

May 17, 2022

Mayor and Members of Council
City of Burlington

Re: Code of Conduct for Local Boards and Committees - Election Campaign Provisions

Council Direction:

At the March 2, 2022, Corporate Services, Strategy, Risk and Accountability Committee (CSSRA) meeting questions arose about the feasibility of alignment between the Election Policy applicable to Staff and Members of Council, and similar provisions of the Code of Conduct applicable to Members of Local Boards and Committees.

At its meeting of March 22, 2022 Council directed as follows:

Staff Direction SD-07-22:

Direct the City Clerk to work with the Integrity Commissioner to review and report back by the end of Q2 on the feasibility of aligning the policies governing advisory committees or local boards with the Use of Corporate Resources during an Election Policy for city staff and council, so there is a single policy applicable to staff, council and volunteers.

Policy applicable to Employees

Burlington's proposed Election Policy provides as follows:

5. City Staff
 1. City staff shall not canvass or actively campaign for any registered candidate or registered third party during hours in which they are receiving compensation from the City unless they are on a leave of absence without pay, lieu time, float day, or vacation leave. This shall not interfere with the employee's normal duties.
 2. ...
 3. ...
 4. City staff shall not canvass nor actively campaign in support of or in opposition to a candidate or party while wearing a City uniform, badge, crest or other item identifying them as a City of Burlington employee, or while using a City owned or leased vehicle.

Essentially, staff and members of Council are prohibited from engaging in election campaign activities during their work hours, as this could be construed as allocation of municipal resources in support of an election campaign, contrary to the *Municipal Elections Act*.

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On their own time, away from municipal property, so long as no municipal resources are used, and no municipal identification is visible, employees may engage in election campaign activities, as may others who perform volunteer work for the municipality (such as theatre ushers).

Policy applicable to Local Board Members

Burlington's Local Board Code provides as follows:

Rule 5: Election Campaigns

No member, while identifying themselves as a member of a Local Board or Committee, shall undertake any election campaign or election-related activities or work on, fund-raise, endorse or otherwise contribute to the election campaign of any person running in the municipal election for the municipality where the member serves on the Local Board and/or committee.

Members of the Committee of Adjustment and Court of Revision are prohibited from fundraising for, endorsing, or otherwise contributing to the election campaign of any person running for a seat on Council.

Any member of a Board or Committee wishing to fully participate in an election campaign will be granted a leave of absence from the Board or Committee

Key Principles and Analysis:

The following principles reflect the legislation and accepted best practice:

- Employees can generally work on election campaigns on their own time but must avoid any perception of use of municipal resources, and must take a leave of absence if they wish to run for Council
- non-adjudicative members (advisory committees) can work on election campaigns, but cannot use their status as a member when doing so
- adjudicative members cannot involve themselves in election campaigns; this is because of their arm's-length function, making it inappropriate for them to be seen supporting or promoting the candidacy of a member of Council
- members of local boards and committees should not be required to take a leave of absence to run in an election

Rule 5 prevents Local Board members from using their status as members to endorse or campaign for members of Council. The issue is not 'use of municipal resources' but rather using their status (as, for example, Chair of an advisory committee) to influence, or allow electors to infer, that the committee is endorsing a particular candidate.

Principles Integrity

Committee members are not precluded from working for or supporting candidates, so long as they do not use their status to do so.

The Rule prohibits members of adjudicative bodies from engaging in any manner in the election campaign of a member of Council. Burlington has just one single adjudicative body, consisting of five members plus two alternates, which serves multiple functions: the Committee of Adjustment also serves as the City's Court of Revision and its Property Standards Committee. The committee meets bi-weekly, and members are compensated for their attendance at meetings.

This quasi-judicial tribunal, comprised of citizens appointed by Council, is required to function at arms'-length from Council, independently hearing and deciding matters on their merits. They are expected to be unaligned politically. This is the rationale behind the provision which prohibits members of adjudicative local boards from supporting or promoting the candidacy of members of Council.

To quote from a recent decision in St.Catharines:

Those appearing before adjudicative bodies such as a committee of adjustment are entitled at common law to procedural fairness. An important component of procedural fairness is the independence of tribunals in a process which is free from political interference. This is especially true where the appointment, re-appointment, or continued engagement of individual members of that body is at the will of a political entity, such as municipal council.

In order for the public to have trust in the administrative processes of the City, not only must these processes be free from political influence, but must also be *seen to be* free from political influence. The public must have confidence that decisions are made on the merits of the case, and not any extraneous factors or political influence.

The Code of Conduct adopted by Council on February 25, 2019, included an additional provision not contained in the draft provided to staff:

Any member of a Board or Committee wishing to **fully participate** in an election campaign will be granted a leave of absence from the Board or Committee.

It is unclear what is intended by the phrase '*fully participate*'.

It may have been the intention that this additional proviso would replicate the requirement in the *Municipal Elections Act*. The requirement in s.30 requires **employees** of both municipalities and local boards to take a leave of absence in order to run in a municipal election as a member of that council or local board.

Employee of municipality or local board

30 (1) An employee of a municipality or local board is eligible to be a candidate for and to be elected as a member of the council or local board that is the employer if he or she takes an

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unpaid leave of absence beginning as of the day the employee is nominated and ending on voting day.

(2) The employee shall give the council or local board written notice, in advance, of his or her intention to take unpaid leave ...

If *'fully participate'* includes registering as a candidate to run for a seat on Council, we are not aware of any similar comparable requirement imposed in other municipalities on their local boards, nor is there a similar obligation applicable to members of Council seeking election (or re-election).

While it may not be beyond Council's authority to impose this obligation on appointees to their local boards and committees, it does appear to be an overreach. It could, arguably, form the basis for a Charter challenge.

Recommendation:

We recommend that the Burlington Local Board Code be amended by **deleting** the third paragraph of Rule 5: Election Campaigns, which provides as follows:

Any member of a Board or Committee wishing to fully participate in an election campaign will be granted a leave of absence from the Board or Committee