

	<b>By-law 2022-17 Schedule A</b>
	Section: Election
	<b>Policy #GP 22-002 Pg. 1 of 5</b> Recounts in a Municipal Election
Revision Date: April 11, 2022	Issue Date: February 12, 2018
Approved by: Council	Review Date: January 2026
Policy Owner: Information and Legislative Services	Policy Author: Manager, Information and Legislative Services

**PURPOSE**

This Governance Policy By-law / Schedule A defines the circumstances that would require the Municipal Clerk to conduct a recount where the vote differential between an elected Township of Wilmot candidate and non-elected candidate falls within the threshold defined by the policy

**SCOPE**

This policy addresses circumstances not included in the recounts prescribed in the Municipal Elections Act, 1996, (MEA). This policy applies to all municipal and school board elections administered by the Township of Wilmot. The policy does not apply to school board elections administered by other municipalities.

**DEFINITIONS**

“**Act**” means the Municipal Elections Act, 1996, S.O. 1996, Chapter 32, as amended.

“**Candidate**” means a person who has filed a nomination for an office pursuant to section 33 of the Act and includes a person who has filed a nomination for election to a school board pursuant to the Education Act, R.S.O. 1990, Chapter E.2, as amended. For the purposes of this Policy, Candidate shall also include any person Acclaimed.

“**Clerk**” means the Clerk of the Township or their designate.

“**Council**” means the Council of the Township.

“**Member of Council**” means a member of the Council of the Township and includes the Mayor of the Township.

“**Policy**” means this Recounts in a Municipal Election Governance Policy.

“**Staff**” means all full-time and part-time persons hired by the Township, including but not limited to the Chief Administrative Officer, Directors, salaried employees, administrative Staff, and contract, temporary, student, co-operative placement, and volunteer Staff.

“**Township**” means The Corporation of the Township of Wilmot.

“**Voting Day**” means, in the case of a regular election, the fourth Monday in October in the year of the election pursuant to section 5 of the Act, or in the case of a by-election, the 45th day after Nomination Day, as noted in subsection 65(4) of the Act.

## **STANDARDS AND PROCEDURES**

A recount required by the MEA, in accordance with sections 56, 57, or 58, shall be conducted in the same manner as the original count as per s.60 (1) unless ordered otherwise by a judge under s.60 (3). A recount is required when:

- there is a tie vote where both or all candidates cannot be declared elected (Automatic);
- by resolution of Council (for Council offices);
- by resolution of local board (for offices on a local board);
- by order of the Minister (for questions submitted by the Minister);
- by order of the Superior Court of Justice. Costs of Recount (s.7(3), 7(4)); or,
- in accordance with a policy of the municipality adopted by by-law.

Any costs incurred to conduct a recount are to be paid by the Municipality. Any expenses incurred by a candidate will be the responsibility of the candidate ie: legal counsel in attendance on behalf of the candidate. The Clerk shall submit a signed certificate verifying the costs to the appropriate local board, upper tier municipality or Minister who shall in turn be responsible for paying the costs as soon as possible.

If required, the vendor shall provide any documentation to support the integrity, security and accuracy of the electronic voting system.

### **When a Recount Shall Occur by Municipal Policy (s.56 (1.1))**

Notwithstanding sections 56, 57 or 58 where a recount is conducted by regulation under the MEA, whether in a regular municipal election or a by-election, a recount shall occur if:

The difference between a successful candidate(s) and an unsuccessful candidate(s) is within one quarter of one percent (0.25%) of the votes cast, rounded up to the nearest vote, for that office.

Where the difference between a successful candidate(s) and an unsuccessful candidate(s) is within one quarter of one percent (0.25%) of the votes cast, rounded up to the nearest vote, for that office, the Clerk shall recount the votes in the manner prescribed below within fifteen days following Voting Day. Recounts occurring under sections 56, 57 or 58 shall be conducted on a day prescribed by the Act.

### **Who Conducts a Recount (s.56)**

The Clerk, or their designate, conducts all recounts for elections for which they are responsible except recounts conducted by the Superior Court of Justice upon appeal.

### **Tied Vote Recount (s.56)**

Where there is a tied vote for the election of a candidate to an office and both or all of the candidates cannot be declared elected, the Clerk must hold a recount within 15 days after the declaration of the results of the election as required by s.55(4) (a) and (b) of the Act.

### **Council, Local/School Board or Minister Request for Recount (s.57)**

Within 30 days after the Clerk's declaration of the results under s.55(4) of the Act, a Council or local/school board may pass a resolution or, the Minister may make an order requiring a recount. The recount is to be held within 15 days after the resolution is passed or the order is made.

An order of the Minister must be made within the same time frame.

### **Application to Superior Court of Justice (s.58)**

A person who is entitled to vote in an election and who has reasonable grounds for believing the election results to be in doubt may apply to the Superior Court of Justice for an order directing the Clerk to hold a recount. The application must be commenced within 30 days after the Clerk's official declaration of the results under s.55(4). The court, if satisfied there are sufficient grounds, shall make an order requiring the Clerk to hold a recount.

The recount is to be held within 15 days after the Clerk receives a copy of the Order. Votes for Candidates to be included in a Recount (s.56, 59) are as follows:

- In a recount for a tied vote, the votes cast for candidates who are tied.
- In a recount being conducted under the authority of a council or local board resolution, the votes cast for candidates named in the resolution (all or specified candidates).
- In a recount being conducted under the authority of a court order, the votes cast for candidates named in the order (all or specified candidates).

The Clerk may include the votes for any other candidate for the same office. The practical application of this provision would be for the Clerk to include any candidate whose vote total was, in the Clerk's opinion, close enough to possibly be affected by the recount.

### **Persons entitled to be Present at a Recount (s.61)**

- the Clerk and any other election official appointed for the recount;
- every certified candidate for the office involved;
- the applicant, if any, who applied for the recount under s.58;
- legal counsel for any of the above; and
- each certified candidate for the office involved or an applicant may appoint a scrutineer for the recount.

### **Notification of Recount (s.56, 57, 58 and O. Reg. 101/97)**

The Clerk shall give notice of the recount date, time and place on “Notice of Recount” Form GH-EL39 to the following:

- all certified candidates for the office which is the subject of the recount;
- where a resolution is involved, the Council or local/school board which passed the resolution;
- the Minister when an order has been made; and,
- the applicant in the case of a court order.

Notice of recount will be given by registered mail or personal service.

### **Process at Recount (s.61, 62)**

Once the recount process has commenced, it must continue to completion. Upon completion of the recount, the Clerk will announce the results of the recount. Persons authorized to be in attendance at the recount may also be at the announcement of the results of the recount. Unless an application has been made for a judicial recount, the Clerk, on the 16th day after the recount is completed, will declare the successful candidate or candidates elected or will declare the result of the vote.

### **Continuing Tie Vote After Recount (s.62(3))**

In the case of a tied vote following the recount, the Clerk shall determine the result by conducting a lot as follows: The Clerk shall write the name of each candidate on equal-sized pieces of paper. They are then put in a container as determined by the Clerk. The Clerk shall announce prior to the draw that “the candidate to be elected shall be the candidate whose name is written on the first piece of paper I draw out of the container.” The paper is pulled from the container and the candidate elected is announced.

### **Declaration by Clerk and Notice of Final Certified Results (s.62(4))**

Unless an application has been made for a judicial recount, the Clerk on the 16th day after the recount is completed will declare the successful candidate or candidates elected by posting the “Declaration of Recount Results” Form 32 at the Municipal Office and on the website. Such Declaration shall be sent to everyone previously given notice of the recount.

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## **RESPONSIBILITIES**

The Municipal Clerk is the Returning Officer for Municipal Elections, and, as such, is responsible for conducting recounts and any other legislative responsibilities regarding recounts under the MEA. The responsibilities of the Municipal Clerk relative to this policy are defined in the Municipal Elections Act.

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## **COMMUNICATION**

This Governance Policy / Schedule A By-law:

- shall be posted online;
- shall be included as part of the information centres for interested applicants; and,
- shall be catalogued with all other Governance Policies for Municipal Elections and Community Engagement.

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## **EVALUATION**

The Director of Information and Legislative Services shall review this Governance Policy with the Corporate Leadership Team in advance of each Municipal Election and advise Council on any recommended amendments for consideration or recommendation for status quo.

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## **LEGISLATIVE REPORTING REQUIREMENTS**

As outlined in the Municipal Elections Act.