

Recount	City Clerk's Office – Toronto Elections
	Procedure No.: PRO-ELER-004

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1. Purpose

This document outlines the Toronto Elections procedure for a recount in accordance with the provisions of the Municipal Elections Act, 1996 and Ontario Regulation 101/97.

2. Application

This procedure applies to election officials designated by the City Clerk, candidates and scrutineers during a recount in Toronto municipal elections and/or by-elections.

3. Authority/Legislative reference(s)

Section 11(2)(b) of the Municipal Elections Act, 1996 states that the City Clerk is responsible for preparing for and conducting a recount in the election.

Sections 56, 57 and 58 of the Municipal Elections Act, 1996 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 within 30 days of the City Clerk's 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 in response to an application for order for recount filed within 30 days of the City Clerk's declaration of results.

Section 59 of the Municipal Elections Act, 1996 states "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."

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 requiring a recount of the votes cast; and/or

- (c) the City Clerk's receipt of an order from the Superior Court of Justice 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 to:
 - (i) every candidate for an office that is the subject of the recount;
 - (ii) the council or school board, as the case may be, in the case of a recount requested under subsection 57(1) of the Municipal Elections Act, 1996; and
 - (iii) the applicant(s), in the case of a recount order under section 58 of the Municipal Elections Act, 1996.
 - (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 Municipal Elections Act, 1996.
 - (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 Municipal Elections Act, 1996, 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, unless specified in the order as per section 60(3).

- (2) In accordance with the City Clerk's procedure for the *Use of vote tabulators and voter assist terminals*:
 - (a) The vote tabulators shall be tested before the recount.
 - (b) A vote 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, results will be stored separately for each ward and subdivision.
 - (c) The ballots to be counted are those in ballot box A, as defined in the City Clerk's *Election procedures definitions*.
- (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.
 - (a) Section 42(4)3.ii. of the Municipal Elections Act, 1996 states 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).
- (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 media. In full view of any scrutineers present at the Recount Station, the election official shall:
 - (a) open the box(es) and remove all ballots;
 - (b) insert the corresponding memory media 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 City Clerk's procedure for the *Use of vote tabulators and voter assist terminals* shall be followed, namely:
 - (a) Where the tabulator returns the ballot because 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 "Cast Blank Ballot" button so that the ballot is accepted 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 "Cast" button so that the ballot is accepted 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-up/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 – Rejected and Replaced Ballot" label ("label") on the back of the original ballot;
 - (ii) record the ward and subdivision, sign the label and file it in the designated folder;
 - (iii) issue a replacement ballot without marking any of the designated voting space(s) for the applicable office(s);
 - (iv) write on the back of the replacement ballot "Ballot Replacement", record the ward and subdivision and sign the back; and
 - (v) 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) place a "Cancelled – Rejected and Replaced Ballot" label ("label") on the back of the original ballot;
 - (ii) record the ward and subdivision, sign the label and file it in the designated folder;
 - (iii) 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;

- (iv) write on the back of the replacement ballot "Ballot Replacement", record the ward and subdivision and sign the back.
 - (v) have the replacement ballot delivered to the originating Recount Station to be fed into the tabulator.
- (8) Section 61(6) of the Municipal Elections Act, 1996 states "The clerk shall determine a dispute referred to in clause (5)(b)."
- (9) After all the ballots from each ward and subdivision have been fed into the tabulator(s), the designated election official shall:
 - (a) print the results tape;
 - (b) remove the memory media from the tabulator;
 - (c) place the ballots back into their original ballot box(es) A, seal it and return the box(es) with the memory media 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 tabulator(s) 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) As per section 62(1)(b) of the Municipal Elections Act, 1996, the clerk shall,
 - (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."
 - (c) 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 section 62(3) of the Municipal Elections Act, 1996.

10. Declaration of results

The City 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 as per section 62(4) of the Municipal Elections Act, 1996.

Refer to section 63 of the Municipal Elections Act, 1996 for information on a judicial recount.

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