



Clerk's Report

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Report To: General Government Committee

Date of Meeting: March 26, 2018

Report Number: CLD-008-18 **Resolution:** GG-174-18 & GG-175-18

File Number: **By-law Number:** 2018-028

Report Subject: "Use of Corporate Resources for Election Purposes" Policy

Recommendations:

1. That Report CLD-008-18 be received;
2. That the By-law attached to Report CLD-008-18, as Attachment 1, adopting an updated "Use of Corporate Resources for Election Purposes" Policy F110, be approved;
3. That Policy F5 (Attachment 2 to Report CLD-008-18) be deleted, as section d) pertaining to facility use is covered in the proposed consolidated Policy F110, and the remaining sections have been incorporated into Policy E1 (staff) Code of Ethics;
4. That Schedule A to By-law 2017-020, enacting the Council Code of Conduct, be amended to update the reference to Policy F5 - Political Activities to Policy F110; and
5. That all interested parties listed in Report CLD-008-18 and any delegations be advised of Council's decision.

Report Overview

Recent amendments to the *Municipal Elections Act, 2001* have created a need to update our "Use of Corporate Resources for Election Purposes" Policy F110. As well, based on experiences during the 2014 Municipal Elections, it was deemed appropriate to clarify the provisions of the policy and to consolidate a number of policies which address the use to corporate resources for election purposes, such that the policy may be more easily understood by staff, candidates and the public.

1. Background

Legislation

- 1.1 With the recent changes to the *Municipal Elections Act (Act)*, the following new Section 88.18 was introduced:

"Before May 1 in the year of a regular election, municipalities and local boards shall establish rules and procedures with respect to the use of municipal or board resources, as the case may be, during the election campaign period."
- 1.2 The Act states that a municipality or local board shall not make a contribution to the election campaign of a candidate. The Act also prohibits a candidate, or someone acting on the candidate's behalf, from accepting a contribution from a person who is not entitled to make a contribution. The Act states that, "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".
- 1.3 By defining money, goods and services as being contributions to a campaign, it is clear that 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 would be viewed as a contribution by the municipality to the candidate, which is a violation of the Act.
- 1.4 The intent of this policy review is to provide clarification regarding the provisions of the Act relating to contributions to election campaigns. It should be noted that the establishment of guidelines for the appropriate use of corporate resources during an election period is undertaken to protect the interests of candidates, Members of Council, staff and the Municipality of Clarington.

Existing By-law & Policy

- 1.5 In January, 2010, arising out of Report CLD-002-10, the Municipality passed By-law 2010-010 adopting Policy F110, the “Use of Corporate Resources for Election Purposes” to ensure:
- that the Municipality was not in violation of campaign contribution; and
 - that it is clear to all election candidates that municipal facilities, equipment, supplies, services staff or other resources shall not be used for campaign-related activities.

Other Related Policies

- 1.6 In addition to Policy F110, Council has previously approved the following related policies:
- Policy F5, “Political Activities”, governing employees’ involvement in political activity (Attachment 2) which was approved by Council in October 2011 and replaced Policy H18
 - The Council Code of Conduct (By-law 2017-020), Section 12(b) states that:

“No member shall undertake campaign-related activities on municipal property except as otherwise provided for in Policy F5 — Political Activities.”
 - The “Use of Corporate Logo by Members of Council” Policy, contained as part of Report COD-030-11, which states that:

“The elements of the Corporate Visual Identity Program (municipal logo, banners, and flags) may not be used for any non-municipal business or interest, including for the purpose of election signs or other electioneering material. This includes the display of campaign related signs in windows or on premises.....the logo or any related material shall not be available for use as of January 1st in an election year.”
 - Display of Material in Municipal Buildings (Policy F107), approved by the CAO in November 2008, prohibits the distributing and displaying political material with the exception of facility rentals directly related to an event.

2. Proposed Changes

The following describes the changes contained in the proposed new consolidated and updated "Use of Corporate Resources for Election Purposes Policy" (Attachment 1).

Scope – Local Boards

- 2.1 The existing Policies F5 and F110 do not explicitly state that they apply to local board resources as well as municipal resources. However, the new legislation requires such a policy for local boards.
- 2.2 To ensure consistency and to simplify matters for candidates and registered third parties, Policy F110 has been amended to include "local boards" in Section 2, "Scope". As well, this section has been amended to include anyone acting on behalf of the person covered by the scope of the policy.

Third Party Advertising

- 2.3 The existing policy is silent regarding third party advertising as it was only recently introduced by changes to the MEA.
- 2.4 Policy F110 has been amended throughout, to apply the same restrictions and rules to registered third party advertisers as for candidates.

Definitions

- 2.5 With the addition of "boards" and "third party advertising", staff are recommending that the definitions of each be added to the policy for clarity.
- 2.6 For further clarity additional definitions have also been added such as campaign materials, municipal buildings/facilities, corporate resources, and election period.

Consolidation of Policies

- 2.7 Policies F5 and F110 are inconsistent with regard to the display of materials.

2.8 Section 2 d) of Policy F5 (Political Activities) states:

“The Municipal Administrative Centre, Library facilities and museum buildings, shall not be used by any person, employee or otherwise for the display or distribution of political campaign materials, signage, etc.”

Whereas Section 2 c) of Policy F110 states (which is consistent with the wording from the predecessor Policy H34):

“Candidates may not use any municipal or any municipally-provided facilities for any election-related purposes, which includes displaying of any campaign related signs in the window or on the premises, as well as displaying any election-related material in the office.”

2.9 In the past, the inconsistency has led to confusion for staff and candidates. As well, neither policy is clear as it pertains to rental of advertisement space on lobby monitors or arena boards, and nor is it clear as it pertains to campaigning in a rented space. It is therefore recommended that Policy F110 be amended to,

- a) prohibit campaigning and the distribution or display of campaign material in any municipal or local board facility, municipal or local board event including any municipal or board meetings,
- b) prohibit third party advertising and the distribution or display of third party advertising material in any municipal or local board facility, municipal or local board event including any municipal or board meetings,
- c) prohibit the rental of advertising space on arena boards and lobby monitors, or any other municipal social media site, to third party advertisers or candidates,
- d) notwithstanding, a), b), and c), allow space within a municipal facility (with the exception of the Municipal Administrative Centre, the Library facilities, and the museum buildings) to be rented for election related purposes and to permit, only within the rented area, campaigning, the distribution or display of campaign material, third party advertising and the distribution or display of third party advertising materials, and
- e) grant staff the authority to take the necessary action to enforce any violation of the policy.

- 2.10 It is further recommended that Policy F110 be further amended to include the following new provisions to provide greater clarity:
- “Distribution lists or contact lists developed utilizing Corporate Resources and in the custody and control of the Municipality shall not be utilized for election purposes.”
 - The Policy has been amended to include a reference to the Election Sign By-law as it relates to vehicle and mobile election signs.
- 2.11 Section d) of Policy F5-Political Activities has been covered through the proposed amendments in section 2.09 above. The remainder of Policy F5 has been incorporated into Policy E1 – Code of Ethics (staff) under the approval of the CAO. Therefore, it is commended that Policy F5 - Political Activities be deleted.

3. Concurrence

- 3.1 This report has been reviewed by the Director of Corporate Services, the Facilities Manager of Community Services, the Director of Operations, and the Municipal Solicitor who concur with the recommendations.

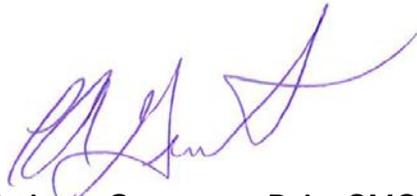
4. Conclusion

- 4.1 To conform to the changes in the *Municipal Elections Act, 1996*, related to use of corporate resources, it is respectfully recommended that the draft by-law contained in Report CLD-008-18 be forwarded to Council for adoption. It is further recommended that the Council Code of conduct be amended to reference Policy F110 Use of Corporate Resources instead of Policy F5 Political Activities, and that Policy F5 Political Activities be deleted.

5. Strategic Plan Application

5.1 The recommendations contained in this report conform to the Strategic Plan.

Submitted by:



C. Anne Greentree, B.A., CMO,
Municipal Clerk

Reviewed by:



Andrew C. Allison, B. Comm, LL.B
CAO

Staff Contact: June Gallagher, Deputy Clerk, 905-623-3379 ext. 2103 or
jgallagher@clarington.net

Attachments:

Attachment 1 - Proposed new Policy F110, Use of Corporate Resources for Election Purposes
(to replace Schedule 1 to By-law 2010-020)

Attachment 2 - Policy F5, "Political Activities"

Attachment 3 - By-law to Repeal and replace By-law 2010-010, being a by-law to adopt the
"Use of Corporate Resources for Election Purposes" Policy

Attachment 4 – By-law to Amend By-law 2017-020 Council Code of Conduct

The following is a list of the interested parties to be notified of Council's decision:

Clarington Local Boards

Corporate Policy

POLICY TYPE:	Operational
SUBSECTION:	???
POLICY TITLE:	Use of Corporate Resources for Election Purposes
POLICY #:	F110
POLICY APPROVED BY:	Council
EFFECTIVE DATE:	April 9, 2018
REVISED:	Not Applicable

APPLICABLE TO: all employees of the Municipality, Candidates, political parties, constituency associations, Registered Third Parties, and persons or groups supporting or opposing a question on a ballot, as well as anyone acting on their behalf

Policy Statement

The *Municipal Elections Act* (MEA), the *Election Finances Act* (Ontario), and the *Canada Elections Act* prohibit the Municipality from making contributions in any form to a Candidate or Registered Third Party.

All provisions contained within this policy shall serve to ensure the protection of freedom of expression while maintaining that:

- Corporate Resources shall not be used during an Election Period to promote or provide an unfair advantage to any Candidate, political party, constituency association, Registered Third Party, or a person or group supporting or opposing a question on a ballot;
- Members of Council shall not be precluded from performing their duties as an elected Official, nor inhibit them from representing the interests of their constituents; and
- Information and communication related to an election shall continue to be open and accessible to the public.

Purpose

The purpose of this policy is to create guidelines in the Municipality of Clarington for all Candidates running for an elected office during the Election Period and to establish parameters on the use of Corporate Resources for election related purposes.

Corporate Policy

Scope

This policy applies to all employees of the Municipality, Candidates, political parties, constituency associations, Registered Third Parties, and persons or groups supporting or opposing a question on a ballot, as well as anyone acting on their behalf.

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Corporate Policy

1 Definitions

- 1.1 Campaign(ing)** means any activity by, or on behalf of a Candidate, political party, constituency association, Registered Third Party, or question on a ballot meant to elicit support during the Election Period. This does not include the appearance of elected officials, other candidates or their supporters, or registrants at an event in their personal capacity without the display of any signage or graphic which identifies the individual as a candidate or registrant and without the solicitation of votes.
- 1.2 Campaign Materials** means any materials used to solicit votes for a Candidate or question during the Election Period including literature, banners, posters, pictures, buttons, clothing, or other paraphernalia. Campaign Materials include materials in all media, for example, print, displays, electronic radio or television, online including websites or social media.
- 1.3 Candidate** means any person who has filed, and not withdrawn a nomination, in a municipal, school board, provincial or federal election or by-election. Where referred to in this Policy, the term Candidate can also be substituted to read political party, constituency association, Registered Third Party, or a person or group supporting or opposing a question on a ballot.
- 1.4 Corporate Resource** means items, staff, services, or resources which are the property of the Municipality of Clarington including materials, equipment, vehicles, facilities, land, technology (computers, smartphones, tablets, etc.), intellectual property, images, logos and supplies. Working hours, the time where the Municipality pays its employees to complete certain duties or tasks, is also considered to be a Corporate Resource.
- 1.5 Election Period** means the official Campaign period of an election for:
- A municipal or school board election; the Election Period commences on the first day prescribed for the filing of nominations in accordance with the MEA and ends on voting day.
 - A provincial or federal election; the Election Period commences the day the writ for the election is issued and ends on voting day.
 - A question on the ballot; the period commences the day Council passes a by-law to put a question to the electorate, and ends on voting day.
 - A by-election; the period commences when the by-election is called and ends on voting day.
- 1.6 Local Board** means a body, municipal service board, or local authority established by the Municipality of Clarington.

Corporate Policy

- 1.7 **MEA** means the *Municipal Elections Act, 1996*, as amended, S.O. 1996, c. 32, Sched.
- 1.8 **Municipal Facility/Building** means any building or facility owned or operated by the Municipality of Clarington or Clarington local board.
- 1.9 **Registered Third Party** shall have the same meaning as “Registered Third Party” under the MEA or “Third Party” under the *Election Finances Act* (Ontario) and *Canada Elections Act*.

2 Responsibilities

- 2.1 Candidates to:
 - Adhere to the guidelines and parameters established by this policy.
- 2.2 Municipal Clerk to:
 - Administer this policy and provide for any related procedures as deemed necessary or desirable for conducting an election.
- 2.3 Municipal Staff to:
 - Ensure that Corporate Resources are not used for Campaigning.

3 General Provisions

In accordance with the spirit and intent of the election related legislation,

- 3.1 Corporate Resources and funding shall not be used by a Candidate for Campaigning or election-related purpose during the Election Period.
- 3.2 This Policy also applies to an acclaimed Member or a Member not seeking re-election.
- 3.3 The Municipal Clerk be authorized and directed to take the necessary action to give effect to this Policy.
- 3.4 This Policy does not preclude a Member of Council from performing their duties as a Councillor, nor inhibit them from representing the interests of their constituents.
- 3.5 Individuals who have questions about this Policy are encouraged to contact the Municipal Clerk to obtain further clarification.

Corporate Policy

4 Corporate Resources - Technology

Further to Section 3.1 above, the following is provided for greater clarity when considering the use of corporate technology resources:

- 4.1 Members of Council are provided access to corporate information technology (I.T.) assets to fulfill their duties and responsibilities as an elected official, but may not use those assets for Campaigning or the development of Campaign Materials. This includes functionality through municipally issued smartphones such as calendar, email, texts, and other such functions.
- 4.2 Websites or domain names that are funded by the Municipality of Clarington may not be used for Campaigning. The Municipality's official election website or webpages will provide Candidate contact information, including a link to a Candidate's website, but shall in no way endorse any Candidate.

Notwithstanding, Candidates may provide a link to the Municipality's official election website or webpages in their campaign materials in order for electors to access additional information about the election and voting process.
- 4.3 Once a Member of Council registers to be a Candidate, any links from a Municipal website or social media account to his or her website or social media pages will be removed from the Municipality's webpages if the Member's website or social media page contains or will contain Campaign Material.
- 4.4 In an election year, Mayor and Council biographies on the Municipal website shall remain static and no changes to these pages will be permitted.
- 4.5 The Municipality's voicemail system shall not be used by Candidates to record campaign-related messages nor shall the computer network, including the email system, be used to distribute Campaign-related correspondence.

5 Corporate Resources - Communications

Further to Section 3.1 above, the following is provided for greater clarity when considering the use of corporate communication resources:

- 5.1 Members of Council may not use Council portraits funded by the Municipality, either as a corporate or Member expense, in Campaign Materials.
- 5.2 Photographs produced for, and owned by, the Municipality may not be used for any election purposes.

Corporate Policy

- 5.3 Candidates may not print or distribute reference to any of the Municipality's email addresses, telephone numbers, or facility addresses on any Campaign Materials.

Notwithstanding, Candidates may provide a link to the Municipality's official election website or webpages in Campaign Materials in order for electors to access additional information about the election and voting process (see also Section 4.2).

- 5.4 The Clerk may develop and distribute information through various means for the purpose of advising and educating electors. Candidates are permitted to promote and distribute election information provided by the Clerk, provided that such information is not modified in any way.

- 5.5 The Municipality's logo, crest, coat of arms, and slogans, or any other images or illustrations owned or under the jurisdiction of the Municipality, may not be used in any Campaign Materials. As per the Use of Corporate Logo by Members of Council Policy (see Report COD-030-11), the logo or any related material shall not be available for use as of January 1st in an election year.

Notwithstanding, Candidates may capture their own photos of Municipal property for use in campaign material, provided the photo is taken from a publicly accessible area, and does not contain a Municipal sign, logo, crest, coat of arms or slogan in the background.

- 5.6 Distribution lists or contact lists developed utilizing Corporate Resources and in the custody and control of the Municipality shall not be utilized for election purposes.

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

- All printing, high speed photocopying and distribution, including printing and general distribution of newsletters unless so directed and approved by Council, and
- The ordering of business cards and stationery.

- 5.8 Members of Council may not,

- Print, post 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,

Corporate Policy

- Profile (name or photograph), or make reference to, in any material paid by municipal funds, any individual who is registered as a candidate in any election,
- Print or distribute any material using municipal funds that makes reference to, or contains the names or photographs, or identifies registered candidates for municipal elections (minutes of Municipal Council and Committee meetings are exempt from this policy).

6 Corporate Resources - Municipality Facilities/Buildings

Further to Section 3.1 above, the following is provided for greater clarity when considering the use of Municipal Facilities/Buildings, including Municipality owned or leased lands, as Corporate Resources:

- 6.1** Any Candidate may attend any public Standing Committee, Advisory Committee or Council meeting; however, they shall not use this forum to speak on, or address, any matter relating to their Campaign.
- 6.2** Candidates are prohibited from renting space (e.g. a booth) as part of a Municipally organized event.
- 6.3** All Candidates must adhere to the provisions set out in any other Municipal Policies pertaining to Municipal Facilities/Buildings.
- 6.4** Members of Council and Candidates may not use their constituency office, municipal or any municipally-provided facilities for any election-related purpose, which includes the display of any Campaign-related signs in the window or on the premises, as well as the display of Campaign Material in the office.
- 6.5** Campaigning and the distribution or display of Campaign Material is not permitted in any municipal or local board facility, on municipal land, or at municipal or local board event including any municipal or board meeting.
- 6.6** Section 6.5 does not prohibit the erection of a temporary election or campaign signs on municipal land in accordance with the Municipality's Election Sign By-law.
- 6.7** Candidates are prohibited from using a Municipal Facility/Building as a campaign office.
- 6.8** Sections 6.4 and 6.5 do not apply to a Candidate or external organization renting space within a municipal facility/building (other than the Municipal Administrative Centre, Clarington Library facilities and the Museum Buildings) for election related purposes during the rental period and within the rented area.
- 6.9** The rental, to candidates, of advertising space on arena boards and lobby monitors, or any other municipal social media site, is prohibited.

Corporate Policy

6.10 Campaigning on public sidewalks and highways is permitted, provided that such campaigning is in compliance with prevailing legislation and Municipal by-laws.

6.11 Vehicle and/or mobile signs may be displayed as per the Municipality's Election Sign By-law.

7 Municipality Staff

7.1 In accordance with the Policy E1 - Employee Code of Ethics, Municipal Staff are prohibited from using corporate resources for the benefit of a Candidate or Campaign. Policy E1 also sets out the rules for participation in political activities by staff.

8 Integrity Commissioner

8.1 The Municipality's appointed Integrity Commissioner is considered to be a Corporate Resource, under contract with the Municipality and may receive, from time to time, compensation from the Municipality in accordance with services provided.

8.2 Members of Council shall not use the services of the Municipality's Integrity Commissioner during the Election Period for the purposes of seeking advice related to their Campaign.

9 Limitation

9.1 Nothing in this Policy shall prohibit a Member of Council from performing their job as a Councillor, nor inhibit them from representing the interests of the constituents who elected them. All tenets of this policy are subject to the exception of Members' actions associated with fulfilling their normal and ongoing representative roles as Members of Council (such as attending annual or regular scheduled events, up until the official end of the term they are serving).

Corporate Policy

POLICY TYPE:	Operational
SUBSECTION:	Communication/Customer Service
POLICY TITLE:	Political Activities
POLICY #:	F5
POLICY APPROVED BY:	Council
EFFECTIVE DATE:	March 21, 2005
REVISED:	October 3, 2011
APPLICABLE TO:	All Employees

1. Purpose:

To protect the integrity of the public service while allowing employees to exercise their democratic rights if they so choose.

2. Policies:

- a) Employees are prohibited from conducting any political activity in the workplace. Such activities include, but are not limited to, the following:
 - i) Making phone calls or stuffing envelopes for a particular candidate
 - ii) Soliciting campaign contributions from subordinates, colleagues or persons/organizations having dealings with the local government
 - iii) Wearing campaign buttons or displaying other visible advertisements for one or more candidate
 - iv) Making public endorsement of one or more candidates
- b) Employees who choose to conduct political activities outside the workplace are discouraged from doing so.
- c) Where an employee chooses to engage in political activity outside the workplace, he/she shall:
 - i) Not coerce, solicit or influence other employees
 - ii) Not represent the Municipality
 - iii) Not prejudice or impair the relationship between Council and Administration.
- d) The Municipal Administrative Centre, Library facilities and museum buildings, shall not be used by any person, employee or otherwise for the display or distribution of political campaign materials, signage, etc.
- e) In order to ensure the integrity of the employer/employee relation, no employee shall participate or be involved in any political activity of a candidate running for municipal election.
- f) Where a Municipal employee seeks an elected office, he/she shall be governed by the Municipal Elections Act.

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The Corporation of the Municipality of Clarington

By-Law No. 2018-XXX

Being a By-law to repeal By-law 2010-010,
to adopt the Use of Corporate Resources
for Election Purposes Policy

Whereas Sub-section 88.18 of the *Municipal Elections Act, 1996*, as amended, (the Act) states that, before May 1 in the year of a regular election, municipalities and local boards shall establish rules and procedures with respect to the use of municipal or board resources, as the case may be, during the election campaign period;

Whereas Sub-section 88.15 (1) of the Act states that 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;

Whereas Section 88.8 (4) 5 of the Act states that a municipality or local board states that a municipality or local board shall not make a contribution to the election campaign of a candidate;

Whereas Council had previously passed By-law 2010-010 adopting the "Use of Corporate Resources for Election Purposes Policy"; and

Whereas the Council of the Municipality of Clarington deems it necessary to update the "Use of Corporate Resources for Election Purposes Policy".

Now Therefore the Council of the Municipality of Clarington enacts as follows:

1. That the attached Policy Statement in respect to Use of Corporate Resources for Election Purposes be adopted to replace the Policy Statement forming part of By-law 2010-010.
2. That Attachment 1, Policy F110, forms part of this By-law.
3. That By-law 2010-010 be repealed.
4. This by-law shall come into force and effect on the date of passing.

Passed in Open Council this ____ day of _____, 2018.

Adrian Foster, Mayor

C. Anne Greentree, Municipal Clerk

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The Corporation of the Municipality of Clarington

By-Law No. 2018-XXX

Being a By-law to amend By-law 2017-020,
Council Code of Conduct

Whereas Policy F5 – Political Activities has been deleted as a result of consolidating parts of the Policy with Policy F110 – Use of Corporate Resources for Election Purposes Policy, to provide clarify and consistency, and

Whereas the Council Code of Conduct makes reference to Policy F5 – Political Activities,

Now Therefore the Council of the Municipality of Clarington enacts as follows:

1. That Schedule A to By-law 2017-020 is amended to delete:

“15.1 (i) Clarington Policy F5 Political Activities”

2. This by-law shall come into force and effect on the date of passing.

Passed in Open Council this ___ day of _____, 2018.

Adrian Foster, Mayor

C. Anne Greentree, Municipal Clerk