

Authorization for the 2014 Municipal Election Contribution Rebate Program and By-law

Date:	June 18, 2013
To:	Executive Committee
From:	City Clerk
Wards:	All
Reference Number:	

SUMMARY

To assist candidates to fund their campaigns, the *Municipal Elections Act, 1996* ("MEA") prescribes that a municipality may, by by-law, authorize a contribution rebate program for the payment of rebates to individual who contribute to candidates for office on municipal council. The MEA does not allow other alternative campaign funding or grant programs.

Should Council decide to implement a contribution rebate program for the 2014 election, it is recommended that the program parameters be the same as those for the 2010 election with one exception. The exception would require a candidate to close their campaign before rebates are paid to their contributors. This will prevent the City from having to recover overpayments identified in the supplementary filing. This by-law will only apply to contributions made to candidates in the 2014 regular election.

RECOMMENDATIONS

The City Clerk recommends that the Executive Committee recommend that either:

1. City Council establish a contribution rebate program for the 2014 municipal election and, if so, that City Council:
 - a. Pass a by-law substantially in the form of the draft bill attached as Appendix "A".

- b. Increase funding from the non-program account to the Elections Reserve Fund XR1017, by \$0.4 million to \$1.2 million per annum beginning in 2014, to pay for the program.
- c. Direct that any election campaign surplus funds that become the property of the City according to the *Municipal Elections Act, 1996* will be deposited into the Elections Reserve Fund XR1017, in accordance with section 14 of the draft bill attached as Appendix "A" to this report.

OR

- 2. City Council not establish a contribution rebate program for the 2014 municipal election.

Financial Impact

If Council adopts recommendation 1, the funding from the non-program budget to the Election Reserve Fund will increase from \$0.8 million per year to \$1.2 million per year. If Council changes the criteria for the contribution rebate program, as included in Appendix A, there will be a change to the requirement of annual funding from the non-program budget to the Election Reserve Fund. The financial impact will be dependent on the changes adopted by Council.

If Council adopts recommendation 2, there will no longer be a contribution rebate program and any funding from the non-program budget to the Election Reserve Fund will not be required.

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

DECISION HISTORY

City Council, at its special meeting on December 2, 2009, passed By-law 1178-2009, which authorizes electronic filing of financial statements and By-law 1177-2009 to prohibit all corporate and trade union contributions to candidates seeking office to Toronto City Council. (EX37.2, Election Campaign Finance By-laws – Updated Report (Bill 212)).

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

Appendix "B" outlines the History of Changes to the Contribution Rebate Programs since 1997.

Appendix "C" provides a Comparison of the 2000, 2003, 2006 and 2010 Contribution Rebate Programs.

ISSUE BACKGROUND

Section 82(1) of the *MEA* provides Council with the authority to pass a by-law to authorize a contribution rebate program for the payment of rebates to individuals who contribute to candidates for office on Council.

The *MEA* currently allows an individual, corporation or trade union to contribute up to \$750 to any one candidate (section 71(1)) and up to \$2,500 to a mayoral candidate for office in the City of Toronto (section 70.1(5)). In December 2009, the *MEA* was amended to provide for a \$5,000 limit as the total amount a contributor can donate to two or more candidates for office on the same council or school board (section 71(2.1)).

COMMENTS

If Council passes a by-law authorizing a contribution rebate program for the 2014 municipal election, it has flexibility in establishing the framework for the program, including the conditions under which a person is entitled to a rebate and the rebate amounts payable. This by-law will only apply to contributions made to candidates in the 2014 regular election. Any by-elections would require Council to pass a new by-law.

Individual contributors to candidates seeking office on Council may apply for a rebate for part of their contribution. Both the candidate and the contributor must follow the rules outlined in the by-law in order for the contributor to receive a contribution rebate. The framework in the by-law provides the rebate application timelines, submission requirements and for the payment formula, which is based on a sliding scale, with a maximum rebate payable of \$1,000 to any one contributor. (See Appendix "A")

1. Recommended change to the rebate program for the 2014 election

Should Council decide to establish a contribution rebate program for the 2014 municipal election, it is recommended that the program parameters be the same as those for the 2010 election with one exception. The exception would require a candidate to close their campaign before rebates are paid to their contributors.

Under the contribution rebate by-law authorized for the 2010 municipal election, rebate payments could be made to contributors of candidates who extended their campaign before that candidate filed their supplementary financial statement. If the supplementary financial statement revealed a lower contribution amount from the primary financial statement or that the contribution was voided altogether, then the City would have to try to recover overpayments identified in the supplementary filing.

This recommendation aims to resolve issues that arose during the last election as a result of the amendments to the *MEA* in December 2009. This amendment would not affect the majority of candidates who do not extend their campaign past the automatic close of the campaign on December 31, 2014. It ensures equal treatment of all candidates requiring that only eligible contributors receive rebates. The integrity of this public funded program may be compromised without this amendment.

Appendix "A" is a draft bill for the rebate program.

2. Estimate of financial requirements for the Contribution Rebate Program

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, contributors and the contribution levels.

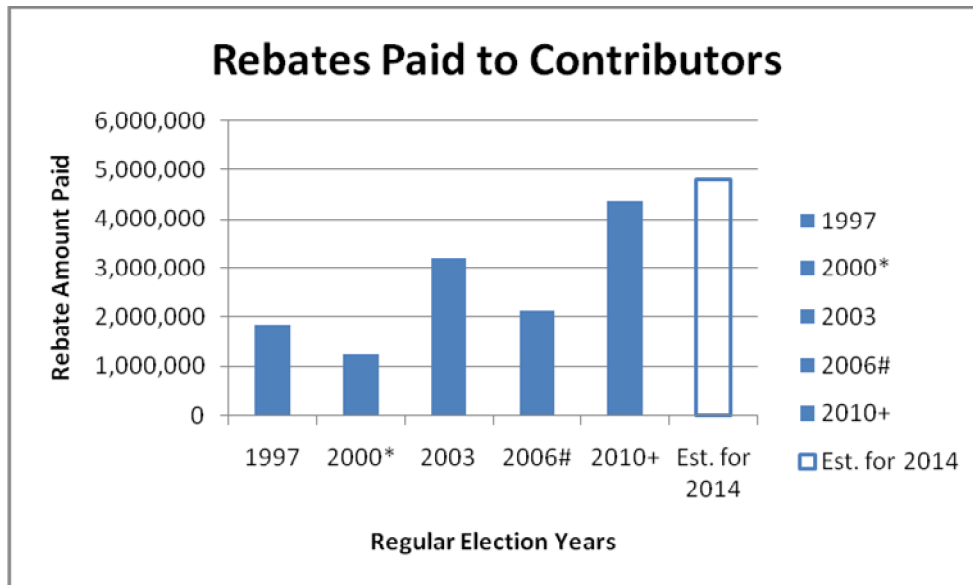
For the 2010 municipal election, Council approved funding of the contribution rebate program to be paid from the Elections Reserve Fund ("reserve"), through an annual funding of \$0.8 million from the City's non-program account to the reserve. However, the funding was insufficient for the 2010 program and additional funding was provided from the City's 2011 surplus.

With the administration of the contribution rebate program over five regular elections, the following trends are evident, as illustrated in Appendix "C":

- The number of candidates and contributors is increasing with each election.
- The number of candidates participating in the contribution rebate program is increasing.
- The total dollar amount of individual contributions is increasing.
- The number of contributors applying for a rebate is increasing.

Chart 1 illustrates amount of rebates paid to contributors in the last five regular elections.

Chart 1 – Rebates paid to Contributors in the last five elections



* maximum rebate increased from \$350 to \$1,000
 # some candidates chose not to participate in the rebate program because it required candidates to remit their campaign surplus to the City
 + total amount of rebates paid as of April 2013, pending the outcome of a compliance audit proceeding for one candidate.

For the 2014 election, it is estimated \$4.8 million may be required to fund the contribution rebate program, provided that the parameters of the program are similar to the program established for the last election. The actual financial impact may be different from this estimate if any of the variables change, including the number of candidates, contributors and contributions.

The current annual non-program funding of \$0.8 million, totalling \$3.2 million over 4 years, is likely insufficient to fund the rebate program for 2014. For the last municipal election, the program paid almost \$4.4 million in rebates to contributors, surpassing the initial estimate. The non-program funding will need to increase to \$1.2 million, beginning in 2014, to provide on-going stable funding for the rebate program.

The Clerk recommends the same rebate formula to be approved for the 2014 election as the previous election, which was:

- (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.

Contributions of less than \$25.00 did not receive a rebate.

Should Council wish to increase the rebate payment formula, the funding from the non-program account will need to be increased accordingly to ensure there are sufficient funds in the reserve.

3. Electronic Filing of Financial Statements and Electronic Financial Filing System (EFFS)

On December 2, 2009, at its special meeting, Council passed by-law 1178-2009, which authorizes electronic filing of financial statements for all candidates and establishes EFFS for this purpose. One of the benefits of using EFFS is the ability to produce rebate receipts, which can be generated automatically and issued to the contributor electronically.

This by-law applies to all regular municipal elections and by-elections in the City of Toronto and remains in effect for the 2014 election.

As recommended by a report from Internal Audit in 2012, the City Clerk's Office will continue to encourage candidates, in preparing their financial statements, to use EFFS to ensure accuracy of their data so that errors identified can be corrected prior to filing financial statements with the City Clerk.

4. Prohibition of corporate and trade union contributions for Council candidates

On December 2, 2009, at its special meeting, Council passed by-law 1177-2009 to prohibit all corporate and trade union contributions to candidates seeking office to Toronto City Council. This by-law remains in effect for the 2014 election.

This report has been prepared in consultation with Legal Services.

CONTACT

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SIGNATURE

Ulli S. Watkiss
City Clerk

ATTACHMENTS

- Appendix "A" – Draft Bill to authorize a Contribution Rebate Program for the 2014 municipal election
- Appendix "B" – History of Changes to the Contribution Rebate Programs
- Appendix "C" – Comparison of the 2000, 2003, 2006 and 2010 Contribution Rebate Programs

Appendix "A" – Draft Bill to Authorize a Contribution Rebate Program for the 2014 municipal election

CITY OF TORONTO

BY-LAW No. _____

To authorize the payment of rebates to individuals who contribute to candidates for office on City Council in the 2014 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 subsection 78(7) of the *Act*, 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. 1178-2009;

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 2014 election is authorized.
2. An individual who, during the 2014 municipal election, makes a contribution to a candidate for an office on the council of the City of Toronto may, on or after January 2, 2014, 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 4:30 p.m., six months after the end of the supplementary reporting period set out in the Act.
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 the application deadline set out in section 4, 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. To participate in the contribution rebate program, a candidate for an office on the municipal council:
 - (a) must file an audited Financial Statement and Auditor's Report in compliance 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 contributor, including the candidate and his or her spouse, to a candidate for an office on the municipal council 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 any financial statement and auditor report required by *Act* by relevant filing dates set by s. 77, s. 79.1 or by court order under s. 80. 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 and 79.1 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 and any proceedings in relation to a compliance audit have been completed.
- 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.** Any election campaign surplus funds that become the property of the City according to the *Act* 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, within 48 hours of filing the original financial statements with the City Clerk, and 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. 2013.

ROB FORD
Mayor

ULLI S. WATKISS
City Clerk

Appendix "B" – History of Changes to the Contribution Rebate Programs since 1997

Election Year	Contribution Rebate 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 • individuals, corporations and trade unions were eligible to receive a rebate • contributors received a rebate only after a candidate closed their campaign • Rebate formula: <ul style="list-style-type: none"> ○ \$100 or less - 75% of total contributions ○ \$101 - \$400 - \$75 plus 50% 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 \$1,000 • contributors no longer had to wait until the campaign closed to receive a rebate • Rebate formula: <ul style="list-style-type: none"> ○ Less than \$50 - Not eligible for a 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 adjusted – contributions of less than \$25 were not eligible for a rebate • Inventory from a previous election was no longer eligible for a rebate • Candidates and spouses were not eligible for a rebate until after the campaign closed • Contributors could provide an affidavit if their application was lost in the mail • By-law was reopened in 2004 to extend the rebate application submission due date 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 • Participants in the rebate program had to turn their campaign surpluses over to the City
2010	<ul style="list-style-type: none"> • One date for submission of rebate applications
Proposed for 2014	<ul style="list-style-type: none"> • A candidate must close their campaign before rebates are paid to their contributors

Appendix "C" – Comparison of the 2000, 2003, 2006 and 2010 Contribution Rebate Programs

	2000 Election	2003 Election	2006 Election	2010 Election
Number of Candidates for Mayor or Councillor	167	243	313	319
Number of Candidates who used Rebate Program	101	153	165	176
Total Number of Contributors	9,946	14,772	16,351	30,920
Number of Individual Contributors	7,271	13,314	15,403	30,920
Number of Corporate Contributors	2,617	1,432	895	N/A
Number of Trade Union Contributors	58	26	53	N/A
Amount of Individual Contributions	\$1,960,195	\$4,571,881	\$4,630,053	\$12,526,468+
Amount of Corporate Contributions	\$2,353,546	\$1,279,635	\$671,400	N/A
Amount of Trade Union Contributions	\$89,836	\$68,280	\$108,625	N/A
Total Amount of Rebates Paid	\$1,247,680	\$3,199,108	\$2,117,139#	\$4,367,439+

* The 2006 and 2010 rebate programs were only open to individual contributors – the 2000 and 2003 programs paid rebates to individuals, corporations and trade unions.

Some candidates chose not to participate in the rebate program because it required candidates to remit their campaign surplus to the City.

+ Total as of April 2013.