

Appendix 11: Recount Procedure

Procedure Number: ELEC-14
Sub-Topic: Recount
Topic: Elections
Applies to: Municipal Elections and By-Elections

Purpose

This document provides the Town of Newmarket's procedures for a recount in accordance with the provisions of the Municipal Elections Act, 1996 (MEA) and Ontario Regulation 101/97 (Regulation).

Application

This procedure applies to election officials designated by the Clerk, candidates and scrutineers during a recount in Town of Newmarket municipal elections and/or by-elections. This procedure does not apply to recounts on votes on a by-law or question or on a recount as provided for in section 60(3) of the MEA.

Authority/Legislative References

Section 11(2)(b) of the MEA states that the Clerk is responsible for preparing for and conducting a recount in the election.

Sections 56, 57 and 58 outline that a recount shall be conducted if:

1. Two or more candidates receive the same number of votes and cannot both or all be declared elected to the office (tied vote);
2. Council, local board and/or minister passes a resolution after the declaration of results requiring a recount of the votes cast for office on Council or on the local board, respectively.
3. The Superior Court of Justice orders the Clerk to hold a recount.

For further provisions relating to recounts in both the MEA, as well as in Ontario Regulation 101/97, refer to Appendix "A".

Timeline for Recount

1. The Clerk shall hold a recount within 15 days of:
 - (a) The declaration of the results if there is a tied vote; and/or
 - (b) A resolution passed by Council, local board and/or minister, within 30 days of the Clerk's declaration of the results, requiring a recount of the votes cast, and/or
 - (c) The Clerk's receipt of an order from the Superior Court of Justice, within 30 days of the Clerk's declaration of the results, requiring a recount.

Recount Schedule and Notice Given

The Clerk shall:

- (a) Designate the date, time and place of the recount.
- (b) Provide notice of the recount (see Appendix "B" for a sample notice), to:
 - i. every candidate for an office that is the subject of the recount;
 - ii. in the case of a recount requested under subsection 57(1) of the MEA, the council or school board, as the case may be; and
 - iii. in the case of a recount order under section 58 of the MEA, the applicant(s).
- (c) Appoint election officials for the purposes of the recount and designate their titles and duties.

Who May be Present at a Recount

The following persons will be authorized to attend the recount:

- (a) The Clerk and any other Election Official appointed by the Clerk for the recount procedure including the Town Solicitor;
- (b) Certified Candidate(s) for the office;
- (c) The lawyer for each of the Candidate(s); and,
- (d) One (1) Scrutineer for each of the Candidate(s).
- (e) Any other person authorized by the Clerk.

Recount Procedures

1. In accordance with subsection 60(1) of the MEA, the recount shall be conducted in the same manner as the original count, that is, through a re-tabulation of votes cast in the internet and paper ballot voting systems as follows:

1.1 The Town Clerk shall schedule a recount to be held at the Municipal Offices to be conducted in the same manner as the original count and in accordance with the Electoral Board Closing Procedures for Internet and Paper Ballot Voting Procedures.

1.2 In the event of a tied vote, subsection 62(3) of the Act shall apply, as follows:

“If the recount indicates that two or more Candidates who cannot both or all be declared elected to an office have received the same number of votes, the Clerk shall choose the successful Candidate or Candidates by lot.”

1.3 In the event that a tied vote occurs after the statutory recount, the following procedure shall be used and applied:

1.3.1 The Clerk shall determine the texture and quality of the paper used for this process and each Candidate or the Candidates' lawyer and/or Scrutineer will have an opportunity to examine the paper to be used to inscribe the names of the Candidates;

1.3.2 The Clerk shall inscribe the name of each Candidate on a similar size paper and the Candidates, the Candidates' lawyer and/or Scrutineer, without touching the paper, examine the same. In addition, all persons present will have an opportunity to examine the box which will be used for conducting the lot;

1.3.3 Upon acceptance by the all Candidates, the Candidates' lawyer and/or Scrutineer, that the processes outlined in clauses 1.3.1 and 1.3.2 have been adhered to, the Clerk shall fold the papers with each Candidate's name, twice in 2 equal parts and shall deposit these papers, in full view of all persons present and authorized to attend, in an open-end box that will be acceptable to all persons present. In the event of a conflict or difference of opinion as to the selection of the box, the Clerk shall determine the box to be used for this process.

1.3.4 Upon completion of this process, the Clerk shall hold the box and, without looking into the box, ensure that the contents have

been displaced sufficiently, and request the Town Solicitor to draw only 1 or the required number for the purpose of determining the successful Candidate(s).

1.3.5 The Town Solicitor shall hand directly to the Clerk the selected and required number of papers and the Clerk shall read aloud the name of the Candidate or Candidates and proceed to declare this or these individuals elected.

1.3.6 Once completed, the Town Solicitor shall remove the remaining contents from the box and provide an opportunity for all persons present to examine these slips of papers including the box.

2. The Clerk shall brief the candidates and their lawyers who are present at the announcement of the recount results on the process followed in the conduct of the recount.

Results

3. The Clerk shall announce the results of the recount and provide copies of the Clerk's statement of the results of the recount to all candidates.

Declaration of Results

The Clerk shall, on the 16th day following the completion of the recount, declare the successful candidate(s) elected, if no application for a judicial recount has been made. See Appendix "C" for a sample declaration.

Contact and Approval

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Town Clerk, Legislative Services Department
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Procedure Version History

Version	Date Effective	Sections Updated
1	May 31, 2022	Original

The Municipal Elections Act states the following:**Duties of Clerk**

11(1) "The Clerk of a local municipality is responsible for conducting elections within that municipality, subject to the following exceptions*... "

* Paragraphs 1 to 4 have not been listed herein as they are not applicable to this procedure.

Duties of Clerk – responsibilities

11(2) "Responsibility for conducting an election includes responsibility for,

- (a) preparing for the election;
- (b) preparing for and conducting a recount in the election;
- (c) maintaining peace and order in connection with the election; and
- (d) in a regular election, preparing and submitting the report described in subsection 12.1(2)."

Powers of Clerk

12(1) "A clerk who is responsible for conducting an election may provide for any matter or procedure that,

- (a) is not otherwise provided for in an Act or regulation; and
- (b) in the clerk's opinion, is necessary or desirable for conducting the election."

Forms

12(2) "The power conferred by subsection (1) includes statutory power to establish forms, including forms of oaths and statutory declarations, and power to require their use."

Delegation

15(2) "The clerk may delegate to a deputy returning officer or other election official any of the clerk's powers and duties in relation to any election, as he or she considers necessary."

Scrutineers – Manner of appointment

16(5) "The appointment of a scrutineer shall be in writing if made by a candidate or applicant or by the Minister, and by resolution if made by a municipality or local board."

Scrutineers – Proof of appointment

16(6) "A scrutineer shall, on request, show proof of his or her appointment to the election official in charge of a voting place or of a place where votes are being counted."

Procedures and forms

42(4)(3) "The following rules apply with respect to the clerk's duties under subsection (3)(a):

Without limiting the generality of clause (3)(a), procedures for the use of vote-counting equipment may provide that,

- (a) at the time when and in the place where the votes are being counted, there shall be no more than one scrutineer for each certified candidate for each piece of vote-counting equipment, and
- (b) at a recount, the persons referred to in subsection 61(5) are not entitled to examine each ballot as the votes are being counted by the clerk."

Recount, tied vote

56(1) "The clerk shall hold a recount,

- (a) of the votes for two or more candidates who receive the same number of votes and cannot both or all be declared elected to the office;
- (b) of the votes on a by-law, if the votes for the affirmative and negative are equal;
- (c) of the votes for two or more answers to a question, if the votes are equal."

Time for recount

56(2) "The recount shall be held within 15 days after the clerk's declaration of the results of the election."

Recount for municipality, local board or Minister

57(1) "Within 30 days after the clerk's declaration of the results,

- (a) the council of a municipality may pass a resolution requiring a recount of the votes cast,
 - (i) for all or specified candidates for an office on the council,

- (ii) for all or specified answers to a questions submitted by the council,
 - (iii) for and against a by-law submitted by the council;
- (b) a local board may pass a resolution requiring a recount of the votes cast,
 - (a) for all or specified candidates for an office on the local board, or
 - (ii) for all or specified answers to a questions submitted by the local board;
- (c) the Minister may make an order requiring a recount of the votes cast for all or specified answers to a question submitted by him or her.”

Recount

57(2) “The clerk shall hold a recount in accordance with the resolution or order, within 15 days after it is passed or made.”

Application for order for recount

58(1) “A person who is entitled to vote in an election and has reasonable grounds for believing the election results to be in doubt may apply to the Superior Court of Justice for an order that the clerk hold a recount.”

Time for application

58(2) “The application shall be commenced within 30 days after the clerk’s declaration of the results of the election.”

Order, notice

58(3) “If satisfied that there are sufficient grounds for it, the court shall make an order requiring the clerk to hold a recount of the votes cast for all or specified candidates, on a by-law, or for all or specified answers to a question, and shall give the clerk a copy of the order as soon as possible.”

Time for recount

58(4) “The recount shall be held within 15 days after the day the clerk receives a copy of the order.”

Procedures

58(5) “The Minister may by regulation establish procedures for applications under this section.”

Problems re voting and vote-counting equipment

58(6) "A request for a recount due to problems related to voting and vote-counting equipment may be made only under this section."

Inclusion of related recount

59 "The clerk may conduct, as part of a recount under section 56, 57 or 58 that relates to an office, a recount of the votes cast for another candidate for that office."

Manner of doing recount

60(1) "A recount under section 56, 57 or 58 shall be conducted in the same manner as the original count, whether manually or by vote-counting equipment"

Prescribed rules

60(2) "A recount shall be conducted in accordance with the prescribed rules, subject to subsection (3)."

Order specifying different manner of doing recount

60(3) "Despite subsection (1), if the judge who orders a recount under section 58 is of the opinion that the manner in which the original count was conducted caused or contributed to the doubtful result, he or she may, in the order, provide that the recount shall be held in a different manner and specify the manner."

Who may be present at recount, election to office

61(1) "The following persons may be present at a recount under section 56, 57 or 58 that relates to an office:

1. The clerk and any other election official appointed for the recount.
2. Every certified candidate for the office.
3. The applicant, in the case of a recount ordered under section 58.
4. For each person referred to in paragraphs 2 and 3,
 - i. a lawyer, and
 - ii. one scrutineer for each recount station established by the clerk."

Examination of ballot

61(5) A person referred to in paragraph 2, 3 or 4 of subsection (1) or (2) is entitled,

- (a) to examine each ballot as the votes are being counted by the clerk (but not to touch the ballot); and
- (b) to dispute the validity of a ballot or the counting of votes in a ballot.

Determination of disputes

61(6) “The clerk shall determine a dispute referred to in clause (5) (b).”

Other persons

61(7) “Any other person may also be present at the recount with the clerk’s permission.”

Duty of clerk

62(1) “When the recount is complete, the clerk shall,

- (a) Announce the result of the recount; and
- (b) If there are disputed ballots,
 - (i) announce the number of them,
 - (ii) announce the result that would be obtained if the disputed ballots were excluded, and
 - (iii) write the number of the voting place on the back of and initial each disputed ballot, place them in a separate envelope clearly marked so as to indicate its contents, and seal the envelope.”

Who may be present

62(2) “Any persons described in subsections 61 (1), (2) and (7) who are at the recount are entitled to be present while the clerk acts under subsection (1).”

Tied vote

62(3) “If the recount indicates that two or more candidates who cannot both or all be declared elected to an office have received the same number of votes, the clerk shall choose the successful candidate or candidates by lot.”

Declaration by clerk

62(4) “If no application has been made for a judicial recount under section 63 the clerk shall, on the 16th day after the recount is completed, declare the successful candidate or candidates elected or declare the result of the vote with respect to a by-law or question, as the case may be.”

Application for judicial recount

63(1) “A person described in subsection (2) who disputes the validity of a ballot or of the counting of votes in a ballot may, within 15 days after the clerk announces the result under section 62, apply to the Superior Court of Justice for a recount limited to the disputed ballots.”

Who may apply

63(2) “Subsection (1) applies to a certified candidate, an applicant under section 58 or, in the case of a by-law or question, the municipality or local board or the Minister, as the case may be.”

Notice of application

63(3) “Notice of the application shall be served on the clerk and, if the application concerns an office, on each certified candidate.”

Summary procedure

63(4) “The application shall be dealt with in a summary manner, without application records or factums; the recount itself forms part of the hearing of the application.”

Clerk to attend and provide materials

63(5) “The clerk shall attend the recount and provide the court with,

- (a) a certified copy of the result of the recount conducted by the clerk;
- (b) a certified copy of the result of the recount conducted by the clerk excluding the disputed ballots;
- (c) the sealed envelope containing the disputed ballots from the recount conducted by the clerk; and
- (d) any other documents relating to the election that are relevant to the application.

Duty of court

63(6) “The court shall conduct the recount by,

- (a) determining the validity of the disputed ballots or of the counting of votes in any disputed ballots; and
- (b) recalculating the result of the election using the determinations made under clause (a) and the certified results referred to in clause (5) (b).”

Who may be present

63(7) “Any persons who were present at the recount under section 56, 57 or 58 are entitled to be present at the hearing and recount under this section.”

Order

63(8) “When the recount is complete the court shall,

- (a) make an order incorporating its decisions under subsection (6);
- (b) announce to the persons present,
 - (i) the result of the recount, and
 - (ii) how the court dealt with the disputed ballots;
- (c) place the disputed ballots in the original envelope and reseal it; and
- (d) return to the clerk the material provided under subsection (5).”

Copy of order

63(9) “The court shall give a certified copy of the order to the clerk.”

Tied vote

63(10) “If the recount indicates that two or more candidates who cannot both or all be declared elected to an office have received the same number of votes, the clerk shall choose the successful candidate or candidates by lot.”

Declaration

63(11) “After receiving the order, the clerk shall declare the successful candidate or candidates to be elected or declare the result of the vote with respect to a by-law or questions, as the case may be.”

No appeal

63(12) “Despite section 6 of the *Courts of Justice Act*, an order under this section cannot be appealed.

Right to sit pending final disposition

64(1) “A candidate who has been declared elected under section 55 is entitled to sit and vote on the council or local board until the recount and all applications under this Act have been finally disposed of and a different candidate has been declared elected.”

Decisions unaffected

64(2) “Decisions of a council or local board in which a candidate described in subsection (1) has participated are unaffected even if another candidate is afterwards declared elected as the result of a recount.

Ontario Regulation 101/97 as amended by Ontario Regulation 341/03 states the following:

4. “The following rules are prescribed for the purpose of subsection 60 (2) of the Act:

The clerk shall give notice of the recount to:

- i. every certified candidate for an office that is the subject of the recount,
 - ii. in the case of a recount requested under subsection 57 (1) of the Act, the council, local board or Minister, as the case may be,
 - iii. in the case of a recount ordered under section 58 of the Act, the applicant, and
 - iv. in the case of a recount concerning an office, question or by-law in respect of which electors of another municipality are entitled to vote, the clerk who was responsible for the conduct of the vote in that other municipality.
2. The clerk shall open the ballot boxes and count,
- i. in the case of a recount in an election for an office, the number of votes for each candidate who is subject to the recount under section 56, 57, 58 or 59 of the Act,
 - ii. in the case of a recount in an election to obtain the assent of the electors to a by-law, the number of votes in favour of the by-law and the number opposed, and
 - iii. in the case of a recount in an election to obtain the opinion of the electors on a question, the number of votes for each possible answer to the question.
3. The clerk shall reject from the count all ballots and votes in a ballot that do not comply with the rules set out in subsection 3 (2).
4. The clerk may conduct the recount by adding the votes from the statements of results prepared by the deputy returning officers under subsection 55 (1) of the Act, rather than by following rules 2 and 3, if a recount under those rules is waived by,
- i. each candidate subject to the recount under section 56, 57, 58 or 59 of the Act who is present, in the case of a recount in an election for office,

- ii. the council that submitted the by-law, in the case of a recount in an election to obtain the assent of the electors to a by-law,
- iii. the Minister, council or local board that submitted the question, in the case of a recount in an election to obtain the opinion of the electors on a question, and
- iv. the applicant, if he or she is present, in the case of a recount ordered under section 58 of the *Act. O. Reg. 101/97, s. 4.*"

Date:

Dear Candidate,

Section 4 of Ontario Regulation 101/97, made under the Municipal Elections Act, 1996 ("Act"), requires the Clerk to give notice of a recount to all certified candidates for the office that is subject to the recount. A recount shall be conducted by the Clerk in accordance with the provisions of the Act and section 4294), paragraph 2.

Notice is hereby given of a recount of voters in respect of the following:

Election:
Office(s):
Ward(s):

The announcement of the results of the recount will be held on:

Date:
Time(s):
Location(s):

Enclosed is a copy of the Clerk's procedures for a Recount and the 2022 Newmarket Municipal Election Procedures.

Each certified Candidate is entitled to be present at the announcement of the recount results with one lawyer an one scrutineer.

Yours truly,

Lisa Lyons

Director of Legislative Service /Clerk and Returning Officer

Declaration of the Results of the Recount

2022 Newmarket Municipal Election

<Office><Ward>

I Lisa Lyons, Clerk of the Town of Newmarket, declare to be elected by recount the following candidate:

Office of:

Name:

Dated at Newmarket this day of , 2022

X

Lisa Lyons
Town Clerk and Returning Officer