



Policy Manual

Section:	Office of the Chief Administrative Officer
Subject:	Municipal Elections Recount Policy
Policy Number:	
Approval Date:	
Approved By:	Resolution No.
Prepared By:	Town Solicitor, Legal and Legislative Services/Clerk

Purpose

The Corporation of the Town of Essex is committed to an election conducted freely, fairly and with integrity. Where questions exist to the accuracy of the results, a recount is one way in which all parties can be provided further certainty that the results are an accurate reflection of the votes cast.

This policy defines the circumstances that would require the Municipal Clerk to conduct a recount where the vote differential between an elected candidate and non-elected candidate falls within the threshold defined by the policy.

Authority

Section 11(2)(b) of the MEA states that the City 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) City Council, local board and/or minister passes a resolution after the declaration of results requiring a recount of the votes cast for office on City Council or on the local board, respectively.
- (3) The Superior Court of Justice orders the Clerk to hold a recount.

The Act also provides authority under Section 56 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.

Procedure

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 then the Clerk shall hold a recount of the votes for the candidate(s) in question. The Clerk may include the votes for any other candidate for the same office. The practical application of this provision would be for the Clerk to include any candidate whose vote total was, in the Clerk's opinion, close enough to possibly be affected by the recount.

The Procedure for any recount(s) shall be in accordance with the Town of Essex Clerk's Recount Procedures attached hereto as Schedule 'A' and forming part of this policy which may be amended from time to time as required or necessary.

Tied after Recount

In the event that a tied vote occurs after the recount, the Clerk shall choose the successful candidate or candidates by lot following the procedure below:

- a) The Clerk shall determine the texture and quality of the paper to be used to inscribe the names of the candidates, and each person who is present may examine the paper.
- b) The Clerk shall select a box that is open on one end from which to draw the lot, and each person who is present may examine the box.
- c) The Deputy Clerk shall inscribe the name of each candidate on a similar size paper, and each person who is present, without touching the paper, may examine the paper.
- d) The Deputy Clerk shall fold the papers bearing each candidate's name twice in two (2) equal parts and shall deposit these papers in the box in full view of all persons present.
- e) The Deputy Clerk shall hold the box and, without looking into the box, ensure that the contents are displaced sufficiently. The Clerk shall draw one (1) piece of paper from the box for each seat that is involved in the tie vote.
- f) The Clerk shall hand directly to the Deputy Clerk the selected and required number of papers, and the Deputy Clerk shall read aloud the name of the candidate or candidates. The Clerk shall proceed to declare this or these individuals elected. Each person who is present may examine the selected paper(s).
- g) Once completed, the Clerk shall remove the remaining contents from the box and provide an opportunity for all persons present to examine these slips of papers and the box.

Declaration

Unless an application has been made for a judicial recount, the Clerk, on the 16th day after the recount is completed, will declare the successful candidate or candidates elected by posting a Declaration of Recount Results form at the Municipal Office and on the Town of Essex website. Such Declaration shall be sent to everyone previously given notice of the recount.

Review Period

Periodic reviews of the Policy and procedures may be undertaken from time to time as required or necessary.

SCHEDULE "A"

2022 Town of Essex Clerk's Recount Procedures

1. Authority

The recount shall be conducted by the Municipal Clerk (the "Clerk") of the Town of Essex in accordance with the provisions of the *Municipal Elections Act, 1996* and Ontario Regulation 101/97.

2. Timing

The recount shall commence at a time to be determined .

3. Location

The recount shall be held at the Town of Essex Municipal building 33 Talbot Street South or at such other facility that may be determined and announced by the Clerk.

4. Notice

The Clerk shall give written notice to every certified candidate for the office(s) to be recount using the preferred contact information provided by the Candidate for the 2022 Town of Essex Municipal Election and by posting on the Town's website.

5. Recount Procedures

The Clerk shall appoint election officials for the purpose of the recount and may designate their titles and duties. The Clerk may delegate to any election officials any of the Clerk's powers and duties in relation to the election, as the Clerk considers necessary as per *MEA* section 15(2)&(3).

In accordance with subsection 60(1) of the *Municipal Elections Act, 1996*, the recount shall be conducted in the same manner as the original count. For the Town of Essex, vote-counting equipment is used, with the marked ballots fed into the vote tabulators, results tapes produced from the tabulators and Election Results Management (ERM) Software.

In accordance with subsection 42 (4)(3) (ii) of the *Municipal Elections Act, 1996*, at a recount using vote counting equipment, more specifically optical scanning vote tabulators, the persons referred to in subsection 61 (5) namely, certified candidates, lawyers representing certified candidates, and

scrutineers representing certified candidates, are not entitled to examine each ballot as the votes are being counted by the Clerk.

6. Location Set-up

The ballot boxes, vote tabulators and other supplies and materials will be set-up at the recount location prior to the commencement of the recount.

There shall be recount stations established, consistent with the number of vote tabulators used during the Town of Essex Municipal Election held on October 24, 2022.

The recount area will comprise 2 zones:

- i. The recount area (consisting of the recount stations and the results area); and
- ii. The observation area.

7. Who May be Present

In accordance with section 61 (1) and 61 (7) of the *Municipal Elections Act, 1996*, the following persons are entitled to be present at the recount:

- i. The clerk and any other election official appointed for the recount.
- ii. Every certified candidate for the office.
- iii. For every certified candidate:
 - One (1) lawyer; and
 - One (1) scrutineer for each recount station established by the clerk.
- iv. Any other person with the clerk's permission.

If for any reason, the Clerk and/or Election Coordinator believe that any of the individuals named above are disrupting the recount procedures, the Clerk and/or Election Coordinator shall provide a warning that their conduct is disruptive and then shall have the right to ask the individual to leave the premises and not return if their behavior is not corrected.

8. Candidates / Scrutineers / Legal Counsel

As per MEA, section 61(1), Candidates may appoint scrutineers or legal counsel in writing to represent them at the recount.

Scrutineers and legal counsel must show their written appointment to election officials

upon entering the recount area and must sign in and take an Oath of Secrecy.

No cellular phones, cameras, recording devices or other such communication devices shall be used in the recount or observation area by anyone other than an election official.

Once the vote counting has been completed for a recount station and the results tape has been produced from the tabulator, if the total number of scrutineers representing a candidate, exceeds the number of remaining recount stations, one (1) scrutineer must leave the recount area, but may remain in the observation area.

9. Programming and Testing of the Vote Tabulators

The vote tabulators shall be programmed for the recount in the same manner as on Election Day and as per the Town of Essex Procedures for 2022 Vote and Vote Counting Equipment.

Prior to the recount, the vote tabulators will be tested in accordance with the Town of Essex Procedures for 2022 Vote and Vote Counting Equipment.

10. Use of Vote Tabulators

The election officials at each recount station shall be assigned a vote tabulator, new ballot box, and ballot box containing the ballots cast for the Town of Essex Municipal Election held on the Advance Voting Days and on Election Day – collectively October 8, 12, 15, 19 and 24, 2022.

In full view of any scrutineers present at the recount station, the election officials shall:

- i. Print a zero tape from the vote tabulator before confirming '0' totals.
- ii. If the totals are '0' for all candidates, the election official shall initial and ensure that the '0' printout remains affixed to the vote tabulator until the results are printed by the vote tabulator after the completion of the recount.
- iii. If the totals are not '0' for all candidates, the election official shall not proceed until the vote tabulator is made operational or a back-up tabulator is provided.
- iv. Open the original ballot box, remove all ballots, and begin to feed ballots into the vote tabulator.

In accordance with subsection 42 (4)(3) (ii) of the *Municipal Elections Act, 1996*, at a recount, the persons referred to in subsection 61 (5) namely, certified candidates, lawyers representing certified candidates, and scrutineers representing certified candidates, are not entitled to examine each ballot as the votes are being counted by the Clerk.

All ballots in the ballot boxes were accepted by the vote tabulator on either Advance or Election Day. The elector who cast their ballot is no longer present but previously instructed an election official to cast the ballot with the voter's intent. Therefore, should a vote tabulator indicate an error on a ballot for either of the reasons noted below, the election official shall press the vote tabulators "cast" button to accept the ballot into the vote tabulator:

- a. Where there are no marks in all of the designated voting spaces;
- b. Where more designated voting spaces are marked for the office than the elector is entitled to vote.

Where there are marks in the designated voting space, but the vote tabulator is unable to count the votes on a ballot because the ballot was damaged after being accepted by the vote tabulator, the election official shall deliver the ballot to the Clerk, who shall:

- (4) Assign the original ballot a specified serial number which shall be recorded on both the original and duplicate ballot. In the presence of the scrutineers, the duplicate ballot shall be marked as an exact representation of the original cast ballot.
- (5) The election official shall wait and not feed any additional ballots into the vote tabulator until the replacement ballot is received and fed into the vote tabulator.

After all the ballots from the ballot box have been fed into the vote tabulator, the election official shall:

1. Obtain a printed record of the votes given for each candidate.
2. Remove the printed record from the vote tabulator.
3. Sign the certificate portion of the printed record along with any scrutineers who are present and wish to sign.
4. Place a ballot box seal on the ballot box, sign the seal and deliver the ballot box to the election officials at the Results area.
5. Deliver the results tape and tabulator to the election officials at the Results area.

11. Inspection of Spoiled Ballots

- i. In accordance with the Municipal Elections Act, section 60(1) all spoiled ballots

contained in envelopes for each original polling location, which were not accepted by the vote tabulator during the Advance polls or on Election Day, will be available for review.

- ii. No spoiled ballots will be fed into the vote tabulators or counted.

12. Results

During the recount, the Clerk or designate Election Official shall post for inspection, a copy of the results tapes from each of the vote tabulators as they are produced.

The results from each of the vote tabulators shall be compiled.

When the recount is complete, the Clerk shall announce the total results of the recount in accordance with subsection 62(1) of the Act.

13. Recount Records

At the conclusion of the recount, the Clerk shall secure the ballots, vote tabulators and other materials from the recount.