

THE CORPORATION OF THE TOWNSHIP OF MCGARRY

BY-LAW NO. 2018-11

BEING A BY-LAW TO ADOPT THE PROCEDURES IN THE MANNER IN WHICH A RECOUNT IS CONDUCTED.

WHEREAS Section 60 (1) of the Municipal Elections Act, 1996, S.O. 1996, C.32 as amended states: "A recount shall be conducted in the same manner as the original count, whether manually or by vote counting equipment.

AND WHEREAS the Council of the Township of McGarry is expedient to adopt the aforementioned procedures;

NOW THEREFORE, the Council of the Township of McGarry enacts as follows:

1. This By-Law shall be cited as the "Recount Procedures By-Law"
2. The Recount Procedures are hereby adopted as set out in Schedule "A" attached and forming part of this By-Law.
3. This By-Law shall come into force and effect on the date of passing.

BY-LAW READ A FIRST AND SECOND TIME ON APRIL 16, 2018

BY-LAW READ A THIRD AND FINALLY PASSED APRIL 16, 2018

THE CORPORATION OF THE TOWNSHIP OF MCGARRY


MAYOR


CLERK-TREASURER



Schedule "A" to By-Law 2018-11

Manner in Which a Recount is Conducted

A recount shall be conducted in the same manner as the original count, whether manually or by vote counting equipment [Section 60 (1)], unless ordered otherwise by a judge as per Section 60 (3).

A recount is required when:

- there is a tie vote where both or all candidates cannot be declared elected (Automatic)
- the votes for the affirmative and negative on a by-law are equal (Automatic)
- the votes for two or more answers to a question are equal (Automatic)

Within 30 days after the declaration of the results:

- by resolution of Council (for Council offices or questions, or by-laws submitted by Council)
- by resolution of local board (for offices on a local board or questions or by-laws submitted by a local board)
- by order of the Minister (for questions submitted by the Minister)
- by order of the Superior Court of Justice

Recount in accordance with Policies

The Clerk shall hold a recount in accordance with any policy adopted with respect to the circumstances in which the municipality or local board requires the Clerk to hold a recount of the votes cast in an election if the by-law or resolution is passed on or before May 1 in the year of an election.

Time for Recount

The recount shall be held within 15 days after the Clerk's declaration of the results of the election or resolution or order to hold a recount is passed or made.

WHO CONDUCTS RECOUNT (SECTION 56, 63)

The Clerk shall conduct all recounts for elections for which he or she is responsible except recounts conducted by the Superior Court of Justice upon appeal.

VOTES FOR CANDIDATES TO BE INCLUDED IN A RECOUNT (SECTION 56, 57, 58)

The votes to be included in the recount 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, for all or specified answers to a question, or for and against a by-law).
- 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, or for all or specified answers to a question).

The Clerk may include the votes for any other candidate(s) for the office for which the recount is being conducted. 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 RECOUNT (SECTION 61)

- the Clerk and any other election official appointed to assist with the recount;
- every certified candidate for the office involved;
- the applicant, if any, who applied for the recount;
- legal counsel for any of the above;
- one scrutineer for each recount station established by the Clerk for every certified candidate for the office involved and the applicant, who applied for the recount;
- where the recount applies to a by-law or question, the scrutineers as appointed by Council, a local/school board or the Minister;
- where scrutineers are appointed under Sections 61 (3) or (4), an equal number must be appointed to represent supporters and opponents of the by-law and for each possible answer to the question;
- any other person may be present with the Clerk's permission.

NOTIFICATION OF RECOUNT DATE, TIME, PLACE (SECTIONS 56, 57, 58 and O. Reg. 101/97)

The Clerk shall give notice of the recount date, time and place on "Notice of Recount" to the following:

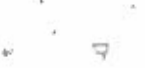
- all certified candidates for the office which is the subject of the recount;
- where a resolution is involved, the Council or local/school board which passed the resolution;
- the Minister when an order has been made;
- the applicant in the case of a court order;
- In the case of a recount concerning an office, by-law or question in respect of which electors of another municipality are entitled to vote, the Clerk who was responsible for the conduct of the vote in the other municipality;
- notice of recount will be given by registered mail or personal service.

PROCESS AT RECOUNT (SECTIONS 61, 62 and O. Reg. 101/97)

At the time set for the recount to commence, the Clerk should outline the procedures as follows:

- the ballot boxes will be distributed to the counting stations as they are required throughout the count;
- the rules prescribed by the Minister or established by the Clerk are to be followed and should be explained to everyone present for the recount;
- disputed ballots will be shown to the Clerk who, after any representation by a candidate, their legal counsel or scrutineer, will determine if the ballot and the votes are to be counted.

Once the recount process has commenced, it must continue to completion.



The Clerk is to conduct the recount in accordance with the recount procedure as follows:

The Clerk shall open the ballot boxes and count,

- in the case of a recount in an election for an office, the number of votes for each candidate who is subject to the recount under section 56, 57, 58 or 59 of the *Act*
- in the case of a recount in an election to obtain the assent of the electors to a by-law, the number of votes in favour of the by-law and the number opposed, and
- in the case of a recount in an election to obtain the opinion of the electors on a question, the number of votes for each possible answer to the question.

The Clerk shall reject from the count all ballots and votes in a ballot that do not comply with the rules set out in subsection 3 (2) of *O. Reg. 101/97*.

The Clerk may conduct the recount by adding the votes from the statements of results prepared by the Deputy Returning Officers under subsection 55 (1) of the *Act*, rather than by following rules 2 and 3 in *O. Reg. 101/97*, if a recount under those rules is waived by,

- each certified candidate subject to the recount under section 56, 57, 58 or 59 of the *Act* who is present, in the case of a recount in an election for office;
- the Council that submitted the by-law, in the case of a recount in an election to obtain the assent of the electors to a by-law;
- the Minister, Council or local board that submitted the question, in the case of a recount in an election to obtain the opinion of the electors on a question, and
- the applicant, if he or she is present, in the case of a recount ordered under section 58 of the *Act*

Upon completion of the recount, the Clerk shall announce the results of the recount and if there are any disputed ballots:

- announce the number of them;
- announce the results if the disputed ballots were excluded;
- mark the number of the Voting Place (subdivision number) on the back of each disputed ballot and initial it; and
- place the disputed ballots in a separate envelope clearly marked as to its contents and seal the envelope.

Persons authorized to be in attendance at the recount may also be at the announcement of the results of the recount.



**CONTINUING TIE VOTE – AFTER RECOUNT PROCEDURES
[SECTION 62 (3) AND 63 (10)]**

Pursuant to Section 62 (3) in a 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 “hat”. 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 hat.” The paper is pulled from the hat and the candidate elected is announced.

DECLARATION BY CLERK [SECTION 62 (4)]

Unless an application has been made for a judicial recount, the Clerk, on the 16th day after the recount is completed, shall declare the successful candidate or candidates elected or will declare the result of the vote with respect to a by-law or a question.

The results of the recount shall be posted, at a minimum, in the Municipal Office and on the municipal website by noon, the day following the recount being completed using the “Declaration of Recount Results”. The Clerk will notify everyone notified of the recount, of the results of the recount in writing.

Such Declaration shall be sent to everyone previously given notice of the recount.

COSTS OF RECOUNT [SECTION 7 (3), (4)]

The costs incurred by the Clerk to conduct a recount are to be paid by the municipality, local board, upper-tier municipality or the Minister as soon as possible after the Clerk has signed a certificate verifying the amount. The municipality is to be reimbursed for its reasonable costs in the following situations:

- a regular election when the recount is for:
 - an office on a local board or an upper tier municipality
 - a by-law or question submitted by an upper-tier municipality; or
 - a question submitted by a local board or by the Minister
- a by-election for a local board or for an upper tier municipality; or for the Minister, or a recount in such a by-election

Any expenses incurred by a candidate will be the responsibility of the candidate (ie: legal counsel in attendance on behalf of the candidate).

