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Summary

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Regulations and other Acts

M.O., 2009

Order of the Minister of Municipal Affairs, Regions and Land Occupancy dated 13 May 2009

An Act respecting elections and referendums in municipalities (R.S.Q., c. E-2.2)

Regulation respecting voting by mail

WHEREAS, under the first paragraph of section 582.1 of the Act respecting elections and referendums in municipalities (R.S.Q., c. E-2.2), the Minister of Municipal Affairs, Regions and Land Occupancy may, by regulation, determine the manner in which a person entered as an elector or a qualified voter on the list of electors or referendum list in a capacity other than that of a domiciled person may exercise the right to vote by mail;

WHEREAS, in accordance with sections 10 and 11 of the Regulations Act (R.S.Q., c. R-18.1), a draft of the Regulation respecting voting by mail was published in Part 2 of the *Gazette officielle du Québec* of 18 March 2009 with a notice that it could be made by the Minister of Municipal Affairs, Regions and Land Occupancy on the expiry of 45 days following that publication;

WHEREAS comments on the draft Regulation were received during the 45-day period;

CONSIDERING that it is expedient to make the Regulation with amendments;

CONSIDERING section 18 of the Regulations Act, which provides that a proposed regulation may come into force on the date of its publication in the *Gazette officielle du Québec* where the authority that has made it is of the opinion that the urgency of the situation requires it;

CONSIDERING that, under section 18 of that Act, the reason justifying such coming into force must be published with the regulation;

CONSIDERING that the Minister of Municipal Affairs, Regions and Land Occupancy is of the opinion that the urgency due to the following circumstances justifies such coming into force:

Section 659.4 of the Act respecting elections and referendums in municipalities provides that, if a regulation made under section 582.1 of the Act is in force, a municipality may provide that a person entered as an elector or a qualified voter on the list of electors or referendum list in a capacity other than that of a domiciled person may, on request, exercise the right to vote by mail in accordance with the regulation. Section 659.4 also provides that the resolution of the municipality must be passed not later than 1 July of the calendar year in which a general election is to be held. The next general election for all municipalities will be held on 1 November 2009.

To make it possible for municipalities that so desire to implement the vote by mail in their territory for the next general election, it is expedient that the Regulation come into force as soon as possible so that the 1 July deadline may be met.

THEREFORE, the Minister of Municipal Affairs, Regions and Land Occupancy orders as follows:

The Regulation respecting voting by mail, attached to this Minister's Order, is hereby made and comes into force on the date of its publication in the *Gazette officielle du Québec*.

Québec, 13 May 2009

NATHALIE NORMANDEAU,
*Minister of Municipal Affairs,
Regions and Land Occupancy*

Regulation respecting voting by mail

An Act respecting elections and referendums in municipalities (R.S.Q., c. E-2.2, s. 582.1)

DIVISION I APPLICATION AND INTERPRETATION

1. This Regulation determines the terms and conditions on which an elector or a qualified voter may exercise the right to vote by mail for the purposes of a poll carried out under the Act respecting elections and referendums in municipalities (R.S.Q., c. E-2.2).

The terms and conditions are added to those provided for in the Act, which continues to apply, adapted as required, except in the case of inconsistency.

Only a person entered or entitled to be entered as an elector or a qualified voter on the list of electors or referendum list in a capacity other than that of a domiciled person is an elector or qualified voter under this Regulation.

For the purpose of applying a provision of this Regulation to the exercise of the right to vote in a referendum poll, if such a provision is applicable, “elector” means a qualified voter, “returning officer” means the clerk or secretary-treasurer and “list of electors” means the referendum list.

DIVISION II

WRITTEN APPLICATION FROM ELECTOR

2. In order for an elector to be allowed to vote by mail, the returning officer must have received a written application to that effect signed by the elector.

An application for the right to vote by mail takes effect upon receipt by the returning officer and remains valid as long as it is not withdrawn or replaced.

The application must be received at the office of the returning officer not later than the last day fixed for making applications to the board of revisors for entry on, striking off or correction to the list of electors.

DIVISION III

INFORMATION TO ELECTORS

3. Before the publication of the notice of election provided for in section 99 of the Act, the returning officer must take the measures necessary to properly inform electors that electors have the right to vote by mail if they apply therefor in writing to the returning officer not later than the deadline set by the returning officer.

For the purpose of applying the first paragraph to the exercise of the right to vote in a referendum poll, the information measures provided for in the first paragraph must be taken as soon as the resolution fixing the date of the referendum poll is passed and must include

(1) the date on which the ballot papers will be sent by the clerk or secretary-treasurer;

(2) the deadline for receiving ballot papers at the office of the clerk or secretary-treasurer; and

(3) the fact that a qualified voter who has made an application and has not received his or her ballot papers on the sixth day before polling day may contact the clerk or secretary-treasurer to obtain them.

4. The public notice given under section 56 of the Act contains, in addition to the particulars provided for therein, the information provided for in the first paragraph of section 3.

DIVISION IV

NOTICE OF ELECTION

5. The notice of election given under section 99 of the Act contains, in addition to the particulars provided for therein and the information provided for in the first paragraph of section 3,

(1) the date on which the ballot papers will be sent by the returning officer;

(2) the deadline for receiving ballot papers at the office of the returning officer; and

(3) the fact that an elector who has made an application and has not received his or her ballot papers on the sixth day before polling day may contact the returning officer to obtain them.

DIVISION V

NOTICE OF POLL

6. The notice of poll given under section 171 or section 572 of the Act contains, in addition to the particulars provided for in those sections,

(1) the deadline for receiving ballot papers at the office of the returning officer;

(2) the contact information of the returning officer and, where applicable, of the returning officer’s assistants; and

(3) the days and hours during which an elector who has not received his or her ballot papers may obtain them by contacting the office of the returning officer.

DIVISION VI

LIST OF ELECTORS REGISTERED TO VOTE BY MAIL

7. Not later than the tenth day before polling day, the returning officer is to draw up a list of the electors registered to vote by mail and send a copy thereof to each authorized party or recognized ticket and to each independent candidate or, in the case of a referendum poll, to each representative designated under section 564 of the Act.

DIVISION VII POSTAL POLLING STATION

8. The returning officer may establish as many postal polling stations as he or she considers necessary.

If the returning officer establishes several postal polling stations, the returning officer determines which polling subdivision is attached to each station.

The returning officer gives notice of his or her decision to each authorized party or recognized ticket and each independent candidate or, in the case of a referendum poll, each representative designated under section 564 of the Act.

DIVISION VIII MATERIALS FOR VOTING BY MAIL

9. After the last day fixed for making applications to the board of revisors for entry on, striking off or correction to the list of electors and not later than the tenth day before polling day, the returning officer sends to every elector who has made a valid application to vote by mail and is entered on the list of electors an envelope containing

(1) the required ballot papers;

(2) an opaque envelope identified as “ENV-1” large enough to contain the ballot papers, not identifying in any way the elector and bearing the words “insert the ballot papers into this envelope” on the obverse;

(3) an envelope identified as “ENV-2” bearing the name and address of the returning officer and used to insert envelope “ENV-1”, a photocopy of one of the identification documents provided for in the second paragraph of section 18 and the declaration of the elector and of the person giving assistance;

(4) the form entitled “*Déclaration de l’électeur ou de la personne habile à voter et de la personne qui porte assistance*”, hereinafter called the “elector’s declaration”; and

(5) the voting instructions.

The returning officer must affix his or her initials to each ballot paper in the space reserved for the deputy returning officer’s initials and must, before sending the ballot papers, detach the stub and destroy it.

The voting instructions indicate

(1) the deadline for receiving ballot papers at the office of the returning officer;

(2) that a photocopy of one of the identification documents provided for in the second paragraph of section 18 must be sent with the ballot papers;

(3) that, if an elector omits to send a photocopy of one of the required identification documents or to sign the elector’s declaration, the elector’s ballot papers will be cancelled;

(4) the days and hours during which an elector who has not received a ballot paper to which the elector is entitled may obtain it by contacting the office of the returning officer; and

(5) that an elector who would have inadvertently marked or spoiled a ballot paper may ask the returning officer for a new one in exchange for the spoiled ballot paper.

10. As of the sixth day before polling day, an elector who has applied to vote by mail and not received his or her ballot papers may contact the returning officer to obtain them. If the elector’s name appears on the list of the electors registered to vote by mail and the elector has not already voted, the returning officer then sends the elector an envelope containing all the voting materials. The returning officer so informs the poll clerk of the postal polling station, who enters an indication to that effect in the poll book.

11. If a candidate withdraws after the ballot papers have been sent, the returning officer so informs any elector who has not yet voted by mail. The foregoing also applies if, after the ballot papers have been sent, a party’s authorization or ticket’s recognition is withdrawn or if a co-candidate ceases to be a co-candidate.

12. On the tenth day before polling day and in accordance with section 204 of the Act, the returning officer delivers to the deputy returning officer of the postal polling station all the materials needed by the latter to perform duties, including a copy of the revised list of electors and a copy of the list of the electors registered to vote by mail.

The opening in the ballot box must be such that the envelopes containing the ballot papers may be inserted but cannot be withdrawn before the ballot box is opened.

13. The deputy returning officer and the poll clerk of the postal polling station must be present on the days and during the hours set by the returning officer for the opening of the polling station.

The representatives assigned to the polling station may be present on the same days and during the same hours.

DIVISION IX **CONDUCT OF THE VOTE BY MAIL**

14. The postal voting period begins on the day the ballot papers are sent by the returning officer and ends at 4:30 p.m. on the second day before polling day.

15. Electors mark the ballot paper in one of the circles, using a fountain pen, a ball-point pen or a pencil.

16. Electors who are unable to mark their ballot paper themselves may be assisted

(1) by a person who is the elector's spouse or relative within the meaning of section 131 of the Act; or

(2) by another person who declares on the elector's declaration that he or she has not already assisted another elector during the poll.

17. Electors who have inadvertently marked or spoiled their ballot paper may ask the returning officer for a new one in exchange for the spoiled ballot paper. The returning officer so informs the poll clerk of the postal polling station, who enters an indication to that effect in the poll book.

18. Electors insert their ballot papers into the envelope identified as "ENV-1", seal it and insert it into the envelope identified as "ENV-2".

Electors also insert into envelope "ENV-2" a photocopy of one of the documents referred to in section 215 of the Act and bearing the elector's signature. If the elector's signature does not appear on the document, the elector must attach to that document a photocopy of another proof of identity bearing the elector's signature.

Electors must also insert into that envelope the elector's declaration, duly signed by the elector and, where applicable, by the person assisting the elector.

19. Electors send envelope "ENV-2" by mail. They may also leave the envelope at the office of the returning officer.

20. Any envelope received after 4:30 p.m. on the second day before polling day is cancelled.

21. The deputy returning officer of the postal polling station places envelope "ENV-1" in the ballot box without opening it after ascertaining that

(1) the elector is entered on the list of electors and the elector's name appears on the list of the electors registered to vote by mail;

(2) a photocopy of the elector's identification document is included and the elector's signature appears on it; and

(3) the elector's declaration is signed and the signature corresponds to the signature appearing on the photocopy of the identification document.

The deputy returning officer is to cancel envelope "ENV-1" if the photocopy of an identification document is not included, if the elector's declaration is not signed or if the signature does not correspond to the signature appearing on the identification document.

No envelope may be processed during the advance poll.

22. As soon as an elector has voted, the poll clerk of the postal polling station indicates it on the list of electors in the space reserved for that purpose.

23. At the end of each voting day and after having processed all the envelopes received, the poll clerk of the postal polling station places in separate envelopes

(1) the envelopes "ENV-1" that have been cancelled and the related electors' declarations;

(2) the electors' declarations for the envelopes "ENV-1" that were placed in the ballot box; and

(3) the photocopies of the identification documents.

24. The deputy returning officer seals the envelopes and places them in the ballot box.

The deputy returning officer, the poll clerk of the postal polling station and the representatives assigned to the polling station who wish to do so affix their initials to the seals.

25. The deputy returning officer then seals the ballot box.

The deputy returning officer, the poll clerk of the postal polling station and the representatives assigned to the polling station who wish to do so affix their initials to the seals.

26. The poll clerk of the postal polling station enters the following particulars in the poll book:

- (1) the polling date and the name of the municipality;
- (2) the number of the postal polling station;
- (3) the number of electors who sent envelope “ENV-1”;
- (4) the number of cancelled envelopes “ENV-1”;
- (5) the names of the persons who have performed duties as election officers or representatives.

The poll clerk also draws up a list of the electors who have voted by mail.

27. The deputy returning officer of the postal polling station gives the returning officer the ballot box, the list of electors, the list of the electors who have voted by mail and all the voting materials.

28. As soon as possible after the end of the postal voting period, the returning officer sends a copy of the list of the electors who have voted by mail to each authorized party or recognized ticket and to each independent candidate or, in the case of a referendum poll, to each representative designated under section 564 of the Act.

DIVISION X COUNTING AND ADDITION OF VOTES

29. From 8:00 p.m. on polling day, the deputy returning officer of the postal polling station, assisted by the poll clerk of the postal polling station, proceeds to the counting of the votes.

Where a postal polling station is situated in the same polling place as a polling station, the counting of votes may begin only after the poll is closed at that polling station.

30. In addition to the reasons for rejection in section 233 of the Act, every ballot paper that has not been furnished by the returning officer, that does not bear the returning officer’s initials or that is spoiled must be rejected.

DIVISION XI KEEPING OF DOCUMENTS

31. The photocopy of the identification document accompanying the ballot papers must be destroyed at the end of the period provided for in the Act for the presentation of a motion in contestation of an election or where a judgment on such a motion becomes a *res judicata*.

DIVISION XII ASSESSMENT REPORT

32. The chief electoral officer or the Minister of Municipal Affairs, Regions and Land Occupancy may require the returning officer to send a report assessing the vote by mail, on the terms and conditions and containing the information determined by the chief electoral officer or the Minister.

DIVISION XIII FINAL

33. This Regulation comes into force on the date of its publication in the *Gazette officielle du Québec*.

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IndexAbbreviations: **A**: Abrogated, **N**: New, **M**: Modified

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