MUNICIPAL ELECTION
October 24 2022

Vote Tabulator Procedure

Vote Tabulation

Pelham NIAGARA

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1. Definitions

In this procedure:

"**Act**" means the *Municipal Elections Act, 1996*, S.O. 1996, c.32.

"**Ballot Marking Pen**" means the designated ballot-marking pen provided by an election official for the use of a voter to mark the ballot.

"**Memory Pack**" means a cartridge that is a removable, battery-sustained memory where all tabulated totals are stored with the subdivision program.

"**Secrecy Folder**" means an apparatus in which a ballot can be placed so as to conceal the names of the candidates and the marks upon the face of the ballot and so as to expose the initials of the deputy returning officer to the Vote Tabulator Operator.

"**Valid Mark**" means a mark made in the designated oval space to the right of the candidate's name using the black ballot-marking pen provided by the election official.

"**Vote by Mail**" means an alternative method of voting where ballot papers are distributed to electors by post or in-person prior to advanced voting or voting day and returned to the Town Clerk by post, in-person or in a designated Vote by Mail dropbox.

"**Voting Place**" means a polling place where voters cast their ballot. A polling place can contain one or more polling stations. For clarity, the Town of Pelham Miclette Room has been designated as a Voting Place for Vote by Mail ballots.

"**Vote Tabulator**" means an apparatus that optically scans a specified area on the ballots to read the votes and tabulate the results.

2. Application of Procedure

This procedure applies to the 2022 Municipal Election to be conducted in the Town of Pelham, the Council of which has passed By-law No. 4401(2021) pursuant to Section 42 of the Act authorizing the use of Vote Tabulators at Voting Places.

Where this procedure does not provide for any matter, an election to which this procedure applies shall be conducted in accordance with the principles of the *Municipal Elections Act, 1996*.

Where a form of words or expression are prescribed by this procedure, deviations therefrom not affecting the substance or calculated to mislead do not vitiate them.

The Clerk may, in writing and in accordance with the provisions of the Act, amend these procedures and in the case of such amendment, shall provide notice to each candidate of the amendment in a form and manner and at a time that the Clerk considers adequate in order to give reasonable notice or to convey the information.

3. Election Officials

3.1. The Clerk may appoint election officials for the purposes of this procedure and may designate their titles and duties.

4. Voting Subdivisions

4.1. The Clerk may divide the municipality into voting subdivisions and combine voting subdivisions into one or more voting locations.

5. Ballots

5.1. Composite ballots combining the contents of two or more separate ballots shall be prepared to conform as closely as possible to the prescribed form and rules provided for in the Act.

6. Vote Tabulators

6.1. The Clerk shall designate Voting Places where the Vote Tabulator(s) will be located.

6.2. Where the Clerk has not provided a Vote Tabulator at a Voting Place, the Clerk shall designate a place to which the ballots shall be taken after the close of the voting to be tabulated by a Vote Tabulator. Every attempt will be made to ensure that all polling locations are equipped with a Vote Tabulator save and except institutional voting at long-term care facilities where a Voting Place within the same ward may be

designated for processing of ballots, depending on availability of Vote Tabulators.

7. Programming of Vote Tabulators

7.1. The Vote Tabulator shall be programmed so that a printed record of the number of votes cast for each candidate and with respect to each by-law and question can be produced.

7.2. The Vote Tabulator shall be programmed so that the following ballots are returned to the Deputy Returning Officer or Vote Tabulator Operator as described:

a. A ballot without votes in any of the specified voting spaces as determined by a vote tabulator with the message "**BLANK VOTED CARD SEE OFFICIAL**"

b. A ballot with more designated voting spaces marked for an office than the voter is entitled to vote for, as determined by a Vote Tabulator, with the message "**OVERVOTED RACE *NAME OF RACE***".

c. A ballot that is damaged or defective or has been marked in such a way that it cannot be properly processed by a Vote Tabulator with the message "**DEFECTIVE BALLOT**".

7.3. Vote Tabulators will not be programmed to return undervoted ballots as it is a common strategy and a permissible practice for electors to purposely undervote. This would cause many ballots to be returned at the poll and would unnecessarily slow the voting process.

8. Testing of Vote Tabulators

8.1. Prior to voting day, the Clerk shall test the Vote Tabulators to ensure that they will accurately count the votes cast for all candidates, by-laws and questions.

8.2. When testing the Vote Tabulator, adequate safeguards shall be taken to ensure that the system, or any part of it, that is used for processing and tabulating votes is isolated from all other applications or programs and that no remote devices are capable of gaining access to the Vote Tabulator.

8.3. The test shall be conducted by:

    a. Loading the memory packs into the Vote Tabulators;

    b. Tabulating a pre-audited group of ballots, including ballots that fall into each of the categories of ballots described in Subsection 7(2) and ballots on which are recorded a predetermined number of valid votes for each candidate and on each by-law and question; and

    c. Comparing the output of the tabulation against the pre-audited results.

8.4. If the Clerk detects any error in the test, the cause of the error shall be ascertained and corrected and the test repeated until an errorless count is made.

8.5. The Clerk shall, at the successful completion of the test, seal the memory pack to the Vote Tabulator, and record the seal number for validation purposes.

9. Candidates/ Scrutineers

9.1. Candidates may appoint scrutineer(s) in writing, using the prescribed forms, to represent them at the Voting Place.

9.2. Scrutineers shall show their written appointment to election officials upon request upon entry to a Voting Place, and at any time thereafter upon demand of an election official.

9.3. The Poll Supervisor is responsible for the conduct of the Voting Place and no candidate or scrutineer has any right to interfere with the Deputy Returning Officer or any other election official in the discharge of their duties.

9.4. During the fifteen minutes before the opening of the Voting Place, the candidates or scrutineers who are entitled to be present in a voting location during voting hours, are entitled to visually inspect the ballots and any other papers, forms and documents relating to the vote but not so as to delay the timely opening of the voting location.

9.5. Only one scrutineer per candidate may be in the Voting Place for each vote tabulating machine or ballot box, at any time. If the candidate or another of their scrutineers enters the Voting Place, the original scrutineer shall leave.

9.6. To protect the secrecy of the vote, scrutineers shall not be permitted to examine marked ballots or to object to ballots or to the tabulating of votes on a marked ballot as provided for in clauses 47(5)(e) and 47(5)(f) and subsection 54(3) of the Act as the ballots are being fed into the vote tabulator by the election official.

9.7. The total of votes cast for each candidate as counted by the vote tabulating equipment and as accepted by the Poll Supervisor is final; however, a Poll Supervisor shall allow a candidate/scrutineer to inspect a printout of the results of the election as produced by vote tabulating equipment.

10. Procedure at the Voting Place

10.1. If a vote tabulator is to be used in a Voting Place, the Vote Tabulator Operator or election official shall, in the presence of all scrutineers (if any), cause the Vote Tabulator to print a copy of all totals in its memory pack one hour or less before the opening of the voting confirming zero totals.

10.2. If the totals are zero for all candidates, by-laws and questions, the Vote Tabulator Operator or election official shall remove this zero total tape and affix it to the outside of the tabulator to be seen by all electors and shall remain visible to electors throughout the day. All election officials may sign the zero totals report, and any scrutineers present may also sign the zero totals report. The Vote Tabulator Operator or election official shall cause to be printed a second zero total tape, and ensure that the zero printout remains affixed to the Vote Tabulator until the results are printed by the Vote Tabulator after the close of the vote in one continuous printout.

10.3. If the totals are not zero for all candidates, by-laws and questions, the Vote Tabulator Operator or other election official shall immediately notify the Clerk and shall conduct the vote using the back-up compartment of the ballot box until the Vote Tabulator is made

operational or the Clerk provides a back-up Vote Tabulator to the voting location.

10.4. The Clerk may assign an election assistant, in addition to the Deputy Returning Officer, to initial a ballot before the ballot is provided to a voter.

10.5. The Deputy Returning Officer or an election assistant shall provide a Secrecy Folder to each person to whom a ballot is provided at the same time as the ballot is provided.

10.6. Upon receiving the ballot, the voter shall:

a. Proceed to the voting compartment; and,

b. Using the Ballot Marking Pen provided, vote by filling in the oval to the right of the candidate(s) of their choice or for the answer to any by-law or question.

10.7. After marking the ballot in the voting compartment, the voter shall:

a. Insert the ballot into the secrecy folder with the Deputy Returning Officer's or other designated election official's initials showing;

b. Leave the compartment without delay; and

c. Deliver the Secrecy Folder containing the ballot to the Vote Tabulator Operator.

10.8. The Vote Tabulator officer shall, in the presence of the voter and without removing the ballot from the secrecy folder, verify the initials of the Deputy Returning Officer or other designated election official, and

a. If a Vote Tabulator is available in the Voting Place, insert the Secrecy Folder containing the ballot, with the initials of the Deputy Returning Officer or other designated election official face down, into the feed area of the Vote Tabulator until the Vote Tabulator draws the ballot from the Secrecy Folder in full view of the voter; or,

b. If a Vote Tabulator is not available in the Voting Place, or if the back-up procedure is enacted, insert the ballot, with the initials of

the Deputy Returning Officer or other designated election official face down, directly into the ballot box from the Secrecy Folder in full view of the voter.

10.9. If a Vote Tabulator is available in the Voting Place but fails to operate, the Vote Tabulator Operator shall:

    a.   Insert the ballot into the back-up compartment of the ballot box; and

    b.   Subject to subsection 11(2), insert the ballots into the feed area of the Vote Tabulator after the close of the voting.

10.10.   If a ballot described in subsection 7(2)(a) ("blank voted card") is returned by the Vote Tabulator and the voter who delivered the ballot is still present, the Vote Tabulator Operator shall advise the voter that the tabulator does not detect any votes in the designated voting spaces and unless instructed by the voter to override the ballot (the voter intended to leave the ballot blank), shall mark the ballot "cancelled", and have the voter return it to the Deputy Returning Officer or election assistant who will place the ballot in the cancelled ballot envelope, deliver another ballot to the voter and instruct the voter how to properly mark the ballot, allowing the voter to mark the subject ballot correctly and have the Vote Tabulator Operator reinsert it.

10.11.   If a ballot described in Clause 7(2)(b) ("over voted") is returned by the Vote Tabulator and the voter who delivered the ballot is still present, the Vote Tabulator Operator shall, unless instructed by the voter to override the ballot, mark the ballot "cancelled", and have the voter return it to the Deputy Returning Officer or election assistant who will place the ballot in the cancelled ballot envelope, deliver another ballot to the voter and instruct the voter how to properly mark the ballot.

10.12.   If a ballot described in Clause 7(2)(c) ("invalid ballot") is returned by the Vote Tabulator and the voter who delivered the ballot is still present, the Vote Tabulator Operator shall re-insert the ballot into the feed area of the Vote Tabulator. If the Vote Tabulator again rejects the ballot, the Vote Tabulator Operator shall, unless instructed by the voter to override the ballot, mark the ballot "cancelled", and have the voter return it to the Deputy Returning Officer or election

assistant who will place the ballot in the cancelled ballot envelope, deliver another ballot to the voter and instruct the voter how to properly mark the ballot.

10.13.   If a ballot described in subsection 7(2) is returned by the Vote Tabulator and the voter who delivered the ballot is present and declines to accept another ballot, the Vote Tabulator Operator shall override the ballot so that the AccuVote accepts the ballot. If the ballot cannot be overridden, the Vote Tabulator Operator will mark the ballot "declined" and return it to the Deputy Returning Officer who issued it.

10.14.   If a ballot described in subsection 7(2) is returned by the Vote Tabulator and the voter who delivered the ballot is not present, the Vote Tabulator Operator shall mark the ballot "defective" and insert the ballot into the back-up compartment of the ballot box.

10.15.   After the close of the voting, and in conjunction with the Poll Supervisor, any ballots in the back-up compartment of the ballot box shall be processed as follows:

a.   Where there are no marks in the specified voting spaces, the Vote Tabulator Operator will override the ballot for acceptance by the tabulator. Should the tabulator still fail to accept the blank ballot in override mode, the Vote Tabulator Operator shall mark the blank ballot "declined" and return it to the Deputy Returning Officer who assigned it for accounting purposes.

b.   Where there are marks in the specified voting spaces:

I.   Prepare a replacement ballot for the defective ballot by duplicating the marks shown on the defective ballot to the replacement ballot. The replacement ballot shall be clearly labeled "replacement" and given a serial number which number shall be recorded on the defective ballot;

II.   Substitute the replacement ballot for the defective ballot and tabulate it; and

III.   For accounting purposes, give the defective ballot to the Deputy Returning Officer who provided the replacement ballot.

> The Deputy Returning Officer will place the defective ballot into the appropriate envelope.

10.16.   Beginning at 6:00pm on voting day, Vote by Mail ballots will unsealed and fed into the AccuVote machine face down by a Vote Tabulator Operator or Deputy Returning Officer. A non-staff person, in addition to any scrutineer or candidate, will be positioned in the Voting Place to witness the tabulation.

11. Procedure for Closing the Voting Place on Election Day

11.1. If a Vote Tabulator has been used to tabulate the votes cast in a Voting Place, the Vote Tabulator Operator shall, after the close of the voting and in the presence of anyone present, check the back-up compartment of the ballot box for ballots to ensure all votes are tabulated and shall immediately:

a.   Record the number of ballots tabulated as displayed on the tabulator and secure the Vote Tabulator against receiving any more ballots;

b.   Obtain a printed record of the votes given for each candidate and, if applicable, the votes given for and against a by-law or question;

c.   Sign the certificate portion of the printed record together with the Poll Supervisor and any scrutineers who are present and wish to sign;

d.   Remove the printed record from the Vote Tabulator and place it in the statement envelope (zero total and final results tape);

e.   Remove the tabulator from the ballot box and secure and seal the ballot box to ensure that the box cannot be reopened without breaking the seal and to cover the ballot slot;

f.   Under supervision of Poll Supervisor, collect all completed Deputy Returning Officer Statements of Ballot Account for return to the Clerk which define:

I.   Ballots received from the Clerk or printed through the Ballot on Demand option if utilized;

II. Ballots issued to electors and voted;

III. Cancelled Ballots;

IV. Declined Ballots;

V. Defective Ballots; and

VI. Ballots Unused.

g. Report the ballots counted by the Vote Tabulator on the Vote Tabulator Operator Statement and attach the Deputy Returning Officer Statements to it;

h. Place the original copy of the Deputy Returning Officer and Vote Tabulator Operator Statements in the statements envelope, as well as the Vote Summary Totals Tape from the AccuVote Tabulator;

i. Place a duplicate copy of the statements and all ballots that have been counted by the Vote Tabulator in a ballot transfer container provided by the Clerk to ensure the safe transfer of the ballots and seal it;

j. Place in a separate envelope:

I. Cancelled Ballots;

II. Declined Ballots;

III. Defective Ballots;

IV. Unused ballots if Ballot on Demand process not used or if any ballots were printed in error;

k. Seal the envelopes;

l. Place all remaining supplies and sealed envelopes, excluding the statement envelope, in a transfer carrier and seal the transfer carrier; and

m. The Vote Tabulator Operator shall personally deliver the transfer carrier, ballot transfer container, vote tabulator and statement

envelope to the Office of the Clerk or to such other place as the Clerk has directed, in writing.

11.2. If a Vote Tabulator has been used to tabulate votes cast in a Voting Place but the tabulation of the votes cannot be completed because the Vote Tabulator is not operating or cannot be made to operate within a reasonable time following the close of the voting, the Vote Tabulator Operator or an election assistant shall, after the close of the voting and after determining the tabulation cannot be completed:

a.   Seal the ballot box in such a manner that it cannot be opened or any ballots be deposited in it without breaking a seal;

b.   Secure the vote tabulator against receiving any more ballots;

c.   Place all supplies and all cancelled, declined, defective and unused ballots in the transfer carrier and seal it;

d.   Personally deliver the ballot box, transfer carrier, ballot transfer container and Vote Tabulator to a place designated by the Clerk where a back-up Vote Tabulator is located, which shall be for the 2022 Election event the Town of Pelham Municipal Building, 20 Pelham Town Square, Fonthill;

e.   Follow the procedures set out in section 10 to ensure that the totals of the back-up vote tabulator are zero for all candidates, by-laws and questions;

f.   Insert all the ballots from the ballot box into the back-up vote tabulator; and

g.   Follow the procedures in subsection 11(1).

12. Advance Voting, Vote By Mail and Early Closing of Voting Places

12.1. The total of the votes at an advance voting location or at a voting location that closes early under subsection 46 (3) of the Act shall not be printed and the procedures under section 12 shall not be followed until after 8:00 p.m. on the voting day.

12.2. Each advance poll will be treated as a separate and distinct poll for tabulator purposes, with separate memory cards to be prepared for each date and location.

12.3. A vote tabulation machine will be assigned to all Vote by Mail ballots and shall be treated as a separate as distinct poll for tabulation purposes, with a separate memory card.

12.4. Following the close of all voting locations on voting day, after 8:00 p.m., the Clerk, or designate, shall tabulate the results of the advance voting and institutional voting results. If a Vote Tabulator has been used to tabulate the votes cast in an advanced or institutional Voting Place, the Clerk, or designate, shall, in the presence of anyone present:

    a.   Secure the Vote Tabulator against receiving any more ballots (Ender Card Process);

    b.   Obtain a printed record of the votes given for each candidate and, if applicable, the votes given for and against a by-law or question; and

    c.   Sign the certificate portion of the printed record together with any scrutineers who are present and wish to sign.

13. Recounts

13.1. Subject to the order of a judge under section 58 of the Act, if a recount of votes is held, the votes shall be recounted in the same manner as the votes were counted on voting day.

13.2. A Vote Tabulator shall be tested before the recount in the manner described in section 8.

13.3. The Clerk (recount officer) shall attend the recount and bring the transfer carriers, ballot transfer containers, vote tabulators, statement envelopes.

13.4. All documents that, in the opinion of the Clerk (recount officer), are relevant to the recount.

13.5. If a Vote Tabulator is used for a recount, the recount is limited to the ballots tabulated by a Vote Tabulator on voting day.

13.6. For the purposes of subsection (2), "results of the election" means:

   a.   In the case of an election to an office, which candidate or candidates have been declared elected;

   b.   In the case of an election to obtain the assent of the voters on a by-law, whether the affirmative or negative received the greatest number of votes; and

   c.   In the case of a question submitted to the voters, which answer received the greatest number of votes.

13.7. The result of a recount using a Vote Tabulator is final and no further recount shall take place, unless:

   a.   The recount changes the results of the election, as declared by the Clerk under subsection 55 (4) of the Act; or

   b.   A judge makes an order under Section 58 of the Act requiring a recount to be held.

13.8. If clause (2)(a) applies, the Clerk (recount officer) shall conduct a manual recount following as far as practicable the provisions of the Act governing the counting of votes and, subject to a judge's order, shall recount only those voting subdivisions where the count at the recount differed from the count on voting day.

13.9. The manual recount shall be a recount of all the original ballots received from the voters in those voting subdivisions.