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**Third Party Advertising
Information Session**

2018 Municipal Election

April 19th, 2018

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Introductions

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Information Session Agenda

- City Clerk's responsibilities
- Guiding principles for the election and election overview
- Third party advertising
 - Eligibility
 - Registration and certification
 - Campaign finance rules
 - Compliance and enforcement
- Resources
- Question and answer period

Disclaimer

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- These slides should not be considered legal advice.
- These slides are intended to provide an overview of information for convenience only. These slides are not intended to replace provincial legislation.
- For specific information and legislative requirements, please refer to the [*Municipal Elections Act, 1996*](#).

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Guiding Principles

- Voters and candidates shall be treated fairly and consistently
- Secrecy and confidentiality of the voting places is paramount
- Election shall be fair and must not favour one candidate over another
- Election shall be accessible to voters
- Integrity of the process shall be maintained throughout the election
- Proper majority vote decides the elections, which is achieved by ensuring that valid votes be counted and invalid votes be rejected

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City Clerk's Responsibilities

- Conduct the election
- Set the voting places
- Establish forms, policies and procedures
- Communicate with public, electors, candidates and third party advertisers
 - Manage third party advertising registration
 - Educate on election rules
 - Oversee financial disclosure

Accessible Elections

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- City Clerk must “have regards to the needs of electors and candidates with disabilities.” (Section 12.1(1) of the *Municipal Elections Act*)
- City Clerk’s accessibility efforts include:
 - Information sessions held in accessible locations, with accommodations available upon request.
 - Providing information across multiple channels, including in-person, e-mail, telephone, website and social media.
 - Elections website, resources and documents provided in accessible formats
- It is important that registered third party advertisers also consider accessibility and ensure equal opportunity for all electors to access your information and interact with you.

2018 Election Key Dates for Third Party Advertisers

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Third party advertising provisions came into force	April 1
Third party advertising restricted period	May 1 to October 22
Third party advertising registration period	May 1 to October 19
Registrations open	May 1
Candidate nomination period	May 1 to July 27; extended nomination period for Councillors and Trustees: August 20 to Sept. 14
Registrations close	October 19
Election Day	October 22, 10 am to 8pm
Campaign period ends	December 31

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Third Party Advertising

Background and overview

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- The [Municipal Elections Act, 1996](#) (the Act) now includes rules for third party advertising. Previously, third party advertising in the municipal election was unregulated.
- The new rules came into effect April 1, 2018 and will apply to 444 municipalities across Ontario.

Third party advertising

- A **third party advertisement** is a message in broadcast, print, electronic or other medium that promotes, supports or opposes a candidate, or a “yes” or “no” answer to a question on the ballot.
- Third party advertising **does not include**:
 - Advertisements by or under the direction of a candidate
 - Issues-based advertising
 - Advertising that does not cost money to post or broadcast
 - Messages distributed by:
 - an individual to their employees
 - a corporation to its shareholders, directors, members or employees
 - a trade union to its members or employees

Registered third party advertiser

- Individuals, corporations and trade unions who wish to conduct third party advertising must register as a **third party advertiser** with the municipality where they want to advertise.
- Registered third party advertisers must follow requirements such as:
 - identifying themselves and providing mandatory information on all advertising
 - complying with spending, contribution and record-keeping rules
 - filing a financial statement

Rules for candidates

- A candidate **cannot register as a third party advertiser** in any municipality.
- A candidate **cannot direct a third party advertiser**. Third party advertising is separate from any candidate's campaign, and must be done independently from a candidate.
- Any advertisements or materials that are made and distributed by a candidate, or under a candidate's direction, are part of the candidate's campaign and are subject to requirements under the Act.

Restricted period

- Beginning May 1 until the close of voting on October 22, 2018, third party advertising is subject to restrictions under the Act.
- Third party advertisements must include:
 - the legal name of the registered third party
 - the municipality where the third party is registered
 - a telephone number, mailing address or email address where the third party can be contacted
- After voting day, all advertisements that have been put up must be removed, including online ads.

Eligibility

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- The following persons and entities are eligible to be a registered third party advertiser in a municipal election:
 - any person who is a resident in Ontario
 - a corporation carrying on business in Ontario
 - a trade union that holds bargaining rights for employees in Ontario

Not eligible to register

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The following persons and entities are not eligible to register:

1. a candidate whose nomination has been filed under section 33
2. a federal political party registered under the Canada Elections Act (Canada) or any federal constituency association or registered candidate at a federal election endorsed by that party
3. a provincial political party, constituency association, registered candidate or leadership contestant registered under the Election Finances Act
4. Crown in right of Canada or Ontario, a municipality or a local board
5. any group or association that is not a corporation

Organizations that are not corporations or trade unions

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According to the Ministry of Municipal Affairs “[2018 Guide for Third Party Advertisers](#)”:

- Groups, associations or businesses that are not corporations are not eligible to register and may not spend money on third party advertising in municipal elections.
- Members may register as individual third party advertisers and may contribute individually.

Rules for broadcasters and publishers

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- Must not broadcast or publish a third party advertisement unless the following information has been provided in writing:
 - the name of the registered third party
 - the municipality where the third party is registered
 - the name, business address and telephone number of the individual who deals with the broadcaster or publisher under the direction of the registered third party
- Must maintain records of:
 - the information collected in writing
 - a copy of the advertisement (or the means of reproducing the advertisement for inspection)
 - a statement of the charge made for its appearance
- Must keep records for 4 years after the advertisement appears and the public must be permitted to inspect these records

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Restrictions for third parties

- Third party advertisers cannot:
 - appoint a scrutineer
 - obtain a copy of the voters' list
- Third party advertisements are not permitted in the voting place.

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Registration and Certification

Registration

- A third party advertiser must register in each municipality where they want to advertise.
- Being registered in a municipality allows the third party to advertise to the voters in that municipality.
- If a third party advertiser registers in more than 1 municipality, each of those registrations is considered to be a separate advertising campaign.

How to register

- Registration opens beginning May 1 to October 19, 2018.
- Registration must be filed **in person or by an agent** at:
 - Elections Office, 1st Floor North, Toronto City Hall, Queen Street West
- The individual registering must provide:
 - Notice of Registration – form at www.toronto.ca/elections
 - Proof of identification
 - For corporation or trade union: proof that the official representative is authorized to act on the corporation or trade union's behalf

Certification

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- The City Clerk must be satisfied that the individual, corporation or trade union is eligible in order to certify the registration.
- Once certified, the registrant becomes a “registered third party advertiser” and their campaign period begins.
- A list of registered third party advertisers will be regularly updated and available on the Toronto Elections' website at:
www.toronto.ca/elections.

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Campaign finance rules

Municipal Elections Act, 1996
ss. 88.12-88.14 and 88.21

Campaign period

- A registered third party can only accept contributions or incur campaign expenses during their advertising campaign period.
 - The advertising campaign begins on the day the individual, corporation or trade union is registered as a third party advertiser.
 - No Chief Financial Officer is required.
- The advertising campaign period runs until December 31, 2018. This extra time can be used to accept contributions if the campaign has not paid for all of its expenses.

Bank account

- Registered third party advertisers must open a bank account exclusively for the advertising campaign.
 - **Exception:** third party advertisers do not have to open a bank account if they do not raise or spend money.
- An individual cannot use an existing personal bank account for campaign finances. A corporation or trade union may not use an existing account.
- All expenses must be paid for from the campaign account.
- All contributions – including contributions that the third party makes to itself – must be deposited into the third party advertising campaign bank account.

Contributions

- A contribution includes money, goods or services.
- Third party advertisers may accept contributions from:
 - individuals normally resident in Ontario
 - trade unions that holds bargaining rights for employees in Ontario
 - corporations that carry on business in Ontario.
 - the registered third party itself
 - the spouse of the registered third party, if applicable
- Corporations are deemed to be a single corporation if one of the corporations controls the others, directly or indirectly, or if all of the corporations are owned or controlled by the same person or group of persons either directly or indirectly.

Contributions are not permitted from certain entities

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Third party advertisers cannot accept contributions from:

- federal political party, constituency association or a registered candidate in a federal election
- provincial political party, constituency association or a registered candidate or leadership contestant
- federal or a provincial government
- a municipality
- a school board
- a business or group that is not a corporation

Contribution limit

- Contribution limit to any one registered third party advertiser: \$1,200
- Contribution limit to more than 1 third party advertiser registered in the same municipality: aggregate total of \$5,000
- Third party advertisers must inform contributors of contribution limits. The limit applies whether it is one large contribution or the total of a number of smaller contributions or combination of money, goods and services.
- There is no limit on how much a registered third party (and, if the third party is an individual, their spouse) can contribute to their own advertising campaign.

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Reporting Contributions

- All contributions must be reported.
- The names of contributors who contribute more than \$100 must be reported on the financial statement.
- Financial statements must include an auditor's report if expenses or contributions exceed \$10,000.
- The City Clerk makes financial statements available to the public in an electronic format free of charge.
- Contributions to third party advertisers are not eligible for a rebate under the City's Contribution Rebate Program

Contributions

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- All contributions over \$25 must be made by cheque, by money order or by a method that clearly shows where the funds originated.
- Receipts must be issued for each contribution and should include the name, address, amount and date of the contribution
- The ticket price of fundraiser is a contribution.

Illegal Contributions

- Third party advertisers are required to return any contribution that was made or accepted in contravention of the act as soon as they learn that it was an ineligible contribution.
- Contributions should be returned or paid to the City Clerk if the contribution is:
 - made outside the campaign period
 - source from an anonymous contributor (except for donations of \$25 or less at a fundraising event)
 - from an ineligible source (e.g. someone who does not live in Ontario, a business that is not a corporation, etc.)
 - greater than the \$1,200 individual limit or the \$5,000 total limit
 - a cash contribution greater than \$25
 - from funds that do not belong to the contributor who gave them

What is not a contribution

Contributions are not:

- Money received for “pass the hat collections” (limited to \$25).
- Goods sold to raise funds that are sold for \$25 or less.
 - that amount is considered campaign income, not a contribution.
- Donations under \$25 at fundraising events are not contributions.

Campaign expenses

- Campaign expenses are the costs that are incurred by or under the direction of a third party advertiser during the campaign in relation to the election.
- A campaign expense includes:
 - any expense incurred for goods and services in relation to an election
 - the equivalent value of any contribution of goods and services for use in whole or in part
- Third party advertisers can **only** incur expenses during their advertising campaign period, except for expenses related to the preparation of an auditor's report.
 - Auditor's report is not required if expenses or contributions do not exceed \$10,000.

Spending limit

- The **general spending limit** for a third party's advertising campaign in Toronto is \$25,000.
 - Calculated according to the following formula:
 - \$5,000 plus \$0.05 per eligible elector, to a maximum of \$25,000.
 - The spending limit covers expenses that are incurred between the beginning of the advertising campaign (the day the third party is registered) and voting day.
- There is a separate **spending limit for expenses related to holding parties and other expressions of appreciation** after the close of voting. For Toronto, that limit is \$2,500
 - 10% of the amount of the general spending limit.

Expenses not subject to the spending limit

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- Expenses that are not subject to the general campaign spending limit include:
 - holding a fundraising event or activity
 - expenses incurred by a registered third party advertiser with a disability that are directly related to the disability
 - audit and accounting fees
 - expenses related to a compliance audit
 - expenses incurred after voting day

Fundraising

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- Fundraising functions are events or activities held for the primary purpose of raising money for a third party's advertising campaign.
- Fundraisers can only be held during the advertising campaign period.
- Third party advertisers must record the gross income, including ticket revenue and other revenue, and the expenses related to each event and activity on their campaign financial statement.

Loans

- Loans may only be from bank or other recognized lending institution in Ontario and paid directly to campaign account.
- Loans may only be guaranteed by the third party advertiser or their spouse.

Financial statement

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- Third party advertisers must file their financial statement on or before 2:00 pm Friday, March 29, 2019.
- If a third party advertiser misses the filing deadline, they may file within a 30-day grace period, provided a \$500 late filing fee is paid.
- A third party advertiser who feels they will not meet the deadline can apply to the courts for an extension prior to the March 29, 2019 deadline.
- A third party advertiser may resubmit a financial statement to correct an error up until the filing deadline.

Penalty for filing late

- If a third party advertiser did not file a financial statement by the end of the 30-day grace period and did not apply to the court for an extension prior to the March 29th deadline, **the individual, corporation or trade union will not be eligible to register as a third party advertiser until after the 2022 election.**

Financial statement is public record

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- The City Clerk is required to make public a report (on a website or in another electronic format) setting out all third party advertisers and indicating whether each third party advertiser complied with the filing requirements by April 30, 2019 (or within 90 days of a by-election).

Record keeping

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A third party must keep the following campaign records:

- the receipts issued for every contribution including when the contribution was accepted and the date the receipt was issued (receipts must also be issued to the third party for any contributions made to their own advertising campaign)
- the value of every contribution, whether it is money, goods or services, and the contributor's name and address
- all expenses, including the receipts for each expense
- any claim for payment of an expense that the third party disputes or refuses to pay
- funds raised and expenses incurred from each separate fundraising event or activity
- the terms of any loan received from a bank or other recognized lending institution

Record keeping

- Refer to the [financial statement \(Form 8\)](#) to view all the information that must be included on the financial statement.
- Every third party is required to keep all of their advertising campaign financial records until November 15, 2022 when the next council or school board takes office.

Deficit

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- If the advertising campaign has a deficit, the third party can extend their campaign in order to do some additional fundraising.
- A third party can extend their campaign by notifying the clerk using the [Notice of Extension of Campaign Period \(Form 6\)](#) on or before Monday, December 31, 2018.

Surplus

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- The entire amount of a campaign surplus must be paid to the City Clerk.
 - A third party advertiser is entitled to a refund of any contributions they (or their spouse, if an individual) made to the campaign before the filing of the financial statement and the payment of the surplus to the City Clerk.
 - The City Clerk holds the surplus monies in trust by the third party advertiser in the event of a compliance audit.
 - If there is no compliance audit, the surplus becomes the property of the City.

Best practices

As a best practice, third party advertisers should:

- ensure that receipts are stored in a secure place
- have a multi-part receipt (one for contributor, one for candidate to keep)
- make sure that receipts are sequentially numbered
- consider including contribution limits on the receipt
- have the bank provide monthly statements and cancelled cheques for the account
- produce duplicate deposit slips for every deposit
- maintain a petty cash fund

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Compliance and Enforcement

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Complaints and compliance

The City Clerk is not empowered to investigate and enforce election-related matters under the Municipal Elections Act, 1996. The City Clerk must remain fair and impartial in the administration of the election.

Available enforcement mechanisms:

1. Election Signs – Election Sign By-law enforcement
2. Campaign Finance – Compliance Audit Committee
3. Accountability Officer (e.g. lobbying) - Complaints procedures
4. Court proceeding for any matter
5. Third Party Advertising – Municipality can require advertising to be removed or discontinued (MEA, s. 88.7)

Compliance Audit Committee

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- Every council and school board must establish a compliance audit committee.
- A qualified elector may apply to the compliance audit committee for a review of third party advertiser's campaign finances, even if the third party advertiser hasn't filed a financial statement.
- The City Clerk is required to review contributions, and if the City Clerk determines that a contributor has exceeded the contribution limits, will prepare a report for the compliance audit committee.

Compliance Audit Proceeding

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- The committee will consider the application and decide whether to retain an auditor.
- Compliance audit committee meetings are required to be open to the public but the committee may deliberate in private.
- The compliance audit committee is required to provide brief written reasons for its decision.
- If the auditor's report concludes that a contravention of the Act has occurred, the committee will decide whether or not to proceed with a legal proceeding.

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Penalties

Penalties

In general, the following penalties are available to the courts upon conviction for an offence under the *Municipal Elections Act, 1996*:

- **Individual**

- maximum fine of \$25,000
- up to six months imprisonment
- ineligibility to run in the next general election or if convicted of corrupt practices:
bribery to vote in next general election

- **Candidate**

- penalties listed above, plus
- fines for excess campaign expenses
- forfeiture of office if offence committed knowingly

- **Trade union and corporation**

- maximum fine of \$50,000

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Tools and Resources

- Election Services
 - www.toronto.ca/elections
 - thirdpartyinfo@toronto.ca
 - 416-338-1111
 - Third Party Advertiser Information Sessions
- Government of Ontario
 - www.ontario.ca/municipalelections
 - [Guide for Third Party Advertisers](#)
 - <https://www.ontario.ca/laws>
 - Webinars
- Municipal World
 - <http://www.municipalworld.com>

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Questions?

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