implementing or discontinuing ranked ballots.
	How much information would you want about election results? For example, where there have been multiple rounds of counting would you want to see the results of each round of counting or just the final results?	The City of Owen Sound encourages allowing each municipality to determine the appropriate information about election results for the community's local needs and circumstances.

Attachment #2 - Counting Votes in a Ranked Ballot Election

This information is from the Ministry of Municipal Affairs website.

Counting the ballots in a single-member election

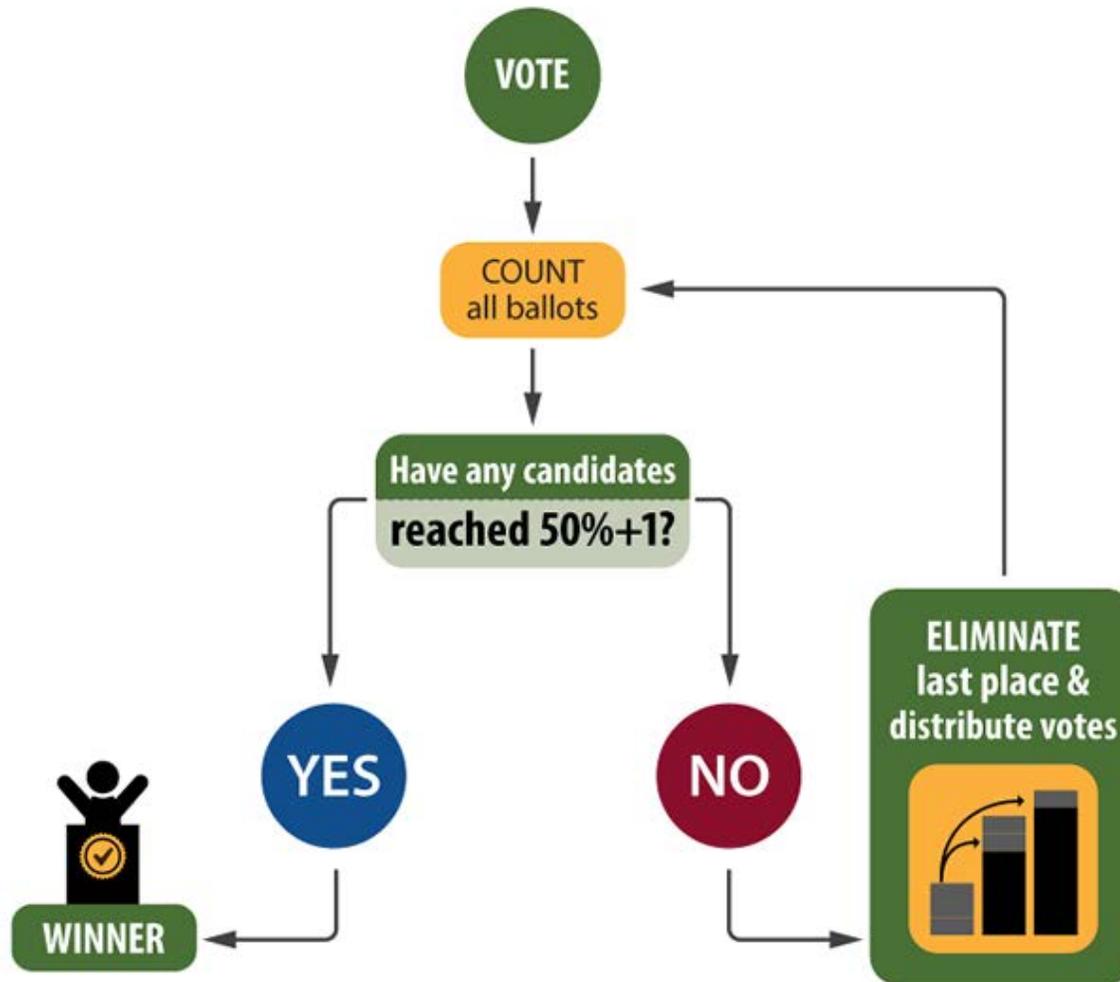
In order for a candidate to be elected in ranked ballot elections, they must receive a pre-determined number of votes.

In a **single-member ranked ballot election**, that number is 50 per cent of the total votes plus one (a simple majority).

First choice votes are counted for all of the candidates. If a candidate receives at least 50 per cent plus one votes, he or she is elected. If none of the candidates receives enough first choice votes, the candidate with the fewest votes is eliminated.

When a candidate is eliminated, their ballots are not disregarded. Instead each of the ballots is redistributed to one of the remaining candidates according to the next highest choice marked on the ballot.

If a candidate now has enough combined votes, he or she is elected. If none of the candidates receives enough votes to be elected, the candidate that now has the fewest votes is eliminated and those ballots are redistributed. This process continues until one candidate has enough votes to win.



In a single-member election, your first choice vote is always counted. Your second or third choices will only be counted if your earlier choice has been eliminated.

Counting the ballots in a multi-member election

Multi-member elections are elections where more than one candidate is elected, such as:

When council members are elected at large

A ward election where two or more people will be elected to represent the ward

In a **multi-member ranked ballot election**, the number of votes needed to win will depend on the total number of candidates being elected.

The threshold would be calculated by dividing the number of votes cast by the total number of candidates being elected plus one, then adding one to make it a majority.

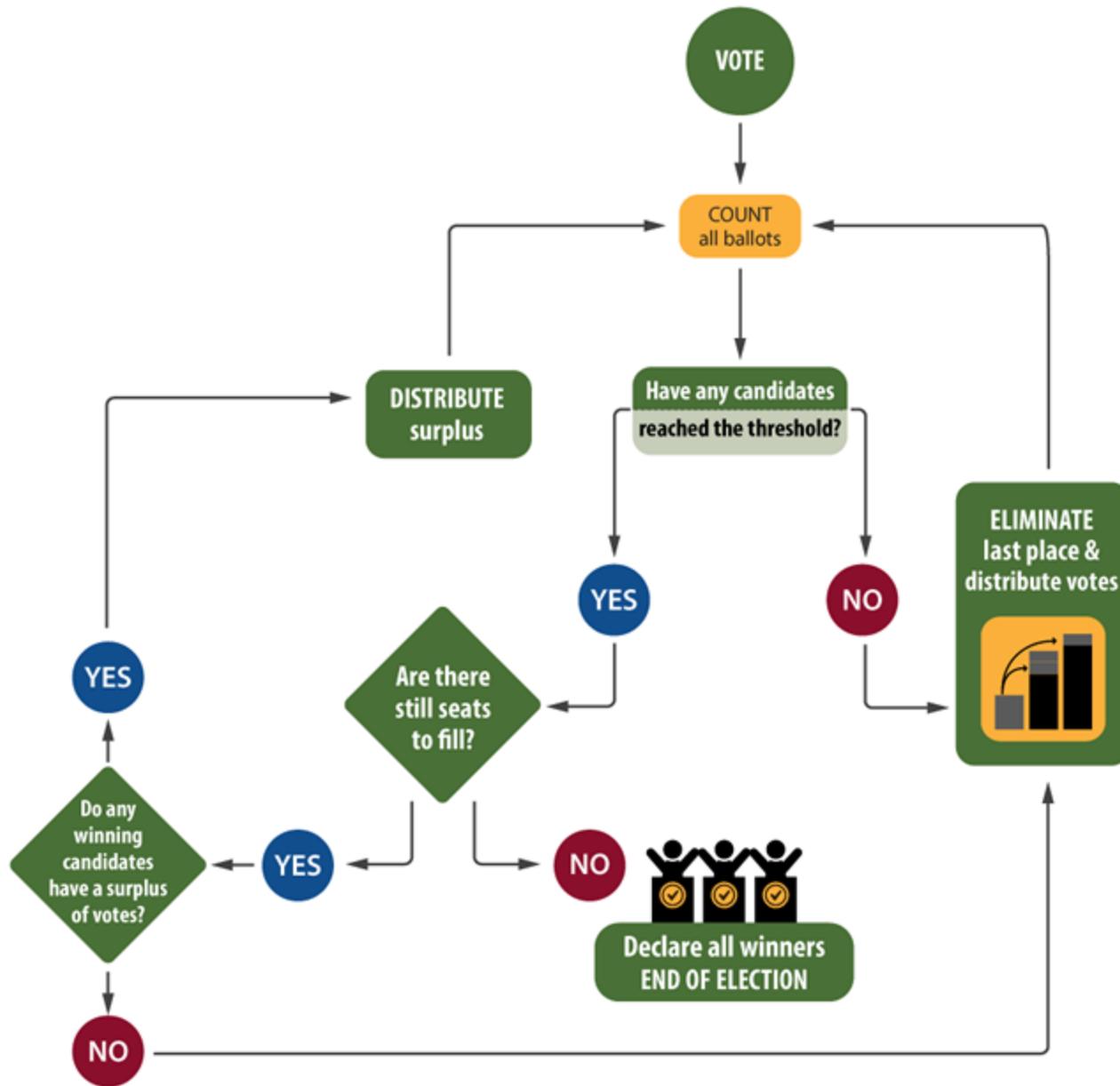
$$\text{Threshold} = \left(\frac{\text{number of votes cast}}{\text{number of candidates being elected} + 1} \right) + 1$$

2 seats: 33.33%+1

3 seats: 25%+1

4 seats: 20%+1

...and so on.



First choice votes are counted for all of the candidates. If none of the candidates receives enough first choice votes, the candidate with the fewest votes is eliminated. The ballots for the eliminated candidate are redistributed according to each voter's next choice, and those votes are added to the total votes for the remaining candidates. If a candidate now has enough combined votes, he or she is elected.

If a candidate receives more than the number of votes that they need to be elected, their surplus votes are redistributed according to each voter's next choice. This is to ensure that there are enough votes remaining to elect all candidates with the same threshold.

In a multi-member election, your first choice vote is always counted. Your second or third choices will only be counted if your earlier choice has been elected or eliminated.