THE CORPORATION OF THE TOWNSHIP OF SOUTH STORMONT

BY-LAW No. 2018-023

<u>BEING</u>	a by-law to adopt a Municipal Elections Recount Policy for the Township of South Stormont.

<u>WHEREAS</u> the *Municipal Act, 2001*, c. 25 s. 5 (1) provides that the powers of a municipal corporation are to be exercised by its council;

<u>AND WHEREAS</u> the *Municipal Act, 2001*, c. 25 s. 5 (3) provides that the powers of every council are to be exercised by by-law;

<u>AND WHEREAS</u> the *Municipal Elections Act, 1996,* s. 56(3) authorizes Council to adopt a recount policy;

<u>AND WHEREAS</u> Council of the Township of South Stormont deems it advisable to adopt a Municipal Elections Recount Policy.

<u>NOW THEREFORE</u> Council of the Corporation of the Township of South Stormont enacts as follows:

1. That the Municipal Elections Recount Policy, attached hereto as Schedule "A", be adopted effective March 28, 2018.

2. Any other by-laws inconsistent with this by-law are hereby repealed.

READ AND PASSED in open Council, signed and sealed this 28th day of March, 2018.

_____
Mayor

_____
Clerk

Policy Statement:

The Township of South Stormont recognizes that elections conducted with integrity are fundamental to our democratic society. The results of an election must instill confidence among candidates, electors and administrators and accurately reflect the votes cast. Where questions exist to the accuracy of the results, a recount will provide certainty that the results are correct.

Purpose:

The purpose of this policy is to establish criteria that will require the completion of an automatic recount in accordance with Section 56(1.1) of *the Municipal Elections Act, 1996* (Act), as amended.

Authority:

A recount under Sections 56, 57, or 58 of the Act, shall be conducted in the same manner as the original count as per Section 60 (1) unless ordered otherwise by a Judge under Section 60 (3).

The Act now provides the Clerk with the authority to adopt a policy by May 1 of an election year to define circumstances under which a recount would be conducted other than those listed above.

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 hold a recount of the votes for the candidate(s) in question.

Procedures for the recount process will be in accordance with Schedule "A" to this policy. These procedures may be amended from time to time pending procedural reviews and/or legislative amendments.

Schedule "A" to Recount Policy
Recount Procedures

Examples are provided below to further explain the difference of 10 votes or 1% of voters who have voted, being the Recount Policy provided above:

Example 1:

Candidate A	500 votes cast
Candidate B	511 votes cast
~~Candidate C~~	~~550 votes cast~~
Votes Cast (A&B)	**1011**

Difference between Candidate A & B is 11 votes and 1% of difference separating Candidates is 1.09%, so **no recount**.

Example 2:

Candidate A	500 votes cast
Candidate B	509 votes cast
~~Candidate C~~	~~550 votes cast~~
Votes Cast (A&B)	**1009**

Difference between Candidate A & B is 9 and 1% of difference separating Candidates is 0.9%, so it is appropriate for a **recount.**

Example 3:

Candidate A	444 votes cast
Candidate B	436 votes cast
Votes Cast	**880**

Difference between Candidate A & B is 8, and 1% of difference separating Candidates is 0.91%, so it is appropriate for a **recount.**

Example 4:

Candidate A	495 votes cast
Candidate B	504 votes cast
Votes Cast	**999**

Difference between Candidate A & B is 9 and 1% of difference separating Candidates is 0.90%, so it is appropriate for a **recount.**

Legislative Requirements for Recounts:

A recount under Sections 56, 57, or 58 of the Act, shall be conducted in the same manner as the original count whether manually or by vote-counting equipment.

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 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 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)

The recount process shall follow the same process as used in the election and the count must be conducted in the same manner as the original count, unless otherwise ordered by a judge who issued an order for a recount.

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 attend 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.

Recount Procedures - Tie Vote

1. In the case of a tie vote, as provided under Section 56 of the Act, the Clerk of the Municipality shall conduct a recount of the votes cast in the same manner, being internet and paper ballots via tabulator.

2. Pursuant to Subsection 56(2) of the Act, the recount shall be held within fifteen (15) days after the Clerk's declaration of the results of the election, and therefore the recount shall occur on or before 12:00 noon on November 17, 2018 at the Municipal Administration Office.

3. Pursuant to Subsection 61(1) of the Act, the following persons will be authorized to attend the recount:

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

4. At 12:00 noon on November 17, 2018 the Clerk shall request Intelivote Systems Inc. to re-tabulate the results for the office(s) that are subject to the recount procedure. Intelivote Systems Inc. shall send the results of the recount by facsimile transmission and/or by electronic mail (E-mail) and these results will be compared to the results tabulated by the Auditor assigned to the election.

5. At 12:00 noon on November 17, 2018 the Clerk shall commence the re-tabulation of the paper ballots with the same equipment for the office(s) that are applicable. and these results will be compared to the results tabulated by the Auditor assigned to the election

6. Upon receipt of the final results of the recount, the Clerk shall announce the results of the recount and in the event of a tied vote, Subsection 62(3) of the Act shall apply, being as follows:
    > *"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".*

7. In the event that a tied vote occurs after the statutory recount, the following procedure shall be used and applied:

    - The Clerk shall determine the texture and quality of the paper used for this process and each individual present will have an opportunity of examining the paper to be used to inscribed the names of the candidates;

- The Clerk shall inscribe the name of each candidate(s) on a similar size paper and each individual present, without touching the paper, examine the same. In addition, all persons present will have an opportunity of examining the box which will be used for conducting the lot;

- Upon acceptance of all the candidates that the process outlined in paragraphs a) and b) have been adhered to, the Clerk shall fold the papers bearing each candidate's name twice in two (2) equal parts and shall deposit these papers, in full view of all persons present and authorized to attend, in an open-end box that will be acceptable to all persons present. In the event of a conflict or difference of opinion as to the selection of the box, the Clerk shall determine the box to be used for this process.

8. Upon completion of this process, the Clerk shall hold the box and, without looking into the box, ensure that the contents has been displaced sufficiently and request the Municipal lawyer to draw only one (1) or the required number for the purpose of determining the successful candidate(s).

9. The Municipal Lawyer shall hand directly to the Clerk the selected and required number of papers and the Clerk shall read aloud the name of the candidate or candidates and proceed to declare this or these individuals elected.

10. Once completed, the Municipal Lawyer shall remove the remaining contents from the box and provide an opportunity for all persons present to examine these slips of papers including the box.

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.