



Report to Council

Department: Office of the CAO
Division: Legal and Legislative Services
Date: April 19, 2022
Prepared by: Robert W. Auger, Town Solicitor/Clerk
Report Number: Legal and Legislative Services-2022-14
Subject: Municipal Election Recount Policy
Number of Pages: 5

Recommendation(s)

That Legal and Legislative Services-2022-14 entitled Municipal Election Recount Policy prepared by Robert W. Auger, Town Solicitor/Clerk dated April 19, 2022 be received, and

That Council support the Town of Essex Municipal Election Recount Policy by giving a first, second, and third reading thereto and finally pass By-law 2115 Being a By-law to adopt a Municipal Election Recount Policy.

Purpose

Elections that are conducted freely and fairly and that ensure the certainty of the votes cast are a key feature of a well-functioning democracy. Where the accuracy of the results are called into question, a recount can be conducted to reinforce confidence among candidates, electors and election administrators that the results are a true reflection of the votes cast by the participants.

The Municipal Elections Act ("MEA"), permits recounts to be conducted in accordance with a policy adopted by Council or a school board. The draft Municipal Election Recount Policy attached hereto authorizes the completion of a recount where the vote differential between an elected candidate and a non-elected candidate is equal to or less than one half of one percent

(0.5%) of the total number of votes cast for the race in which a recount is contemplated. This policy applies to all municipal elections administered by the Town of Essex. The policy does not apply to school board elections administered by other municipalities.

Background and Discussion

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 of the MEA 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 and/or the Minister passes a resolution after the declaration of results requiring a recount of the votes cast for office on Council.
- (3) The Superior Court of Justice (upon application by an elector) 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, please refer to Appendix "A" of this report.

The MEA also provides authority under Section 56 (3) to adopt via By-law a Policy by May 1 of an election year to define further circumstances under which a recount would be required other than those listed above. Where a recount is completed in accordance with a recount policy, it may only be conducted in the same manner that the original count was conducted and must be completed within a 15-day period that starts after the results have been declared by the Clerk.

The adoption of a recount policy does not in any way restrict the power of Council or the

Minister to still direct a recount pursuant to the MEA. A recount policy also does not affect an elector's right to seek a court order pursuant to Section 58, directing a recount.

However there are several main reasons for adopting a defined Municipal Election Recount Policy. A recount policy helps to reinforce the integrity and confidence of the municipal election by providing Council with a framework that addresses close vote situations, while removing the perception of bias in having Council itself deliberate and decide on directing a recount in a close vote situation. A policy would also provide candidates and voters with certainty with a clear and known definition of the circumstances where a recount will automatically be completed. A policy will also help election staff to proactively plan for and manage a recount, rather than having to react, often on short notice, to an order or resolution directing a recount.

The draft Municipal Elections Recount Policy (Appendix B to this Report) suggests a threshold that would require a recount where a vote differential of half of 1 percent (0.5%) or less, rounded up to the whole nearest whole number, of the total votes cast for the office exists between the candidate(s) who is elected and those who are not. The proposed formula accounts for varying participation rates and establishes a value where members of the public and candidates may have reasonable concerns respecting the perceived accuracy of the count due to the closeness of the results.

As an example, in an election with 5,000 total ballots cast by electors, a recount would be undertaken where the variance was equal to or less than 25 votes.

Staff believe that using a percentage figure to determine whether a recount should take place is more appropriate than defining a specific set number of votes, so as to account for variances which occur in the total number of votes cast for each race. Using a set number of votes as vote differential runs the chance that there will be recounts being conducted where it is not reasonable to do so, simply due to a small number of ballots being cast, or it may result in a

recount not being conducted despite a small statistical difference between candidate totals, because of a large number of ballots being cast by voters.

Financial Impact

If a recount is required under the Municipal Election Recount Policy, the cost will be limited to the cost incurred for staff time required for a manual recount which would be estimated at the Clerk, Deputy Clerk and Election Coordinator's time for up to one day per recount.

Consultations

Link to Strategic Priorities

- Manage, invest and plan for sustainable municipal infrastructure which meets current and future needs of the municipality and its citizens.
- Create a safe, friendly and inclusive community which encourages healthy, active living for people of all ages and abilities.
- Provide a fiscal stewardship and value for tax dollars to ensure long-term financial health to the municipality.
- Manage responsible and viable growth while preserving and enhancing the unique rural and small town character of the community.
- Improve the experiences of individuals, as both citizens and customers, in their interactions with the Town of Essex.
- Improve the Town's capacity to meet the ongoing and future service needs of its citizens while ensuring the corporation is resilient in the face of unanticipated changes or disruptions.

Report Approval Details

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| Document Title: | 2022 Municipal Election Recount Policy - Legal and Legislative Services-2022-14.docx |
| Attachments: | - By-Law No. 2115 - To Adopt a Municipal Election Recount Policy.pdf - Town of Essex Municipal Elections Recount Policy (002).pdf |
| Final Approval Date: | Apr 10, 2022 |

This report and all of its attachments were approved and signed as outlined below:



Doug Sweet, Chief Administrative Officer - Apr 10, 2022 - 9:14 AM