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**TO:** GENERAL COMMITTEE

**SUBJECT:** USE OF CORPORATE RESOURCES FOR ELECTIONS PURPOSES POLICY

**WARD:** ALL

**PREPARED BY AND KEY CONTACT:** W. COOKE, ACTING CITY CLERK/DIRECTOR OF LEGISLATIVE AND COURT SERVICES EXT. 4560

**SUBMITTED BY:** W. COOKE, ACTING CITY CLERK/DIRECTOR OF LEGISLATIVE AND COURT SERVICES

**GENERAL MANAGER APPROVAL:** D. MCALPINE, GENERAL MANAGER OF COMMUNITY AND CORPORATE SERVICES

**CHIEF ADMINISTRATIVE OFFICER APPROVAL:** M. PROWSE, CHIEF ADMINISTRATIVE OFFICER

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### **RECOMMENDED MOTION**

1. That the updated Use of Corporate Resources for Election Purposes Policy attached as Appendix "A" to Staff Report LCS005-18, be adopted.

### **PURPOSE & BACKGROUND**

#### Report Overview

2. The purpose of this Staff Report is to present a revised Use of Corporate Resources Policy, to address Provincial amendments to the *Municipal Elections Act, 1996* as well as administrative updates intended to clarify the provisions within the Policy.
3. Section 88.18 of the *Municipal Elections Act, 1996* requires municipalities and local boards, before May 1 in an election year to establish rules and procedures with respect to the use of municipal or board resources during the election campaign period.
4. Section 88.15 (1) of the *Municipal Elections Act, 1996* states money, goods and services given to and accepted by a person for his or her election campaign, or given to and accepted by another person who is acting under the person's direction, are contributions.
5. Section 88.15 (2) of the *Municipal Elections Act, 1996* states that money, goods and services given to and accepted by an individual, corporation or trade union in relation to third party advertisements, or given to and accepted by another person who is acting under the direction of the individual, corporation or trade union, are contributions. This is a new provision in the legislation, as the *Municipal Elections Act, 1996* was previously silent regarding third party advertisers.
6. Section 88.12 (4) of the *Municipal Elections Act* states that a municipality or local board shall not make a contribution to a registered third party. This is another new provision.
7. Section 88.8(4) of the *Municipal Elections Act, 1996* states that a municipality or local board shall not make a contribution to the election campaign of a candidate.

8. In 2005, City Council adopted motion 05-G-569 to adopt a policy concerning the Use of Corporate Resources for Elections Purposes Policy.
9. By defining money, goods and services as being contributions to a campaign or registered third party, it is clear that the use of the use of the Corporation's resources (facilities, equipment, supplies, services, staff or other resources of the municipality) for any election campaign or campaign related activities or third party advertising would be viewed as a contribution by the municipality to the Candidate or Registered Third Party, which is a violation of the Act.
10. Campaign related activities on municipal property during regular working hours, have been viewed to be a contribution from the municipality to an election campaign and therefore not permitted. Further, the use of the services of staff (or any person receiving compensation from the municipality) during their working hours is also deemed to be a violation of the Act.

### ANALYSIS

11. Amendments to the *Municipal Elections Act, 1996* resulting from Bill 181 the *Municipal Elections Modernization Act*, enacted in 2016, that are initiating an update to the policy include:
  - a) A requirement for a municipality to establish rules and procedures with respect to the use of municipal or board resources during the election campaign period before May 1 in an election year (previously discretionary);
  - b) A shorter nomination period with the opening of nominations occurring on May 1 and ending on the 4<sup>th</sup> Friday in July (July 27, 2018); and
  - c) New provisions associated with registered third parties/third party advertising.
12. Administrative updates have also been included in the proposed Policy to ensure clarity related to the requirements. These administrative updates include changes to definitions, clarity related to use of municipal property and facilities and a new policy template.
13. Provisions contained within the *Municipal Elections Act, 1996* prohibiting municipalities and local boards to contribute to a campaign are not new. The City of Barrie established a Use of Corporate Resources for Election Purposes Policy back in 2005 and it was last updated in advance of the 2010 Municipal Election. The *Municipal Elections Act, 1996* previously was silent on the actual requirement for established rules and procedures.
14. A Registered Third Party is an individual, corporation or trade union that has filed a Notice of Registration as a third party advertiser in the municipal election. Under the Act, a third party advertiser is any individual, corporation or trade union that causes an election campaign advertisement to appear. Third party advertising must be done independently of candidates, who are not able to direct a third party advertiser
15. A third party advertisement is an advertisement in any broadcast, print, electronic or other medium that has the purpose of promoting, supporting or opposing a candidate in the election, or a question on the ballot.
16. The intent of the updated policy is to provide clarification regarding the provisions of the *Municipal Elections Act, 1996* relating to contributions to election campaigns (candidate or registered third party). It should be noted that guidelines on the appropriate use of Corporate Resources during an election period would serve to protect the interests of both the candidates (including Members of Council), registered third parties and the Corporation.

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17. Should an individual or registered third party be convicted of an offence under the *Municipal Elections Act, 1996* a fine up to \$25,000 can be imposed.
  18. The updated policy, if approved, would continue to be applicable to all candidates (municipal, provincial and federal) including Members of municipal Council and add third party advertisers. The intention of the policy is not to preclude a Member of Council from performing their job as a Councillor or inhibit them from representing the interests of the constituents who elected them.
  19. Consistent with the Employee Code of Conduct, Members of Council and Committee Code of Conduct and Acceptable Use of Corporate Assets Policy, the following are some of the key parameters outlined in the proposed policy:
    - Corporate resources, assets and funding may not be used for any election-related purposes;
    - Staff may not canvass or actively work in support of a municipal, provincial or federal candidate or political party during normal working hours unless they are on a leave of absence, without pay, lieu time, float day or vacation leave;
    - The use of municipally owned facilities by candidates is prohibited unless the facility is generally available for rent by the public and it is rented in accordance with the City of Barrie rental procedures – with the exception of City Hall;
    - Members of Council may not print or distribute any election-related material using municipal funds;
    - In any material printed or distributed by the City of Barrie, Members of Council are not permitted to:
      - i) Illustrate that an individual (either a Member of Council or any other individual) is a candidate registered in any election;
      - ii) Identify where they will be running for office; or
      - iii) Profile or make reference to candidates in any election.
    - Members of Council are responsible for ensuring that the content of any communication material, created, printed, hosted or distributed by the City of Barrie, is not election-related;
    - The discontinuation of advertising, municipal publications; printing, copying and newsletters for Members of Council from the day prior to nomination day up to and including final voting day;
    - Websites or domain names funding by the municipality may not contain any election-related campaign materials;
    - The municipality's voice mail system may not be used to record election related messages and the computers, cell/smart phones, telephones, tablets, etc. can not be used for election campaign-related purposes;

- The municipality's logo, crest, coat of arms, slogan, etc. may not be printed or distributed on any election materials, be included on any election campaign related website or used in any third party advertising, except in the case of a link to the City's web site to obtain information about the municipal election;
  - Photographs produced for and owned by the City of Barrie may not be used for any election purposes; and
  - The City Clerk is responsible for enforcing the policy.
20. Staff reviewed policies from Ottawa, Guelph, Newmarket, Milton, Kingston and Brampton and the provisions contained within the draft policy are consistent with policies adopted by these municipalities.

### **ENVIRONMENTAL MATTERS**

21. There are no environmental matters related to the recommendation.

### **ALTERNATIVES**

22. The following alternatives are available for consideration by General Committee:

**Alternative #1** General Committee could recommend that the existing policy be maintained.

This alternative is not recommended as the current policy does not clearly reflect the changes to the *Municipal Elections Act, 1996* with respect to registered third parties and the shortened nomination period.

**Alternative #2** General Committee could recommend changes to the policy or that a different policy be adopted concerning the use of Corporate Resources for election purposes.

This alternative is not recommended, as staff have researched policies of other municipalities and the provisions contained within the draft policy are consistent with policies adopted by other municipalities and complies with the legislative requirements.

### **FINANCIAL**

23. There are no financial implications for the Corporation resulting from the proposed recommendation.

### **LINKAGE TO 2014-2018 STRATEGIC PLAN**

24. The recommendation(s) included in this Staff Report are not specifically related to the goals identified in the 2014-2018 Strategic Plan.

APPENDIX "A"

<b>Policy: CO7 - USE OF CORPORATE RESOURCES FOR ELECTION PURPOSES</b>			
Section:	<b>Legislative Services</b>	Subsection:	<b>Elections</b>
Effective date:		Last Review Date:	2018
Approved by:		Owner Division/Contact:	
		For information on this process, contact the Legislative and Court Services Department – City Clerk	

Policy Statement:	<p>The <i>Municipal Elections Act, 1996</i>, as amended, establishes the election campaign finance rules for Candidates running in a municipal election. Section 88(8)(4) prohibits municipalities such as The Corporation of the City of Barrie from making campaign contributions.</p> <p>The <i>Election Finance Act, 1990</i>, as amended, and the <i>Canada Elections Act, 2000</i> as amended, establish regulations for candidates and parties running in provincial and federal elections. Section 29(1) of the <i>Election Finance Act</i> and Section 363 (1) of the <i>Canada Elections Act</i> prohibit a municipal corporation from making campaign contributions to any candidate, political party or constituency association in a provincial or federal election.</p> <p>As campaign contributions may take the form of money, goods or services, any use of corporate resources for election related purposes, by candidates, third party advertisers or City staff, is not permitted.</p> <p>No candidate or registered third party advertiser shall use the facilities, equipment, supplies, services, staff or other resources of the City (including Councillor newsletters and Councillor budgets) for any election campaign or campaign-related activities.</p>
Purpose/Application:	<p>The policy provides direction to candidates, third party advertisers, Members of Council and all City staff on the administration of Corporate Resources and Members' budgets with respect to election-related matters. The purpose of this policy is to clarify that all election candidates at the municipal, provincial and federal level, including Members of Council and Third Party Advertisers are required to follow the provisions of the <i>Municipal Elections Act, 1996</i> as amended, the <i>Election Finance Act, 1990</i> as amended, <i>Elections Act, 1990</i> and the <i>Canada Elections Act, 2000</i> as amended, as applicable.</p> <p>The Policy is intended to:</p> <ul style="list-style-type: none"> <li>• Ensure compliance with the <i>Municipal Elections Act, 1996</i>, <i>Elections Finance Act, 1990</i> and the <i>Canada Elections Act, 2000</i>, in regards to the role of the City contributing to a candidates or registered third party campaign;</li> <li>• Ensure that candidates and registered third parties are treated fairly and consistently within the municipality;</li> </ul>

	<ul style="list-style-type: none"> <li>• Ensure the integrity of the election process is maintained at all times;</li> <li>• Establish the appropriate uses of resources during an election period, in order to:             <ul style="list-style-type: none"> <li>○ Protect the interests of the Members of Council, Candidates, Registered Third Parties, City staff and the Corporation; and</li> <li>○ Ensure accountable and transparent practises.</li> </ul> </li> </ul> <p>This policy is applicable to all candidates (including any candidate acclaimed), Members of Council (including a Member who is not seeking re-election), Third Party Advertisers and City of Barrie staff.</p>
Definition(s):	<p><b>Election Campaign-Related Activities and Materials</b> means any resources used to promote, support or oppose a candidate or a “yes” or “no” vote related to a question on the ballot, including but not limited to literature, banners, posters, pictures, buttons, clothing or other paraphernalia. Activity means any action or event by or on behalf of a candidate, political party, or third party advertiser meant to promote, support or oppose a candidate or a “yes” or “no” vote related to a question on the ballot during the election period. Campaign-related activities do not include the appearance of elected officials acting in their capacity of Councillor, School Board Trustee, Member of Provincial Parliament, or Member of Parliament.</p> <p><b>Campaign Period</b> means the official campaign period of an election.</p> <ul style="list-style-type: none"> <li>• For a municipal election, the campaign period commences on the May 1 of an election year and ends on December 31 of an election year.</li> <li>• For a provincial or federal election, the election period commences on the day the writ for the election is issued and ends on voting day.</li> <li>• For a by-election, the period commences the day the by-election is called and ends on voting day.</li> </ul> <p><b>Candidate</b> means any individual running for an elected office, including Mayor, Councillor, School Board Trustee, Member of Provincial Parliament and/or Member of Parliament or anyone acting on their behalf.</p> <p><b>Election-related purpose</b> refer to the occurrence of a municipal election or by-election. It also includes any participation in federal and provincial elections that is partisan in nature.</p> <p><b>Nomination Day</b> refers to the fourth Friday in July in a municipal election year.</p> <p><b>Third Party or Third Party Advertiser</b> means an individual, corporation or trade union that promotes, supports or opposes a candidate or a “yes” or “no” vote related to a question on the ballot in accordance with the <i>Municipal Elections Act</i>.</p>
Specific Requirements:	<p><b>Policy</b></p> <p><b>Communications Related Provisions</b></p> <p>At no time shall Corporate Resources and/or Members’ budgets be used to sponsor or produce any election campaign-related materials (municipal, provincial and federal).</p>

Members of Council are responsible for ensuring that the content of any communication material, printed, hosted or distributed by the City of Barrie is not election campaign-related.

Members of Council shall not deliver any unsolicited material outside of their existing ward where the printing and/or distribution costs are being paid by the municipality. Care should be taken to ensure that the mailing of newsletters is restricted to the Member's ward only. This provision shall be effective not only during an election year, but at all times.

Members of Council shall not:

- Create, print, publish, sponsor or distribute any material paid by municipal funds that illustrates that a Member of Council or any other individual is registered in any election or where they will be running for office;
- Profile (name or photograph), or make reference to, in any material paid for using municipal funds, any individual who is registered as a candidate in any election; and
- Create, print, publish, sponsor or distribute any material using municipal funds that makes reference to, or contains the names or photographs, or identifies registered candidates for municipal elections.

In a municipal election year or in the event of a by-election, Corporate Resources or the Members' budgets are not to be used to sponsor any advertisements, flyers or newsletters from the day prior to Nomination Day up to and including the final voting day.

The following be discontinued for Members of Council from the day prior to Nomination Day in a municipal election year to Voting Day:

- All forms of advertising, including municipal publications; and
- All printing, high speed photocopying and distribution, including printing and general distribution of newsletters unless directed and approved by Council.

Candidates shall not create, print, publish sponsor or distribute any election campaign-related materials using municipal funds. This prohibition also applies to the use of any City equipment, facilities, social media or websites, if the access is City-sponsored/funded.

In any material created, printed sponsored or distributed by the City of Barrie, candidates are not permitted to:

- Illustrate that an individual (either a Member of Council or any other individual) is a candidate registered in any election;
- Identify where they or any other individual will be running for office; or
- Profile or make reference to candidates in any election.

Notwithstanding the above, the minutes of Council and Committee meetings shall be exempt from this policy.

The municipality's logo, crest, coat of arms, slogan, etc. shall not be printed or distributed on any election campaign-related materials, or included on any election campaign website, except in the case of a link to the City's website to obtain information about the municipal election.

Photographs produced for and owned by the City of Barrie shall not be used for any election campaign-related purposes.

Photographs taken utilizing City equipment or sent through City accounts shall not be utilized.

Candidates and Third Party Advertisers are not permitted to engage in election campaign-related activities directed at City employees while those employees are at their workplace or engaged in work for the City.

Where an emergency occurs, a non-emergency related community issue arises or where an annual community event is held during the period beginning the day prior to Nomination Day up to and including final voting day, a Member of Council may use Corporate resources to advise or contact their ward constituents with the approval of the City Clerk.

#### **Use of Municipal Facilities, Services and Property Provisions**

Candidates shall not campaign and/or distribute campaign literature during any function hosted by the City of Barrie, whether on municipal property or not.

Members of Council, Candidates and Third Party Advertisers shall not use any municipally provided facilities for any election-related purposes unless the facility is generally available for rent by the public and it is rented in accordance with the City of Barrie rental procedures.

In accordance with the Election Sign By-law, no election campaign-related signs nor any other election-related material shall be displayed in any municipally owned facilities.

Notwithstanding, the ability to use the interior of any City-owned or run facility for election related purposes, if rented in accordance with the provisions noted above, no election related activities, including campaigning and the distribution of campaign literature are permitted to take place inside or on the property of the City of Barrie City Hall.

#### **Technology Related Provisions**

Candidates, Members of Council and Third Party Advertisers shall not use Corporate resources or services such as computers, cell/smart phones, telephones, tablets, printers, scanners, copiers, email, file storage, voicemail, or any other equipment or technology owned by the City of Barrie, for election related purposes.

Websites or domain names that are operated or funded by the City of Barrie shall not include any election campaign-related materials or links to any sites that feature election campaign-related information, including but not limited to



Twitter, Facebook and other social media accounts to any sites that feature election campaign-related material.

The on-line Candidate's List shall be the only area of the City of Barrie's website where links to external election campaign websites will be posted during the Campaign Period.

The municipality's voice-mail system or voice-mail set up on any City issued phone shall not be used to record election related messages or the computer network (including the City's email system) to distribute election related correspondence.

Distribution lists or contact lists developed utilizing Corporate resources or through a contact in a Member of Council's role shall not be utilized for election purposes.

#### **Budget Administration**

Corporate resources, assets and funding shall not be used for any election campaign-related purposes.

The budgets for Members of Council for the period of January 1 to Election Day in a municipal election year shall be restricted to 11/12ths of the approved annual budget amount with the provision that subsequent to Voting Day:

- New Members of Council be allocated a budget of 1/12<sup>th</sup> of the approved budget amount for the month of December; and
- Re-elected Members of Council have available to them the balance of funds remaining as of Election Day.

In the event of a ward or City-wide by-election or an appointment for a position on Council, funds from the vacated Member's budget will be set aside on a pro-rated basis for the newly elected/appointed representative, based on the start date of the new Member.

#### **City of Barrie Staff**

In keeping with the City of Barrie Staff Code of Conduct, City Staff are expected to preserve the public trust and confidence in the City. Employees engaged in political activities must take care to separate those personal activities from their official positions.

Employees may participate in political activity at the federal, provincial or municipal levels providing that such activity does not take place during work hours or utilizing City assets, resources, or property. Notices, posters or similar material promoting, supporting or opposing a particular Candidate or political party are not be produced, displayed or distributed by employees on City of Barrie work sites or property.

Employees shall not canvass or actively work in support of a Candidate or political party during normal work hours, unless they are on a leave of absence without pay, lieu time, flex time or vacation leave.



	<p>Employees shall not canvass or actively work in support of a municipal Candidate or political party while wearing a uniform, badge, logo or any other item identifying them as an employee of The Corporation, or using a vehicle owned or leased by the City.</p> <p>Employees wishing to run for federal, provincial or municipal office must request and obtain a leave of absence without pay, and abide by the respective legislation governing such elections.</p>
Limitations	<p>Nothing in this Policy shall preclude a Member of Council from performing their duties as Mayor or Councillor, nor inhibit them representing the interests of the constituents who elected them.</p>
Responsibilities	<p>The City Clerk (or designate) is responsible for communicating the policy to Members of Council, Candidates, Third Party Advertisers and City staff.</p> <p>Members of Council, Candidates, Third Party Advertisers and City staff are accountable to comply with this policy.</p> <p>In accordance with the Municipal Elections Act, the City Clerk is authorized and directed to take the necessary action to give effect to this policy.</p>
Date Approved by City Council	
Rationale and Legislative Authority	<p>Section 88.18 of the <i>Municipal Elections Act, 1996</i> as amended requires a municipality before May 1 in the year of a regular election, to establish rules and procedures with respect to the use of municipal or board resources, as the case may be, during the election campaign period. The <i>Municipal Elections Act, 1996</i> as amended establishes regulations governing campaign finance for candidates running in a municipal election. Section 88(8)(4) prohibits municipalities from making campaign contributions to municipal candidates.</p> <p>The <i>Election Finance Act, 1990</i>, as amended, and the <i>Canada Elections Act, 2000</i> as amended, establish regulations for candidates and parties running in provincial and federal elections. Section 29(1) of the <i>Election Finance Act</i> and Section 363(1) of the <i>Canada Elections Act</i> prohibit a municipal corporation from making campaign contributions to any candidate, political party or constituency association in a provincial or federal election.</p>
Related Policies, Legislation and By-laws	<p>Acceptable Use of Corporate Assets Policy Council and Committee Member Code of Conduct City of Barrie Staff Code of Conduct Reimbursement of Council Expenses Policy Election Sign By-law <i>Municipal Elections Act, 1996</i> as amended, <i>Election Finance Act, 1990</i>, as amended, and the <i>Canada Elections Act, 2000</i> as amended and</p>
Department Contact:	<p>Wendy Cooke, Acting City Clerk/Director of Legislative and Court Services x4560, <a href="mailto:wendy.cooke@barrie.ca">wendy.cooke@barrie.ca</a></p>