



Recount Procedures with the Use of Vote Tabulators

1.0 General Information

1.1 Preamble and Authority

The *Municipal Elections Act*, 1996 (the Act) gives the authority to the Clerk as Returning Officer, to establish procedures and forms for the recount process within the municipality. The Act further gives authority to the Clerk to provide for any matter or procedure that is not provided for in the Act.

In accordance with section 56(5)(a) of the Act, at its meeting of February 15, 2022, Council of the Corporation of the Town of Kirkland Lake resolved that the Clerk be directed to maintain the existing statutory threshold of the Act for the 2022 Municipal Election. That threshold is simplified as follows: that an automatic recount is required where there is a tied vote (section 56(1)(a), or, upon a court order (section 58)

The recount shall be conducted by the Clerk of the Town of Kirkland Lake (the “Clerk”) in accordance with the provisions noted within the Act, Ontario Regulation 101/97, the Town of Kirkland Lake’s 2022 Municipal Election Procedures, Voting Machine Procedures, and these Procedures.

1.2 Timing and Location

The recount shall commence on the date and time and at the location determined by the Clerk and shall be held within the relevant time periods as set out in the Act.

1.3 Notice

As described in Regulation 101/97 s.4, notice shall be given to each certified candidate for an office subject to recount; and to the applicant if applicable under Section 58 of the *Municipal Elections Act*.

1.4 Manner of the Recount

As provided for in subsection 60(1) of the Act, *“a recount under section 56, 57, or 58 shall be conducted in the same manner as the original count”*.

In accordance with Section 42(4) of the Act, these procedures provide that at the recount, there shall be no more than one scrutineer for each certified candidate for each piece of vote-counting equipment (each recount station). The Act also identifies that the persons referred to in subsection 61(5) are not entitled to examine each ballot as the votes are being counted by the Clerk.

Appointed Election Officials are the only persons who may handle and touch the ballots and other election material. Prior to the commencement of the recount, the Clerk will allow the candidates and their authorized representatives to view and identify the election materials.

1.5 Order and Decorum

Decorum will be maintained at all times. The Clerk will exercise reasonable control over the conduct of the recount to assure that election officials do not experience interference from any candidate, their scrutineer, legal counsel, or any other person/representative. Should anyone or anything impede the recount process, the recount will stop until the solution is remedied. Anyone who disrupts the recount or fails to follow the instructions of the Clerk or their designate will be required to leave. The decision of the Clerk in this regard is final.

1.6 Election/Recount Officials

The Clerk shall appoint such number of Election Officials to assist in the conduct of the recount as considered necessary and may designate her titles and duties, and in accordance with s. 15(2) of the Act, may delegate powers and duties to those officials.

1.7 Who may be Present in the Designated Recount Area

In accordance with Section 61(1 – 2) of the *Act*, only the following persons are entitled to be present:

- (a) *The Clerk and any other election official appointed by the Clerk for the recount*
- (b) *Every certified candidate for the office subject to the recount*
- (c) *The applicant for the recount*
- (d) *For each person referred to above:*
 - a lawyer, and*
 - one (1) candidate scrutineer for each recount station established by the Clerk.*

Media representatives will be permitted to attend the Recount Place and must remain at the designated media area(s) established by the Clerk.

Candidates' scrutineers must be appointed in writing by the candidate or the candidate's legal counsel and must present a complete and signed Appointment of Scrutineer Form to the Clerk prior to the commencement of the recount in order to be admitted into the designated area.

Any person authorized to attend the Recount Place, shall be required, prior to the start of the recount process, to take an oath or declaration before participating in the recount or performing of any duties.

All non-appointed election officials attending the Recount Place must formally sign-in. Any non-appointed election officials wishing to leave or re-enter the Recount Place must formally sign-out. Re-entry to the Recount Place during the conduct of the recount process will be prohibited unless as so authorized by the Clerk or designate. The Clerk's decision on re-entry is final.

Observers of the recount at the Recount Place may not make a record or note of any personal information or identifying marks which may appear on ballots or other documents unless each action is specifically authorized, in writing, by the Clerk. Personal information is protected by Section 14(1) of the *Municipal Freedom of Information and Protection of Privacy Act*.

1.8 Location Setup

The number of recount stations at the Recount Place shall be determined by the Clerk based on the number of ballots to be counted.

The ballot boxes, vote tabulators, and all other supplies and materials necessary for the recount shall be delivered to the recount location prior to the commencement of the recount for set-up.

1.9 Programming and Testing of the Vote Tabulators

The vote tabulators shall be programmed in the same manner as was done during the election period.

Prior to the recount process commencing, the Clerk shall test all vote tabulators to be used in the recount using the same procedures used for the election. The recount shall commence once the Clerk is satisfied that the tabulators are accurate.

2.0 Procedure

2.1 Recount Process -- Paper Ballot/Tabulator Count

In accordance with the *Act*, the recount is to be conducted in the same manner as the original count.

For additional processes and details, refer to Appendix 'A' Tabulator Protocol, and Appendix 'B' Roles of Appointed Election Officials, Candidates, Scrutineer, authorized representatives and Media, both forming part of this procedure.

All ballots counted during the 2022 Town of Kirkland Lake Municipal Election shall be included in the recount process. Cancelled ballots were not counted on Election Day and are not included in the Recount.

Counts will only be tabulated for those races for office that are subject to the recount.

The appointed Election Officials at each recount station shall receive a ballot box or ballot boxes, and in full view of any candidates or their scrutineers or legal counsel present at the recount station, the election official shall:

- a) insert a memory card;

- b) open the poll by turning the key to the open position and pushing the yes button on the vote tabulator;
- c) cause the vote tabulator to print a copy of all vote totals in the memory card, confirming zero totals. The zeros report is to be examined and signed by the election official responsible for that tabulator and the Clerk in the presence of the candidates and their authorized representatives;
- d) candidates or their authorized representatives may visually examine but not touch the vote tabulators;
- e) the election official will unseal the ballot box, remove all ballots and show the empty ballot box; and
- f) the ballots will be held up by an election official for candidates or their authorized representatives to visually examine but not touch;
- g) the Election Official will feed the ballots into the tabulator one at a time.

When the Election Official is alerted to a ballot containing an over-vote, a blank ballot or a ballot that contains ambiguous marks by the vote tabulator, the election official will cause the ballot to be accepted and processed by the tabulator.

2.2 Ballots unable to be tabulated / Rejected Ballots

For whatever reason, the vote tabulator is unable to process a ballot that had been processed by vote tabulation and counted at the voting location on Election Day, the Election Official shall:

- a) place a "Rejected Ballot" label on the back of the ballot;
- b) print their name, sign and date the label;
- c) record the original voting location the ballot originated from and the recount station on the ballot label;
- d) note the reason why the tabulator has not processed the ballot, if that reason is known; and
- e) place the ballot in the 'REJECTED BALLOTS' envelope for delivery to the Clerk.

Upon receipt of the rejected ballots the Clerk shall review the ballots and if the intent of the voter is clearly discernible, the Clerk shall manually add those votes to the final count from the vote tabulators. If the intent of the voter cannot be determined, the vote shall not be counted.

At the conclusion of the recount, the Clerk shall place the rejected ballots that have not been counted back into the 'REJECTED BALLOTS' envelope and seal the envelopes for storage with the ballot boxes and results tapes.

2.3 Ballots Objected to by Candidates / Authorized Representatives

For ballots that are Objected to by Candidates or their authorized representatives that had been processed by vote tabulation and counted at the Voting Location on Election Day, the election official shall:

- (a) place an "Objection #" on the back of the ballot;
- (b) record on the associated form:
 - the # of the objection,
 - the reason for the objection,
 - and the name of the person objecting;
- (c) place the ballot to one side;
- (d) at the end of the poll, the 'objected to' ballots will be processed by the vote tabulator to the counted, and then the 'objected to' ballots will be sealed in an envelope marked "OBJECTED TO" ballots with the associated form for delivery to the Clerk.

At the conclusion of the recount, the Clerk shall place the 'OBJECTED TO' envelope for storage in the ballot boxes and results tapes and memory card.

After all the ballots from the ballot box have either been fed into the tabulator or placed in the rejected ballot or objected to envelopes for delivery to the Clerk, the election official shall:

- a) close the poll by turning the key to the open/close poll position and pressing the close poll button;
- b) cause the results tape to be produced by the vote tabulator (three copies will be automatically printed);
- c) separate the three results tape reports;
- d) sign the results tape report and have the Clerk sign each copy in the presence of candidates or their authorized representatives;
- e) turn off the tabulator, and remove the memory card;
- f) seal the ballot box and place the memory card in an envelope and seal the envelope;
- g) record the vote totals for each candidate on a final tally sheet;
- h) seal the tabulator reports envelope and give the sealed envelope together with the loose results tape report to the Clerk;
- i) deliver the 'REJECTED BALLOTS' envelope and 'OBJECTED TO' envelope to the Clerk.

3.0 Results

During the recount, the Clerk shall post for inspection the summary of the votes cast for each candidate for the office subject to the recount from each of the recount stations.

When the recount is complete, the Clerk shall announce the results of the recount.

As per the Act, if no application has been made for a judicial recount, the Clerk shall declare the successful candidates elected on the 16th day after the recount is completed.

3.1 Still Tie Vote – Selection by Lot

In accordance with sections 62(3); 63(10) of the Act, if the recount leaves two candidates tied, the Clerk shall choose the successful candidate by lot.

The Clerk will place the name of both candidates on two post-it notes, fold the post-it note in half, and draw from a hat held by an Appointed Election Official above the head of the Clerk in the presence of all those in the Recount Place. The successful candidate will be the name drawn by the Clerk by this method.

4.0 Recount Records

At the conclusion of the recount, the Clerk shall secure all materials from the recount including but not limited to the ballots, ballot boxes, results tapes, memory cards and all other materials relating to the recount process.

The Clerk shall destroy recount materials in accordance with the retention period as prescribed in the Act.

Appendix 'A'

The ballots from each poll shall be tabulated as follows:

Vote Tabulator #1

- (October 5, 2022 - # of Ballots processed through tabulator)
- (October 8, 2022 - # of Ballots processed through tabulator)
- (October 11, 2022 - # of Ballots processed through tabulator)
- (October 24, 2022 - # of Ballots processed through tabulator)

Vote Tabulator #2

- (October 24, 2022 - # of Ballots processed through tabulator)
- (October 24, 2022 – TPR # of Ballots processed through tabulator)
- (October 24, 2022 – Extencicare # of Ballots processed through tabulator)
- (October 24, 2022 – Hospital LTC # of Ballots processed through tabulator)

Appendix 'B'

1. ELECTION OFFICIAL DISPLAYING BALLOTS (Appointed DRO)

- Election Official Displaying Ballots will pick up and display one ballot at a time for attending candidates and authorized representatives to view (2 – 3 seconds).
- If there are no objections to the ballot, the Election Official Displaying Ballots will pass the ballot to the tabulator operator (Appointed DRO Staff #1 & Appointed DRO Staff #2).
- Election Official Displaying Ballots will pick up another ballot and repeat the process.
- If there are objections to the ballot, the Election Official Displaying Ballots will pass the ballot to the Election Recording Official (Appointed DRO Staff #3 & DRO Staff #4) for processing.

The Election Official will NOT make any comments, observations, remarks or judgments on any of the ballots being processed.

The Election Official will NOT answer any questions concerning the recount process, but will refer all questions to the Clerk or their designate (section .

The Election Official will conduct themselves in a professional, business-like manner.

If a break or leave of the Recount Place is required by any of the Election Official during the course of the recount process, a request must be made to the Clerk or designate who will ensure an alternative Appointed DRO Staff can substitute in their place until return.

2. ELECTION RECORDING OFFICIAL (Appointed DRO)

Ballots passed to the Election Recording Official from the Election Official Displaying Ballots will be assessed as being 'Objected to' or 'Rejected'.

OBJECTED TO BALLOTS

- Election Recording Official will number and mark on the back of objected ballots "Objected Ballot #"; and will complete the corresponding form with objection #, the reason for the objection, and the person objecting.
- The objected ballots will be placed in an envelope marked "OBJECTED TO" and put to one side; at the end of the poll, before tabulating the results, the Election Recording Official will pass the envelope to the Election Tabulator Operator to be processed through the tabulator and included in the result.

REJECTED BALLOTS

For whatever reason, the vote tabulator is unable to process a ballot that had been processed by vote tabulator and counted at the voting location on Election Day, the Election Recording Official shall:

- place a "Rejected Ballot" label on the back of the ballot;

- print their name, sign and date the label;
- record the original voting location the ballot originated from and the recount station on the ballot label;
- note the reason why the tabulator has not processed the ballot, if that reason is known; and
- place the ballot in the rejected ballot envelope for delivery to the Clerk at the end of the poll.

The Election Recording Official will NOT make any comments, observations, remarks or judgments on any of the ballots being processed.

The Election Recording Official will NOT answer any questions concerning the recount process but will refer all questions the Clerk or their designate.

The Election Recording Official will conduct themselves in a professional, business-like manner.

If a break or a leave of the Recount Place is required by any Election Recording Official during the course of the recount process, a request must be made to the Clerk or designate who will ensure an alternative Appointed DRO Staff can substitute in their place until return. A tracking sheet will be managed by an Appointed Election Official.

3. ELECTION TABULATOR OPERATOR (Appointed DRO)

The Election Tabulator Operator will:

- a) insert a memory card;
- b) open the poll by turning the key to the open position and pushing the yes button on the vote tabulator;
- c) cause the vote tabulator to print a copy of all vote totals in the memory card, confirming zero totals. The zeros report is to be examined and signed by the Election Tabulator Operator responsible for that vote tabulator and the Clerk in the presence of the candidates and their authorized representatives;
- d) The Election Tabulator Operator will allow candidates or their authorized representatives to visually examine but not touch the vote tabulators;
- e) The Election Tabulator Operator will accept the ballots from the Election Recording Official to be processed through the vote tabulator one at a time.
- f) If the vote tabulator does not fully process a ballot, the Election Tabulator Operator will read to the candidates and their authorized representatives the message on the display screen and
 - i. in the event of an overvote or blank ballot, the Election Tabulator Operator will override the irregularity and process the ballot through;

- ii. in the event of ineligible marks, the Election Tabulator Operator will bring back the ballot and have the Clerk determine the course of action.

'REJECTED BALLOTS'

For whatever reason the vote tabulator is unable to process a ballot that had been processed by the vote tabulator and counted at the voting location on Election Day, the Election Tabulator Operator shall pass the ballot to the Election Recording Official for processing.

'OBJECTED TO' BALLOTS

After all the ballots from the ballot box have been fed into the vote tabulator, the Election Tabulator Operator will accept the 'OBJECTED TO' envelope from the Election Recording Official and process those objected ballots through the vote tabulator, but NOT allow those ballots to fall into the box. The objected ballots will be returned into the 'OBJECTED TO' envelope with the form, sealed and placed in the ballot box.

END OF BALLOT PROCESSING

- The Election Tabulator Operator shall then:
 - close the poll by turning the key to the open/close poll position and pressing the close poll button;
 - cause the results tape to be produced by the vote tabulator (three copies will be automatically printed);
 - separate the three results tape reports;
 - sign the results tape reports and have the Clerk sign each copy in the presence of candidates or their authorized representatives;
 - turn off the tabulator, and remove the memory card;
 - return all election material to the Clerk.

The Election Tabulator Operator will NOT make any comments, observations, remarks or judgments on any of the ballots being processed.

The Election Tabulator Operator will NOT answer any questions concerning the recount process, but will refer all questions the Clerk or their designate.

The Election Tabulator Operator will conduct themselves in a professional, business-like manner.

If a break or a leave of the Recount Place is required by any Election Recording Official during the course of the recount process, a request must be made to the Clerk or designate who will ensure an alternative Appointed DRO Staff can substitute in their place until return. A sign-in/out sheet will be managed by an Appointed Election Official.

4. CANDIDATES, SCRUTINEERS, AUTHORIZED REPRESENTATIVES, MEDIA

Before being admitted to a Recount Place, a person appointed as a Scrutineer shall produce and show their Appointment (Form TD22 Appointment of Scrutineer by Candidate) to the Clerk and take the oral Oath of Secrecy (Form TD25 Oral Oath of Secrecy) before being permitted to remain in the Recount Place.

Where requested, Scrutineers must show their formal appointment Form to the Election Tabulator Operator or Clerk in the Recount Place.

A candidate may have a scrutineer at each vote tabulator. The allowable placement of the candidate or scrutineer will be identified by the Clerk prior to the conducting of the recount at the Recount Place.

Candidate, scrutineers and authorized representatives are not permitted to touch any election materials at any time during the recount process.

If a break or leave of the Recount Place is required by any candidate or scrutineer, it is mandatory that at least one representative from the office for which a recount is being conducted be present at all times during the complete recount process. A sign-in/out sheet will be managed by an Appointed Election Official.

Media representatives must limit their discussions and questions as follows: prior to the commencement of the recount process, or, upon completion of the recount process. The only exception is to obtain procedural clarification from the Clerk or designate on the recount process.

The Clerk is responsible for the conduct of the Recount Place and no candidate, scrutineer, authorized representative or member of the media has the right to interfere with the Clerk or Election Officials in the discharge of their duties.

ANYONE who is creating a disturbance at a Recount Place will be removed by the Clerk or designate.

Use of cell phones is NOT permitted at any time inside the Recount Place or Location.