

<b>Recount</b>	City Clerk's Office – Election Services
	<b>Procedure No.:</b> PRO-EMO-004

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## 1. Purpose

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

## 2. Application

This procedure applies to election officials designated by the City Clerk, candidates and scrutineers during a recount in City of Toronto 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.

## 3. Authority/Legislative reference(s)

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.

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

## 4. Timeline for a recount

- (1) The City Clerk shall hold a recount within 15 days of:
  - (a) the declaration of results if there is a tied vote; and/or

- (b) a resolution passed by City Council, local board and/or minister, within 30 days of the City Clerk's declaration of the results, requiring a recount of the votes cast, and/or
- (c) the City Clerk's receipt of an order from the Superior Court of Justice, within 30 days of the City Clerk's declaration of the results, requiring a recount.

## **5. Recount schedule and notice given**

- (1) The City 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.

## **6. Who may be present at a recount**

- (1) The following persons are entitled to be present at the recount:
  - (a) the City Clerk and any other election official appointed for the recount.
  - (b) any candidate for the office that is the subject of the recount.
  - (c) the applicant(s), in the case of a recount ordered under section 58 of the MEA.
  - (d) one (1) lawyer for each of the certified candidates and/or applicant(s).
  - (e) one (1) scrutineer for each of the certified candidates and/or applicant(s) at each Recount Station. A scrutineer must be designated by the candidate.
  - (f) any other person authorized by the City Clerk.

- (2) The City Clerk may appoint security personnel to be election officials to ensure the safekeeping of the ballots during the recount.

## **7. 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, the marked ballots will be fed into the vote tabulators.
- (2) In accordance with the City of Toronto's procedures for the *Use of vote tabulators and voter assist terminals*:
  - (a) The vote tabulators shall be tested before the recount.
  - (b) A tabulator may be used to process the election results for more than one ward and subdivision that is subject to the recount. In this case, a separate memory card shall be used for each ward and subdivision and a separate results tape shall be printed and posted for each ward and subdivision.
  - (c) The ballots to be counted are those in ballot box A.
  - (d) Candidates, their lawyer(s) or scrutineer(s) will not be permitted to examine or touch the ballots, nor are they permitted to dispute the validity of a ballot or the counting of votes on a ballot as the ballots are being fed into the vote tabulators by the election official(s).
- (3) The City Clerk shall brief the candidates and their lawyers who are present on the process to be followed in the conduct of the recount.
- (4) The City Clerk shall designate onsite a Ballot Distribution Station, Ballot Determination Station and the number of Recount Stations.
- (5) The election official at each Recount Station shall receive the ballot box(es) A from one voting subdivision and the corresponding memory card. In full view of any scrutineers present at the Recount Station, the election official shall:
  - (a) open the box and remove all ballots;
  - (b) insert the corresponding memory card into the tabulator;
  - (c) cause a "zero tape" to be printed; and
  - (d) feed the ballots face down into the tabulator.
- (6) Should a tabulator reject a ballot, the process outlined in the *Use of vote tabulators and voter assist terminals* procedures shall be followed, namely:

- (a) Where there are no marks in any of the designated voting spaces, the election official shall re-feed the ballot into the tabulator and press the button under "Count as Marked" until the ballot is drawn into the tabulator.
  - (b) Where the tabulator returns the ballot because it detects more votes in the designated voting spaces than an elector is entitled to mark on the ballot, the election official shall re-feed the ballot into the tabulator and press the button under the "Count as Marked" until the ballot is drawn into the tabulator.
  - (c) Where there are marks in the designated voting space(s), but the tabulator cannot process the ballot, the election official shall re-insert the ballot, trying different orientations (face-down/head-first/last).
- (7) If the ballot is rejected again, the ballot shall be referred to the Ballot Determination Station for examination. At the Ballot Determination Station:
- (a) Where there are no marks in any of the designated voting space(s) for the applicable office and the tabulator cannot process the ballot, the City Clerk or designated election official shall:
    - (i) place a "Cancelled – Replaced Ballot" label ("Label") (see Appendix "C" for a sample label) on the back of the original ballot;
    - (ii) record the ward and subdivision, check the "Ballot Rejected" box, sign the Label and file it in the designated folder;
    - (iii) issue a replacement ballot; and
    - (iv) have the replacement ballot delivered to the originating Recount Station to be fed into the tabulator.
  - (b) Where there are marks in the designated voting space(s) for the applicable office and the tabulator cannot process the ballot, the City Clerk or designate shall replace the ballot. The City Clerk or designated election official shall:
    - (i) write on the original ballot "cancelled – replaced" and file it in the designated folder;
    - (ii) prepare a replacement ballot in full view of any certified candidates, scrutineers or lawyers by making a replica mark in the appropriate designated voting space(s) on the replacement ballot;
    - (iii) place a new Label on the back of the replacement ballot;
    - (iv) record the ward and subdivision, check "Ballot Replacement" and sign the Label; and

- (v) have the replacement ballot delivered to the originating Recount Station to be fed into the tabulator.
- (8) After all the ballots from each ward and subdivision have been fed into the tabulator, the designated election official shall:
- (a) print the results tape;
  - (b) remove the memory card from the tabulator;
  - (c) place the ballots back into ballot box A, seal it and return the box with the memory card to the Ballot Distribution Station; and
  - (d) deliver the results tape to the City Clerk and/or her designated election official.

## **8. Results**

- (1) The City Clerk shall post for inspection a copy of the results tapes from each of the tabulators in a designated area onsite as they are produced.
- (2) The results from each ward and subdivision will be compiled.
- (3) The City Clerk shall announce the results of the recount and provide copies of the City Clerk's statement of the results of the recount to all candidates.
- (4) The City Clerk shall secure all materials from the recount.

## **9. Breaking a tied vote**

If the recount results in a tied vote, the City Clerk shall choose the successful candidate by lot, as outlined in the MEA.

## **10. Declaration of results**

The City Clerk shall, on the 16<sup>th</sup> 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 "D" for a sample declaration.

**Date Approved: March 2018**

## Appendix "A" – Authority/Legislative References

The MEA 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 race 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,
    - (i) 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:

1. 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."



## Appendix "B" – Notice of recount by the City Clerk



City Clerk's Office  
Ujj S. Watkiss, City Clerk

Election Services  
City Hall,  
100 Queen Street West  
1st Floor, North  
Toronto, Ontario M5H 2N2

Fiona Murray  
Deputy City Clerk

Tel: 416-392-8019  
Fax: 416-392-3781  
Fiona.Murray@toronto.ca  
www.toronto.ca

**Date:**

Dear Candidate,

Section 4 of Ontario Regulation 101/97, made under the *Municipal Elections Act, 1996* ("Act"), requires the City Clerk of the City of Toronto 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 City Clerk in accordance with the provisions of the Act and section 42(4), paragraph 2.

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

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

The recount will be held on:

**Date(s):**  
**Times(s):**  
**Location(s):**  
**No. of recount stations:**

The testing of the vote tabulators shall take place at:

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

Enclosed is a copy of the City Clerk's procedures for a *Recount* and for *Use of tabulators and voter assist terminals*.

Each certified candidate is entitled to be present with one lawyer. A certified candidate may also have present one scrutineer at each recount station. In a court-ordered recount, an applicant may have a lawyer present and one scrutineer at each recount station.

Yours truly,

Fiona Murray  
Deputy City Clerk, Election Services

**Appendix "C" – "Cancelled – Replaced Ballot" label**

<b>Cancelled – Replaced Ballot</b>	
Ward _____	Sub _____
<input type="checkbox"/> Ballot Rejected	
<input type="checkbox"/> Ballot Replacement	
Signature of Clerk or election official: _____	

## Appendix "D" – Declaration of Results of the Recount



City Clerk's Office

City Hall  
100 Queen Street West  
West Tower, 13<sup>th</sup> Floor  
Toronto, Ontario M5H 2N2

Ulli S. Watkiss  
City Clerk

Tel: 416-392-8011  
Fax: 416-392-4900  
clerk@toronto.ca  
www.toronto.ca

### Declaration of the Results of the Recount s. 62(4) of the *Municipal Elections Act, 1996*

2018 Municipal Election  
<Office><Ward>

I, Ulli S. Watkiss, City Clerk of the City of Toronto, declare to be elected by recount the following candidate:

Office of:

Name:

<Office><Ward>

<First Name><Last Name>

Dated at Toronto this \_\_\_\_\_ day of \_\_\_\_\_, 2018

Ulli S. Watkiss  
City Clerk