

2018 Municipal Election Related Matters

Date: September 11, 2017

To: Executive Committee

From: City Clerk

Wards: All

SUMMARY

The 2018 municipal election will take place on October 22, 2018. This report seeks City Council's authorization on matters within its jurisdiction relating to the upcoming municipal election, including (1) whether to authorize a contribution rebate program; (2) authorize the City Clerk to enter into an agreement with Election Systems & Software, Inc. ("ES&S") for the maintenance and support of the City's vote counting equipment for a period of four years; and (3) repeal two election-related by-laws that are no longer required due to recent changes to the Municipal Elections Act, 1996 ("MEA"). This report also recommends that City Council continue with the tied-vote recount threshold outlined in the MEA and not adopt a separate recount policy.

RECOMMENDATIONS

The City Clerk recommends that:

1. City Council adopt one of the following options with respect to the contribution rebate program:

Option A - Authorize a contribution rebate program for the 2018 municipal election

a. City Council authorize a contribution rebate program for the 2018 municipal election and:

i. Pass a by-law substantially in the form of the draft bill in Attachment 1.

ii. Maintain funding from the non-program account to the Election Reserve Fund XR1017, at \$1.2 million per annum beginning in 2018, to pay for the program.

iii. Direct that any election campaign surplus funds that become the property of the City according to the Municipal Elections Act, 1996 be deposited into the Election Reserve Fund XR1017, in accordance with section 12 of the draft bill, in Attachment 1 of this report.

OR

Option B - Not authorize a contribution rebate program for the 2018 municipal election

b. City Council not authorize a contribution rebate program for the 2018 municipal election.

2. City Council authorize the City Clerk to negotiate and enter into an agreement with Election Systems and Software, Inc. ("ES&S") on the terms and conditions satisfactory to the City Clerk and in a form satisfactory to the City Solicitor for the maintenance and support of the City's vote counting equipment and the supply of their associated goods and services, in the amount of up to \$1,607,000 net of HST and \$1,635,283.20 net of HST recoveries, for a period of four years from January 1, 2018 to December 31, 2021.

3. City Council repeal the following two by-laws because they are redundant given the recently amended Municipal Elections Act, 1996:

a. City of Toronto By-law 1177-2009, which prohibits all corporate and trade union contributions to candidates seeking office to Toronto City Council, because the Municipal Elections Act, 1996 now prohibits corporations and trade unions from contributing to candidates for office on City Council.

b. City of Toronto By-law 1178-2009, which authorizes the electronic filing of financial statements, because the Municipal Elections Act, 1996 now authorizes the City Clerk to provide for electronic filing and to establish corresponding conditions and limits with respect to electronic filing.

FINANCIAL IMPACT

Contribution rebate program for the 2018 municipal election

If City Council authorizes the establishment of a contribution rebate program, the funding from the non-program budget to the Election Reserve Fund for this program will be maintained at \$1.2 million per year for four years for a total of \$4.8 million. This funding is contingent upon City Council approving the same payment formula to individual contributors as it did for the 2014 municipal election. The contribution rebate payment formula is outlined in Attachment 1. Registered third parties are not eligible to participate in the contribution rebate program.

Should City Council wish to increase the contribution rebate payment formula, the funding from the non-program account will need to be increased accordingly to ensure there are sufficient funds in the Election Reserve Fund. The financial impact will be dependent on the changes that City Council adopts.

Agreement for maintenance and support of the vote counting equipment

The total value of the agreement with ES&S for the continued maintenance and support of the City's vote counting equipment and associated goods and services for the 2018 municipal election, and subsequent by-elections, will be up to \$1,607,000 net of HST and \$1,635,283.20 net of HST recoveries.

Below is a table breaking down estimated costs for ES&S' goods, services, maintenance and rentals for the period of January 1, 2018 to December 31, 2021.

	2018 (net of HST)	2019 (net of HST)	2020 (net of HST)	2021 (net of HST)	4 Year Total (net of HST)	4 year total (net of HST recoveries)
Software maintenance	\$30,000	\$32,000	\$34,000	\$36,000	\$132,000	\$134,323.20
Municipal Election (Hardware maintenance + goods, services, and rentals)	\$955,000	N/A	N/A	N/A	\$955,000	\$ 971,808.00
Potential By-Elections* (Hardware maintenance + goods, services, and rentals)	N/A	\$520,000*			\$520,000*	\$529,152.00*
TOTAL					\$1,607,000	\$1,635,283.20

* Costs of up to \$520,000 apply only if the vote counting equipment is used in any by-election(s) during the four year period of the agreement and is calculated on the basis of two potential ward by-elections and one City-wide by-election.

Funding for the 2018 municipal election is included in the City Clerk's Office 2018 Operating Budget submission and is fully recovered from the Election Reserve Fund with net zero impact. Funding for subsequent years (2019-2021) will be reflected in the 2019-2021 City Clerk's Office Operating Budget submissions, also fully recovered from the Election Reserve Fund.

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

DECISION HISTORY

City Council, at its meeting of December 13, 14 and 15, 2016, authorized the City Clerk to negotiate and enter into an agreement with ES&S for the supply and installation of new modems and associated software in the City's vote counting equipment to allow for the continued wireless transmission of election night results for the 2018 election.

<http://www.toronto.ca/legdocs/mmis/2016/ex/bgrd/backgroundfile-98545.pdf>

City Council, at its meeting of December 16, 17 and 18, 2013, authorized the City Clerk to negotiate and enter into an agreement with ES&S for the maintenance and support of vote counting equipment, as well as the supply of associated goods and services, over a four year period covering January 1, 2014 to December 31, 2017.

<http://www.toronto.ca/legdocs/mmis/2013/gm/bgrd/backgroundfile-63097.pdf>

City Council, at its special meeting on December 2, 2009, passed: (1) By-law 1177-2009, which prohibits all corporate and trade union contributions to candidates seeking office to Toronto City Council; and (2) By-law 1178-2009, which authorizes electronic filing of financial statements.

(EX37.2, Election Campaign Finance By-laws – Updated Report (Bill 212)).

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

COMMENTS

1. Contribution rebate program for the 2018 municipal election

The MEA provides City Council with 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 City Council. City Council has flexibility in establishing the framework for the contribution rebate program, including the conditions under which a person is entitled to a rebate and the rebate amounts payable. The MEA does not permit registered third parties to participate in the contribution rebate program.

If City Council authorizes a contribution rebate program for the 2018 municipal election, it is recommended that the program parameters be similar to those for the 2014 election, with minor amendments to improve the processing of rebates to contributors and to ensure compliance with the recently amended MEA. A draft bill to authorize the contribution rebate program and its framework is outlined in Attachment 1 to this report.

The proposed contribution rebate program provides that individual contributors to candidates seeking office on City Council may apply for a rebate for part of their contribution. Both the candidate and the contributor must follow the criteria outlined in the by-law in order for the contributor to receive a contribution rebate. The key criteria include that:

- Contributions must comply with the provisions of the MEA, including that candidates must file an audited primary and/or supplementary financial statement(s) by the filing deadline outlined in the MEA.

- Candidates must provide a copy of all campaign expense invoices with the audited primary and/or supplementary financial statement(s) at the time of filing with the City Clerk.
- The application for a rebate must be in the form that the City Clerk has established for that purpose.
- The City Clerk must receive the application for a rebate on or before 4:30 p.m., six months after the supplementary reporting period ends in the MEA.

The by-law also outlines the rebate submission requirements and the payment formula, which is based on a sliding scale, with a maximum rebate payable of \$1,000 to any one contributor. Total contributions of \$25.00 or less are not eligible for a rebate payment.

The recently amended MEA now allows an individual to contribute up to \$1,200 to any one candidate and maintains the same contribution limit of up to \$2,500 to a mayoral candidate for office in the City of Toronto. An individual can contribute to two or more candidates for office on the same council or school board up to a maximum total of \$5,000. The MEA now also limits a candidate and spouse's combined contribution to the candidate's campaign to a maximum amount of \$25,000.

1a. Estimate of financial requirements for the contribution rebate program

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

The City has authorized a contribution rebate program for the last five municipal elections, as outlined in Attachment 2 to this report. For the 2010 municipal election, the City paid \$4,378,618 to 17,419 individual contributors. For the 2014 municipal election, the City paid \$4,005,376 to 30,323 individual contributors.

The City Clerk has observed the following trends in the contribution rebate program over the past five municipal elections:

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

While the number of candidates and contributors is increasing with every election, the total amount of rebates that the City has paid to contributors has not correspondingly increased in the last two elections. The decrease in total rebates paid to contributors from 2010 to 2014 is due to several factors, including a decrease in both the number of contributors applying for a rebate and the overall contribution amount to candidates.

For the 2018 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 municipal election.

The actual program expenditure may be different from this estimate if any of the variables change, including the number of candidates, contributors and contribution levels.

1b. Electronic filing of financial statement through the Electronic Financial Filing System (EFFS)

Recent amendments to the MEA now authorize the City Clerk to provide for electronic filing of a candidate and/or a registered third party's financial statement and establish conditions and limits with respect to electronic filing.

Since 2006, the City Clerk has provided candidates the opportunity to file their financial statements electronically through the City's own free online application called EFFS. To staff's knowledge, Toronto is the only Canadian municipality to implement such a system. In 2012, the City's Internal Audit Division recommended that the City Clerk's Office continue to encourage candidates to use EFFS when preparing their financial statements to ensure accuracy of their data and to allow for errors to be identified and corrected prior to filing financial statements with the City Clerk.

For the 2018 municipal election, the City Clerk has enhanced EFFS to comply with the amendments to the MEA and will continue to make EFFS available to all candidates and third party registrants free of charge.

2. Agreement for maintenance and support of the vote counting equipment

This report seeks authority for the City Clerk to negotiate and enter into an agreement with ES&S for the continued maintenance and support of the City's vote counting equipment and associated goods and services. This new agreement is critical for the delivery of the 2018 election and any subsequent by-elections during the next City Council term, up to December 31, 2021.

On February 3, 2000, City Council enacted By-law 79-2000 which authorized the use of vote counting equipment for its municipal elections. That same year, the City entered into a Master Agreement with ES&S for the acquisition of vote tabulators and software. At the time the agreement was executed, it was contemplated that from time to time the parties would negotiate the cost of maintenance and support. The City still uses the same vote tabulators, and ES&S has agreed to support them through the 2018 City Council term. City Council also recently authorized the City Clerk to enter into an agreement with the same vendor to supply and install new upgraded modems for the same machines to wirelessly transmit election night results for the 2018 election.

ES&S is the only vendor that can provide the equipment and services that the City requires for the 2018 municipal election, including preventative maintenance, warranty and software services, electronic components used in the equipment, and the software required to operate the hardware. ES&S has sole access to the proprietary intellectual property. In accordance with the Master Agreement, and given the specialized nature and proprietary rights to the City's vote counting equipment, ES&S must continue to provide maintenance, support, and supply associated goods and services that are compatible with the existing vote counting system.

The City has used vote counting equipment since its 2000 election to produce timely, accurate and reliable results as soon as possible after the election. In each of the last five municipal elections, 90% of all election results were received within one hour of the polls closing. The public, media and candidates have all become accustomed to this level of service.

The City's vote counting equipment continues to function well and produce reliable and accurate results due to the ongoing maintenance and support provided by its manufacturer.

After the 2018 municipal election, the City Clerk will report to City Council on the replacement options for the vote counting equipment for the 2022 municipal election.

3. Repeal two election-related by-laws that are no longer required

The Province of Ontario passed Bill 181, Municipal Elections Modernization Act, 2016, on June 9, 2016, which amended the MEA. Given these amendments, this report requests that City Council repeal the following two City by-laws that are now redundant:

- By-law 1177-2009 prohibits all corporate and trade union contributions to candidates seeking office to Toronto City Council. Under this by-law, it was an offence for a corporation or trade union to make a contribution. The penalty was a maximum fine of up to \$50,000. This by-law has applied to all elections and by-elections since the 2010 municipal election. This by-law is no longer required because the recently amended MEA now prohibits corporations and trade unions from making such contributions for all candidates. Note: for the 2018 municipal election, corporations and trade unions are now permitted to make contributions to registered third parties in accordance with the contribution limit set out in the MEA.
- By-law 1178-2009 authorizes the electronic filing of financial statements for all candidates and establishes EFFE for this purpose. This by-law is no longer required because the recently amended MEA now authorizes the City Clerk to provide for electronic filing and establish corresponding conditions and limits.

4. Recount policy

The MEA prescribes that an automatic recount is required if there is a tied vote or upon a court order. In addition, the MEA provides that City Council may adopt a policy by May 1, 2018 that directs the City Clerk to conduct an automatic recount under certain circumstances that departs from the existing statutory threshold.

This report recommends that the existing statutory threshold of a tied-vote be the only circumstance where the City Clerk should be required to hold a recount. At this time, it is not recommended that City Council adopt a policy that departs from this threshold. While a recount policy could be useful in some circumstances, it is more likely that decisions for recounts will be based on the particular facts that arise during the vote. A recount policy cannot anticipate these circumstances.

An example of a problem with a recount policy is as follows: if City Council adopts a recount policy that states that if two candidates are within 10 votes of one another then an automatic recount will be held, there may be an occasion that arises where two candidates are within 11 votes of one another. In that scenario, City Council will be faced with whether to depart from their recount policy and may do so in any event regardless of the pre-existence of a policy after the vote.

The MEA permits City Council to order a recount within 30 days after the City Clerk has declared the results of the election even if the votes are not tied or the circumstances are not covered by the recount policy. An eligible elector can also apply to the Superior Court of Justice for an order declaring a recount or the Minister of Municipal Affairs and Housing can order a recount. There are, therefore, a number of mechanisms already in place that allow for recounts to occur without City Council having to adopt their own recount policy.

The City also uses vote-counting equipment, called vote tabulators, to provide quick and accurate results and these vote tabulators are rigorously tested before every election and by-election to ensure logic and accuracy of the results. Unlike the process of manually counting ballots, vote tabulators have been proven to provide consistently accurate results. There is no other Canadian jurisdiction that uses both vote counting equipment and has a statutory margin that triggers a recount that has chosen to adopt a separate recount policy departing from the existing statutory criteria. Furthermore, since the MEA provides that recounts must be conducted in the same manner as the original count, it is highly likely that the exact same results will be generated because the City of Toronto uses vote tabulators.

CONTACT

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SIGNATURE

Ulli S. Watkiss
City Clerk

ATTACHMENTS

Attachment 1 – Draft Bill to Authorize a Contribution Rebate Program for the 2018 municipal election

Attachment 2 – The Contribution Rebate Programs for the Past 5 Elections

Attachment 1

Draft Bill to Authorize a Contribution Rebate Program for the 2018 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 2018 municipal election.

Whereas subsection 88.11(1) of the Municipal Elections Act, 1996 ("MEA"), provides that a municipality may, by by-law, provide for the payment of rebates to individuals who make contributions to candidates for an office on the municipal council;

Whereas subsection 88.25(11) of the MEA, provides that the City Clerk of the municipality may provide for electronic filing under this section and may establish conditions and limits with respect to electronic filing;

Whereas the City Clerk has established the Electronic Financial Filing System ("EFFS") Policy, which sets out the conditions and limits with respect to electronic filing;

Whereas candidates who choose to file financial statements electronically under the provisions of the EFFS Policy must also file original financial statement(s) with the City Clerk in accordance with the requirements and deadlines set out in the MEA; and

Whereas candidates who choose to file financial statements electronically using EFFS must also issue all contribution receipts electronically;

The Council of the City of Toronto enacts for the 2018 municipal election that:

1. The payment of rebates to individuals who make contributions to candidates for an office on the municipal council is authorized.
2. An individual who, during the campaign period, makes a contribution to a candidate for an office on Council may apply to the City Clerk for a rebate.
3. Notwithstanding section 88.15 of the MEA, only a contribution of money will be eligible for a rebate.
4. All contributions must comply with the provisions of the MEA.
5. The Clerk must receive the application for a rebate on or before 4:30 p.m., six months after the supplementary reporting period ends as set out in the MEA.
6. The application for a rebate must be in the form that the City Clerk has established for that purpose and must include the original or electronic signature of the candidate or their designate.

7. To participate in the contribution rebate program, a candidate for an office on Council must:
 - A. File an audited primary financial statement, and if applicable, a supplementary financial statement, in compliance with subsections 88.25(1) to (7) of the MEA; and
 - B. Include with the documents filed under subsection 88.25(1) or (4) of the MEA, 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.
8. A contributor, including the candidate and his or her spouse, to a candidate for an office on Council whose campaign period is extended will not be eligible to receive a rebate until after the candidate's campaign closes and an audited supplementary financial statement is filed in accordance with the MEA.
9. The City Clerk shall pay the applicant a rebate in accordance with section 11 of this by-law if the following conditions are met:
 - A. The applicant complies with sections 5 and 6 of this by-law;
 - B. The candidate has complied with sections 4 and 7 of this by-law;
 - C. The City Clerk is satisfied that the receipt that the applicant filed and the copy that the candidate filed are consistent by comparing both copies;
 - D. The City Clerk is satisfied that the candidate has filed an audited financial statement(s) required by the relevant filing dates or by court order under the MEA, and that the candidate has not incurred expenses exceeding what is permitted under the MEA;
 - E. The City Clerk is satisfied that the candidate has paid any surplus, at the time of filing, in accordance with the provisions of the MEA; and
 - F. The time for an application for a compliance audit has expired and any proceedings in relation to a compliance audit and/or resulting court proceeding(s) is complete.
10. Despite section 9 of this by-law, where an applicant for a rebate claims that their application was mailed but the City Clerk did not receive it prior to the deadline set out in section 5 of this by-law, that applicant can provide an affidavit to the City Clerk. The affidavit must be in the form that the City Clerk has established for that purpose and attesting to the facts. The City Clerk is authorized to process that application in accordance with the relevant provisions of this by-law.
11. An applicant who makes one or more contribution(s) to one or more candidate(s) may apply for a rebate in accordance with the following formula:

A. If the total of the applicant's contribution(s) to all candidates is \$300.00 or less, the maximum rebate that will be paid to the contributor is 75 per cent of that total; or

B. If the total of the applicant's contribution(s) to all candidates is more than \$300.00 but not more than \$1,000.00, the maximum rebate that will be paid to the contributor 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 contribution(s) to all candidates is more than \$1,000.00, the maximum rebate that will be paid to the contributor is the lesser of:

(i) \$575.00 plus 33 $\frac{1}{3}$ per cent of the difference between the total and \$1,000.00; or

(ii) \$1,000.00.

D. Total contributions of \$25.00 or less will not receive a rebate.

E. Notwithstanding the above formula, any contribution to a candidate that is not in compliance with this by-law and, therefore, does not qualify for a contribution rebate, shall not be included in the total calculation of the contribution amounts.

12. Any election campaign surplus funds that become the property of the City according to the MEA will be deposited into the Election Reserve Fund XR1017.

13. If candidates choose to participate in the contribution rebate program and use EFFS, the following provisions apply:

A. Candidates must issue all contribution receipts electronically (whether or not eligible for a contribution rebate) and file the prescribed audited financial statement(s) in accordance with the MEA, this by-law and the EFFS Policy.

B. Despite subsection 7B of this by-law, candidates must submit their electronic financial statement(s) and contribution receipts through EFFS within 48 hours of filing the original financial statement(s) with the City Clerk.

C. Candidates must attach copies of their campaign expense invoices to the original financial statement filing at the time of filing with the City Clerk.

Enacted and passed on October __, 2017.

Frances Nunziata
Speaker

Ulli S. Watkiss,
City Clerk

Attachment 2

The Contribution Rebate Programs for the Past 5 Elections

	2000 Election	2003 Election	2006 Election	2010 Election	2014 Election
Candidates for Mayor or Councillor	167	243	313	319	423
Candidates who participated in the Contribution Rebate Program	101	153	165	181	185
Total Contributors	9,946	14,772	16,351	17,419	30,323
Total Individual Contributors	7,271	13,314	15,403	17,419	30,323
Corporate Contributors	2,617	1,432	895	N/A	N/A
Trade Union Contributors	58	26	53	N/A	N/A
Amount of Individual Contributions	\$1,960,195	\$4,571,881	\$4,630,053	\$12,437,566	\$12,249,126+
Amount of Corporate Contributions	\$2,353,546	\$1,279,635	\$671,400	N/A	N/A
Amount of Trade Union Contributions	\$89,836	\$68,280	\$108,625	N/A	N/a
Total Amount of Rebates Paid	\$1,247,680	\$3,199,108	\$2,117,139*	\$4,378,618	\$4,005,376+

The 2006 and 2010 contribution 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 contribution rebate program because it required them to remit their campaign surplus to the City.

+ Total as of September 1, 2017. One candidate in the 2014 municipal election is still subject to a legal proceeding. Contribution rebates cannot be paid to this candidate's contributors until the legal proceeding has ended.