

Election Campaign Finance By-laws

Date:	August 26, 2010
To:	Executive Committee
From:	City Clerk
Wards:	All
Reference Number:	

SUMMARY

Under the *Municipal Elections Act, 1996*, Council has the authority to enact by-laws to authorize a contribution rebate program, the prohibition of corporate and trade union contributions and the electronic filing of candidate financial statements. These are all permissive by-laws.

Should Council decide to implement a rebate program for the 2010 election, it is recommended that the program parameters be the same as those for the 2006 election with the exceptions that all campaign surpluses required to be paid to the Clerk by a candidate for office on Toronto City Council will become the property of the City and the rebate application deadline will be extended to June 29, 2012.

It is recommended that the by-laws prohibiting corporate and trade union contributions and the electronic filing of candidate financial statements apply to all regular municipal elections and by-elections, not just the 2010 election.

RECOMMENDATIONS

The City Clerk recommends that the Executive Committee:

Establishment of a Contribution Rebate Program

1. Decide whether to recommend to City Council that a contribution rebate program be implemented for the 2010 election and, if so, recommend that City Council:

- a. pass a by-law substantially in the form of the draft bill attached as Appendix 'A' to this report;
- b. increase funding from the non-program account to the Elections Reserve Fund XR1017 by \$0.2 million to \$0.8 million per annum beginning in 2010 to pay for the program;
- c. direct that any election campaign surplus funds paid to the Clerk under subsection 79(4) of the *Municipal Elections Act, 1996* by a candidate for office on Toronto City Council be deposited into the Elections Reserve Fund XR1017 in accordance with section 14 of the draft bill attached as Appendix 'A' to this report.

Corporate and Trade Union Contributions

2. Recommend that City Council pass a by-law to prohibit all corporate and trade union contributions to candidates seeking office to Toronto City Council in all regular municipal elections and by-elections, substantially in the form of the draft bill attached as Appendix 'B' to this report.

Electronic filing of Candidate Financial Statements

3. Recommend that City Council pass a by-law to authorize the electronic filing of candidate financial statements in all regular municipal elections and by-elections substantially in the form of the draft bill attached as Appendix 'C' to this report.
4. Authorize and direct the appropriate City officials to take the necessary action to give effect thereto, including the introduction of the bills substantially in the form of Appendices 'A', 'B' and 'C'.

Financial Impact

It is difficult to accurately estimate the cost of a contribution rebate program as it is dependent upon many factors including the number of candidates and contributors and the contribution levels.

In past years, the rebate program was funded from the Elections Reserve Fund, through an annual contribution of \$0.6 million from non-program to the reserve fund. However, the contribution from non-program has been insufficient to totally fund the rebate program. Additional withdrawals from the reserve fund, made up of annual contributions from the City Clerk's Office operating budget in non-election years, were required.

The main purpose of the Elections Reserve Fund is to fund the capital and operating requirements to deliver the municipal elections. The adequacy of the Elections Reserve Fund is being separately addressed in the 2010 operating budget process.

Table 3 in Appendix 'D' compares the impacts of the campaign activity of the participating candidates on the 2000, 2003 and 2006 contribution rebate programs. The following trends are evident:

- the number of candidates is increasing with each election;
- the number of candidates participating in the rebate program is increasing;
- the total number of contributors is increasing;
- the number of individual contributors is increasing;
- the total dollar amount of individual contributions is increasing;
- the number of corporate contributors is decreasing;
- the total dollar amount of corporate contributions is decreasing;
- the number of contributors applying for a rebate is increasing; and
- individual contributors are more likely to apply for a rebate than corporate or trade union contributors

If Council enacts the proposed provision that all campaign surpluses required to be paid to the Clerk will become the property of the City, candidates will no longer have the ability to opt out of the program in order to retain their surpluses. Therefore, it is likely that the costs of the 2010 election rebate program will be similar to those of the 2003 program (\$3,199,100).

It is estimated \$3.2 million will be required to fund the Contribution Rebate Program for the 2010 election, provided that the parameters of the program remain at the 2006 levels. The actual financial impact may exceed this estimate if a record number of candidates decide to run for office. The current annual non-program contribution of \$0.6 million, totalling only \$2.4 million over 4 years, is insufficient to fund the rebate program. The non-program contribution will need to increase to \$0.8 million beginning in 2010 to provide on-going stable funding for the rebate program. Rebate payments will be made to applicants in 2011 and 2012.

Should Council wish to avoid the projected \$0.8 million in added rebate costs, staff estimate that the maximum rebate payout would have to be reduced from the current \$1,000 to \$350 which would take the maximum rebate to what it was in 1997.

Should Council wish to increase the rebate payment formula, the contribution from the non-program account will need to be increased accordingly to ensure there is sufficient money in the reserve to fund future elections and by-elections.

The Deputy City Manager and Chief Financial Officer has reviewed this report and agrees with the financial impact information.

DECISION HISTORY

Since the 2006 election, Council has, from time to time, considered issues relating to the election by-laws included in this report:

1. Executive Committee (January 5, 2009) directed the City Clerk to submit a report on adjustments to the elections by-laws and to prepare the necessary by-law to prohibit corporate and trade union donations to candidates for office on Toronto City Council.

Municipal Election Finance Reform - By-law to Prohibit Corporate and Trade Union Contributions

<http://www.toronto.ca/legdocs/mmis/2009/ex/bgrd/backgroundfile-17918.pdf>

2. A recommendation from the Auditor General (June 14, 2007 report) that Members of Council utilize the City's Electronic Financial Filing System when preparing their financial statements.

Municipal Election 2006 – Review of Financial Filings by Members of City of Toronto Council

<http://www.toronto.ca/legdocs/mmis/2007/ex/bgrd/backgroundfile-7625.pdf>

Municipal Election 2006 – Review of Financial Filings by Member of City of Toronto Council – Report

<http://www.toronto.ca/legdocs/mmis/2007/ex/bgrd/backgroundfile-7626.pdf>

Municipal Election 2006 – Review of Financial Filings by Members of City of Toronto Council – Report

<http://www.toronto.ca/legdocs/mmis/2007/ex/bgrd/backgroundfile-7627.pdf>

Observations From the Review of Financial Filings by Members of City of Toronto Council – Attachment 1

<http://www.toronto.ca/legdocs/mmis/2007/ex/bgrd/backgroundfile-7628.pdf>

3. At its meeting of April 7, 2009, the Executive Committee, in considering Motion MM30.16 (Municipal Election Finance Reform – By-law to Prohibit Campaign Surplus Carry-Over), requested the City Clerk to report on the following motion:
 1. City Council enact a by-law to prohibit the transfer of municipal election financial campaign surpluses by any candidate for Mayor and Councillor in the City of Toronto from the 2010 municipal election onwards.
 2. City Council endorse in principle the concept that surplus campaign funds be retained by the City for campaign related matters.
 3. Surpluses be held by the City in reserve for the following purposes:
 - campaign related legal expenses
 - to write down the cost of election financing
 - should the City initiate an election grant program, to help underwrite these grants
 4. This matter be referred to the City Clerk for report to the Executive Committee and City Council within four months on:
 - how to determine access to these funds for campaign related legal expenses would be regulated; and
 - the terms of reference for the reserve.
 5. Members of Council be permitted to accrue a surplus for these purposes.

The motion can be found at:

<http://www.toronto.ca/legdocs/mmis/2009/ex/bgrd/backgroundfile-19367.pdf>

The City Solicitor has previously reported on the legal issues associated with the reimbursement of compliance audit legal expenses. In these reports, the City Solicitor advised that the courts have established that municipalities do not have the jurisdiction to reimburse councillors for legal expenses incurred outside of the office of councillor, including expenses incurred as a candidate for municipal office. The City Solicitor's reports (dated November 9, 2007, June 12, 2008 and August 21, 2008) can be found at: <http://www.toronto.ca/legdocs/mmis/2007/cc/bgrd/ex13.1e.pdf>
<http://www.toronto.ca/legdocs/mmis/2008/ex/bgrd/backgroundfile-13851.pdf>
<http://www.toronto.ca/legdocs/mmis/2008/ex/bgrd/backgroundfile-15126.pdf>

Council previously directed the City Clerk to report on the feasibility of establishing a fund to reimburse candidates for their compliance audit costs. The Clerk advised that given the provisions of the *Municipal Elections Act, 1996* and the *City of Toronto Act*, it would not be possible to establish such a fund. It was recommended that Council request legislative amendments to allow candidates to reopen their campaigns to pay compliance audit costs. The report, dated October 4, 2007, can be found at: <http://www.toronto.ca/legdocs/mmis/2007/ex/bgrd/backgroundfile-7632.pdf>

This current request from Executive Committee directs the City Clerk to report on the use of the surplus campaign funds to pay for campaign legal expenses, election financing costs or a grant program, should one be established, and how access to these funds for legal expenses would be regulated.

The issue of financing candidates' legal costs arising from compliance audits was raised by both City staff and individual Members of Council to the Ministry of Municipal Affairs and Housing in 2008 and 2009 along with a request that amendments be enacted to deal with this situation. (The *Municipal Elections Act, 1996* does not permit the use of surplus campaign funds for this purpose.)

The numerous requests by the City, other municipalities and the Association of Municipal Managers, Clerks and Treasurers of Ontario (AMCTO) for legislative amendments to the *Municipal Elections Act, 1996*, in particular, the campaign finance provisions, have not been acted upon by the Province.

With the start of the election campaign period only four months away, staff do not expect any legislative amendments will be forthcoming. Accordingly, the 2010 election will be conducted within the same legal framework as the 2006 election.

It is recommended that any election campaign surplus funds paid to the Clerk under subsection 79(4) of the *Municipal Elections Act, 1996* by a candidate for office on Toronto City Council be deposited into the Elections Reserve Fund XR1017 in accordance with section 14 of the draft bill attached as Appendix 'A' to this report. These funds can be used to finance the costs of conducting elections and by-elections and the contribution rebate program.

COMMENTS

The *Municipal Elections Act, 1996* (the *Act*) altered the manner in which elections were to be administered, from a process strictly mandated by the legislation to one where the municipality has the flexibility to tailor certain elements of the election to suit the particular needs of the municipality.

The *Act* assigns the decision-making role to Council for those areas or activities that necessitate political accountability (e.g., the prohibition of corporate and trade union donations) or that involve the spending of public funds (e.g., the establishment of a contribution rebate program).

This report addresses the permissive by-laws Council may enact relating to the election campaign finance provisions of the *Act*. In preparing this report, staff analysed the impact of the by-laws enacted by Council for the 2006 municipal election process. Staff also consulted with Members of Council, candidates and other stakeholders to obtain feedback on their 2006 municipal election experience.

Historically, Council has enacted by-laws for each separate election and by-election. It is recommended that the by-laws for the prohibition of corporate and trade union donations and the electronic filing of candidate financial statements be applicable to all future regular municipal elections and by-elections in the City of Toronto. This would not preclude Council from amending these by-laws for a subsequent election or by-election should Council determine it appropriate to do so.

This will give certainty of the election rules to electors and potential candidates well in advance of the start of an election period. It will also allow staff to quickly prepare the necessary elector and candidate materials in the event of a by-election.

The contribution rebate program by-law will be applicable to the 2010 election only.

This report has been prepared in consultation with Legal Services.

Separate reports on the establishment of a compliance audit committee and the enactment of the election administration by-laws are also before the Committee at this time.

1. Contribution Rebate Program

Authority to pass a by-law establishing a contribution rebate program is found in subsection 82(1) of the *Act*. The *Act* provides total flexibility to Council in establishing the program, including the conditions under which a person is entitled to a rebate and the rebate amounts payable.

Under a rebate program, individual contributors to candidates seeking office on Toronto City Council may apply for a rebate of part of their contribution. The payment formula is based on a sliding scale, with a maximum rebate of \$1,000 to any one contributor.

Council has had contribution rebate programs for the 1997, 2000, 2003 and 2006 municipal elections as well as the 1998, 1999 and 2001 by-elections. Table 1 in Appendix 'D' shows the changes that have been made to the rebate programs since 1997. Tables 2 and 3 in Appendix 'D' show the cost of the rebate program for each election and by-election and the impact of the campaign activity of candidates on the program.

For the 2006 election rebate program, the by-law provided that campaign surpluses from those candidates participating in the program would become the property of the City. Forty-one Members of Council participated in the rebate program; four Members continue to carry forward their surpluses for the 2010 election as they did not participate. Table 4 in Appendix 'D' shows the impact of this provision on the surplus funds.

The draft bill also includes provisions for the electronic filing of campaign contribution receipts as was the case with the 2006 rebate by-law.

Following both the 2003 and 2006 elections, some Members of Council requested the reopening of the contribution rebate program by-law to extend the time frame in which contributors could submit their rebate applications. Council did amend the 2003 rebate by-law to extend the application filing deadline by seven months, from July 31, 2004 to January 31, 2005.

The 2006 contribution rebate by-law reflected the extended period granted to the 2003 program. Given the concerns following the 2006 election, the date has been further extended.

Should Council decide to establish a contribution rebate program for the 2010 election, it is recommended that the program parameters be the same as those for the 2006 election with the exceptions that all campaign surpluses required to be paid to the Clerk under subsection 79(4) of the *Act* by a candidate for office on Toronto City Council will become the property of the City and deposited into the Elections Reserve Fund and the rebate application deadline will be extended to June 29, 2012.

2. Prohibition of Corporate and Trade Union Contributions

Under section 70.1 of the *Act*, Council has the authority to enact a by-law prohibiting contributions from corporations and trade unions to candidates in City of Toronto elections. This is a permissive by-law that may be passed by City Council. A draft bill is attached as Appendix 'B'.

The Clerk was directed by the Executive Committee at its meeting of January 5, 2009 to prepare the necessary by-law to prohibit corporations and trade unions from contributing to any candidate for Mayor and Councillor in the City of Toronto, and report to the Executive Committee and Council by no later than September, 2009, to enable it to be in effect for the 2010 municipal election.

It is recommended that the by-law prohibiting corporate and trade union donations apply to all future regular municipal elections and by-elections.

3. Electronic Filing of Candidate Financial Statements

Subsection 78(7) of the *Act* permits Council to pass a by-law to authorize the electronic filing of financial statements subject to such conditions and limits as are set out in the by-law. However, Council cannot require that the electronic filing replace the manual paper filing scheme set out in the *Act*. This is a permissive by-law that may be passed by City Council. A draft bill is attached as Appendix 'C'.

In response to a recommendation of the Toronto Election Finance Review Task Force in the fall of 2004, Council enacted a by-law to establish the Electronic Financial Filing System ("EFFS") and provide for the electronic filing of candidate financial statements for the 2006 election. To staff's knowledge, Toronto was the first Canadian municipality to implement such a system. EFFS won numerous public sector and information technology awards.

Permitting electronic filing of financial statements increases the transparency and openness of election campaigns by facilitating the display of the financial statements on the City's web site. Interested individuals no longer need to visit the Clerk's office in order to review a candidate's financial statement.

EFFS is of great benefit to candidates as the automatic mathematical calculations performed by the system prevent addition and subtraction errors from occurring. Members of Council may recall that following his review of the financial statements of the Members in 2007, the Auditor General recommended Members use EFFS to avoid these types of mathematical errors. The Auditor General also recommended that Council request the province to amend the Act to require all candidates in the City of Toronto to use EFFS. It is unknown what the province's position is on this recommendation.

Given the current wording of subsection 78(7) of the *Act*, there is an issue as to whether Council can make electronic filing mandatory. This subsection only allows Council to "authorize" electronic financial filing and does not confer authority on Council to compel candidates to file electronically. When this subsection is considered in light of other provisions of the Act, which continue to require filing of hard copies of financial statements, a strong argument can be made that, under current legislation, participation in an electronic filing system can only be voluntary. Consequently, it is unknown how many candidates will choose to file electronically.

In addition, any decision on mandatory electronic filing should be judged against the principles of fairness and accessibility. Not all candidates are computer literate or have access to a computer and the internet. Imposing mandatory electronic filing would create difficulties for these candidates and may serve as a barrier to their participation. In addition, electronic filing will increase the complexity of a campaign and may cause a significant rise in the costs of a campaign. If electronic filing were to become a mandatory requirement, it would place an additional burden onto candidates, especially those who conduct a simple campaign.

If Council passes a by-law to authorize electronic filing, candidates filing electronically must still file a paper copy of their financial statement with the City Clerk in order to satisfy the legislative requirements of the *Act*. Section 14 of the *Act* requires all election documents filed with the Clerk to bear an original signature. The financial statement requires signatures from both the candidate and the auditor and also contains a declaration that the candidate must take before a commissioner for taking oaths. The *Electronic Commerce Act*, which authorizes the electronic submission of documents, including signatures, specifically excludes the *Municipal Elections Act, 1996*.

The paper copy of the financial statement filed with the City Clerk will be deemed to be the official copy for the purposes of the *Act*. Failure to file this paper copy by the legislated filing date will place the candidate in default of the filing requirements of the *Act*.

The financial statement submitted to the system will be posted directly to the City's web site and will not be subject to any verification or amendments by the Clerk. The City accepts no responsibility for the accuracy of this information; it is the responsibility of the candidate to ensure there is no discrepancy between the paper copy filed with the Clerk and the electronic copy of the financial statement.

It is recommended that the by-law authorizing electronic financial filing apply to all future regular elections and by-elections. This will ensure the continued transparency and ease of access to candidate financial information.

CONTACT

Bonita Pietrangelo, Director, Elections and Registry Services
Tel – 416-392-8019; Fax – 416-395-1300
E-mail: bpietran@toronto.ca

SIGNATURE

Ulli S. Watkiss
City Clerk

ATTACHMENTS

Appendix "A" – draft bill to authorize a contribution rebate program for the 2010 election
Appendix 'B' – draft bill to prohibit all corporate and trade union donations to candidates seeking office to Toronto City Council in any regular election or by-election
Appendix 'C' – draft bill to authorize the electronic filing of candidate financial statements for any regular election or by-election
Appendix 'D' – Contribution Rebate Program Statistics

Appendix “A”

CITY OF TORONTO

BY-LAW No. _____

To authorize the payment of rebates to individuals who make contributions to candidates for an office on the municipal council in the 2010 municipal election.

WHEREAS subsection 82(1) of the *Municipal Elections Act, 1996*, as amended (“the Act”), provides that a municipality may, by by-law, provide for the payment of rebates to persons who make contributions to candidates for an office on the municipal council;

WHEREAS subsection 78(7) of the Act, provides that a municipality may, by by-law, authorize candidates seeking election to municipal office to file their financial statements and any required auditor’s reports (the “financial statements”) electronically, subject to such conditions and limits as are set out in the by-law; and

WHEREAS O. Reg. 101/97, as amended, provides that the financial statements may be electronically filed if the local council has passed an enabling by-law [the “Electronic Financial Filing System (EFFS) By-law”], being City of Toronto By-law No. _____;

WHEREAS candidates who choose to file financial statements electronically under the provisions of the EFFS By-law must also file original financial statements with the Clerk in accordance with the requirements and deadlines set out in the Act;

WHEREAS candidates who choose to file financial statements electronically under the EFFS must also issue all contribution receipts electronically even if the candidates are not participating in the City of Toronto contribution rebate program established under this By-law;

The Council of the City of Toronto HEREBY ENACTS as follows:

1. The payment of rebates to individuals who make contributions to candidates for an office on the municipal council for the 2010 election is authorized.
2. An individual who, during the 2010 municipal election, makes a contribution to a candidate for an office on the council of the City of Toronto may, on or after January 4, 2010, apply to the Clerk of the municipality (the “Clerk”) for a rebate.
3. Notwithstanding section 66 of the *Act*, only a contribution of money will be eligible for a campaign contribution rebate.
4. The application for rebate must be received by the Clerk on or before 5:00 p.m., June 29, 2012.

5. Despite sections 4, 6, 7, 10 and subsections 11(a) and 11(c), where an applicant for a rebate claims that their application was mailed, but not received by the Clerk prior to June 29, 2012, that applicant can provide an affidavit to the Clerk, in a form satisfactory to the Clerk, attesting to the facts, and the Clerk is authorized to process that application in accordance with the relevant provisions of this by-law.
6. The application for rebate shall be in the form established for that purpose by the Clerk.
7. The application for rebate shall include a receipt in the form provided by the Clerk that is signed by or on behalf of the candidate.
8. A candidate for an office on the municipal council:
 - (a) shall comply with subsections 78(1) to (4) of the *Act*; and
 - (b) shall include with the documents filed under subsection 78(1) or (2) of the *Act*, as the case may be, a copy of the receipt issued for the contribution and a copy of all campaign expense invoices incurred as part of the campaign.
9. A candidate for an office on the municipal council, or their spouse, whose campaign period is extended under paragraph 4 or 5 of subsection 68(1) of the *Act*, will not be eligible to receive a rebate application until after the candidate's campaign closes and the final document is filed under subsection 78(2) of the *Act* or subsection 11(d) of this by-law.
10. The Clerk shall compare the receipt filed by the applicant and the copy filed by the candidate to ensure consistency.
11. The Clerk shall pay the applicant a rebate in accordance with sections 12 and 13 if the following conditions are met:
 - (a) The application complies with sections 4, 6 and 7;
 - (b) The candidate has complied with section 8;
 - (c) The Clerk is satisfied that the receipt filed by the applicant and the copy filed by the candidate are consistent;
 - (d) The Clerk is satisfied that the candidate has filed the documents required by section 78 of the *Act* by:
 - (i) the relevant filing date, including a supplementary filing date set out in section 77 of the *Act*, or
 - (ii) within 91 days after the relevant filing date, or

(iii) within the time frame set out in a court order authorizing a later time for filing the financial statements under subsections 80(6) and (7) of the *Act*,

and, that no such document shows on its face that the candidate has incurred expenses exceeding what is permitted under section 76 of the *Act*;

(e) The Clerk is satisfied that the candidate has paid any surplus in accordance with the provisions of section 79 of the *Act* within the time period stipulated in that section; and

(f) The time for an application for a compliance audit under section 81 of the *Act* has expired.

12. (1) Subject to section 13, the rebate shall be calculated as follows:

(a) If the contribution is \$300.00 or less, the rebate is 75 per cent of the contribution;

(b) If the contribution is more than \$300.00 but not more than \$1,000.00, the rebate is \$225.00 plus 50 per cent of the difference between the contribution and \$300.00;

(c) If the contribution is more than \$1,000.00, the rebate is the lesser of:

(i) \$575.00 plus 33-1/3 per cent of the difference between the contribution and \$1,000.00; or

(ii) \$1,000.00.

(2) Contributions of less than \$25.00 will not receive a rebate.

13. An applicant who makes contributions to more than one candidate may apply for a rebate in respect of each contribution, but is not entitled to receive total rebates amounting to more than the following maximums:

(a) If the total of the applicant's contributions to all candidates is \$300.00 or less, the maximum is 75 per cent of that total;

(b) If the total of the applicant's contributions to all candidates is more than \$300.00 but not more than \$1,000.00, the maximum is \$225.00 plus 50 per cent of the difference between that total and \$300.00; or

(c) If the total of the applicant's contributions to all candidates is more than \$1,000.00, the maximum is the lesser of:

- (i) \$575.00 plus 33-1/3 per cent of the difference between that total and \$1,000.00, or
- (ii) \$1,000.00.

14. In accordance with subsection 82(5) of the *Act*, any campaign surplus paid to the Clerk under subsection 79(4) of the *Act* by any candidate for office on Toronto City Council will become the property of the City of Toronto and will be deposited into the Elections Reserve Fund XR1017.

15. If candidates choose to participate in the Electronic Financial Filing System, the following provisions apply:

- (1) Candidates must issue all contribution receipts electronically (whether or not eligible for a contribution rebate) as well as file the prescribed financial statements in accordance with the Act, this by-law and the EFFF By-law.
- (2) Despite section 7, contribution receipts issued through the EFFF must have either the original or electronic signature of the candidate or their designate.
- (3) Despite subsection 8(b), candidates are not required to attach paper copies of their contribution receipts with the original financial statements filed with the City Clerk, provided the contribution receipts are electronically issued through the EFFF. Candidates must still attach copies of their campaign expense invoices to the original financial statement filing.
- (4) Despite subsection 8(b), candidates must submit their electronic contribution receipts, as part of filing their electronic financial statements through the EFFF, either within 48 hours of filing the original financial statements with the City Clerk, or no later than within 48 hours after the filing deadlines set out in the Act, whichever is earlier.

ENACTED AND PASSED this ____day of _____, A.D. 2009.

DAVID MILLER,
Mayor

ULLI S. WATKISS
City Clerk

Appendix 'B'

CITY OF TORONTO

BY-LAW No. _____

To prohibit all corporate and trade union contributions to candidates seeking office to Toronto City Council in any regular election or by-election.

WHEREAS subsection 70.1(1) of the *Municipal Elections Act, 1996*, as amended (the "Act"), provides that Toronto City Council may, by by-law, prohibit a corporation that carries on business in Ontario or a trade union that holds bargaining rights for employees in Ontario from making a contribution to or for any candidate for an office on Toronto City Council; and

WHEREAS clause 69(1)(m) of the Act requires that a contribution of money made or received in contravention of the Act shall be returned to the contributor as soon as possible after the candidate becomes aware of the contribution; and

WHEREAS clause 69(1)(n) of the Act requires that a contribution not returned to the contributor under clause 69(1)(m) shall be paid to the clerk with whom the candidate's nomination paper was filed;

The Council of the City of Toronto HEREBY ENACTS as follows:

- 1.** A corporation that carries on business in Ontario or a trade union that holds bargaining rights for employees in Ontario shall be prohibited from making a contribution to or for any candidate in any regular election or by-election for an office on Toronto City Council.
- 2.** A candidate for an office on Toronto City Council shall, as soon as possible after becoming aware of the contribution, return any contribution received from a corporation that carries on business in Ontario or a trade union that holds bargaining rights for employees in Ontario.
- 3.** If, for whatever reason, the candidate is unable to return a contribution in accordance with section 2, the candidate shall pay the amount of the contribution to the City Clerk in accordance with section 69 of the *Act*.
- 4.** For greater certainty, this by-law applies to all elections and by-elections for an office on the council of the City of Toronto.

ENACTED AND PASSED this ____ day of _____, A.D. 2009.

DAVID MILLER
Mayor

ULLI S. WATKISS
City Clerk

Appendix ‘C’

CITY OF TORONTO

BY-LAW No. _____

**To authorize the electronic filing of financial statements under the
Municipal Elections Act, 1996 by candidates seeking office in any regular election or by-
election in the City of Toronto and to establish the Electronic Financial Filing System
 (“EFFS”).**

WHEREAS subsection 78(7) of the *Municipal Elections Act, 1996*, as amended (the “Act”), provides that a municipality may, by by-law, authorize candidates seeking election to municipal office to file their financial statements and any required auditors’ reports (the “financial statements”) electronically, subject to such conditions and limits as are set out in the by-law; and

WHEREAS the filing of candidate financial statements is mandated by the Act and the forms for filing those financial statements are prescribed by O. Reg. 101/97, as amended; and

WHEREAS O. Reg. 101/97, as amended, provides that financial statements may be electronically filed if the local municipal council has passed an enabling by-law; and

WHEREAS the financial statements prescribed by O. Reg. 101/97, as amended, require candidates to sign the financial statements and make declarations before a Commissioner for Taking Affidavits or the City Clerk as to the truth and correctness of the content of the financial statements and must be accompanied by signed auditors’ reports, if required; and

WHEREAS section 30 of the *Electronic Commerce Act* prohibits the electronic submission of signatures with respect to documents required to be filed under the Act; and

WHEREAS section 14 of the Act states that any document to be filed with an election official under the Act that is required to be signed shall bear an original signature; and

WHEREAS candidates who choose to file financial statements electronically under the provisions of this by-law must also file original financial statements with the Clerk in accordance with the requirements and deadlines set out in the Act; and

WHEREAS candidates who choose to file financial statements electronically under the provisions of this by-law must also issue all contribution receipts electronically even if the candidates are not participating in the City of Toronto contribution rebate program established under By-law No. _____;

The Council of the City of Toronto HEREBY ENACTS as follows:

1. The electronic filing of financial statements by candidates seeking office in the City of Toronto in any regular municipal election or by-election is authorized, and candidates are to use the City's Electronic Financial Filing System ("EFFS") for this purpose.
2. Candidates seeking election to office in any regular election or by-election in the City of Toronto may file the required financial statements electronically with the City Clerk in accordance with this by-law, the Act and associated regulations.
3. Prior to using EFFS, candidates must sign the Agreement Regarding Electronic Filing of Contribution Information – City of Toronto Municipal Election or By-Election, as the case may be, in content and form satisfactory to the City Clerk and the City Solicitor, and must agree to issue all contribution receipts electronically in accordance with this by-law and, if the candidates are participating in the contribution rebate program, in accordance with By-law No. _____.
4. Contribution receipts issued through the EFFS must have either the original or electronic signature of the candidate or their designate.
5. Candidates may designate up to two individuals who may utilize the EFFS on the candidate's behalf, and those two designated individuals will also be required to sign the agreement identified in section 3 of this by-law.
6. Campaign workers, other than those identified in section 5 of this by-law, authorized by candidates to use the EFFS must first have read, understood and accepted, electronically, the Terms of Use Agreement on the EFFS secured site, in content and form satisfactory to the City Clerk and the City Solicitor.
7. Once candidates have signed the necessary agreement and registered to use the EFFS, any additional guidelines and requirements on the use of the EFFS and all further documents and communications from the City Clerk with respect to the election will be sent to the candidates by e-mail transmission, subject to any notification which requires registered mail delivery under the Act or other legislation.
8. Despite candidates' participation in the EFFS, candidates must still file original financial statements, bearing original signatures, in accordance with the provisions of the Act and, in particular, section 78 of the Act.
9. The original financial statements must be filed with the City Clerk in accordance with the requirements and deadlines set out in the Act.
10. Electronic financial statements must be posted to the EFFS by candidates either within 48 hours of filing the original financial statements with the City Clerk, or no later than within 48 hours after the filing deadlines set out in the Act, whichever is earlier. Electronic financial statements will not be verified or amended by the City Clerk, and in the event of any discrepancy between the EFFS financial statements and the original financial statements filed with the City Clerk, the original documents shall govern.

- 11.** The financial statements prescribed by the Act require candidates to record the name, address and amount of every contributor who contributes more than \$100, and, subject to section 10 of this by-law, that information as entered by candidates into the EFFF will be posted on the City of Toronto election website.
- 12.** For greater certainty, this by-law applies to all elections and by-elections and to all candidates for office on the school boards related to the geographical area of the City of Toronto, as well as candidates for office on the council of the City of Toronto.

ENACTED AND PASSED this ____ day of _____, A.D. 2009.

DAVID R. MILLER
Mayor

ULLI S. WATKISS
City Clerk

Appendix 'D'

Contribution Rebate Program Statistics

1. Changes to the Contribution Rebate Programs

Over the years, Council has amended the program criteria to enhance the rebate formula and restrict the eligibility rules. Some of these revisions (e.g. corporate, trade union and goods and services contributions are no longer eligible) were as a result of staff recommendations following the 2005 Internal Audit review of the contribution rebate program.

Table 1 – Changes to the Contribution Rebate Programs

Election Year	Program Criteria Changes
1997	<p>The Province passed Ontario Regulation 172/97 authorizing the contribution rebate program</p> <ul style="list-style-type: none"> • maximum amount a contributor could receive was \$350 • individual, corporations or trade unions eligible for a rebate • contributors could not get a rebate until the candidate closed their campaign <p>Formula:</p> <ul style="list-style-type: none"> • less than \$100 – 75 percent of total contributions • \$101 - \$400 – \$75 plus 50 percent of the difference between the contribution and \$100 • over \$400 – the lesser of: <ul style="list-style-type: none"> ○ \$225 plus 33.3% of the difference between the contribution and \$400, and ○ \$350 (maximum)
2000	<ul style="list-style-type: none"> • formula was adjusted • maximum amount a contributor could receive was increased to \$1,000 • contributors no longer had to wait until the campaign closed to receive a rebate <p>Formula:</p> <ul style="list-style-type: none"> • less than \$50 – not eligible for rebate • \$50 - \$300 – 75% of total contributions • \$301 - \$1,000 – \$225 plus 50% of the difference between the total contributions and \$300 • over \$1,000 – the lesser of: <ul style="list-style-type: none"> ○ \$575 plus 33.3 % of the difference between the total contribution and \$1,000, and ○ \$1,000 (maximum)
2003	<ul style="list-style-type: none"> • formula was adjusted – contributions less than \$25 not eligible for a rebate • inventory from a previous election was no longer eligible for a rebate • candidates and spouses not eligible for a rebate until after the campaign closed • contributors could provide an affidavit if their rebate application was lost in the mail • the by-law was reopened in 2004 to extend the submission date for rebate applications from July 31, 2004 to January 31, 2005
2006	<ul style="list-style-type: none"> • contributions from corporations and trade unions were no longer eligible for rebates • contributions of goods and/or services were no longer eligible for rebates • candidates participating in the rebate program had to turn their election campaign surpluses over to the City

2. Cost of the Contribution Rebate Programs

It is difficult for staff to accurately estimate the cost of a campaign contribution rebate program as it is dependent upon:

- the number of candidates seeking election to City Council;
- the number of high profile candidates running (who are usually more successful in raising funds);
- whether or not candidates decide to participate in the contribution rebate program;
- the success of the fund-raising activities of candidates;
- the costs of the candidates' campaigns;
- the total number of contributors;
- the total amount of contributions; and
- whether or not the contributor submits the application for a rebate to the City Clerk

Table 2 – Cost of the Contribution Rebate Programs

Election Year	Rebates Paid (\$)
1997	1,842,852
1998	23,237
1999	21,517
2000*	1,247,680
2001	48,289
2003	3,199,108
2006#	2,117,139
Total	8,499,822

* maximum rebate increased from \$350 to \$1,000

not all candidates participated due to requirement that surpluses would become the property of the City

Table 3 compares the impacts of the campaign activity of the participating candidates on the 2000, 2003 and 2006 contribution rebate programs. The following trends are evident:

- the number of candidates is increasing with each election;
- the number of candidates participating in the rebate program is increasing;
- the total number of contributors is increasing;
- the number of individual contributors is increasing;
- the total dollar amount of individual contributions is increasing;
- the number of corporate contributors is decreasing;
- the total dollar amount of corporate contributions is decreasing;
- the number of contributors applying for a rebate is increasing; and
- individual contributors are more likely to apply for a rebate than corporate or trade union contributors

Table 3 – Comparison of 2000, 2003 and 2006 Contribution Rebate Programs

	2000 Election	2003 Election	2006 Election
Number of Candidates	167	243	313
Number of Candidates who used Rebate Program	101	153	165
Total Number of Contributors	9,946	14,772	16,351
Number of Individual Contributors	7,271	13,314	15,403
Number of Corporate Contributors	2,617	1,432	895
Number of Trade Union Contributors	58	26	53
Amount of Individual Contributions	\$1,960,195	\$4,571,881	\$4,630,053
Amount of Corporate Contributions	\$2,353,546	\$1,279,635	\$671,400
Amount of Trade Union Contributions	\$89,836	\$68,280	\$108,625
Number of Contributors Applying for Rebate	9,571	13,687	14,408
Number of Individual Contributors Applying for Rebate	7,095 (74.1%)	12,344 (90.2%)	14,408 100%*
Number of Corporate/Trade Union Contributors Applying for Rebate	2,476 (25.9%)	1,343 (9.8%)	N/A*
Total Amount of Rebates Paid	\$1,247,680	\$3,199,108	\$2,117,139#

* The 2006 rebate program was only open to individual contributors – the 2000 and 2003 programs gave rebates to individuals, corporations and trade unions.

Not all candidates participated due to requirement that surpluses would become the property of the City.

3. Retention of Candidate Campaign Surpluses

For the 2006 election rebate program, the by-law provided that the campaign surpluses from those candidates participating in the program would become the property of the City. Table 4 shows the impact of this provision on the surplus funds. There was a 61.7 percent reduction in the number of candidates with a surplus over \$500 and a 78.9 percent reduction in the amount of surplus funds paid over to the Clerk from candidates participating in the rebate program. Even among the 4 Members of Council not participating, there was a 31.3 percent reduction in the amount of surplus funds they turned over to the Clerk to be held in trust for the 2010 election.

Table 4 – Surplus Funds

	2003 Election	2006 Election	Percentage Change
Number of Candidates Paying Over a Surplus in excess of \$500	47	18	-61.7%
Value of Surplus from Candidates Participating in the 2006 Rebate Program	\$662,378	\$139,543	-78.9%
Value of Surplus from Candidates Not Participating in the 2006 Rebate Program	\$136,026	\$93,433*	-31.3%

* these funds are being held in trust for 4 candidates who chose not to participate in the rebate program.

Based on the 2006 experience, it appears that the provision in the rebate by-law requiring the retention of campaign surplus did address the concern of some Members of Council on the need to limit the amount of excess fund-raising. There is no longer any incentive for candidates to raise more money than they can spend on their current campaigns.