

Use of Corporate Resources During an Election Year

(City Council on December 14, 15 and 16, 1999, amended this Clause by inserting in Recommendation No. (6) embodied in the report dated November 19, 1999, from the City Clerk, after the word “websites”, the words “or domain names”, so that such recommendation shall now read as follows:

“(6) websites or domain names that are funded by the City of Toronto may not include any election-related campaign material. In addition, Members of Council may not use their City funded websites or domain names for advertising or as a substitute to distributing newsletters/flyers between the dates specified in Recommendation No. (5) above;”.)

The Administration Committee recommends:

- (1) the adoption of the report (November 19, 1999) from the City Clerk subject to amending Recommendation No. (7) by deleting the words “a Member’s” and inserting in lieu thereof the word “any”, so that Recommendation No. (7) now reads as follows:**

“(7) Council Transportation Services may not be utilized to transport Members of Council to or from election-related meetings or to deliver packages that are connected to any election campaign;”;

- (2) that effective August 1, 2000, in the election year, general distribution of newsletters by Councillors not be permitted unless so directed and approved by City Council;**
- (3) that the Mayor be requested to write to the Premier of Ontario and the Minister of Municipal Affairs and Housing with a request that the Municipal legislation be amended, this session, to reiterate Council’s position respecting the option of changing the date of the 2000 Municipal Election;**
- (4) that the City Clerk be requested to submit a report to the Administration Committee on the results of the request contained in the foregoing Recommendation No. (3) of the Administration Committee; and**
- (5) that the City Clerk be requested to submit a report, prior to November, 2000, to the Administration Committee, if the amendments to the Municipal Elections Act, 1996 as outlined in the aforementioned report are approved.**

The Administration Committee submits the following report (November 19, 1999) from the City Clerk:

Purpose:

The *Municipal Elections Act, 1996*, permits candidates to file nominations as early as January 4, 2000. Once a candidate has filed a nomination paper, he/she can begin to raise campaign funds or incur campaign expenses in accordance with the provisions of the *Act*. The *Act* also prohibits cities or local boards, amongst others, from making campaign contributions. Pursuant to the provisions of the *Municipal Elections Act, 1996*, this report provides guidelines on the use of corporate resources and funding for Members of Council during an election year.

Funding Sources, Financial Implications and Impact Statement:

There are no funding sources required.

Recommendations:

It is recommended that:

- (1) corporate resources and funding may not be used for any election-related purposes;
- (2) staff of Members of Council may not canvass or actively work in support of a municipal, provincial or federal candidate/party during normal working hours unless they are on a leave of absence without pay, lieu time or vacation leave;
- (3) Members of Council should ensure that their constituency office is not used for any election-related purposes, which includes displaying of any campaign related signs in the window or on the premises;
- (4) the Office Budgets for Members of Council for the period January 1 to Election Day be restricted to 11/12ths of the approved global budget amount with the provision that subsequent to election day:
 - (a) new Members of Council be allocated a budget equal to 1/12th of the approved budget amount for the month of December; and
 - (b) re-elected Members of Council have available to them the balance of funds remaining as of Election Day;
- (5) the following services be discontinued for Members of Council for the period beginning the third day following the last meeting of Council before the election, or Nomination Day, whichever is earlier, and ending Election Day:
 - (i) all forms of advertising;

- (ii) all printing, high speed photocopying and distribution;
 - (iii) the ordering of office furniture and furnishings, except those of an emergency nature, as well as no movement of furniture and furnishings; and
 - (iv) the ordering of stationery;
- (6) websites that are funded by the City of Toronto may not include any election-related campaign material. In addition, Members of Council may not use their City funded websites for advertising or as a substitute to distributing newsletters/flyers between the dates specified in Recommendation No. (5) above;
- (7) Council Transportation Services may not be utilized to transport Members of Council to or from election-related meetings or to deliver packages that are connected to a Member's election campaign;
- (8) Members of Council may not use the City's voice mail system to record election related messages;
- (9) Members of Council are responsible to ensure that the content of any communications material, including printed material such as newsletters, advertising, etc. funded by the City for the operation of each Councillor's Office, is not election-related; and
- (10) the above recommendations also apply to an acclaimed Member or a retiring Member.

Council Reference/Background/History:

Members of Council are provided with a global office budget to cover the expenses in connection with their day-to-day operations and to communicate with their constituents. Some examples of typical expenses may be for constituency office accommodation, communications and office supplies and other discretionary items (e.g., postage/distribution, advertising and promotion, photocopying, constituency meetings, business meetings, etc).

It is necessary to establish guidelines on the appropriate use of corporate resources during an election period to protect the interests of both the Members of Council and the Corporation. The *Municipal Elections Act, 1996* prohibits a municipality from making a contribution to a candidate. The *Act* also prohibits a candidate, or someone acting on the candidate's behalf, from accepting a contribution from a person who is not entitled to make a contribution.

As a contribution may take the form of money, goods or services, any use by a Member of Council of the Corporation's resources for his or her election campaign would be viewed as a contribution by the City to the Member, which is a violation of the *Act*.

Should an individual launch a legal challenge on this issue, the offence provisions of the *Act* provide for a fine of up to \$5,000 for a Member and up to \$25,000 for the City for any violations of the *Act*.

In addition to the provisions of the *Municipal Elections Act, 1996*, the Code of Conduct approved for Members of Council also includes provisions governing election campaign work and breach of trust conduct.

Comments:

In developing guidelines for the use of corporate resources during an election year, staff reviewed selected policies from the former municipalities, other Canadian municipalities as well as the Province of Ontario and the Government of Canada.

City of Scarborough:

Newsletters after August 31st, in an election year, are not allowed unless directed and approved by Council.

Any mass communication of 100 or more is not allowed after September 30th during an election year unless directed or approved by Council.

Advertising paid out of a Discretionary Account from January 1st of an election year to Election Day is not allowed for any purpose.

If a Member of Council chooses not to run for re-election, the same rules apply for the nomination Day to Election Day period.

City of Toronto:

Printing, Photocopying and Distribution Services:

Effective July 1st in an election year, Councillors may only use City funds to print and distribute material including newsletters and brochures, about issues on the current agendas of the present Council or its Committees. This material may not contain election/promotional material. The City Clerk will review for content all materials which you print and/or distribute using City funds, whether in-house or external. Members of Council may not use City business cards, envelopes, or letterhead for election purposes.

Interpretation and Translation Services:

Effective July 1st in an election year, the City restricts translation services to material relevant to a matter which is on the agenda of the present Council or its Committees.

Municipality of Metropolitan Toronto:

Purchase and Payment of Goods and Services:

The following services are discontinued for the period beginning Nomination day and ending on Election Day:

- (1) the ordering of office furniture and furnishings;
- (2) the ordering of stationery;
- (3) all forms of advertising; and
- (4) all printing.

Other Canadian Municipalities:

In addition to researching the policies of the former municipal governments, City staff also contacted a number of Canadian municipalities to determine whether they had existing policies to regulate council member budgets/activities during an election period. The municipalities contacted were London, Mississauga, Ottawa, Edmonton, Montreal and Yellowknife.

Of the municipalities surveyed, only Ottawa has an established policy on council member budgets during an election period. The policy provides that the City will not pay for any flyer or householder distributed within 120 days of voting day. Any flyers or householders sent by a council member during this time period are to be paid for by the member.

Province of Ontario:

The use of office premises can never be used to further activities such as Riding Association activities, political meetings or to display partisan, politically-oriented signs.

Constituency office staff shall not engage in any activity on behalf of a candidate in a provincial election; or canvass on behalf of, solicit funds for, or otherwise actively work in support of a provincial political party or candidate; or speak on a public platform on any matter that forms part of the platform of a provincial political party.

Constituency office staff shall take a leave of absence without pay, or time off in lieu of overtime, or vacation leave if they wish to actively work in an election campaign.

Government of Canada:

Use of allocated annual budget:

Effective April 1st in an election year, Members may use a maximum of 10 percent of their annual budget, cumulative on a monthly basis.

Postal Services:

Free/special mailing privileges for Members of the House of Commons are withdrawn 10 calendar days after Parliament is dissolved. These privileges will be re-established on the day that notice of the Member's election is given.

Members may authorize the purchase of postage stamps for their normal day-to-day operations, at a cost not to exceed \$500, from their annual office budget.

Printing:

Printing privileges are withdrawn under the same conditions as postal services.

No printing of personalized stationery may be requisitioned once Parliament is dissolved.

Ottawa Office:

Members may use their offices in Ottawa between the day of dissolution and election day. However, any requests for furniture, furnishings and renovations which are not of an emergency nature will be denied.

Translation Services:

Translation services provided to Members by the Translation Bureau will be withdrawn 10 calendar days after Parliament is dissolved. These privileges will be re-established on the day that notice of the Member's election is given.

Constituency Office:

The constituency office may remain open during the election period, however Members are not permitted to advertise or broadcast that address after the dissolution of Parliament up to and including election day. This space may not be utilized as an election campaign office.

Members should refrain from entering into any leases or commitments chargeable to the Members' Office Budget that extend beyond the date of the election.

In addition, consultations were conducted with Members of Council regarding election campaign and use of corporate resource issues. All Members were surveyed, with the exception of three, who were not available at the time. While the comments received by Members vary from issue to issue, most agreed that guidelines should be established on the use of corporate resources in an election year. The recommendations herein reflect some of the comments received during the survey.

Attached for the information of Council is Appendix "A" which contains excerpts from the *Municipal Elections Act, 1996*.

Conclusions:

While the City's business must continue to be carried out throughout the full term of Council, and the needs of constituents must also continue to be met in an election year, Members of Council are responsible to ensure that corporate resources and any part of their office budgets are not used for any election-related purposes. This report provides guidelines on the use of corporate resources and funding for Members of Council during an election year and recommends a distribution formula of the Councillors global budget to accommodate the new term of office in an election year.

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Appendix "A"

Excerpts from the *Municipal Elections Act, 1996*

66 (1) Contributions:

For the purposes of this Act, money, goods and services given to and accepted by or on behalf of a person for his or her election campaign are contributions.

66 (4) No penalty – employee refusing voluntary service:

No employer shall impose any penalty on an employee who refuses to provide services voluntarily as described in subparagraph ii of paragraph 2 of subsection (2).

70 (3) Contributions – who may contribute
Only the following may make contributions:

- (1) An individual who is normally resident in Ontario.
- (2) A corporation that carries on business in Ontario.
- (3) A trade union that holds bargaining rights for employees in Ontario.
- (4) Subject to subsection (5), the candidate and his or her spouse.

70 (4) Contributions – prohibition:

For greater certainty, and without limiting the generality of subsection (3), the following shall not make a contribution:

- (1) A federal political party registered under the *Canada Elections Act* (Canada) or any federal constituency association or registered candidate at a federal election endorsed by that party.
- (2) A provincial political party, constituency association, registered candidates or leadership contestant registered under *the Election Finances Act*.
- (3) A municipality or local board.

80 (2) Penalties – additional
The following penalties apply:

- (1) The candidate forfeits any office to which he or she was elected and the office shall be deemed to be vacant.
- (2) Until the next regular election has taken place, the candidate is ineligible to be elected or appointed to any office to which this Act applies.

92 (1) Election campaign finance offence – corporation – trade union:

A corporation or trade union that contravenes any of sections 70 to 76 is guilty of an offence and, on conviction, is liable to a fine of not more than \$25,000.

92 (2) Election campaign finance offence – individual:

An individual who contravenes section 69 or 70 or any of sections 73 to 79 is guilty of an offence and on conviction is liable to a fine of not more than \$5,000.

92 (3) Election campaign finance offence – additional penalty:

If the expenses incurred by or on behalf of a candidate exceed the amount determined for the office under section 76, the candidate is liable to a fine equal to the excess, in addition to the fine set out in subsection (2).

92 (4) Election campaign finance offence – limitation:

No prosecution for a contravention of any of sections 69 to 79 shall be commenced more than one year after the facts on which it is based first came to the informant's knowledge.

92 (5) Election campaign finance offence – by candidate:

A candidate is guilty of an offence and, on conviction, in addition to any other penalty that may be imposed under this Act, is subject to the penalties described in subsection 80 (2), if he or she,

- (a) files a document under section 78 that is incorrect or otherwise does not comply with that section; or

(b) incurs expenses that exceed what is permitted under section 76.

92 (6) Election campaign finance offence – exception:

However, if the presiding judge finds that the candidate, acting in good faith, committed the offence inadvertently or because of an error in judgement, the penalties described in subsection 80 (2) do not apply.