

Supplementary Report on Proposed Amendments to Chapter 693, Election Signs and impacts of recent Municipal Elections Act amendments relating to third party advertising

Date: May 17, 2017

To: City Council

From: City Solicitor

Wards: All

REASON FOR CONFIDENTIAL INFORMATION

This report contains advice or communications that are subject to solicitor-client privilege.

SUMMARY

This report provides legal advice to members of Council concerning the April 19, 2017 report from the Executive Director, Municipal Licensing and Standards and the General Manager, Economic Development.

RECOMMENDATIONS

The City Solicitor recommends that:

1. City Council receive this report for information.
2. City Council direct that the confidential information contained in Confidential Attachment 1 remain confidential in its entirety, as it contains advice which is subject to solicitor-client privilege and relates to litigation or potential litigation.

FINANCIAL IMPACT

There is no financial impact resulting from the adoption of the recommendations in this report.

DECISION HISTORY

At its meeting of May 5, 2017, the Licensing and Standards Committee considered a report from the Executive Director, Municipal Licensing and Standards.

At its meeting of December 13-15, 2016, City Council adopted [EX20.5 Changes to the Municipal Elections Act and Related Matters Impacting the 2018 Election](#), and requested the City Solicitor and the Executive Director of Municipal Licensing and Standards, to report on the impact of the amended Municipal Elections Act on Toronto's sign bylaw, including provisions related to third party advertising and on any potential legal challenges to the provisions in the amended Municipal Elections Act which allow third party advertising.

COMMENTS

This report responds to the direction from City Council at its meeting of December 13-15, 2016, respecting the recent amendments to the Municipal Elections Act ("MEA").

Third Party Advertising During Municipal Elections

Third party advertising with respect to municipal elections has previously taken place on an unregulated basis.

Effective April 1, 2018, the MEA will now include a framework to regulate third party advertising, with provisions relating to: expenses, contribution and spending limits, identification requirements, record keeping, and registration. The restrictions in force effective April 1, 2018, will constrain third party advertisers by setting limits on third party spending, expenses and contributions.

MEA Amendments

The April 19, 2017 report from the Executive Director, Municipal Licensing and Standards, identifies certain amendments to Chapter 693, Signs, in order to ensure that signs erected by third party advertisers are subject to the same requirements as a candidate's election sign.

This report provides further information and legal advice relating to Council's request for comments on any potential challenges to the provisions in the amended Municipal Elections Act which allow third party advertising.

Under the MEA, "third party advertisement" is defined as an advertisement in any broadcast, print, electronic or other medium that has the purpose of promoting, supporting or opposing, a candidate, or, a "yes" or "no" answer to a question on the ballot. However, advertising that does not cost money to post or broadcast, such as comments on social media, is not to be considered third party advertising.

Individuals, corporations, and unions may register as third party advertisers and make contributions to third party advertisers. Third party advertisers will be required to register with the Clerk of the municipality where they will advertise.

Third party advertising must be done independently of candidates. Candidates may not direct a third party advertiser, or register as third party advertisers.

Third party advertisers and candidates will be required to identify themselves on signs and campaign advertisements so that it is clear who is responsible for each sign and advertisement. Municipalities are also provided with the authority to require the removal or discontinuance of any advertising that contravenes MEA requirements. Further information about the enforcement of these MEA requirements will be addressed in a future report as the issue requires further review.

Some key restrictions contained in the MEA amendments relating to third party advertising are discussed below.

Only the following entities are eligible to register and participate as a third party advertiser: individuals who are normally resident in Ontario, corporations that carry on business in Ontario and trade unions that hold bargaining rights for employees in Ontario. Candidates for election are not permitted to register as a third party advertiser and are not able to direct a third part advertisement.

Similarly, contributions to registered third party advertisers can only be made by: individuals who are normally resident in Ontario, corporations that carry on business in Ontario; trade unions that hold bargaining rights for employees in Ontario; the registered third party itself and the spouse of a third party. A contributor other than a third party or their spouse cannot contribute more than \$750 to a registered third party for advertisements that appear during an election in a municipality and cannot donate more than \$5000 to multiple registered third parties registered in the same municipality.

Third party advertisers will also be subject to spending limits that will be based, in part, on the number of electors entitled to vote in a regular election or by-election in the municipality in which the third party advertising will occur. Third party advertising will only be permitted during the campaign period and the filing of financial statements and auditors reports with the City Clerk is required. Third party advertisers will be subject to a compliance audit process relating to campaign finances as set out in the MEA.

These amendments should be viewed as adding new or greater restrictions on the third party advertising which has previously taken place during municipal elections. The Confidential Attachment contains legal comments respecting this matter as previously requested by City Council.

Enforcement of the MEA

Staff from Legal Services, Municipal Licensing and Standards and the City Clerk's Office have met to discuss options for the enforcement of the MEA. These matters will be the subject of another report to Council when staff have determined the best options available to ensure effective enforcement of the MEA.

CONTACT

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SIGNATURE

Wendy Walberg
City Solicitor

ATTACHMENTS

Confidential Attachment 1 - Challenges to the MEA