



SUBJECT: Use of Corporate Resources During an Election Policy
TO: Corporate Services, Strategy, Risk & Accountability Cttee.
FROM: Office of the City Clerk

Report Number: CL-05-22

Wards Affected: All

File Numbers: 100-02

Date to Committee: March 2, 2022

Date to Council: March 22, 2022

Recommendation:

Approve the Use of Corporate Resources During an Election Policy attached as appendix A to office of the city clerk report CL-05-22; and

Repeal the Use of Corporate Resources During an Election Policy, adopted on October 30, 2017, attached as appendix B to office of the city clerk report CL-05-22.

PURPOSE:

To update the City of Burlington's policy with respect to the *Municipal Elections Act, 1996, S.O. 1996, c.32* ("MEA" or the "Act") section 88.8(4) which prohibits a municipality from making a contribution to an election campaign.

Vision to Focus Alignment:

- Building more citizen engagement, community health and culture

Background and Discussion:

Section 88.8 (4) of the MEA prohibits a municipality from making a contribution to a candidate. A contribution may take the form of money, goods or services. Any use by a council member, candidate, third party advertiser or city staff of the City's resources for an election campaign could be viewed as a contribution by the municipality to that campaign, and is a violation of the Act. It is therefore necessary to establish guidelines on the appropriate use of corporate resources (the resources of the Corporation of the

City of Burlington) during a municipal election period in order to protect the Corporation and maintain integrity of the election. The contribution provisions found in the MEA are echoed in provincial and federal legislation, and therefore this policy will be applied to provincial and federal elections and candidates.

Highlights of the proposed policy include the following:

- Established timelines for when the policy is applied. This is captured in at the beginning of the policy to provide clarity.
- Clarification on the specific restrictions applicable to sitting members of Council (not seeking re-election) from Nomination Day until the end of the Election period.
- A more expansive and clarified definition of “City Property and Facilities” and their prohibited use thereof during an election period. This definition is greatly expanded for clarification purposes and includes prohibitions on the use of any City facilities, equipment, (including computer hardware and software), supplies, services, staff, staff offices or any other resources of the municipality.
- More detail and information on the prohibitions relating to access to and use of City information and resources during an election period. This includes specific examples of restrictions on the use of the City’s corporate identity or the use of any City intellectual property or other City materials during the election period. For example, the use of City logos, crest, coat of arms, the use of city apparel, the use of City Mission Statements, Strategic Plan Statements, tagline, etc. are all prohibited.
- Enhanced protocols and restrictions with respect to City cell phone use by sitting members of council during an election period and the prohibition of the use of any City electronic devices to respond to campaign inquiries/matters or post or re-post matters on social media relating directly or indirectly to campaign matters.
- Clarification as to access of City IT property/resources and the use of social media by candidates during the election.
- Clarification that the provisions of this Policy shall apply to third-party advertisers during the election period.
- Clarification that the provisions of this policy shall also apply to Provincial and Federal election activities in the City of Burlington.
- Clarification that municipal staff may take part in political campaigns or activity on their own time, and while not using any municipal identifiers.

Strategy/process

The existing City of Burlington Use of Corporate Resources during an Election policy, attached as Appendix B, was created by the former Citizen Review Committee on Council Compensation, Expense Limits and Resources and approved by Council on October 30, 2010.

While this Policy was a source of guidance for candidates during the 2018 election, it became apparent during the election that the Policy at times could not be relied upon to provide clear or consistent direction to candidates, members of Council and City staff.

While no one policy, no matter how comprehensive, will be able to capture and interpret all potential scenarios, it is recommended that the current policy be replaced with an updated and new policy, attached as Appendix A, to bring improved clarity for candidates, members of Council, third party advertisers and City staff alike. The elections team will work with staff to create a Frequently Asked Questions (FAQ) document which will help to provide additional clarity from a tactical standpoint when determining how to proceed with exceptions.

Awareness to all Candidates

At the nominations appointment candidates will be provided with a copy of the approved policy and this report. Staff will take the time to outline the major tenets of the policy and point to the consequences of violating the Act, vis-à-vis the Policy. This review will be a compulsory component of the nominations appointment to ensure candidates and potential candidates are aware and comply.

Candidate Enquiries Webpage

In addition, staff will provide all candidates with a protocol on how to ask questions of municipal staff. As conducted in the 2018 municipal election, a webform will be available to candidates to submit questions of City staff. The enquiry will be sent to the appropriate staff/department and a response will be provided to the requestor. For transparency purposes, the response will be redacted for any identifying information and posted to a webpage for all candidates to view. This practice is customary for most municipalities and it ensures that all candidates have a level playing field to information received. Effectively using this process may lead to a reduction in repetitive questions to particular departments or municipal officials and will ensure official responses are available to all candidates and the public.

Options Considered

Use of City Facilities Throughout an Election Campaign

Staff reviewed the use of city facilities during an election, and there is a disconnect between the policy and how it was handled at an operational level. In particular, a concern about room rentals and political activity being extended into common areas. For outdoor facility rentals a concern that political activity may not be contained to designated areas, or encroach on adjacent areas impacting the visitor or user experience. Therefore, staff have proposed that no rentals are provided to any candidate or campaign throughout the election period.

Members of Council will still be able to rent space for ward meetings, however these must be held only to conduct City business, and no campaigning may be conducted. In reviewing other corporate resources policy, some municipalities such as Toronto and Mississauga have adopted similar prohibitions on rental or use of city facilities.

As this is a Council policy, Council may wish to amend the draft Policy to delete the prohibition on rentals and insert the following wording:

- “a. Municipally provided facilities/properties *can only be* used for any election related purpose if there is a rental fee established corporately and the rental is available to all candidates and third parties. No facility/property shall be rented or used for any municipal election related purpose during any day that voting is taking place on the property including set-up, hosting or take-down activities.
- b. Use of rentals are subject to the following conditions:
 - a. all election campaign materials must only be displayed within the allotted rental period in the allotted rented area designated in the rental agreement; and
 - b. rentals for campaign related activities are not permitted from the first date of advance voting to the day after voting day; and
 - c. the City reserves the right to refuse or cancel a rental contract at any time, in accordance with the terms of the contract, should it conflict with the City’s corporate values or established policies or procedures, or presents a health and safety concern.”

Should Council choose to adopt the above amendment, the Elections team will work with Recreation Communities and Culture to provide additional instruction on the application of policy by way of a robust FAQ document.

Investigation and Corrective Action

With regard to administration and enforcement the City Clerk, or designate, shall have the delegated authority under the Policy to review and resolve many of the issues arising from any written complaint regarding an alleged contravention of this policy.

The Clerk or designate shall further be authorized and directed to take the necessary action to give effect to the Policy. All complaints received from the public shall be in writing and addressed to the Clerk. If a breach of this policy is confirmed, the candidate may be required to make corrective action(s) or reimburse the City for any of the costs associated with the breach. Candidates will also be reminded that their actions may also possibly subject them to offences and/or penalty provisions for violations under the Act.

The City of Burlington commitment to elections policies means that all election policies will be reviewed as part of the preparations for any general municipal election. This policy will be reviewed after the election as part of a holistic review of the 2022 election, and then through a formal policy review with any amendments presented to Council in advance of the 2026 election.

Financial Matters:

There is no financial impact associated with this policy. This policy will be administered in accordance with the budget to be set for the 2022 Municipal Election.

Climate Implications

None.

Engagement Matters:

The election policies survey released in the Spring of 2021 engaged the public on a number of matters pertaining to 2022 Election Planning. The results of the survey approximately 300 respondents, was presented by way of [CL-21-21](#) and advocated for better communication regarding the policy and its intent as well as clearer definitions of corporate resources and enforcement and investigative provisions.

At the July 5, 2021 CSSRA meeting committee directed staff to seek feedback on a potential campaign contribution rebate program. Staff took the time to also canvass advisory committees on applicable election policy, which included the Corporate Resources Policy. Through that consultation advisory committee members noted that the policy should be better communicated. Staff will ensure that the policy is

communicated to staff who will need to enforce the policy and candidates that will have to abide by it.

In addition to consulting with our advisory committees, the Election Team circulated the policy to various staff teams that will need to enforce and comply with the approved policy. A draft of the policy was presented to the Burlington Leadership Team to solicit feedback, as there are major changes proposed to the way in which City of Burlington staff will be permitted to engage with the election if approved.

Conclusion:

The proposed changes to the Corporate Resources during an Election Policy are aimed to provide clarity and be responsive to what worked and did not work for the 2018 municipal election. If approved, staff will work with operational staff to ensure that frequent questions are addressed in a FAQ document to ensure uniform application of the policy.

Respectfully submitted,

Kevin Arjoon

City Clerk

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Appendices:

- A. Proposed Use of Corporate Resources during an Election policy
- B. Existing Use of Corporate Resources during an Election policy

Report Approval:

All reports are reviewed and/or approved by Department Director, the Chief Financial Officer and the Executive Director of Legal Services & Corporation Counsel.