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City of Greater Sudbury 2014 Municipal and School Board Election Recount Procedures

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1.0 General Information

1.1 Preamble and Authority

The *Municipal Elections Act, 1996* (the *Act*) gives the authority to the City Clerk as Returning Officer, to establish procedures and forms for the recount process within the municipality. The *Act*, further gives authority to the City Clerk to provide for any matter or procedure that is not provided for in the *Act*.

The recount shall be conducted by the Clerk of the City of Greater Sudbury (the “Clerk”) in accordance with the provisions of the *Municipal Elections Act* (the *Act*), Ontario Regulation 101/97, the *City of Greater Sudbury 2014 Municipal and School Board Election Voting and Vote Counting Procedures* and these procedures.

1.2 Timing and Location

The recount shall commence on the date and time and at the location determined by the Clerk and shall be held within the time periods set out in the *Act*.

The location of the recount shall be divided into two areas, one viewing area which shall be open to media and the public and one designated recount area which shall only be open to those who are participating in the recount as set-out in the *Act* and in Section 1.7 of this Procedure.

1.3 Notice

The Clerk shall give notice of the recount as described in Regulation 101/97 s.4 and as provided for in the *City of Greater Sudbury 2014 Municipal and School Board Election Voting and Vote Counting Procedures*.

1.4 Manner of the Recount

As provided for in subsection 60(1) of the *Act*, “*a recount under section 56, 57, or 58 shall be conducted in the same manner as the original count*”.

In accordance with Section 42(4) of the *Act*, these procedures provide that at the recount, there shall be *no more than one scrutineer for each certified candidate for each piece of vote-counting equipment* and also that *the persons referred to in subsection 61(5) are not entitled to examine each ballot as the votes are being counted by the Clerk*.

Election recount officials are the only persons who may handle and touch the ballots and other election material. Prior to the commencement of the recount, the Clerk will allow the candidates and their authorized representatives to view and identify the election materials.

1.5 Order and Decorum

Decorum will be maintained at all times. The Clerk will exercise reasonable control over the conduct of the recount to assure that election officials do not experience interference from any candidate, their scrutineer, legal counsel, or any other person. Should anyone or anything impede the recount process, the recount will stop until the solution is remedied.

Anyone who disrupts the recount or fails to follow the instructions of the Clerk or their designate will be required to leave. The decision of the Clerk in this regard shall be final.

1.6 Election/Recount Officials

The Clerk shall appoint such number of election officials to assist in the conduct of the recount as considered necessary and may designate their titles and duties and in accordance with s. 15(2) of the *Act* may delegate powers and duties to those officials.

1.7 Who may be Present in the Designated Recount Area

Media representatives and the public will be entitled to attend and must remain in the viewing area set aside for this purpose.

In accordance with Section 61(1 – 2) of the *Act*, only the following persons are entitled to be present in the designated recount area:

- (a) *The Clerk and any other election official appointed by the Clerk for the recount*
- (b) *Every certified candidate for the office subject to the recount or in the case of a ballot question, the scrutineers appointed by the municipality or local board or by the Minister as the case may be*
- (c) *The applicant for the recount*
- (d) *For each person referred to above:*
 - *a lawyer, and*
 - *one (1) candidate scrutineer for each recount station established by the Clerk.*

Candidate's scrutineers must be appointed in writing by the candidate or the candidate's legal counsel and must present a complete and signed Appointment of Scrutineer Form to the Clerk prior to the commencement of the recount in order to be admitted into the designated area.

As per Section 61(4) of the *Act*, if the question(s) on the ballot are subject to a recount and scrutineers are to be appointed under subsections 16(2) and (3) then *equal numbers of scrutineers shall be appointed for each possible answer to the question; and one scrutineer for each of the possible answers may be present for each recount station established by the Clerk.*

Any person authorized to attend in the recount area, shall be required, prior to the start of the recount procedures, to take an oath or declaration before participating in the recount or performing any duties. Those in attendance in the viewing gallery are exempt from the oath as they will not have access to the ballots and recount equipment.

Observers of the recount may not make a record or note of any personal information or identifying marks which may appear on ballots or other documents unless each action is specifically authorized, in writing, by the Clerk. Personal information is protected by Section 14(1) of the *Municipal Freedom of Information and Protection of Privacy Act*.

1.8 Location Setup

The number of recount stations shall be determined by the Clerk based on the number of ballots to be counted.

The ballot boxes, vote tabulators, and all other supplies and materials necessary for the recount shall be delivered to the recount location prior to the commencement of the recount for set-up.

The Clerk or their designate shall be on-site at the recount location to accept delivery of the ballot boxes and other recount materials and shall ensure the safekeeping of the ballots.

1.9 Programming and Testing of the Vote Tabulators

The vote tabulators shall be programmed in the same manner as was done during the election period.

Prior to the recount, the Clerk shall test all vote tabulators to be used in the recount using the same procedures used for the election. The recount shall commence once the Clerk is satisfied that the tabulators are accurate.

1.10 Amendment of Procedures

Where the Clerk deems it necessary to provide clarification, interpretation or adjustment on any of the procedures described herein, the Clerk shall post the amended procedures to the City of Greater Sudbury election website prior to the start of any recount.

2.0 Recount Process

2.1 Paper Ballot/Tabulator Count

In accordance with the *Act*, the recount is to be conducted in the same manner as the original count.

All ballots counted during the 2014 City of Greater Sudbury Municipal and School Board Election shall be included in the recount. Cancelled, declined or spoiled ballots were not counted on Election Day and are not included in the Recount. See *City of Greater Sudbury 2014 Municipal and School Board Election Voting and Vote Counting Procedures – Appendix B*.

Counts will only be tabulated for those races for office that are subject to the recount. (i.e. Recount requested for Ward 1 - only Ward 1 race will be tabulated).

The election officials at each recount station shall receive a ballot box or ballot boxes from the ballot distribution area, and in full view of any candidates or their scrutineers or legal counsel present at the recount station, the election official shall:

- (a) insert a memory card and apply a seal;
- (b) open the poll by turning the key to the open position and pushing the yes button on the vote tabulator;
- (c) cause the vote tabulator to print a copy of all vote totals in the memory card, confirming zero totals. The zeros report is to be examined and signed by the election official responsible for that tabulator and the Clerk or their designate in the presence of the candidates and their authorized representatives;
- (d) candidates or their authorized representatives may visually examine but not touch the seal(s) on the ballot transfer case(s);

- (e) the election official will unseal the ballot box, remove all ballots and show the empty ballot box; and
- (f) the election official will feed the ballots into the tabulator one at a time.

In accordance with Ontario Regulation 101/97, made pursuant to the *Act*, as amended:

3 (2) *The deputy returning officer shall reject from the count;*

- (a) *all votes in a Ballot, if the Ballot,*
 - (i) *was not supplied by the deputy returning officer, or*
 - (ii) *contains writing or marks that clearly identify the elector, or is torn, defaced, or otherwise dealt with by the elector in a way that may identify him or her;*
- (b) *all votes in a ballot for an office, if the votes have been cast for more candidates for the office than are to be elected;*
- (c) *all votes in a ballot on a by-law, if votes have been cast for both the affirmative and negative on the by-law;*
- (d) *all votes in a ballot on a question, if votes have been cast for more than one answer on the question;*
- (e) *any vote in a ballot, if the vote is not marked inside the space provided for marking the ballot.*

When the election official is alerted to a ballot containing an over-vote, an under-vote, a blank ballot or a ballot that contains ambiguous marks by the vote tabulator, the election official will cause the ballot to be accepted and processed by the tabulator as described in Schedule B of the *City of Greater Sudbury 2014 Municipal and School Board Election Voting and Vote Counting Procedures* and Ontario Regulation 101/97.

Ballots unable to be tabulated / Rejected Ballots

For whatever reason, the vote tabulator is unable to process a ballot that had been processed by tabulator and counted at the voting location on Election Day, the election official shall:

- (a) place a "Rejected Ballot" label on the back of the ballot;
- (b) print their name, sign and date the label;
- (c) record the original voting location the ballot originated from and the recount station on the ballot label;
- (d) note the reason why the tabulator has not processed the ballot, if that reason is known; and
- (e) place the ballot in the rejected ballot envelope for delivery to the Clerk.

Upon receipt of the rejected ballots the Clerk shall review the ballots and if the intent of the voter is clearly discernible the Clerk shall manually add those votes to the final count from the vote tabulators. If the intent of the voter cannot be determined the vote shall not be counted.

The Clerk shall make the final determination of the votes cast for the office in the ballots referred to them from the recount stations in accordance with the provisions of the *Act*, and Ontario Regulation 101/97.

At the conclusion of the recount, the Clerk shall place the rejected ballots that have not been counted back into the rejected ballot envelopes and seal the envelopes for storage with the ballot boxes and results tapes.

After all the ballots from the ballot box have either been fed into the tabulator or placed in the rejected ballot envelope for delivery to the Clerk, the election official shall:

- (a) close the poll by turning the key to the open/close poll position and pressing the close poll button;
- (b) cause the results tape to be produced by the vote tabulator (three copies will be automatically printed);
- (c) separate the three results tape reports;
- (d) sign the results tape report and have the Clerk or their designate sign each copy in the presence of candidates or their authorized representatives;
- (e) turn off the tabulator, cut the seal to release and remove the memory card;
- (f) remove the vote tabulator from the top of the ballot box, and open the top panel of the ballot box to reveal the ballots;
- (g) place all the ballots counted by the vote tabulator back into the ballot transfer container and apply a new seal to the transfer case;
- (h) record the vote totals for each candidate on a final tally sheet;
- (i) place two copies of the results tape report, the cut seal and the memory card into the recount tabulator reports envelope;
- (j) seal the tabulator reports envelope and give the sealed envelope together with the loose results tape report to the Clerk or their designate;
- (k) deliver the rejected ballot envelope to the Clerk; and
- (l) at the end of the recount the election official will provide their completed tally sheet to the Clerk.

2.2 Internet Voting

In accordance with the *Act*, the recount is to be conducted in the same manner as the original internet voting count. Details with respect to the process and procedures of internet voting can be found in the *City of Greater Sudbury 2014 Municipal and School Board Election Voting and Vote Counting Procedures*.

In the event of a recount, the system shall regenerate the election count and a printed copy of the regenerated count shall be given to the Clerk.

- If the initial count and the regenerated count match, the regenerated count shall be the final count of the votes cast during the internet voting period.
- If the regenerated count and the initial count do not match, the Clerk shall:
 - direct one final count to be regenerated by the system of the votes cast during the internet voting period; and
 - attend while the final count is being regenerated.

The regenerated final count shall be the final count of the votes cast during the internet voting period.

3.0 Results

During the recount, the Clerk shall post for inspection the summary of the votes cast for each candidate for the office subject to the recount from each of the recount stations.

The results from the internet advance voting period and all paper ballot, tabulator counts shall be added together.

When the recount is complete, the Clerk shall announce the results of the recount.

As per the *Act*, if no application has been made for a judicial recount, the Clerk shall declare the successful candidates elected on the 16th day after the recount is completed.

4.0 Recount Records

At the conclusion of the recount, the Clerk shall secure all materials from the recount including but not limited to the ballots, ballot boxes, ballot transfer cases, results tapes, memory cards and all other materials relating to the recount process.

The Clerk shall destroy recount materials in accordance with the retention period as prescribed in the *Act*.

Legislative and Regulatory References

Selected applicable sections of the *Municipal Elections Act, 1996* are as follows below. Please note that the full version of the Municipal Election Act is available online at: <http://www.e-laws.gov.on.ca/>

Section 11

(1) The Clerk of a local municipality is responsible for conducting election within that municipality, subject to the following exceptions:

(Note: paragraphs 1 to 4 have not been listed here as they are not applicable to the City of Greater Sudbury)

- (2) Responsibility for conducting an election includes responsibility for,
- (a) preparing for the election;
 - (b) preparing for and conducting a recount in the election;
 - (c) maintaining peace and order in connection with the election; and
 - (d) in a regular election, preparing and submitting the report described in subsection 12.1(2). (identification and removal or barriers report to Council)

Section 12

(1) A clerk who is responsible for conducting an election may provide for any matter or procedure that,

- (a) is not otherwise provided for in an Act or regulation; and
- (b) in the clerk's opinion, is necessary or desirable for conducting the election.

(2) The power conferred by subsection (1) includes power to establish forms, including forms of oaths and statutory declarations, and power to require their use.

(3) The power conferred by subsection (1) includes power to require a person, as a condition of doing anything or having an election official do anything under this Act, to furnish proof that is satisfactory to the election official of the person's identity or qualifications, including citizenship or residency, or of any other matter.

Section 15

(1) When it is necessary to conduct an election, the clerk shall appoint a deputy returning officer for each voting place established under section 45 and may appoint any other election officials for the election and for any recount that the clerk considers are required.

(2) The clerk may delegate to a deputy returning officer or other election official any of the clerk's powers and duties in relation to an election, as he or she considers necessary.

(3) The clerk may continue to exercise the delegated powers and duties, despite the delegation.

(4) The delegation shall be in writing.

Section 16

- (1) A candidate may appoint scrutineers to represent him or her during voting and at the counting of votes, including a recount.
- (2) A municipality may appoint scrutineers in relation to voting on a by-law or question submitted to the electors, to attend at a voting place and at the counting of votes, including a recount.
- (4) An election who applies for a recount under section 58 may appoint scrutineers to represent him or her at the recount.
- (5) The appointment of a scrutineer shall be in writing of made by a candidate or applicant or by the Minister, and by resolution if made by a municipality or local board.
- (6) A scrutineer shall, on request, show proof of his or her appointment to the election official in charge of a voting place or of a place where votes are being counted.

Section 42

- (4) The following rules apply with respect to the clerk's duties under subsection (3):
 - 3. Without limiting the generality of clause (3)(a), procedures for the use of vote counting equipment may provide that,
 - i. at the time when and in the place where the votes are being counted, there shall be no more than one scrutineer for each certified candidate for each piece of vote-counting equipment, and
 - ii. at a recount, the persons referred to in subsection 61(5) are not entitled to examine each ballot as the votes are being counted be the clerk.

Section 52

- (3) On receiving the ballot from the deputy returning officer, the elector shall,
 - (a) make a cross or other mark on the ballot, within the space designated for the marking of the ballot to the right of the name of each candidate for whom the elector wishes to vote (or in the case of a by-law or question, to the right of the answer for which he or she wishes to vote);

Section 56

- (1) 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.
- (2) The recount shall be held within 15 days after the clerk's declaration of the results of the election.

Section 57

- (1) Within 30 days after the clerk's declaration of the results,
 - (a) the council of a municipality may pass a resolution requiring a recount of the votes cast,
 - (i) for all of specified candidate for an office on the council.
 - (ii) for all or specified answers to a question submitted by the council,
 - (iii) for an against a by-law submitted by the council;
 - (c) the Minister may make an order requiring a recount of the votes cast for all or specified answers to a question submitted by him or her.
- (2) The clerk shall hold a recount in accordance with the resolution or order, within 15 days after it is passed or made.

Section 58

- (1) A person who is entitled to vote in an election and has reasonable ground for believing the election results to be in doubt may apply to the Superior Court of Justice for an order that the clerk hold a recount.
- (2) The application shall be commenced within 30 days after the clerk's declaration of the results of the election.
- (3) If satisfied that there are sufficient grounds for it, the court shall make an order requiring the clerk to hold a recount of the votes cast for all of specified candidates, on a by-law, or for all specified answers to a question, and shall give the clerk a copy of the order as soon as possible.
- (4) The recount shall be held within 15 days after the day the clerk receives a copy of the order.
- (5) The Minister may by regulation establish procedures for applications under this section.
- (6) A request for a recount due to problems related to voting and vote-counting equipment may be made only under this section.

Section 59

The clerk may conduct, as part of a recount under section 56, 57, or 58 that related to an office, a recount of the votes cast for another candidate in that office.

Section 60 – Procedure

- (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, subject to subsection (3).
- (2) A recount shall be conducted in accordance with the prescribed rules, subject to subsection (3).
- (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 and specify the manner.

Section 61

(1) The following persons may be present at a recount under section 56, 57 or 58 that relates to an office:

1. The clerk and any other election official appointed for the recount.
2. Every certified candidate for the office.
3. The applicant, in the case of a recount ordered under section 58.
4. For each person referred to in paragraphs 2 and 3,
 - i. a lawyer, and
 - ii. one scrutineer for each recount station established by the clerk.

(2) The following persons may be present at a recount that related to a by-law or question:

1. The clerk and any other election official appointed for the recount.
2. The scrutineers appointed by the municipality or a local board or by the Minister, as the case may be.
3. The applicant, in the case of a recount order under section 58.
4. For the application referred to in paragraph 3,
 - i. a lawyer, and
 - ii. one scrutineer for each recount station established by the clerk.

(3) If the vote is on a by-law and scrutineers are to be appointed under subsection 16 (2),

- (a) equal numbers of scrutineers shall be appointed to represent supporters and opponents of the by-law; and
- (b) one scrutineer representing supporters and one representing opponents may be present for each recount station established by the clerk.

(4) If the vote is on a question and scrutineers are to be appointed under subsection 16 (2) and (3),

- (a) equal numbers of scrutineers shall be appointed for each possible answer to the question; and
- (b) one scrutineer for each of the possible answers may be present for each recount station established by the clerk.

Any other person may also be present at the recount with the clerk's permission.

Section 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.

(2) Any persons described in subsections 61(1), (2) and (7) who are at the recount are entitled to be present while the clerk acts under subsection (1).

(3) 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.

(4) If no application has been made for a judicial recount under section 63 the clerk shall, on the 16th day after the recount is completed, declare the successful candidate or candidates elected or declare the result of the vote with respect to a by-law or question, as the case may be.

Section 64

(1) A candidate who has been declared elected under section 55 is entitled to sit and vote on the council or local board until the recount and all applications under this Act have been finally disposed of and a different candidate has been declared elected.

(2) Decisions of a council or local board in which a candidate described in subsection (1) has participated are unaffected even if another candidate is afterwards declared elected as the result of a recount.

Applicable sections of *Ontario Regulation 101/97 as amended by Ontario Regulation 341/03* are as follows:

Section 3

(1) The rules set out in subsection (2) are prescribed for the purpose of subsection 54(2) of the Act (rejection of ballots).

- (2) The deputy returning officer shall reject from the count,
- (a) all votes in a ballot, if the ballot,
 - (i) was not supplied by the deputy returning officer, or
 - (ii) contains writing or marks that may identify the elector, or is torn, defaced or otherwise dealt with by the elector in a way that may identify him or her;
 - (b) all votes in a ballot for an officer, if votes have been cast for more candidates for the office than are to be elected;
 - (c) all votes in a ballot on a by-law, if votes have been cast for both the affirmative and negative on the by-law;
 - (d) all votes in a ballot on a question, if votes have been cast for more than one answer on the question;
 - (e) any vote in a ballot, if the vote is not marked inside the space provided for making the ballot.

Section 4

The following rules are prescribed for the purpose of subsection 60(2) of the Act:

1. The clerk shall give notice of the recount to:
 - i. every candidate for an office that is subject of the recount,
 - ii. in the case of a recount requested under subsection 57(1) of the Act, the council, local board or Minister as the case may be,
 - iii. in the case of a recount ordered under section 58 of the Act, the applicant, and
 - iv. in the case of a recount concerning an office, question or by-law in respect of which electors in another municipality are entitled to vote, the clerk who was responsible for the conduct of the vote in that other municipality.

2. The clerk shall open the ballot boxes and count,
 - i. 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,
 - ii. 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 of opposed, and
 - iii. 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.

3. 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).

4. The clerk may conduct the recount by adding the votes from the statements of results prepared by the deputy returning officer under subsection 55(1) of the Act, rather than by following rules 2 and 3, if a recount under those rules is waived by,
 - i. each 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,
 - ii. 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,
 - iii. 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
 - iv. the applicant, if he or she is present, in the case of a recount ordered under section 58 of the Act. O. Reg. 101/97, s. 4