



Report to Council

Department: Office of the CAO
Division: Legal and Legislative Services
Date: April 6, 2021
Prepared by: Robert W Auger, Town Solicitor/Clerk
Report Number: Legal and Legislative Services-2021-05
Subject: Policy: Prohibition on the Use of Corporate Resources during an Election
Number of Pages: 6

Recommendation(s)

That Legal and Legislative Services-2021-05 entitled **Policy: Prohibition on the Use of Corporate Resources during an Election** prepared by Robert W Auger, Town Solicitor/Clerk dated April 6, 2021 be received, and

That the Town of Essex Policy: Prohibition on the Use of Corporate Resources during an Election attached hereto as Schedule "B" to this report be adopted as presented.

Purpose

To create a framework of responsibilities and a consistent approach for prohibiting the use of Town of Essex resources during an election by Town Staff, candidates, registered third party advertisers and electors.

Section 88.8 (4) of the Municipal Elections Act ("MEA" or the "Act") prohibits a municipality from making a contribution to a candidate. The Act also prohibits a candidate, Third party

advertiser, or someone acting on the candidate's behalf, from accepting a contribution from a person who is not entitled to make a contribution. A contribution may take the form of money, goods or services. Any use by a Council Member/Candidate/third party advertiser/town staff of the Town's resources for an election campaign could be viewed as a contribution by the municipality to that campaign, which is a violation of the Act.

It is therefore necessary to establish guidelines on the appropriate use of corporate resources (those resources of the Corporation of the Town of Essex) during a municipal election period in order to protect the independence and integrity of the Election, meet the requirements of the Municipal Elections Act (and other applicable legislation) and serve the best interests of the electorate.

Background and Discussion

The current Town of Essex Policy entitled "*Use of Corporate Resources for Election Purposes*" and attached hereto as Schedule "A" was originally approved by Council back on April 19, 2010. This policy has not been amended since 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 Town staff.

The Act provides the Clerk with special duties and powers as it relates to the conduct of Municipal elections. It is these legislated duties and powers that provides the Clerk with the required authority, independence and integrity so as to be able to conduct municipal elections in the required objective, fair and transparent manner so that public confidence in our electoral systems is maintained.

While electoral discretion and its reasonable exercise thereof is always going to be required of the Clerk when conducting an election, a Use of Corporate Resources Policy that better defines from the outset the expectations and better clarifies what is permitted and what is not permitted will always be preferred as it will help Candidates, Council Members and Town Staff

proactively make more consistent and reliable decisions as far as taking actions that are appropriate versus not appropriate.

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 in order to hopefully bring that improved clarity for candidates, members of council, third party advertisers and town staff alike.

Attached hereto as Schedule "B" to this report is a copy of the proposed new policy entitled

"Prohibition on the Use of Corporate Resources during an Election"

The highlights of this new Policy include:

- a more expansive and clarified definition of "Town 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 Town 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 Town information and resources during an election period. This includes specific examples of restrictions on the use of the Towns corporate identity or the use of any Town intellectual property or other town materials during the election period. For example the use of Town logos, crest, coat of arms, the use of town apparel, the use of Town Mission Statements, Strategic Plan Statements, tagline, etc. are all prohibited
- enhanced protocols and restrictions with respect to Town cell phone use by sitting members of council during an election period and the prohibition of the use of any Town electronic devices to respond to campaign inquiries/matters or post or re-post matters on social media relating directly or indirectly to campaign matters. Included in that are further protocols giving the Town the right to audit such Town issued electronic devices from time to time as may be reasonable and necessary.

- Clarification as to access Town IT property/resources and the use of social media use by candidates during the election.
- Clarification as to information sharing protocols by the Clerk's Office and candidates during the election.
- Clarification and enhanced protocols as to procedures and restrictions as to candidate access to Town staff and Town information during an election period.
- Clarification on the specific restrictions applicable to sitting members of Council from Nomination day until the end of 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 Town of Essex.
- A specific and enhanced sign-off from candidates attesting to and acknowledging that non-compliance with this policy may further expose that candidate to personal costs and/or further investigation/enforcement including under the Municipal Elections Act or such other applicable legislation.

With regards to administration and enforcement the Town Clerk, or designate, shall have the delegated authority under the Policy/By-law 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 personally reimburse the Municipality 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 Municipal Elections Act.

Specifically as it relates to the conduct of candidates during a municipal election, a key point to note from the proposed policy is that the Clerk performs largely an administrative and

procedural function related to the conduct of the Municipal Election but within the framework established by the Municipal Elections Act (“MEA”). While Section 12 of the MEA gives the Clerk a wide range of powers to provide for any matter necessary *for conducting the election*, the Act specifically does not provide the Clerk with investigative or enforcement powers specifically as it relates to allegations that the Municipal Elections Act or such other applicable legislation was violated. Concerns that a candidate or other person may have violated either the MEA and/or any other legislation (i.e. Criminal Code etc.) should be addressed by contacting:

- Independent legal counsel for further advice if necessary; and/or
- the Ministry of Municipal Affairs which has ministerial responsibility for the MEA; and/or
- the Ontario Provincial Police.

The Policy proposed in Schedule “B” to this Report would continue to be reviewed from time to time on an as needed basis including after each Municipal election.

Financial Impact

There is no financial impact as of yet associated with this policy. This policy will be administered in accordance with the budget to be set for the 2022 municipal election.

Consultations

Chief Administrative Officer

Director, Community Services/Deputy CAO

Manager, Strategic Communications

Manager, Information Technology

Deputy Clerk, Legal and Legislative Services

Link to Strategic Priorities

- Manage, invest and plan for sustainable municipal infrastructure which meets current and future needs of the municipality and its citizens.
- Create a safe, friendly and inclusive community which encourages healthy, active living for people of all ages and abilities.
- Provide a fiscal stewardship and value for tax dollars to ensure long-term financial health to the municipality.
- Manage responsible and viable growth while preserving and enhancing the unique rural and small town character of the community.
- Improve the experiences of individuals, as both citizens and customers, in their interactions with the Town of Essex.
- Improve the Town's capacity to meet the ongoing and future service needs of its citizens while ensuring the corporation is resilient in the face of unanticipated changes or disruptions.

Report Approval Details

Document Title:	Use of Corporate Resources during an Election Policy.docx
Attachments:	<ul style="list-style-type: none">- Schedule B Prohibition on the Use of Corporate Resources During an Election Policy.pdf- Schedule A Use of Corporate Resources for Election Purposes Policy.pdf
Final Approval Date:	Mar 30, 2021

This report and all of its attachments were approved and signed as outlined below:

A handwritten signature in black ink, appearing to read "Chris Nepszy". The signature is written in a cursive, flowing style.

Chris Nepszy, Chief Administrative Officer - Mar 30, 2021 - 10:36 AM