

Use of City Agency and Corporation Resources during an Election

Date:	January 21, 2013
To:	Executive Committee
From:	City Manager
Wards:	City-wide
Reference Number:	

SUMMARY

In order to facilitate a consistent approach to the use of public resources during an election, this report recommends that City agencies and corporations be requested to adopt policies appropriate to their organization that reflect the purpose and principles of the City's Policy on Use of City Resources during an Election. This action would augment other election-related legislation and a City by-law which currently apply to agencies and corporations. Under the *Municipal Elections Act, 1996 (Act)*, local boards are prohibited from making a contribution to an individual candidate during an election. Also under the *Act*, the City has the ability to prohibit any Ontario corporation or trade union from making a contribution to a candidate in an election, and City Council passed By-law 1177-2009 to this effect.

RECOMMENDATIONS

The City Manager recommends that City Council:

1. Request City agencies and corporations to review the City's Policy on Use of City Resources during an Election, adopt policies appropriate to their organization that reflect the purpose and principles of the City's Policy, and submit their policies to the City Manager no later than September 20, 2013.

Financial Impact

There are no financial implications resulting from the implementation of the recommendation in this report.

DECISION HISTORY

At its meeting on July 11, 12 and 13, 2012, Council considered the report EX21.9: Policy Changes to Facilitate Councillor Office Operations. Council adopted recommendation 14 from the report which states, "City Council request the City Manager to report on the application of the Policy on Use of City Resources during an Election to City agencies and corporations, for implementation for the 2014 Municipal Election."

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2012.EX21.9>

The *Municipal Elections Act, 1996, S. 70 (4)* states that a municipality or local board shall not make a contribution to a candidate or registrant in an election campaign. The *Act, 1996, S. 70.1 (1)* also states that the City of Toronto can prohibit an Ontario corporation or trade union from making a contribution to or for any City Council candidate. A contribution includes the provision of goods or services below market value.

http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_96m32_e.htm

At its meeting on December 2, 2009, Council passed By-law 1177-2009 which prohibits corporations conducting business in Ontario and trade unions from making a contribution to or for any candidate seeking office on Toronto City Council.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2009.EX37.2>

ISSUE BACKGROUND

It is in the City's interests that City agencies and corporations govern their activities in a similar way as the City during an election to maintain public confidence in the fairness of the electoral process, maintain the impartiality of the City and its agencies and corporations in election outcomes, and avoid conflict of interest in dealing with election candidates or elected officials.

The purpose of the Council-approved Policy on Use of City Resources during an Election (the Policy) is to provide a consistent approach and direction to employees on how City resources can and cannot be used during a municipal, school board, provincial and federal election, or a question on the ballot. The principles in the Policy establish the need to balance freedom of expression and assembly of candidates with the City's legal responsibility to avoid providing unfair advantage, promotion or contributions to any one candidate, party, registrant, or supporter of a ballot question, over another. The Policy is intended to enable continued public and media access to candidates or registrants for information and interviews, and recognizes that Members of Council are holders of their office until the end of their term.

The Policy provides direction to City employees on the use of City facilities, events, information, infrastructure, and funds during an election or ballot campaign. Further, it requires the City Manager to review how the Policy applies to City agencies and corporations.

COMMENTS

City resources, as defined in the Policy, do not include most agencies and corporations. The Policy applies to City employees but not employees of agencies and corporations (except for the Board of Health and agency operated community centres). The Policy defines City facilities as those directly managed by the City, which excludes facilities managed or controlled by agency and corporation boards even if they are owned by the City. Similarly, events, information and infrastructure under agency or corporation management or control may not be considered City resources. However, the Policy defines City funds as funding supported through the City's annual budget process. Given that agency budgets are approved as part of the budget process and generally are tax supported, their funding can be considered City funds under the Policy.

While the Policy does not apply to most agencies and corporations, they are subject to election-related legislation and a City by-law. City agencies are considered local boards under the *Municipal Elections Act, 1996*. As such, they are prohibited from making a contribution to a candidate or registrant in an election campaign. As well, the *Act* provides for the City to prohibit contributions to an election candidate or registrant by any Ontario corporation or trade union, and the City has passed By-law 1177-2009 to this effect.

Under the *Act*, a contribution includes money or goods and services given to and accepted by or on behalf of a person for his or her election campaign purposes. This includes goods or services used in a person's election campaign that are purchased for less than their market value. Costs incurred for goods or services by or on behalf of a person for use in his or her election campaign are expenses. One interpretation of the legislation is that goods or services provided at market value are considered expenses and not contributions. For example, City agencies that rent space at full cost for campaign events, and provide no preference in renting to individual candidates, are likely not in contravention of the *Act*.

This report recommends that Council request agencies and corporations to review the Policy and adopt policies based on similar purposes and principles appropriate for their organization, and that these policies be submitted to the City Manager no later than September 20, 2013. This action will facilitate the development of a consistent approach and policy framework for the use of public resources during an election and will not undermine the arm's-length nature of the agencies and corporations or contravene existing relationship frameworks and shareholder directions.

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SIGNATURE

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