

MUNICIPAL ELECTIONS 2022
Voting Day Procedures &
Procedures for the Use of Vote Tabulators

1. INTRODUCTION

- 1.1. This procedure has been prepared and is being provided to all nominated candidates pursuant to Section 42 of the Municipal Elections Act, 1996.
- 1.2. Every effort has been made to ensure the accuracy of these procedures; however, in all cases, the actual text of the applicable legislation and/or by-laws should be referred to. It is also important to note that while these procedures provide important election information, it is the responsibility of each prospective candidate to ensure compliance with all legislative and municipal requirements.

2. DEFINITIONS

- 2.1. In this procedure:
 - a) “Act” means the Municipal Elections Act, 1996, S.O., 1996, c. 32, as amended;
 - b) “Ballot-Marking Pen” means the designated black Ballot-Marking Pen provided by an Election Official for the use by an elector to mark the ballot;
 - c) “Clerk” means the returning officer for the Municipal Elections and Clerk for The Corporation of the Town of Niagara-on-the-Lake;
 - d) “Election Official” means any individual provided by the Town of Niagara-on-the-Lake to assist in the coordination of an election;
 - e) “Memory Pack” means a cartridge that is a removable, non-volatile memory card where all tabulated totals are stored;
 - f) “Secrecy Folder” means an apparatus in which a ballot can be placed so as to conceal the names of the candidates and the marks upon the face of the ballot, except for the mark of the Election Official;
 - g) “Valid Mark” means a mark made by an elector in the designated space on a ballot to the right of the candidate's name using a Ballot-Marking Pen;
 - h) “Vote Tabulator” means an apparatus that optically scans a specified area on the ballots to read the votes cast and to tabulate the results.

3. APPLICATION OF PROCEDURE

- 3.1. The following procedures are provided for the use of Vote Tabulators at the voting places as approved through By-law 5405-22 by the Council of The Corporation of the of the Town of the Niagara-on-the-Lake.

- 3.2. Where this procedure does not provide for any matter, an election to which this procedure applies shall be conducted in accordance with the principles of the Act.
- 3.3. The Clerk may, in writing and in accordance with the provisions of the Act, amend these procedures and in the case of such amendment, shall provide notice to each candidate of the amendment in a form and manner and at a time that the Clerk considers adequate in order to give reasonable notice or to convey the information.

4. ELECTION OFFICIALS

- 4.1. The Clerk may appoint Election Officials for the purposes of this procedure and may designate their titles and duties.

5. BALLOTS

- 5.1. Composite ballots combining the contents of two or more separate ballots shall be prepared to conform as closely as possible to the prescribed form and rules provided for in the Act.
- 5.2. There shall appear on the ballot to the right of each candidate's name a space suitable for the marking of the ballot.

6. CANDIDATES/SCRUTINEERS

- 6.1. Candidates may, in writing and using the prescribed forms, appoint Scrutineers to represent them at a voting place.
- 6.2. Scrutineers must show their written appointment to Election Officials upon entry to the voting place and at any time thereafter upon demand of an Election Official.
- 6.3. Election Officials are responsible for the conduct of the voting place and no candidate or Scrutineer has any right to interfere with these individuals in the discharge of his/her duties.
- 6.4. During the fifteen minutes before the opening of the voting place, the candidates or Scrutineers who are entitled to be present in a voting location during voting hours are entitled to visually inspect but not to physically handle the ballots and any other papers, forms and documents relating to the vote but not so to delay the timely opening of the voting location.
- 6.5. Only one Scrutineer for each certified candidate for each Vote Tabulator or ballot box at a Voting Place may be present within the Voting Place when Election Officials are performing their duties. If the candidate or another of their Scrutineers enters the Voting Place, the original Scrutineer shall leave.
- 6.6. It is recommended that Scrutineers supply themselves with a clipboard for their use, as sitting at the tables provided for Election Officials is not permitted. Scrutineers will be given direction by an Election Official on where they can place themselves to observe.

- 6.7. Candidates and Scrutineers shall not attempt to directly or indirectly influence how an elector votes while in attendance at a voting location.
- 6.8. Candidates and Scrutineers are not allowed to enter a voting station while occupied by an elector, or to be in a position to see how the elector marks their ballot.
- 6.9. Candidates and Scrutineers shall not display or distribute any campaign material or literature at a Voting Place and shall abide by all rules and procedures regarding the Voting Place as established by the Clerk and by the Municipal Elections Act.
- 6.10. If an elector is objected to by a Scrutineer, the Scrutineer shall speak directly to the election official and indicate the reason for the objection. The Election Official shall note the objection on the Voters' List and require the elector to take a prescribed oath prior to issuance of a ballot.
- 6.11. To protect the secrecy of the vote, candidates and Scrutineers shall not be permitted to examine marked ballots or object to marked ballots or the tabulating of votes on marked ballots as referenced in Section 49 of the Act as the ballots are being fed into the Vote Tabulator by an Election Official.
- 6.12. The total of votes cast for each candidate as counted by the vote tabulating equipment and as accepted by the Election Official is final.
- 6.13. An Election Official shall allow a candidate/Scrutineer to inspect a printout of the results of the election as produced by a vote tabulating equipment. A copy of the printout can be provided upon request.
- 6.14. Scrutineers may place a seal on the ballot box after the tabulating of votes, when an Election Official seals the box, so that ballots cannot be deposited or withdrawn without breaking the seal.
- 6.15. A candidate or their Scrutineer is entitled to be present when the ballot box and documents are delivered to the Clerk but in no case shall a candidate or Scrutineers interfere with or delay any such election processes.

7. PROCEDURE AT THE VOTING PLACE

- 7.1. If a Vote Tabulator is to be used in a Voting Place, an Election Official shall, in the presence of any Scrutineers and Election Officials present, cause the Vote Tabulator to print a copy of all totals in its Memory Pack 15 minutes before the opening of the voting place confirming zero totals.
- 7.2. If the totals are zero for all candidates, by-laws and questions, an Election Official shall ensure that the zero printout remains affixed to the Vote Tabulator until the results are printed

by the Vote Tabulator after the close of the vote. All Election Officials may sign the zero totals report.

- 7.3. If the totals are not zero for all candidates, by-laws and questions, an Election Official shall immediately notify the Clerk and shall conduct the vote by placing all marked ballots returned by electors into the auxiliary compartment of the ballot box until the Vote Tabulator is made operational or the Clerk provides a back-up Vote Tabulator to the voting location.

8. PROCEDURES IN NORMAL CIRCUMSTANCES

- 8.1. As each elector arrives at the ballot issuing table, the Election Official verifies the elector ID, that the elector is on the Voters' List and the type of ballot to be provided. An Election Official shall, at the same time as the ballot is issued, explain the voting procedure and provide a secrecy folder and show the elector how to place the ballot back in the secrecy folder after marking it, before handing it to the election official at the tabulator or ballot box.
- 8.2. Upon receiving the ballot, the voter shall:
- a) immediately proceed to a voting compartment; and
 - b) using the ballot-marking pen provided, mark the ballot in accordance with the instructions provided.
- 8.3. After marking the ballot in the voting compartment, the voter shall:
- a) insert the ballot into the secrecy folder such that only the initials of the Deputy Returning Officer are visible;
 - b) place the ballot marking pen in the voting compartment and leave the compartment without delay; and
 - c) deliver the secrecy folder containing the ballot to the Election Official attending the Vote Tabulator.
- 8.4. The Election Official will request that the elector remain until the Vote Tabulator has successfully accepted the ballot, and shall, in the presence of the voter and without removing the ballot from the secrecy folder:
- a) verify that the ballot displays the initials of the Deputy Returning Officer;
 - b) place the secrecy folder containing the ballot into the feed area of the vote tabulator until the vote tabulator draws the ballot inside the tabulator and accepts the ballot in full view of the voter. The voter may then leave the voting location without delay. The election official will retain the secrecy folder and return it to the ballot issuing station official periodically throughout the day.; or
 - c) if a Vote Tabulator is not available in the voting place, insert the ballot directly into the ballot box from the secrecy folder in full view of the voter.

- 8.5. If a Vote Tabulator is available in the voting place but fails to operate, the Election Official shall:
- a) insert the marked ballots received from electors while the tabulator is not operating into the auxiliary compartment of the ballot box; and,
 - b) pursuant to Section 13 process the ballots contained in the auxiliary compartment through the feed area of the Vote Tabulator after the close of the voting.
- 8.6. The Election Official will thank the elector, and the elector shall promptly leave the voting location. A person whose ballot has been processed through the tabulator and into the ballot box is deemed to have voted.

9. VOTE TABULATORS

- 9.1. The Clerk shall designate voting places where the Vote Tabulator(s) will be located.
- 9.2. Where the Clerk has not provided a Vote Tabulator at a voting place, the Clerk shall designate a place to which the ballot box containing the used ballots shall be taken after the close of the voting to be tabulated.

10. PROGRAMMING OF THE VOTE TABULATOR

- 10.1. Vote Tabulators shall be programmed so that a printed record of the number of votes cast for each candidate and with respect to each by-law and question can be produced.
- 10.2. Vote Tabulators may be programmed so that the following ballots are returned to an Election Official for confirmation as provided for in this Procedure:
- a) A ballot without votes specified in any of the provided voting spaces, as determined by a Vote Tabulator, with the message "Blank Ballot".
 - b) A ballot with more designated voting spaces marked for an office than the voter is entitled to vote for, as determined by a Vote Tabulator, with the message "Overvoted".
 - c) A ballot that is damaged or defective or has been marked in such a way that it cannot be properly processed by a Vote Tabulator with the message "Defective Ballot".
 - d) A ballot that has been marked in such a way that it contains one or more unclear marks with the message "Ambiguous Mark".
- 10.3. Vote Tabulators will not be programmed to return under-voted ballots as it is a common strategy and a permissible practice for electors to purposely undervote. This would cause many ballots to be returned at the poll and would unnecessarily slow the voting process.

11. LOGIC AND ACCURACY TESTING OF VOTE TABULATORS

- 11.1. Prior to Voting Day, the Clerk shall test the Vote Tabulators to ensure that they will accurately count the votes cast for all candidates, by-laws and questions.
- 11.2. When testing the Vote Tabulators, adequate safeguards shall be taken to ensure that the system, or any part of it, that is used for processing and tabulating votes is isolated from all other applications or programs and that no remote devices are capable of gaining access to the Vote Tabulator.
- 11.3. Tests shall be conducted by:
 - a) loading Memory Packs into the Vote Tabulators;
 - b) tabulating a pre-audited group of ballots; and
 - c) comparing the output of the tabulation against the pre-audited results.
- 11.4. If the Clerk detects any error in the test, the cause of the error shall be ascertained and corrected and the test repeated until an errorless count is made.

12. PROCEDURES IN EXTRAORDINARY CIRCUMSTANCES

- 12.1. Vote Tabulators may be programmed to return a ballot for confirmation if the tabulator detects that the ballot is blank, overvoted, defective or contains ambiguous marks.
- 12.2. In the event that a Vote Tabulator returns a ballot to an Election Official for confirmation, the Election Official shall proceed as follows:
 - a) If the Vote Tabulator indicates that a "Blank Ballot" has been detected, the Election Official shall advise the voter present, without inspecting the ballot, that the Vote Tabulator was unable to detect any marks on the ballot in any of the election races. The Election Official will ask the voter if a blank ballot was their intention or if they would like the ballot returned for review to ensure that the ballot is marked as the voter intended.
 - i. If the voter accepts the offer to review the ballot, the Election Official will return the ballot to the voter (in a secrecy folder and without viewing the ballot) explain how to mark the ballot in the voting area to the right of the candidates' names using the marker pen provided and the voter may proceed to the voting station with the ballot to undertake the review. After review and any necessary corrections, the voter will resubmit the ballot to the Election Official for processing through the Vote Tabulator. If the Vote Tabulator returns the ballot a second time as a blank ballot the Election Official shall direct the Vote Tabulator to accept the blank ballot.

intent and properly marked ballot then a replacement ballot will be obtained and marked in the voting areas exactly as the voter marked the original ballot in full view of any scrutineers present. The replacement ballot(s) will then be inserted into the vote tabulator before closing the vote and included in the vote totals.

- d) If the Vote Tabulator indicates that an “Ambiguous Mark” has been detected on a ballot, the Election Official shall advise the voter present that the Vote Tabulator was unable to process the ballot and that the ballot was not counted by the Vote Tabulator. The Election Official will ask the voter if they would like the ballot returned for review to ensure that the ballot is marked as the voter intended.
- I. If the voter accepts the offer to review the ballot, the Election Official will return the ballot to the voter (in a secrecy folder and without viewing the ballot) and the voter may proceed to the voting station with the ballot to undertake the review. If the voter determines that the ballot is not marked as intended, the voter may proceed to the Deputy Returning Officer with their original ballot to obtain a replacement ballot. The Deputy Returning Officer will mark the original ballot as “cancelled”, place the ballot in a cancelled ballot envelope, issue a new ballot to the voter and instruct the voter on how to properly mark the ballot.
 - II. If the voter is no longer present, the Election Official will insert the ballot with ambiguous marks, without viewing it, into an envelope marked “Ambiguous Ballots” and at the close of the polls an Election Official will open the “Ambiguous Ballots” envelope and review any ballots inside to determine if there was clear voter intent and properly marked ballot then a replacement ballot will be obtained and marked in the voting areas exactly as the voter marked the original ballot in full view of any scrutineers present. The replacement ballot(s) will then be inserted into the vote tabulator before closing the vote and included in the vote totals. and the ballot will not be counted.
 - III. There are two possible types of ambiguous marks: a mark that is too light and which needs to be darkened in order to be clearly counted as a vote or inadvertent small marks made by a voter in a box where they had not intended to place a mark.

- 12.3. The Vote Tabulator may also return a ballot to an Election Official if the Vote Tabulator identifies the ballot as an invalid ballot or if the Vote Tabulator fails to detect the initials of the Deputy Returning Officer on the ballot. The Election Official will direct the voter to the Deputy Returning Officer for assistance by explaining the reason for the problem with the ballot and having the elector receive a replacement ballot. The DRO will mark the original ballot as cancelled and place it in the cancelled envelope. The elector will receive a replacement ballot and repeat the normal voting process.

- 12.4. In the event that a Vote Tabulator malfunctions during the voting process and the Memory Pack is still functional, it may be necessary for an adjustment or replacement of the tabulator. In such cases, an Election Official shall contact the Clerk for direction and remedy.
NOTE: At no time shall an elector be prevented from casting their ballot. During any tabulator “downtime”, ballots shall continue to be issued to eligible electors, marked by electors and received by an Election Official where such ballots shall be processed into an auxiliary compartment of the ballot box for tabulation at the close of regular voting.

13. PROCEDURES AT THE CLOSE OF VOTING ON VOTING DAY

- 13.1. If a Vote Tabulator has been used to tabulate the votes cast in a voting place, Election Officials, after the close of the voting will:
- a) check the auxiliary compartment of the ballot box for ballots that have not been tabulated – any ballots contained in the auxiliary compartment shall be processed through the tabulator at this time and direct the tabulator to accept all ballots as they are scanned. This will mean all blank, overvote, and ambiguous ballots will be recorded as marked by the tabulator. Invalid ballots should be returned to the election official for marking as a cancelled ballot and placed in the cancelled ballot envelope once processed to ensure the elector count is valid on the vote tabulator;
 - b) check the defective ballot envelope for properly marked ballot and follow the procedure written in section 12.2 (c).
 - c) record the number of electors displayed on the tabulator;
 - d) close the tabulator using the designated security key;
 - e) obtain the printed record of the votes cast for each candidate and, if applicable, the votes cast for and against a by-law or question;
 - f) sign the certificate portion of the printed record along with any Scrutineers who are present and wish to sign;
 - g) remove the printed record from the Vote Tabulator and place it in the statement envelope (zero total + final results tape);
 - h) remove the tabulator from the ballot box and secure and seal the ballot box to ensure that the box cannot be reopened without breaking the seal and to cover the ballot slot;
 - i) prepare a prescribed Composite Ballot Statement and place it in the prescribed statement envelope;
 - j) unplug and pack the tabulator in its transport box complete with power supply, security key and statement envelope containing the zero total and the final results tape;
 - k) count and place in separate envelopes,
 - I. cancelled and declined ballots;
 - II. unused ballots.

- l) place all remaining supplies and envelopes, excluding the prescribed statement envelope, in the transfer carrier and seal the transfer carrier; and
 - m) personally deliver the transfer carrier, ballot box, Vote Tabulator and statement envelopes to the office of the Clerk or to such other place as directed by the Clerk.
- 13.2. If a Vote Tabulator has been used to tabulate votes cast in a voting place but the tabulation of the votes cannot be completed because the Vote Tabulator is not operating or cannot be made to operate within a reasonable amount of time following the close of the voting, an Election Official, after the close of the voting and after determining the tabulation cannot be completed:
- a) contact the Clerk at the Municipal Offices for direction;
 - b) direction from the Clerk may be as follows:
 - I. seal the ballot box in such a manner that it cannot be opened or any ballots be deposited in it without breaking the seal;
 - II. secure the Vote Tabulator against receiving any more ballots;
 - III. place all supplies and all cancelled, declined, and unused ballots in the transfer carrier and seal it;
 - IV. personally deliver all materials to a place designated by the Clerk where a back-up Vote Tabulator process may be carried out;
 - V. follow the procedures set out in this Procedure to complete the tabulation of all votes cast by the elector of the voting subdivision.
- 13.3. If a Vote Tabulator has not been provided, or if provided, has not been used to tabulate votes cast in a voting place:
- a) an Election Official shall, immediately after the close of voting, follow with necessary modifications the procedures in Section 15; and
 - b) report to the Clerk, or a person designated by the Clerk, so that all votes cast may be tabulated and the procedures provided for in Section 15, with necessary modifications, may be carried out.
- 13.4. If, at the close of the voting, the Clerk is of the opinion that it is impracticable to count the votes with the Vote Tabulators, he or she may direct that any or all of the votes cast in the election be counted manually following as far as practicable the provisions of the Act governing the counting of votes. The decision of the Clerk shall be final.

- 13.5. The Clerk shall, at the completion of the count, retain the programs, Memory Packs, test materials and ballots in the same manner as is provided for in the Act for the keeping of ballots.
- 13.6. The Clerk shall retain, in the same manner as is provided for in the Act for the keeping of ballots, the pre-audited group of ballots and other materials used in the programming and testing of the Vote Tabulators, and shall not alter or make changes to such materials.
- 14. ADVANCE VOTING AND EARLY CLOSING OF VOTING PLACES**
- 14.1. The total of the votes at an advance voting location or at a voting location that closes early under subsection 46(3) of the Act shall not be printed until after 8:00 p.m. on the voting day.
- 15. RECOUNTS**
- 15.1. If a recount of votes for an office is held, the votes shall be recounted in the same manner as the votes were counted on voting day, unless otherwise ordered by a Judge pursuant to Section 58 of the Act.
- 15.2. Vote Tabulators shall be tested before the recount in the manner described in Section 11.
- 15.3. The appointed Recount Officer shall attend the recount and bring all appropriate ballot boxes, transfer carriers, Vote Tabulators, statement envelopes and all documents that, in the opinion of the recount officer, are relevant to the recount.
- 15.4. The recount shall be limited to the ballots tabulated by a Vote Tabulator on voting day, being those ballots contained within the applicable sealed ballot boxes.
- 15.5. At a recount using Vote Tabulators, the persons referred to in subsection 61(5) of the Act are not entitled to examine each ballot as the votes are being counted.
- 15.6. The result of a recount using a Vote Tabulator is final, and no further recount shall take place, unless:
- a) the recount changes the results of the election, as declared by the Clerk under Section 55 of the Act; or
 - b) Judge makes an order under Section 58 of the Act requiring a recount to be held.
- 15.7. If clause 15.6 (a) applies, the Recount Officer shall conduct a manual recount following, as far as practicable, the provisions of the Act governing the counting of votes and, subject to a Judge's order, shall recount only those voting subdivisions where the count at the recount differed from the count on voting day and the results of such manual recount shall prevail.
- 15.8. A manual recount shall be a recount of all the original ballots received from the voters in those voting subdivisions for those candidates and offices as may be prescribed.

15.9. If after all of the recounts, a tie still exists, the Town Clerk shall choose the successful candidate or candidates by lot as described in Section 62(3) of the *Municipal Elections Act 1996*.

16. AMENDMENT TO THESE PROCEDURES AND RULES

16.1. The Clerk, at any time, has the right to amend this document to facilitate the vote, count, tabulation of the votes and security or any other matter at the sole discretion of the Clerk.

16.2. The Clerk's ruling on any interpretation of this document is final.

May 2, 2022