2018 Municipal Election Candidate and Third Party Advertiser Information Session

Dufferin County

June 28, 2018

DISCLAIMER

- These slides are provided by the Ministry of Municipal Affairs for convenience only.
- The slides should not be considered legal advice. These slides are not meant to replace provincial legislation. For more specific information, please refer to the relevant legislation and regulations which can be found online at www.e-laws.gov.on.ca.
- As local facts and circumstances are variable, users should obtain their own legal and professional advice when specific issues arise.

OVERVIEW

- Roles and responsibilities of elected officials, staff and third party advertisers
- Eligibility rules
- Nomination process
- Campaign finances
- Compliance audit
- Voters' list and voting proxy
- Scrutineers
- Recounts
- Resources

WHY RUN FOR OFFICE?

ROLE OF COUNCIL

Section 224 of the *Municipal Act, 2001*

It is the role of council to:

- represent the public and to consider the well-being and interests of the municipality
- develop and evaluate the policies and programs of the municipality
- determine which services the municipality provides
- ensure that administrative and controllership policies, practices and procedures are in place to implement the decisions of council

ROLE OF COUNCIL (cont'd)

It is the role of council to:

- ensure the accountability and transparency of the operations of the municipality, including the activities of the senior management of the municipality
- maintain the financial integrity of the municipality
- carry out the duties of council under the *Municipal Act, 2001* or any other Act

ROLE OF COUNCIL (cont'd)

It is also the role of council to:

- conduct meetings
- pass bylaws
- develop policies with respect to:
  - accountability and transparency
  - notice
  - delegation of authority
  - hiring
  - disposition and sale of land
  - procurement of goods and services
  - relationship between council and staff*
  - protection of tree canopy and natural vegetation*
  - pregnancy and parental leaves*

*The requirement for council to develop these policies comes into effect on March 1, 2019.

ROLE OF HEAD OF COUNCIL

Section 225 of the *Municipal Act, 2001*

It is the role of head of council to:

- act as the chief executive officer
- preside over council meetings "so that its business can be carried out efficiently and effectively"
- provide leadership to the council
- provide information/recommendations to council on policies, practices, procedures, to ensure transparency and accountability
- represent the municipality at official functions
- carry out the duties of the head of council under the *Municipal Act, 2001* or any other Act

ROLE OF HEAD OF COUNCIL (cont'd)

As the chief executive officer of the municipality, the head of council shall:

- uphold and promote the purposes of the municipality
- promote public involvement
- act as the representative and promote the municipality locally and elsewhere
- participate in and foster activities that enhance the economic, social and environmental well being of the municipality and its residents

ROLE OF MUNICIPAL STAFF

It is the role of municipal staff to:

- implement council's decisions and establish administrative practices and procedures to carry out council's decisions
- undertake research and provide advice to council on the policies and programs of the municipality
- carry out duties required under legislation and as assigned by council

COUNCIL/STAFF ROLES AND RESPONSIBILITIES

Governance Council	Leadership	Management Staff
▪Representing the community ▪Setting direction and policy ▪Overseeing and being accountable for public funds and trust	▪Developing vision and goals ▪Aligning people and resources with vision and goals ▪Motivating and inspiring ▪Measuring progress ▪Being accountable and transparent	▪Managing people and resources, information and actions to achieve goals ▪Planning, organizing and delivering ▪Being accountable to council for work undertaken on its behalf

ROLE OF SCHOOL BOARD TRUSTEE

- School board trustees are members of the school board.
- Trustees are locally-elected representatives of the public, and they are the community's advocate for public education.
- The *Education Act* creates four different kinds of school boards:
  - (i) English-language public district school boards,
  - (ii) English-language separate district school boards,
  - (iii) French-language public district school boards, and
  - (iv) French-language separate district school boards

ROLE OF SCHOOL BOARD TRUSTEE (cont'd)

The role of a school board trustee is to:

- establish policy direction
- participate in making decisions that benefit the entire school board while representing the interests of constituents
- be accountable to:
  - constituents
  - Ministry of Education
  - families
  - community

ELIGIBILITY TO RUN FOR MUNICIPAL OFFICE

What are the qualifications to run for municipal office?

- A resident, non-resident owner or tenant or spouse of a non-resident owner or tenant
- A **Canadian citizen**
- 18 years of age or older
- Not legally prohibited from voting
- Not disqualified by any legislation from holding municipal office

NOT ELIGIBLE TO RUN FOR MUNICIPAL OFFICE

Who is not eligible to run for municipal office?

- any person not eligible to vote in the municipality
- an employee of the municipality (unless a leave of absence is taken before nomination and the employee resigns if elected)
- a judge of any court
- a member of the Ontario Legislature, Senate or House of Commons
- a person who was a candidate in the previous election and did not file a campaign financial statement by the deadline

ELIGIBILITY TO RUN FOR SCHOOL BOARD TRUSTEE

What are the criteria to run for school board trustee?

- a resident within the jurisdiction of the board
- eligible to vote for school board election

On the day the candidate files a nomination, they must:

- be a Canadian citizen aged 18 or older
- meet any other qualifications to vote for the school board (for example – being a Roman Catholic, or hold French language rights)

NOT ELIGIBLE TO RUN FOR SCHOOL BOARD TRUSTEE

Who is not eligible to run for school board trustee?

- any person who is not eligible to vote for the school board
- an employee of any school board who has not taken an unpaid leave of absence
- municipal officials
- a judge of any court
- a member of the Ontario Legislature, Senate or House of Commons
- a person who was a candidate in the previous election and did not file a campaign financial statement by the deadline

THIRD PARTY ADVERTISER

- A third party advertiser is an individual, corporation or trade union that is registered in the municipality to promote, support or oppose a candidate or a "yes" or "no" answer to a question on the ballot.

- A third party advertisement means an advertisement in any broadcast, print, electronic or other medium that has the purpose of promoting, supporting or opposing,
  a) a candidate, or
  b) a "yes" or "no" answer to a question on the ballot.

ELIGIBILITY TO REGISTER AS A THIRD PARTY ADVERTISER

The following are eligible to be a registered third party advertiser in a municipal election:

- an individual
- a corporation
- a trade union

NOT ELIGIBLE TO REGISTER AS A THIRD PARTY ADVERTISER

The following persons and entities are not eligible to file a notice of registration:

- a candidate whose nomination has been filed under section 33
- a federal political party registered under the *Canada Elections Act* (Canada) or any federal constituency association or registered candidate at a federal election endorsed by that party
- a provincial political party, constituency association, registered candidate or leadership contestant registered under the *Election Finances Act*
- Crown in right of Canada or Ontario, a municipality or a local board
- any group or association that is not a corporation

NOMINATION PROCESS

- Nominations can be submitted beginning Tuesday, May 1, 2018.
- Nomination day is Friday, July 27, 2018 (between 9:00 am and 2:00 pm).
- Withdrawal of a nomination must be filed with the clerk's office in writing before 2:00 pm on nomination day.
- It is recommended that a candidate personally attend at the clerk's office to withdraw a nomination.
- Clerk must certify nominations by 4:00 pm on Monday following nomination day (July 30, 2018).

NOMINATION PROCESS (cont`d)

- Candidates must complete Form 1 (nomination paper) and submit it to the municipal clerk with the filing fee:
  - $200 for head of council or
  - $100 for all other offices
- The clerk may require candidates to show proof of eligibility or fill out a declaration that the individual is eligible to run.
- In a ward system, an eligible voter in the municipality may run in any ward.

NOMINATION PROCESS
25 SIGNATURE REQUIREMENT

- The nomination for an office on council must be endorsed by at least 25 persons on the official form provided by the province.
- Persons endorsing a nomination must be eligible to vote in an election for an office within the municipality if a regular elections was held on the day that the person endorses the nomination.
- Individuals may endorse more than one nomination.
- The clerk is entitled to rely upon the information filed by the candidate.

RUNNING FOR A DIFFERENT OFFICE

- Occasionally a candidate changes their mind and decides to run for a different office
- A candidate may only run for one office at a time
- If a candidate files a second nomination, the first nomination is deemed to be withdrawn
- If a candidate decides to run for a different office on the same council or as a school board trustee and both are elected at large, everything from the first campaign is transferred to the second campaign.
- Note: If a candidate was running for an at-large council position and decided to run for the head of council position the nomination filling fee would need to be topped up to $200.00.
- If one or both of the offices is/are elected by ward, the two campaigns must be kept separate and a separate nomination filing fee would be required.

REGISTRATION OF THIRD PARTY ADVERTISERS

- Individuals, corporations and trade unions will be required to identify themselves and provide mandatory information on all advertising.
- There is no registration fee for third party advertisers.
- A third party advertiser would register in the local municipality with the clerk responsible for conducting an election.
- Third parties may advertise in support of or opposition to any candidate being elected by voters in that municipality.
- Registration for questions on the ballot would be included in third party advertising.
- For a regular election, the registration cannot be filed earlier than May 1, 2018 and cannot be filed later than the Friday, October 19, 2018, during the clerk's office hours.

CONTRIBUTIONS

- Candidates and third party advertisers do not have to open a bank account if they do not raise or spend money.
- A contribution includes money, goods or services.
- Contributions to candidates from trade unions and corporations are prohibited in municipal elections.
- Corporations and trade unions can contribute to third party advertisers.
- Municipalities and local boards are required to set policies about the use of municipal or board resources during the campaign period.
- Municipalities or local boards providing information to the public on a website or other electronic means is not a contribution.

CONTRIBUTIONS (cont'd)

- Candidates can accept contributions from:
  - individuals who are normally resident in Ontario
  - the candidate and their spouse
- Third party advertisers may accept contributions from individuals normally resident in Ontario, trade unions that holds bargaining rights for employees in Ontario and corporations that carry on business in Ontario.
- The rules for determining if corporations are deemed to be a single corporation have been simplified.
- Corporations are deemed to be a single corporation if one of the corporations controls the others, directly or indirectly, or if all of the corporations are owned or controlled by the same person or group of persons either directly or indirectly.

CONTRIBUTIONS (cont'd)

Neither candidates nor third party advertisers can accept contributions from:

- federal political party, constituency association or a registered candidate in a federal election
- provincial political party, constituency association or a registered candidate or leadership contestant
- federal or a provincial government
- a municipality
- a school board
- a business or group that is not a corporation

CONTRIBUTIONS (cont'd)

- Contributions over $25 may be by cheque or money order or by a method that clearly shows where the funds originated.
- If goods sold to raise funds are sold for $25 or less, that amount is considered campaign income, not a contribution.
- Donations under $25 at fundraising events are not contributions.
- Ticket price of fundraiser is a contribution.
- Receipts must be issued for each contribution and should include the name, address, amount and date of the contribution
- No anonymous contributions except for pass the hat collections (limited to $25).

CONTRIBUTION LIMIT

- The limit on contributions to any one candidate or registered third party advertiser is $1,200.
- Contributors are limited to an aggregate total of $5,000 to any number of candidates running for the same council or school board.
- Contributors are limited to an aggregate total of $5,000 to any number of third party advertisers registered in the same municipality.
- Limit applies whether it is one large contribution or the total of a number of smaller contributions or combination of money, goods and services
- Candidates and third party advertisers are required to inform contributors of contribution limits.

SELF-FUNDING LIMIT

- There is now a limit on the amount that a candidate for a municipal council can make to their own campaign. This limit also applies to contributions made by the candidate's spouse.
- This limit is based on the number of electors voting for the office, to a maximum of $25,000 per candidate:
  - $7,500 + $0.20 per elector for head of council
  - $5,000 + $0.20 per elector for other council offices
- These contributions must be deposited into the campaign account, a receipt provided and contributions reported on the financial statement.

BORROWING

- Loan - only from bank or other recognized lending institution in Ontario and paid directly to campaign account.
- Loans may only be guaranteed by the candidate or their spouse.
- Generally, the same borrowing rules apply to third party advertisers.

CAMPAIGN EXPENSES

For the purposes of the *Municipal Elections Act, 1996*, the following are considered campaign expenses:

- Candidates – costs incurred for goods or services by or under the direction of a candidate wholly or partly for use in their election campaign are expenses.
- Third party advertisers – costs incurred by or under the direction of an individual, corporation or trade union for goods or services for use wholly or partly in relation to third party advertisements that appear during an election in a municipality are expenses.

CAMPAIGN EXPENSES (cont'd)

A campaign expense includes:

- any expense incurred for goods and services in relation to an election
- the replacement value of any goods held in inventory from a previous election
- the equivalent value of any contribution of goods and services for use in whole or in part

CAMPAIGN EXPENSES (cont'd)

Changes to the *Municipal Elections Act, 1996* since the last regular election:

- The nomination fee is not a campaign expense.
- After the 2018 election, campaign deficits cannot be carried forward from the previous campaign.
- Expenses related to preparation of the auditor's report, where one is required, that accompanies the financial statement can be incurred after December 31.

SPENDING LIMIT

- Ontario Regulation 101/97
- Head of council: $7500 + 85 cents per elector
- All other offices: $5000 + 85 cents per elector
- Maximum amount for parties etc. after voting day – 10% of the above calculated amounts.
- The clerk's calculation of the spending limit is final.

SPENDING LIMIT (cont'd)

- The clerk will provide both candidates and third party advertisers with two certificates:
  - preliminary estimate – when filing a nomination form or when registering as a third party advertiser, based on the 2014 voter's list
  - Amount based on the 2018 voter's lists which will be provided by September 25
- The higher of the two amounts is the spending limit.
- A 10% spending limit is in effect for parties and expressions of appreciation after the close of voting .

EXPENSES NOT SUBJECT TO THE SPENDING LIMIT

Expenses that are not subject to the general campaign spending limit include:

- holding a fundraising event or activity
- expenses related to a recount
- expenses incurred by a candidate with a disability that are directly related to the disability
- audit and accounting fees
- expenses related to a compliance audit
- expenses related to a court action for a controverted election
- expenses incurred after voting day

(Note: expenses related to a recount and controverted elections do not apply to third party advertisers.)

THIRD PARTY ADVERTISER SPENDING LIMIT

- Third party advertisers will be subject to two spending limits:
  - a general spending limit
  - a separate limit for expenses related to parties and expressions of appreciation after the close of voting.
- Changes proposed to O. Reg. 101/97 include the following formula for calculating third party spending limits: $5,000 plus $0.05 per elector, to a maximum of $25,000.
- The formula used is based on the number of electors entitled to vote in an election in the municipality.
- The *Municipal Elections Act, 1996* also provides that the spending limit for parties and other expressions of appreciation after voting day be set at 10% of the general spending limit. This would be consistent with the spending limit in place for candidates.

CAMPAIGN FINANCE RULES

- Campaign finance rules for candidates (sections 88.8-88.11 and 88.15-88.20 of the *Municipal Elections Act, 1996*).
- Campaign finance rules for third party advertisers (sections 88.12-88.14 and 88.21).
- A campaign bank account must be opened for election campaign purposes prior to spending money or accepting contributions.
- All contributions of money must be deposited in the campaign account.

CAMPAIGN FINANCE RULES (cont`d)

- Accurate record keeping is a legislated requirement.
- Candidates and third party advertisers must keep records of:
  - receipts issued for every contribution
  - value of every contribution
  - whether contribution is in form of money, goods or services
  - contributor's name and address
  - every expense including the receipts obtained for each expense.
- All campaign financial records must be retained until after November 15, 2022 once the new council/local board has been sworn in.

CAMPAIGN FINANCE RULES (cont`d)

As a best practice, candidates and third party advertisers should:

- ensure that receipts are stored in a secure place
- have a multi-part receipt (one for contributor, one for candidate to keep).
- make sure that receipts are sequentially numbered
- consider including contribution limits on the receipt
- have the bank provide monthly statements and cancelled cheques for the account
- produce duplicate deposit slips for every deposit
- maintain a petty cash fund

CAMPAIGN ADVERTISEMENTS

- Candidates and third party advertisers cannot cause an election campaign advertisement to appear unless they provide the following information to the broadcaster or publisher in writing:
  - the name of the candidate/registered third party advertiser
  - the name, business address and telephone number of the individual who deals with the broadcaster or publisher under the direction of the candidate/registered third party advertiser
  - the third party advertiser must also include the name of the municipality where the third party advertiser is registered.
- No broadcaster or publisher shall cause a campaign or third party advertisement to appear unless this information has been provided.
- The restricted period for third party advertisements is May 1, 2018 until the close of voting on voting day on October 22, 2018.

CAMPAIGN ADVERTISEMENTS (cont'd)

- The broadcaster or publisher of a third party or candidate advertisement shall maintain records containing the following information for a period of four years after the date the advertisement appears and shall permit the public to inspect the records during normal business hours:
  - the name of the candidate/registered third party advertiser
  - the name, business address and telephone number of the individual who deals with the broadcaster or publisher under the direction of the candidate/registered third party advertiser
  - a copy of the advertisement, or the means of reproducing it for inspection.
  - a statement of the charge made for its appearance.

FINANCIAL STATEMENT

- Candidates and third party advertisers must file their financial statement on or before 2:00 pm Friday, March 29, 2019.
- If a candidate/third party advertiser feels that they will not meet the deadline, they may apply to the courts for an extension prior to the March 29, 2019 deadline.

FINANCIAL STATEMENT (cont'd)

- All contributions must be reported.
- The names of contributors who contribute more than $100 must be reported on the financial statement.
- The clerk is required to make financial statements available to the public in an electronic format free of charge.
- Financial statements must include an auditor's report if expenses or contributions exceed $10,000.

FINANCIAL STATEMENT (cont'd)

- Candidates can close their campaign and file their financial statement before December 31, 2018.
- Clerks are required to make public a report (on a website or in another electronic format) setting out all candidates and third party advertisers and indicating whether each candidate/third party advertiser complied with the filing requirements by April 30, 2019 (or within 90 days of a by-election).
- Clerks can determine conditions and limits regarding electronic filing of financial statements.

FINANCIAL STATEMENT (cont'd)

- The candidate's nomination fee is refundable only if the financial statement is filed on time.
- A candidate or third party advertiser who misses the filing deadline may file within a 30-day grace period, provided a $500 late filing fee is paid to the municipality.
- A candidate or third party advertiser may resubmit a financial statement to correct an error up until the filing deadline.

SURPLUS

- Entire amount of a campaign surplus must be paid to the clerk.
- A candidate or third party advertiser is entitled to a refund of any contributions they (or their spouse, if an individual) made to the campaign before the filing of the financial statement and the payment of the surplus to the clerk.
- The clerk holds the surplus monies in trust for the candidate in the event of a compliance audit.
- The clerk holds the surplus monies in trust by the third party advertiser in the event of a compliance audit.
- If there is no compliance audit, the surplus becomes the property of the municipality or school board.

COMPLIANCE AUDIT

- Every council and school board must establish a compliance audit committee.
- A member of a compliance audit committee cannot be a candidate, a member or employee of a council or school board or a registered third party advertiser.
- The clerk reviews contributions to candidates and third party advertisers and prepares a report for consideration by the compliance audit committee.
- If the clerk determines that a contributor has exceeded the contribution limits, the clerk will provide a report to the compliance audit committee, which will determine whether or not to proceed with legal action.
- The clerk then sends the report regarding contributors to trustee candidates to the secretary of the school board, who will forward the report to the school board`s CAC.
- A qualified elector may apply to the compliance audit committee for a review of a candidate's or third party advertiser's campaign finances even if the candidate or third party advertiser hasn't filed a financial statement.
- The committee will consider the application and decide whether to retain an auditor.

COMPLIANCE AUDIT (cont'd)

- Compliance audit committee meetings are required to be open to the public but the committee may deliberate in private.
- Electors will be able to apply for a compliance audit of a third party advertiser's campaign finances.
- The compliance audit committee is required to provide brief written reasons for its decision.
- If the auditor's report concludes that a contravention of the *Municipal Elections Act, 1996* has occurred, the committee will decide whether or not to proceed with a legal proceeding.

OFFENCES

It is an offence to directly or indirectly:

- offer, give, lend or promise to give any valuable consideration connected to the exercise or non-exercise of an elector's vote
- offer a person money or other valuables in order to convince them to run for office or refrain from running for office
- give, procure or promise to procure an office or employment to induce a voter to vote or not vote, or a candidate to run or not run for office.

PENALTIES

In general, the following penalties are available to the courts upon conviction for an offence under the *Municipal Elections Act, 1996*:

Individual

- maximum fine of $25,000
- up to six months imprisonment
- ineligibility to run in the next general election or if convicted of corrupt practices: bribery to vote in next general election

Candidate

- penalties listed above, plus
- fines for excess campaign expenses
- forfeiture of office if offence committed knowingly

Trade union and corporation

- maximum fine of $50,000

VOTERS' LIST

- The preliminary list of electors, as corrected by the clerk, becomes the voters' list on September 1, 2018.
- The clerk determines how and when individuals can apply to have their name and information corrected or added to or removed from the voters' list.
- The clerk can also remove a name from the list if the clerk becomes aware that the person has died.

VOTERS' LIST (cont'd)

- One copy of the voters` list can be provided to each municipal candidate or trustee candidate (request must be made to the clerk in writing).
- Candidates running in a ward are entitled only to that portion of the list that contains the names of the electors entitled to vote for that office.
- Copies of the voters' list are not available before September 1, 2018.
- The voters' list shall not be posted in a public place.
- The voters' list shall not be made available to the public by posting on an internet website or via any other print or electronic medium of mass communication.
- Third party advertisers are not eligible to receive a copy of the voters' list.

VOTERS' LIST (cont'd)

- The clerk may require anyone who receives a copy of the list to sign a receipt acknowledging the list is only to be used for election purposes and any other use would be in violation of the *Municipal Elections Act, 1996.*
- An elector's name shall appear only once on the list
- In a ward system, an elector is entitled to vote only in the ward where he or she resides.

VOTING PROXY

- A person who is entitled to be an elector in a local municipality may appoint another person who is also entitled to vote as their voting proxy.
- No proxy appointments can be made until nominations close.
- A voter must directly appoint another eligible voter by name as their proxy.
- A person may only act as the voting proxy for one person, unless they are acting on behalf of a spouse, sibling, parent, child, grandparent or grandchild.
- The prescribed proxy form must be completed by the individual appointing the proxy.

Note: if the municipality is using alternative voting you should verify with the clerk whether or not proxy voting is permitted.

SCRUTINEERS

- The scrutineer must have written proof of authorization from the candidate
- Clerk may require an oath of secrecy
- During the regular election process, only one candidate or scrutineer per ballot box
- Scrutineers are not permitted to touch ballots
- Third party advertisers cannot appoint scrutineers
- No age restriction on scrutineers
- No “campaigning” within the voting place

RECOUNTS

- In the event of a tie, a recount is automatic.
- In addition:
  - councils and school boards may establish policies prior to the election setting out additional conditions for an automatic recount
  - council may pass a resolution for a recount within 30 days after clerk declares the election results
  - an eligible elector may apply to the Superior Court of Justice for a recount within 30 days after clerk declares election results
- In all instances the recount must happen within 15 days of the clerk receiving a court order or council passing a resolution to conduct a recount.
- Recount must be held in the same manner as the original count.

KEY DATES

- Opening of nominations/registration as third party advertiser: May 1, 2018
- Nomination day: Friday, July 27, 2018
- Voting day: Monday, October 22, 2018
- Candidate campaign period: from filing of nomination until Wednesday, December 31, 2018
- Third party advertiser campaign period: from registration until December 31, 2018
- Campaign financial statement filing deadline: Friday, March 29, 2019 at 2:00 pm

RESOURCES

- e-laws
  - *Municipal Elections Act, 1996*
  - *Municipal Act, 2001*
  - *Municipal Conflict of Interest Act*
  - *Education Act*
  - https://www.ontario.ca/laws
- MMA municipal elections website: http://ontario.ca/municipalelections
- Municipal World: http://www.municipalworld.com

QUESTIONS

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