

THE CORPORATION OF THE TOWNSHIP OF TUDOR AND CASHEL

BYLAW NO. 2022-05

**A BYLAW TO ADOPT AN AUTOMATIC RECOUNT POLICY
FOR THE 2022 MUNICIPAL ELECTION**

WHEREAS the Council of The Corporation of the Township of Tudor and Cashel wishes to enact a policy to provide for the calling of recounts during a Municipal Election; and

WHEREAS section 5(3) of the *Municipal Act, 2001*, as amended, provides that a municipal power shall be exercised by bylaw;

NOW THEREFORE BE IT RESOLVED THAT the Council of The Corporation of the Township of Tudor and Cashel enacts as follows:

1. **THAT** the Council Policy entitled “Municipal Election Automatic Recount Policy”, attached hereto as Schedule “A”, is hereby adopted; and
2. **THAT** this bylaw comes into force on the date it is passed.

PASSED THIS 11th day of January, 2022.

SEAL

MAYOR: LIBBY CLARKE

CLERK: NANCY CARROL

THE CORPORATION OF THE TOWNSHIP OF TUDOR AND CASHEL

BYLAW NO. 2022-05

Schedule A

Purpose:

To establish criteria that will require the completion of an automatic recount for elected positions in accordance with the *Municipal Elections Act*.

Authority:

A recount under 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 as per Section 60 (3).

A recount is required when:

1. there is a tie vote where both or all candidates cannot be declared elected (Automatic);
2. by resolution of Council (for Council offices);
3. by resolution of local board (for offices on a local board);
4. by order of the Minister (for questions submitted by the Minister); or
5. by order of the Superior Court of Justice.

The Municipal Elections Modernization Act now provides the Clerk with the authority to adopt a policy by May 1 of the election year to define circumstances under which a recount would be conducted other than those listed above. The Clerk now has the authority to hold a recount in accordance with the new recount policy.

Policy:

If the number of votes separating candidates from winning an office is a variance of one of the following:

1. ten (10) votes or less; or
2. 1% of voters who have cast their votes for the office, whichever is the lesser amount.

The Clerk shall conduct a recount of the votes for the candidate(s) / position(s) in question.

Example 1:

Candidate A	500 votes cast
Candidate B	511 votes cast
Candidate C	550 votes cast
Votes Cast	1561
1% of 1561 votes cast	15.61

Difference between Candidate A & B votes is 11.
1% of total is 16, so **No Recount**.

Example 2:

THE CORPORATION OF THE TOWNSHIP OF TUDOR AND CASHEL

BYLAW NO. 2022-05

Candidate A	500 votes cast
Candidate B	509 votes cast
Candidate C	550 votes cast
Votes Cast	1559
1% of 1559 votes cast	15.59

Difference between Candidate A & B is 9.

Recount for Candidates A & B.

Example 3:

Candidate A	444 votes cast
Candidate B	436 votes cast
Votes Cast	880
1% of 880 votes cast	8.8

Difference between Candidate A & B is 8.

Recount for Candidates A & B as the percentage vote (9%) is less than 10 votes and less than 1% of the total votes cast.

Example 4:

Candidate A	495 votes cast
Candidate B	504 votes cast
Votes Casted	999
1% of 999 votes cast	9.9

Difference between Candidate A & B is 9.

Recount for Candidates A & B as the percentage vote (10%) is less than 10 votes and less than 1% of the total votes cast.

Legislative Requirements for Recounts:

A recount under 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 would be 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))

The costs incurred by the Clerk to conduct a recount are to be paid by the Municipality. Any expenses incurred by a candidate will be the responsibility of the candidate i.e.: legal counsel in attendance on behalf of the candidate.

Who Conducts Recount (s.56)

The Clerk conducts all recounts for elections for which he or she is responsible

THE CORPORATION OF THE TOWNSHIP OF TUDOR AND CASHEL

BYLAW NO. 2022-05

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** required by s.55(4)a)b) of the results of the election.

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), a Council, 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**. The resolution for a recount must be passed no later than Wednesday November 21, 2018. An order of the Minister must be made within the same time frame. The incoming council or local board is no longer able to make a decision on a recount.

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)

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).
- 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;
- each certified candidate for the office involved or an applicant may appoint

THE CORPORATION OF THE TOWNSHIP OF TUDOR AND CASHEL

BYLAW NO. 2022-05

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 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;
- 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 Procedures

Pursuant to s.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 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 the DRO draws out of the container." The paper is pulled from the container and the candidate elected is announced by the Clerk.

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 at the Municipal Office and on the website. Such Declaration shall be sent to everyone previously given notice of the recount.