

Recount Procedures

Section 56(1) of the Municipal Elections Act, 1996 (MEA) states that 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

Where Council or the Minister orders a recount under the MEA, the Clerk shall conduct the recount within the timelines prescribed by the Act.

1. Authority

In accordance with sections 56, 57 and 58 of the Municipal Elections Act (MEA), the recount shall be conducted by the Town Clerk (the Clerk) of the Town of Niagara-on-the-Lake in accordance with the provisions of the MEA and Ontario Regulation 101/97 and/or pursuant to a Town Council resolution.

2. Timing

The recount shall commence on a date and time as posted by the Clerk.

3. Location

The recount shall be held at Town Hall. The location will be posted and will be determined by the Clerk.

4. Notice

The Clerk shall give notice to every certified candidate for (Town Councillor, Lord Mayor, and School Board Candidates) using the preferred contact information provided by the Candidate for the October municipal election. The notice will be posted on the Town of Niagara-on-the-Lake election 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 official any of the Clerk's powers and duties in relation to the election, as the Clerk considers necessary.

In accordance with subsection 60 (1) of the MEA the recount shall be conducted in the same manner as the original count, with the marked ballots fed into the vote tabulators and results tapes produced from the tabulators.

In accordance with subsection 42(4)(3)(ii) of the MEA at a recount using alternative voting methods, the persons referred to in subsection 61(5) namely, certified candidates, lawyers representing certified candidates, and scrutineers certified by 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 in Town Hall, or a location to be determined by the Clerk prior to the commencement of the recount.

There will be sufficient recount stations established, one for each polling location, consistent with the number of vote tabulators used during the Town's municipal election held in October.

The recount area will be comprised of 2 zones:

1. The recount area (consisting of the recount stations and the results area)
2. The observation area

7. Who may be Present

In accordance with section 61(1) of the MEA the following persons are entitled to be present at the scheduled recount:

1. The Clerk and any other election official(s) appointed by the Clerk for the recount.
2. Every certified candidate for the office in question;
3. For every certified candidate:
 - One lawyer
 - One scrutineer for each recount station established by the Clerk.
4. Any other person with the Clerk's permission.
5. The applicant in the case of a recount ordered under Section 58.

8. Candidates/Scrutineers/Legal Counsel

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.

One scrutineer per candidate may be in the recount area for each recount station.

No cellular phones, cameras, recording devices or other such electronic communication devices (except where required for accessibility accommodation)

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 they were on Election Day and as per Procedures for the Use of the Vote tabulators as distributed to each candidate at the time of their nomination.

Prior to the recount, the vote tabulators will be tested in accordance with the Procedures for the Use of the vote tabulators at the Town.

10. Use of Vote Tabulators

The election officials at each recount station shall be assigned a vote tabulator, ballot box transfer container containing ballots cast for the municipal election held on Advance Voting and on Election Day.

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

1. Print a Zero tape from the vote tabulator before confirming "0" totals
2. If the totals are "0" for all candidates, the election official and candidate representative shall initial and/or 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.
3. 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. Back up tabulators will be prepared for this purpose and will be on standby.
4. Open the ballot box or transfer container, remove all ballots, and begin to feed ballots into the tabulator. The ballots should be inserted into the tabulator the same way they were inserted without secrecy folders into the tabulator on the day of the municipal election.
5. For a ballot box transfer container from Advance Polls, election officials shall immediately divide all ward ballots if applicable. All the ballots not being run through the tabulator for this recount will be resealed in a ballot box transfer container.

In accordance with subsection 42(4)(3)(ii) of the MEA at a recount using alternative voting methods, 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.

Should a vote tabulator reject a ballot for either of the following reasons, the election official shall press the vote tabulator “accept” button so the ballot is input into the vote tabulator because the elector who cast their ballot is no longer present and all ballots in the box were accepted by the vote tabulator on Advance or Election Voting Day.

1. where there are no marks in any of the designated voting spaces;
2. 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 to the Clerk, who shall:

1. assign the original ballot a specified identifying 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.
2. 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 the ballots from the ballot box transfer container have all been fed into the vote tabulator, the election official shall:

1. obtain a printed record of the votes given for each candidate;
2. Information on the results tapes related to the offices that are not subject to the recount will be severed by election officials prior to review by any scrutineers or posting.
3. Sign the certificate portion of the printed record along with any scrutineers who are present and wish to sign (this is not compulsory).
4. Remove the printed record from the vote tabulator.
5. Retrieve all ballots from the ballot or transfer box, place them in a ballot box transfer container and place a ballot box seal on the container, sign the seal and deliver the ballot box transfer container to the election officials at the Results area.
6. Deliver the results tape to the election officials at the Results area.

11. Inspection of Spoiled Ballots

1. All spoiled ballots which were not accepted by the vote tabulator during the Advance polls and on Election Day will be available for review. They will be placed in a marked envelope.
2. No spoiled ballots will be fed into the vote tabulators or counted.

12. Disputed Ballots

Any ballots in dispute, refer to section 61 (6) of the MEA: (6) The clerk shall determine a dispute referred to in clause (5) (b).

13. Online Votes

The Clerk shall complete a recount of online votes by following section 8 of the Neuvote “Online Voting – Recount and Audit Procedures” document.

14. Results

During the recount, the Clerk or designated election official shall post for inspection, a copy of the results tapes from each of the vote tabulators as they are produced, having first severed information on the results tapes related to offices that are not subject to the recount.

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) (4) and 62 (3) of the MEA, as follows:

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. 1996, c. 32, Sched., s. 62 (1)

62. (3) Tied vote

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. 1996. c. 32, Sched., s. 62 (3).

15. Recount Records

At the conclusion of the recount, the Clerk shall secure the ballot box transfer containers, vote tabulators and other materials from the recount.

16. Order Specifying Different Manner of Recount

Section 60 (3) of the MEA, states the following:

Despite subsection (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. 2016, c. 15, s.41(1).

(3) 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. 1996, c. 32, Sched., s. 60 (3) 2016, c. 15, s. 41 (2)

After Voting

1. At no time after voting day shall any information regarding the voter, PINs and ballots come together to allow anyone to know how an elector has voted.
2. Election materials shall be retained and destroyed in accordance with the Municipal Elections Act, 1996 and all applicable record retention requirements.

For further information, please contact the Town Clerk.

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