

4. 2018 ELECTIONS – AMENDMENTS TO THE CONTRIBUTION REBATE PROGRAM BY-LAW
- ÉLECTIONS 2018 – MODIFICATIONS AU RÈGLEMENT DU PROGRAMME DE REMISE DE CONTRIBUTIONS

### **COMMITTEE RECOMMENDATION**

**That Council approve the amendments to the Contribution Rebate Program as described in this report.**

### **RECOMMANDATION DU COMITÉ**

**Que le Conseil approuve les modifications proposées pour le règlement du programme de remise de contributions comme l'énonce le présent rapport.**

### **DOCUMENTATION/DOCUMENTATION**

1. Manager's report, Legislative Services dated 31 October 2017 (ACS2017-CCS-GEN-0027)

Rapport du gestionnaire, Services législatifs daté le 31 octobre 2017 (ACS2017-CCS-GEN-0027)

**Report to  
Rapport au:**

**Finance and Economic Development Committee  
Comité des finances et du développement économique  
7 November 2017 / 7 novembre 2017**

**and Council  
et au Conseil  
22 November 2017 / 22 novembre 2017**

**Submitted on October 31, 2017  
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**Ward: CITY WIDE / À L'ÉCHELLE DE LA VILLE      File Number: ACS2017-CCS-GEN-0027**

**SUBJECT: 2018 Elections – Amendments to the Contribution Rebate Program By-Law**

**OBJET: Élections 2018 – Modifications au règlement du programme de remise de contributions**

#### **REPORT RECOMMENDATIONS**

**That the Finance and Economic Development Committee recommend Council approve the amendments to the Contribution Rebate Program as described in this report.**

## **RECOMMANDATIONS DU RAPPORT**

**Que le Comité des finances et du développement économique recommande au Conseil d'approuver les modifications proposées pour le règlement du programme de remise de contributions comme l'énonce le présent rapport.**

### **BACKGROUND**

Section 88.11 of Ontario's *Municipal Elections Act, 1996* ("MEA") enables a municipality to pass a by-law that provides for the payment of rebates to persons who contribute to candidates for office on municipal council, and may establish conditions under which such a rebate is paid. The by-law can establish the conditions under which a person is entitled to receive a rebate, and provide for the payment of different rebate amounts to different individuals on any basis.

On March 1, 2002, Councillor Peter Hume tabled a Notice of Motion and provided a background report (ACS2002-CCS-CSE-0005) with respect to the City of Ottawa establishing a contribution rebate program for municipal elections. The "primary objective" of the program was to "level the playing field between corporate and individual donations" to municipal campaigns, and lessen to "the apparent dominance of corporate campaign contributions in the funding of municipal election campaigns and, therefore, reduce the perceived conflicts of interest that linger long after an election has passed". On April 2, 2002, the Corporate Services and Economic Development Committee ("CSEDC") adopted Councillor Hume's motion directing staff to prepare a report on contribution rebate options.

The resulting staff report (ACS2002-CRS-SEC-0084), was considered, amended and approved by the CSEDC on November 19, 2002 and adopted by Council on November 27, 2002. Because of its recent inception and the lack of similar precedents, a source of funding for the program was not identified.

In February 2003, Council passed By-law No. 2003-26, authorizing the payments of rebates to individuals who contributed to candidates running for office on the municipal council in the 2003 elections. As shown in Table 1, this initial by-law followed a formula for calculating rebates similar to that of the Town of Ajax.

**Table 1. Original Contribution Rebate Model – 2003 to 2010 Municipal Elections**

| <b>Contribution Amount</b> | <b>Eligible Rebate</b> |
|----------------------------|------------------------|
| Less than \$50             | No rebate              |

|                   |  |
|-------------------|--|
| \$50 to \$150     | Rebated 75%  |
| \$150.01 to \$300 | Rebated 75% of the first \$150 and 50% of the remaining amount |
| Exceeding \$300   | Rebated \$187.50   |

In preparation for the 2006 municipal elections, staff conducted a review of the Election Contribution Rebate Program. The ensuing report (ACS2005-CRS-CCB-0044) was considered by CSEDC on November 1, 2005, where a motion was adopted recommending the Contribution Rebate Program continue for the 2006 and subsequent elections, unless amended or repealed by Council. The report also identified that the program was not funded and staff did not provide a recommendation regarding the continuation of the program.

Council approved the recommendation from CSEDC to continue the contribution rebate program on November 9, 2005, enacting By-law No. 2005-505 on November 30, 2005, repealing By-law No. 2003-26. A funding source was not identified as one cycle of the program provided insufficient information on which to base an ongoing budget estimate.

Prior to the 2010 municipal elections, staff brought forward a report (ACS2010-CMR-CCB-003) identifying that the Election Contribution Rebate Program created a budget pressure in the past and would continue to do so in the future. In addition, the *Good Government Act, 2009* ("Bill 12") made several amendments to the MEA, including eliminating the carrying forward of surplus campaign funds by candidates from one election to the next. Thereafter, surplus campaign funds would become the property of the municipality.

Staff recommended that, should the program continue, Council establish a separate contribution rebate reserve fund for the 2011 and subsequent budgets to cover the costs associated with the contribution rebate program, and that surplus funds from municipal candidates be directed to that reserve fund. CSEDC approved the staff recommendation on January 19, 2010, and Council approved the Committee's recommendation on January 27, 2010.

During the budget deliberations on March 8, 2011, Council considered the value of having staff review the financial and other related data from the three previous regular elections before evaluating the success of the program. Since the total cost of the program in 2010 was not yet available, Council did not approve a budget allocation for the creation of the contribution rebate program.

Instead, Council directed the City Clerk and Solicitor to prepare a report on the program, taking into account the results from the 2003, 2006 and 2010 municipal elections, offering options for a reduction in the overall cost of the program and how the Province addresses these matters. On November 7, 2011, the Finance and Economic Development Committee (“FEDCO”) received a report (ACS2011-CMR-CCB-0088) with only a preliminary assessment of the contribution rebate program, as the full cost of the 2010 program had not yet been determined. The information report identified five potential options for the program:

- 1) Raising the minimum contribution eligible for rebate;
- 2) Capping rebates at \$50;
- 3) Reducing the rebate percentage;
- 4) Cancelling the program; and
- 5) Assigning a budget to the program.

Council received the report and no further action was taken at the time.

On October 1, 2013, FEDCO received a report entitled “Municipal Elections – Contribution Rebate Program – Options” (ACS2013-CMR-CCB-0063) which offered three options:

- 1) Assign a Budget to the current Contribution Rebate Program;
- 2) Adjust the Rebate Amounts and assign a related budget; and
- 3) Cancel the Program.

The report noted that the program had not yet been allocated a budget and advised that the practice of funding the program from the election reserve fund contributed to the projected overall deficit in that reserve fund. The report also highlighted a desire to continue to encourage individual contributions through the rebate program while also reducing the financial impact of the program.

FEDCO adopted a motion recommending Council approve adjustments to the rebate formula for the Election Contribution Rebate Program, reflected in Option 2 in the staff report, as shown in Table 2 below. The motion also recommended that staff include a corresponding contribution to an election contribution rebate program reserve fund for consideration in the 2014 Draft Budget.

**Table 2. Current Contribution Rebate Model**

| <b>Contribution Amount</b> | <b>Eligible Rebate</b>   |
|----------------------------|--|
| \$25 or less               | No rebate  |
| Between \$25.01 and \$100  | Rebated 50%  |
| Between \$100.01 and \$200 | \$50 plus 25% of the amount by which the contribution exceeds \$100. |
| More than \$200            | \$75   |

The FEDCO recommendation was adopted by Council on October 9, 2013. On October 23, 2013, Council enacted By-law No. 2013-333, amending By-law No. 2005-505, adjusting the formula by which a rebate payment is calculated.

On October 9, 2013, a report to Council proposed a budget increase of \$285,000 to the election reserve fund, assigning an annual contribution of \$71,000 to a separate election contribution rebate reserve fund. As part of the 2014 Budget process, Council increased its annual contribution to the election reserve fund by \$250,000 including \$180,000 for accessibility requirements mandated by legislation and \$70,000 to fund the contribution rebate program.

Following every municipal election, the Province of Ontario reviews the MEA. After the 2014 municipal elections, the Province's review resulted in amendments to the MEA under Bill 181, *Municipal Elections Modernization Act, 2016*. Bill 181, which received Royal Assent on June 9, 2016, made approximately 65 pages of amendments, including mandatory changes to campaign finance rules and expanded the scope of the City Clerk's duties. The report entitled, "Bill 181, the *Municipal Elections Modernization Act, 2016 – Changes to the Municipal Elections Act, 1996*" (ACS2016-CMR-CCB-0051) provides an overview of the amendments to the MEA. FEDCO received it on December 6, 2016, followed by Council on December 14, 2016.

One of the most significant amendments to campaign finance rules in Bill 181 was the prohibition of corporate and trade union contributions to candidates in municipal elections campaigns, including candidates in school board election campaigns. However, corporations and trade unions may register with the municipality where they want to advertise as third party advertisers. They may also contribute to third party advertisers as further described in the MEA and the related report to Council.

Furthermore, the Province introduced some additional changes to the MEA on November 16, 2016, as part of Bill 68 the *Modernizing Ontario's Municipal Legislation*

*Act, 2016*. Bill 68, which received Royal Assent on May 30, 2017, includes changes to the contribution limits to single candidate or third party advertisers, raising the limit from \$750 to \$1,200. The new limit is consistent with contribution limits in the provincial elections. Bill 68 did not change the \$5,000 contribution limit to multiple candidates on a municipal council or school board.

Since the establishment of the Contribution Rebate Program, the Elections Office reviews the program as part of its preliminary preparations for each municipal election. Staff examines its experiences, along with common practices in other municipalities, taking into account questions and feedback received and if necessary, recommends further amendments to the *Contribution Rebate Program By-law*.

The following section provides a review of the Election Contribution Rebate Program to date. It also presents recommended revisions, housekeeping in nature, to the *Contribution Rebate Program By-law* in light of recent amendments to the MEA, as well as revisions to the language intended to bring further clarity to the by-law. There are no policy changes being recommended.

## **DISCUSSION**

The Contribution Rebate Program authorizes the payment of rebates to individuals residing in the Province of Ontario who contribute to candidates for an Office on City Council. The *Contribution Rebate Program By-law* establishes the conditions under which an individual is entitled to receive a rebate. A rebate is payable only if the candidate has complied with the provisions of the by-law, filed an audited financial statement, and any required supplementary audited financial statements. The amount rebated depends on the amount contributed. There are three contribution brackets, with the following corresponding rates, as seen in Table 2 above.

As previously noted, Council's initial intent of the program was to "level the playing field" between individual and corporate municipal contributions. In the four municipal elections (2003, 2006, 2010 and 2014) the program has been in effect, staff have observed that the percentage of individual contributions has increased in relation to the percentage of corporate contributions. Document 1, attached, outlines the breakdown of corporate versus individual contributions for the last four regular elections. It also indicates that the number and total dollar value of contributions, most notably contributions from individuals, can fluctuate from election to election.

No single campaign altered the percentages for the 2014 municipal election. However, it should be noted that in 2014, individuals played a significant role in contributing to candidates running for municipal office. Eighty-eight percent of the total number of

contributions and 76% of the total value of contributions to candidates who participated in the rebate program came from individuals.

Based on the above, it is reasonable to suggest that the Program has achieved Council's initial objectives for same. Furthermore, an examination of participating versus non-participating campaigns reflects who participated in the program collected a higher percentage of contributions from individuals.

In each of the last four regular elections, more than half of the candidates signed up to participate in the Program. While the number of candidates who signed up for the program dropped as a percentage of total campaigns in 2010, the number has increased over the four elections. This is marked especially with the highest percentage of total campaigns signing up for the program in 2014, as seen in Table 3.

**Table 3. Total Number of Candidates who signed up for the Contribution Rebate Program from 2003 to 2014**

|  | 2003 | 2006 | 2010 | 2014 |
|--|------|------|------|------|
| No. of candidates who signed up for the program        | 52   | 64   | 81   | 106  |
| No. of candidates who did not sign up for the program  | 25   | 36   | 69   | 26   |
| Percentage of candidates who signed up for the program | 68%  | 64%  | 54%  | 80%  |

It is also worth noting that over the last four elections, a strong majority of elected candidates participated in the rebate program, with 100% of elected Members of Council participating in the contribution rebate program in the 2014 municipal elections.

Documents 2, 3, 4, 5 respectively summarize the number of candidates, those who signed up for the Program and those who participated by complying with the By-law. Furthermore, they reflect the potential rebate totals for each of the 2003, 2006, 2010 and 2014 regular municipal elections' contribution rebate programs, as well as the total amount of contributions to candidates who did not participate in the Program.

As mentioned previously, the Province recently introduced amendments to the MEA, now prohibiting corporations and trade unions from contributing to candidates for municipal office while allowing for corporate and trade union contributions to Third Party Advertisers. The recent changes to the MEA are discussed below.

Amendments under Bill 181- *Municipal Elections Modernization Act, 2016*



## Campaign Finances

Formerly, the MEA specified eligible contributors to candidates in a municipal election as individuals, corporations and trade unions. Bill 181, the *Municipal Elections Modernization Act, 2016*, recently introduced amendments to campaign finance rules in Section 88.8 through 88.18 of the MEA, setting out rules with respect to contributions and limits and the duties of candidates.

Bill 181 imposed a prohibition of corporate and trade union contributions for all candidates of municipal office, including school board trustees. While corporations and trade unions are now prohibited to contribute to municipal campaigns, they may register with the municipality where they want to advertise as third party advertisers. Becoming a third party involves a formal registration process with the City Clerk, including the verification that registrations are qualified and compliant with the MEA.

The ban on corporate and trade union contributions to candidates does not apply to registered third parties. For the purposes of the MEA, third parties are considered to be Ontario residents, corporations and trade unions who are not candidates in an election and who incur advertisement costs related to the promotion, support or opposition of a candidate, or take a position on a “yes” or “no” question on the ballot, in any broadcast, print, electronic, or other medium. Registered third parties are also permitted to hold fundraisers to raise money to finance their advertising campaigns. Third parties are required to file financial statements and auditor’s reports with the City Clerk. However, they are not eligible to participate in the Contribution Rebate Program, nor are contributors to third parties eligible for the payment of rebates.

That said, the new provisions of the MEA permit corporations and trade unions to participate in municipal elections, albeit in a different manner. The eventual impact of third party advertisements, and the contributions to third parties, is unknown at this time. Accordingly, the original purpose of the contribution rebate program, which was to encourage greater participation from individual contributors, continues to be relevant.

As a result, staff recommend expanding Section 2 of the *Contribution Rebate Program By-law* to reflect changes made to the MEA under Bill 181, further clarifying those not eligible for the payment of rebates with:

**Contributions to candidates for school board trustees are not eligible for the payment of rebates. Contributions to registered third parties in relation to the election in the municipality are also not eligible for the payment of rebates.**

Adding Clarity to the *Contribution Rebate Program By-law*

The *Contribution Rebate Program By-law* facilitates the administration of the program by authorizing the payment of rebates and establishing the conditions under which an individual is entitled to contribute and receive a rebate.

Recommended amendments are set out below to bring further clarity to the *Contribution Rebate Program By-law*. The recommended revisions to the by-law are housekeeping in nature and include an added definition, amendments to filing deadlines and minor clarifications on language. These are based on questions received and minor administrative challenges encountered by the Elections Office with respect to the administration of the contribution rebate program. Some of the bigger housekeeping amendments are outlined below, while Document 6 provides a more thorough outline of the revisions.

### **Contribution Rebate Program By-law Definitions**

The success of the Program is dependent on the participation of two individuals, the contributor and the candidate. This includes the participation of both individuals who contribute to candidates for municipal office and candidates who receive contributions from individuals. The purpose of the Program is to provide for the payment of rebates to individuals who contribute to candidates for municipal office, yet to receive a payment for a rebate, a candidate to whom an individual contributed must participate in the program by fully complying with the provisions of the by-law.

While, the current By-law provides the conditions for both individuals and candidates to participate in the program, it only defines “individual”. In accordance with the MEA, the By-law defines “individual” as an individual residing in the province of Ontario.

To clarify the responsibilities of the individuals involved in the contribution rebate program, staff recommend adding a definition of a “participating candidate” as follows:

**“participating candidate” means a candidate for an office on the municipal council who has submitted a completed application form to the City Clerk for the purpose of participating in the Contribution Rebate Program and who meets the requirements of this by-law.**

For the purposes of consistency and clarity, it is recommended that every mention of “candidate” be repealed and replaced with “participating candidate” in the *Contribution Rebate Program By-law*.

### **Amending Filing Deadlines**

To comply with the *Contribution Rebate Program By-law* candidates must submit financial statements to the City Clerk. The current by-law states that individuals must

submit the original and signed version of the application for participation in the Contribution Rebate Program to the City Clerk, on or before on the date that is 90 days after the filing deadline for the financial statement for the candidate. The same timeline is applied for supplementary financial statements if a candidate's campaign period is extended. In accordance with the MEA and the current *Contribution Rebate Program By-law*, the deadline for the supplementary financial statement is the day after Christmas in the year after the election. Table 4, shown below, compares the financial deadlines according to the current by-law and the recommended financial deadlines.

**Table 4. Financial Deadlines for the 2018 Municipal Election**

|                                  | <b>Filing Deadline<br/>(MEA)</b> | <b>90 days after the<br/>filing deadline<br/><br/>(current)</b> | <b>60 days after the<br/>filing deadline<br/><br/>(recommended)</b> |
|----------------------------------|----------------------------------|---|---|
| <b>Financial Statement</b>       | March 29, 2017                   | June 27, 2019   | May 28, 2019  |
| <b>Supp. Financial Statement</b> | September 27, 2017               | December 26, 2019   | November 26, 2019   |

In order to avoid an administrative challenge during a holiday period, staff recommend adjusting the timeline for the submission of individuals' applications to the program to 60 days after the filing deadline for the supplementary financial statements.

To ensure procedural consistency, staff recommend also amending the timeline for the submission of individuals' applications to the program to 60 days after the filing deadline for the financial statement for the candidate.

### **Consolidating By-laws**

Council established the Program by enacting its first by-law (By-law No. 2003-26) in 2003. In 2005, By-law No. 2005-505 replaced the former when Council approved the continuation of the program for the 2006 municipal elections and subsequent elections. Finally, in 2013, Council enacted By-law No. 2013-333, adjusting the formula by which a rebate payment is calculated. This was an amendment only to By-law No. 2005-505. The recommended By-law proposes to consolidate By-law No. 2005-505 and By-law No. 2013-333 to ensure the *Contribution Rebate Program By-Law* provisions are clear and understandable for candidates and their auditors.

### The Cost of the Contribution Rebate Program

Since the establishment of the Program, the City has paid out \$1.13M in rebates originally from the Election Reserve Fund for over three regular elections and one by-election in Ward 1 – Orléans (the 2006 By-election in Ward 1 payments were approximately \$8,400 to 83 individuals), and then the Election Contribution Rebate Reserve Fund over one regular election in 2014.

Document 7 demonstrates comparative statistics relative to rebate payments for the last four regular municipal elections. The table also indicates the total value of rebate payments to individual contributors has decreased by 70% from 2010 to 2014, while the number of individual contributions has only decreased by 13%. These observations may be attributed to the formula change in 2013. By amending the formula, Council reduced the budget impact on the contribution rebate program and further achieved their initial goal of encouraging contributions by individuals.

Document 8, entitled “2014 Contribution Rebate Programs by Ontario Municipalities,” provides an overview of the similarities and differences of the 2014 rebate programs in relevant Ontario municipalities.

#### **RURAL IMPLICATIONS**

N/A

#### **CONSULTATION**

N/A

#### **COMMENTS BY THE WARD COUNCILLOR(S)**

This is a City-wide report.

#### **ADVISORY COMMITTEE(S) COMMENTS**

N/A

#### **LEGAL IMPLICATIONS**

There are no legal impediments to Council’s consideration of this report.

#### **RISK MANAGEMENT IMPLICATIONS**

N/A

#### **FINANCIAL IMPLICATIONS**

Costs related to the Contribution Rebate Program are funded through the election reserve. There is no budget pressure resulting from the recommendations in this report.

### **ACCESSIBILITY IMPACTS**

The Elections Office will provide candidates and third party advertisers with information about accessibility, such as the “Candidate’s Guide to Accessible Elections,” published by the Association of Municipal Managers, Clerks and Treasurers of Ontario (AMCTO).

### **TERM OF COUNCIL PRIORITIES**

N/A

### **DISPOSITION**

Following Council's approval of this report, staff will prepare a new By-law to repeal and replace By-law 2005-505, as amended.