

Consolidated Clause in Administration Committee Report 2, which was considered by City Council on May 23, 24 and 25, 2006.

12a**Use of Corporate and Communication Resources
During an Election Year**

City Council on May 23, 24 and 25, 2006, amended this Clause by:

- (1) *deleting Recommendation (2) of the Administration Committee and inserting instead the following:*

“(2) select Option 3 in Recommendation (2), that Nomination Day of an election year be the Effective Date of some of the guidelines. For 2006 the date is Friday, September 29, 2006.”; and

- (2) *amending Attachment 1 to the report (February 17, 2006) from the City Clerk and the Director, Corporate Communications, by deleting from Part (2), under the section related to the activities to be discontinued for Members of Council from Effective Date to Election Day in a municipal election year, the words “all printing, high speed photocopying and distribution, including”, so that Part (2) now reads as follows:*

“(2) printing and general distribution of newsletters unless so directed and approved by Council;”.

This Clause, as amended, was adopted by City Council.

City Council on April 25, 26 and 27, 2006, postponed consideration of this Clause to its next regular meeting on May 23, 2006.

The Administration Committee recommends that City Council:

- (1) **adopt staff Recommendations (1), (3) and (4) in the Recommendations Section of the report (February 17, 2006) from the City Clerk and Director, Corporate Communications; and**
- (2) **select Option 1 in Recommendation (2), that August 1 of an election year be the Effective Date of some of the guidelines.**

The Administration Committee submits the report (February 17, 2006) from the City Clerk and the Director, Corporate Communications.

Purpose:

This report seeks Council confirmation of the guidelines governing the use of corporate and communication resources during an election year, as adopted by City Council in 2003. The report also seeks Council direction on the Effective Date for the application of some of these guidelines, for 2006 and future election years.

Financial Implications and Impact Statement:

There are no financial implications from the adoption of this report, regardless of the Effective Date selected. The Deputy City Manager and Chief Financial Officer has reviewed the report and concurs with the financial impact statement.

Recommendations:

It is recommended that:

- (1) City Council reconfirm the guidelines governing the use of corporate and communication resources during an election year, as detailed in Attachment 1;
- (2) City Council select one of the following three options as the Effective Date for some of the guidelines:
 - Option 1 – Effective Date: August 1 of an election year;
 - Option 2 – Effective Date: September 25 of an election year;
 - Option 3 – Effective Date: Nomination Day of an election year. For 2006, the date is Friday, September 29, 2006;
- (3) the complaint protocol regarding use of corporate resources during an election year be consistent with the established Council Code of Conduct Complaint Protocol; and
- (4) the appropriate City officials be authorized and directed to take the necessary action to give effect thereto.

Background:

On December 14, 15 and 16, 1999, the Council of the City of Toronto adopted, as amended, Clause No. 7 of Report No. 8 of the Administration Committee, titled 'Use of Corporate Resources During an Election Year.' Contained in this report were recommendations pertaining to specific uses of corporate resources during an election year for Members of Council and their staff.

On August 1, 2, 3 and 4, 2000, the Council of the City of Toronto adopted, as amended, Clause No. 4 of Report No. 16 of the Administration Committee, titled "Use of Corporate Resources During an Election Year." Contained in this report were further recommendations that specifically addressed printing and distribution of material by Members of Council.

At its meeting on April 14, 15 and 16, 2003, Toronto City Council adopted, as amended, Clauses Nos. 1a and 2a of Report No. 1 of the Administration Committee, titled "Use of Communication Services and Resources during an Election Year" and "Use of Corporate Resources for Election Purposes Especially During a Municipal Election Year." These reports consolidated some of the recommendations and guidelines of previous election years, and laid out new guidelines regarding the use of communication services and resources.

At its meeting September 22, 23, 24 and 25, 2003, Toronto City Council further amended report No. 2a with a Motion which read that "community groups be extended access to City facilities for the explicit purpose of conducting all-candidates meetings, including all-candidates for municipal, provincial and federal elections, at a nominal fee of \$1.00, and all registered candidates within each specific category be invited to attend such meetings."

This report seeks the current Council to reconfirm the policies and guidelines governing the use of communication and corporate resources during an election year, and further seeks Council direction on the Effective Date for the application of some of these policies.

Comments:

The Need for Council Confirmation of Policy

While City Council has approved the policies and guidelines governing the use of corporate and communication resources during an election year in 2003, staff are bringing these guidelines back to Council for confirmation for a number of reasons.

The City of Toronto has adopted policies to ensure that its municipal elections are conducted in an impartial and transparent manner. Examples include the HR policy on Employee Participation in Municipal Election Campaigns and provisions in the Council Code of Conduct applicable to Members of Council.

Subsection 70(4) of the *Municipal Elections Act, 1996* (the *Act*) specifically prohibits a municipality from making a contribution to a candidate. In addition, subsection 70(7) states that a candidate may only accept a contribution from a person or entity that is entitled to make a contribution. Upon conviction, penalties for breaching the campaign financing provisions of the *Act* include fines up to \$25,000 for the City and up to \$5,000 for an individual.

Some of the principles that were considered by Ministry of Municipal Affairs and Housing staff during the development of the *Act* were that:

- the election should be fair and non-biased;
- the integrity of the process should be maintained throughout the election; and
- candidates should be treated fairly and consistently within a municipality.

During the 2000 and 2003 elections, the City Clerk's Office received a number of complaints from members of the public and other candidates with respect to the use of corporate resources by Members of Council for their election campaigns, e.g. office staff working on their campaigns during business hours and use of office equipment/supplies. In addition, one of the compliance audit requests received after the 2000 election alleged that a Member of Council had inappropriately used corporate resources.

As well, a candidate in the 2003 election took the City to court on the basis that a councillor's use of corporate resources "unlawfully discriminate against non-incumbent candidates for City Council and create an unlevel playing field for the benefit of incumbent councillors". The court application was unsuccessful but pointed to the need for Council to reconfirm its policies and guidelines.

To ensure that the City maintains a neutral position in the 2006 election, it is necessary for Council to confirm a policy to prohibit the use of corporate resources for any election-related matter. Any such policy should also include an appeal mechanism.

Guidelines Governing Use of Corporate and Communication Resources during an Election Year:

The guidelines, as approved by City Council in April 2003, are summarized in Attachment 1. It should be pointed out that there are two sets of guidelines – those that are applicable throughout an election year, and those that are applicable only between a pre-determined Effective Date and the Election Day.

It is recommended that Council reconfirm the guidelines as approved by Council in 2003. However, staff are seeking further Council direction on the Effective Date for some of the guidelines.

Selection of an Effective Date

There are three options for the Effective Date:

Option 1 – August 1 of an election year. This date was originally proposed in the 2003 staff report.

This date would prohibit use of certain resources and activities for more than 3 months prior to Election Day. It is an option that provides the greatest level playing field between incumbent Councillors and potential challenging candidates, and is most congruent with the principle of openness and fairness in accordance with the Municipal Elections Act. However, this option would also provide the greatest limitation to the ability of Councillors to communicate with their constituents. The Integrity Commissioner has reviewed the 2003 reports and concurred that the original staff recommendation of August 1 as the Effective Date is most congruent with the principles of the Municipal Elections Act.

Option 2 – September 25 of an election year. This date was approved by Council in 2003 through an amendment motion.

This Effective Date allows Councillors to communicate with their constituents in September after the summer holidays, while still prohibits certain activities approximately six to seven weeks before Election Day. This is the normal time frame for provincial and federal election campaigns, and thus, an argument could be presented that such a time frame should provide sufficient time to level the playing field between incumbent and challenging candidates.

While this date coincided with Nomination Day in 2003, September 25, 2006 falls on a Monday while Nomination Day is September 29, 2006, the Friday of the same week. Choosing a certain date, such as September 25 of an election year, would have the disadvantage that the date becomes an arbitrary choice with a different election year, and would be difficult for staff and candidates to remember.

Option 3 – Nomination Day of an election year.

The pros and cons of choosing Nomination Day is similar to Option 2, except that this option provides a rationale behind the selection of the Effective Date.

Nomination Day is the last day for candidates to file their papers to declare their candidacy for the municipal election. It normally falls on the Friday, more than six weeks ahead of Election Day, which traditionally falls on a Monday. This date is specific to each Municipal Election Year. It is determined before nominations are accepted in January, and is familiar to all candidates. Selecting this date, thus, has the added advantage of being simple and clear to all parties, including candidates, staff, the public and the media.

Complaint Protocol

It is proposed that the complaint protocol concerning the use of corporate resources during an election year be consistent with the established Complaint Protocol for the Council Code of Conduct, as adopted by Council at its meeting on March 1, 2 and 3, 2004.

The Integrity Commissioner has been consulted on the preparation of this report.

Conclusions:

The City of Toronto is an open, transparent and accountable government. Clear guidelines governing the use of corporate and communication resources during an election year, with a clear Effective Date, would enable all parties, including Councillors and their staff, as well as all City staff and members of the public, to adhere to these guidelines closely. As the proposed effective date options are generic for any election year, once Council approves this report, it will no longer be necessary to bring forward a similar report every election year. Confirming a complaint mechanism for the use of corporate resources during an election year would clarify the procedures and steps required for such complaints to move forward.

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Attachment 1

Use of Corporate and Communication Services and Resources during an Election Year (As approved by Council in 2003)

The following guidelines apply to an acclaimed Member or a Member not seeking re-election, as well as all Members who seek re-election.

Nothing in this Policy shall preclude a Member of Council from performing their job as a Councillor, nor inhibit them from representing the interests of the constituents who elected them.

Policies Applicable during the entire Election Year

- (1) Corporate resources and funding may not be used for any election-related purposes, with the exception that community groups be extended access to City facilities for the explicit purpose of conducting all-candidates meetings, including all-candidates meetings for municipal, provincial and federal elections, at a nominal fee of \$1.00, and all registered candidates within each specific category must be invited to attend such meetings;
- (2) Staff of Members of Council may not canvass or actively work in support of a municipal, provincial or federal candidate or party during normal working hours unless they are on a leave of absence without pay, lieu time, float day or vacation leave;
- (3) Members of Council may not use their constituency office for any election-related purposes, which includes displaying of any campaign related signs in the window or on the premises, as well as displaying any election-related material in the office;
- (4) The Office Budgets of Members of Council for the period January 1 to Election Day in a municipal election year 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;
 - (b) re-elected Members of Council have available to them the balance of funds remaining as of Election Day;

- (5) Members of Council may not deliver any unsolicited material outside their existing ward where the printing and/or distribution costs are paid by the City. Care should be taken to ensure that the mailing of newsletters be restricted to the member's ward only (with accommodation made for the normal spillage associated with Canada Post postal walks.) This policy to be effective not only during an election year but at all times;
- (6) Members of Council may not:
 - (a) print or distribute any material paid by City funds that illustrates that a Member of Council or any other individual is registered in any election or where they will be running for office;
 - (b) profile (name or photograph), or make reference to, in any materials paid by City funds, any individual who is registered as a candidate in any election;
 - (c) print or distribute any material using City funds that makes reference to, or contains the names or photographs, or identifies registered candidates for municipal elections; and that Minutes of City Council and Committee meetings be exempt from this policy;
- (7) Members of Council are responsible to ensure that the content of any communication material, including printed material such as newsletters, advertising etc., funded by the city for the operation of each Councillor's Office, is not directly election-related;
- (8) web sites or domain names that are funded by the City of Toronto may not include any election-related campaign material;
- (9) the City Clerk or her designate shall be responsible at all times for setting of committee agendas, in consultation with the Chair of Standing Committee;
- (10) Members of Council may not use the City's voice mail system to record election related messages;
- (11) Members of Council may not use the services of any staff in the City of Toronto to assist in any communication activity related to the preparation or distribution of campaign related materials or events;
- (12) no photographic or video materials may be created by City staff for use in any campaign materials; and
- (13) The City of Toronto logo will not be used in any campaign related materials.

The following activities be discontinued for Members of Council from Effective Date to Election Day in a municipal election year:

- (1) no advertising paid for by the City of Toronto shall contain the name of a Councillor or the Mayor unless consistent with their duties as an elected official;

- (2) all printing, high speed photocopying and distribution, including printing and general distribution of newsletters unless so directed and approved by Council;
- (3) the ordering of office furniture and furnishings, except those of an emergency nature, as well as no movement of furniture and furnishings;
- (4) the ordering of stationery;
- (5) Members of Council will not enter into joint ventures using city funds outside their existing wards, unless specifically approved by Council. At all other times, a signed agreement between Ward Councillors is required;
- (6) Members of Council will not distribute media releases using the City of Toronto media relations or departmental communications networks or distribution systems unless such a release is considered to be consistent with their duties as an elected official; and
- (7) The City of Toronto media clippings package will be made available to the general public through copies provided for viewing at the central library and at the counter of all civic centres.