

Clause embodied in Report No. 13 of the Administration Committee, as adopted by the Council of the City of Toronto at its meeting held on October 29, 30 and 31, 2002.

5**2003 Contribution Rebate Program**

(City Council on October 29, 30 and 31, 2002, amended this Clause:

(1) *by amending Recommendation No. (2) of the Administration Committee to now read as follows:*

“(2) the Contribution Rebate Program pay for monetary donations and goods and services in-kind; and”;

(2) *to provide that the \$50.00 contribution level be reduced to \$25.00;*

(3) *by amending Appendix “A”, entitled “Proposed Contribution Rebate Program”, embodied in the report dated August 7, 2002, from the City Clerk:*

(i) to provide that the words “Corporations and Trade Unions” be added thereto, mutatis mutandis; and

(ii) by deleting therefrom, the following Part 13:

“13. In accordance with subsection 82(5) of the Act, any campaign surplus paid by a candidate to the Clerk under section 79 of the Act will become the property of the City of Toronto.”; and

(4) *by adding thereto the following:*

“It is further recommended that all rebate cheques issued by the City Clerk identify the candidate(s) for whom the contribution was made.”)

The Administration Committee recommends the adoption of the following report (August 27, 2002) from the City Clerk subject to amending the Recommendations embodied therein to read as follows:

“It is recommended that:

(1) City Council authorize the payment of rebates to persons who make contributions to candidates for office on the Council of the City of Toronto during the 2003 municipal election and the Contribution Rebate Program be as outlined in Appendix “A” of this report;

- (2) the Contribution Rebate Program pay for monetary donations only and not for service-in-kind; and**
- (3) the appropriate City officials be authorized and directed to take the necessary action to give effect thereto, including the introduction of a bill substantially in the form of Appendix “A”:**

The Administration Committee submits the following report (August 7, 2002) from the City Clerk:

Purpose:

This report outlines the options for a contribution rebate program for the 2003 municipal election.

Financial Implications and Impact Statement:

Should Council decide to enact a by-law to provide for a contribution rebate program for the 2003 municipal election, it is estimated \$1.6 million will need to be set aside to pay the contribution rebate applications over the years 2004 and 2005. This estimate is based on an average of the two previous rebate programs (1997 and 2000), however the actual financial impact may well exceed this estimation.

The Chief Financial Officer and Treasurer has reviewed this report and concurs with the financial implications.

Recommendations:

It is recommended that:

- (1) should City Council decide to authorize the payment of rebates to persons who make contributions to candidates for office on the Council of the City of Toronto during the 2003 municipal election, the contribution rebate program be as outlined in Appendix “A” of this report; and
- (2) the appropriate City officials be authorized and directed to take the necessary action to give effect thereto, including the introduction of a bill substantially in the form of Appendix A.

Background:

On July 30 and 31 and August 1, 2002, City Council, in adopting Clause No. 3 of Report No. 10 of The Administration Committee (Municipal Campaign Finance Reform), approved the following recommendation:

“that the City Clerk report back with recommendations in September 2002 on the entire contribution rebate program as part of the 2003 municipal election by-law report taking into account the issues raised in this report”.

In approving the above report, Council also authorized the establishment of the Toronto Election Finance Review Task Force and referred to it a number of election finance issues requiring longer-term solutions.

The following discussion addresses the issues that can be dealt with immediately by Council through a campaign contribution rebate program should Council decide to implement such a program for the 2003 election.

Comments:

(1) Legislative Authority:

Authority to pass a by-law instituting a contribution rebate program is found in subsection 82(1) of the *Municipal Elections Act, 1996* (the *Act*). Section 82 of the *Act* provides total flexibility to Council in establishing the program, including the conditions under which a person is entitled to a rebate, the rebate amounts payable and the administration of the program. In order to implement a rebate program for the 2003 election, Council must pass a by-law authorizing the program and specifying the rebate amounts and administrative requirements.

(2) 2000 Campaign Contribution Rebate By-law:

In 2000, Council enacted By-law 78-2000 to provide for the payment of rebates to persons who made contributions to candidates for office on the City of Toronto Council. Rebates totalling \$1.3 million have been paid.

The rebates were based on the following formula:

- (i) a contribution of less than \$50 did not receive a rebate;
- (ii) a contribution between \$50 and \$300 received a rebate of 75 percent of the contribution;
- (iii) a contribution over \$300 but not exceeding \$1,000 received a rebate of \$225 plus 50 percent of the difference between the amount of the contribution and \$300; and
- (iv) if the total contribution was more than \$1,000, the rebate was the lesser of:
 - (a) \$575 plus 33 $\frac{1}{3}$ percent of the difference between the amount of the contribution and \$1,000, and
 - (b) \$1,000 (the maximum rebate payable).

The amount of the rebate paid to a contributor was based upon the total amount of all the contributions the contributor had made to all candidates for office of the City of Toronto Council.

Rebates for contributions made on or before December 31, 2000, were paid in July 2001. The reason for the delay in payment is that the by-law provided that no rebates would be paid until the ninety-day compliance audit period had ended. If a candidate's campaign was continuing to erase a deficit, rebates were paid ninety days after the supplementary financial filing date.

(3) Recommended Changes for 2003:

The following discussion highlights the issues raised by staff and Council during the review of the 2000 campaign contribution rebate program and recommends changes should Council decide to implement such a program for the 2003 election.

Contribution of Goods and Services:

For the 2000 contribution rebate program, a contribution of goods and services was eligible for a rebate. Some candidates have expressed concern that this element of the program may be subject to abuse. For example, candidates may treat what would normally be "volunteer unpaid labour" as a receipted contribution which will allow individuals working on their campaign to receive a rebate from the City. The *Act* specifically excludes unpaid labour from the definition of a contribution. The current rebate application form only provides information as to whether the contribution was for cash or a goods and service. The Clerk who has no investigative authority under the *Act* does not have the means necessary to ascertain whether this was an illegal contribution.

Overall, the valuation of goods and services is highly subjective. Although candidates are required to report the market value of such services, there are no checks and balances in place to determine whether the values assigned are accurate.

To address these concerns, Council could provide that only contributions of money are eligible for a rebate, not contributions of goods and services. The Town of Ajax, which is the only other Ontario municipality that has a contribution rebate program, only pays rebates for contributions of money.

Candidate Inventory:

A contribution by a candidate of inventory from prior elections is classified as a contribution under the *Act* and was therefore eligible for a rebate during the 2000 rebate program. In effect, this allows the candidate to receive a rebate for the same material each time he or she brings it into an election campaign. In addition, contribution rebates would already have been paid by the City to the contributors of the donations that enabled the candidates to purchase the goods that are being held in inventory. As previously mentioned, the rebate application form only denotes whether the contribution was for a goods and service or cash thus not providing enough information to determine the extent of this type of irregularity.

To eliminate this inequity, Council could provide that a candidate's inventory from prior elections no longer qualifies for a rebate.

Campaign Expense Invoices:

In response to concerns raised by some Members of Council regarding the lack of documentation of campaign expenses, Council could require that candidates must submit copies of all invoices as a condition of participating in any campaign contribution rebate program.

Eligibility for Rebates:

Concerns have been raised by some Members of Council about the eligibility of corporations, trade unions and non-residents for contribution rebates. The *Act* currently permits campaign contributions to be made by residents of the Province of Ontario, corporations carrying on business in Ontario and trade unions that hold bargaining rights for employees in Ontario. In the 2000 Contribution Rebate Program, corporate donors represented 34 percent of the overall number of contributors.

Another concern focuses on the payment of rebates to non-residents, when one of the purposes of the rebate program is to encourage the involvement of local residents in the democratic process. While Council could not prevent candidates from accepting contributions from these groups, Council could provide that only individuals living in the City of Toronto, not corporations, trade unions or non-resident contributors are entitled to a rebate. Currently, The Town of Ajax, only pays rebates to eligible electors of the Town of Ajax, excluding candidates and their spouses.

Rebates to Candidates Prior to Close of Campaign:

Another inequity that exists in the 2000 rebate program concerns the payment of rebates to candidates or their spouses. It is possible that candidates, whose campaigns are continuing to erase a deficit, could submit a rebate application and receive a rebate after the first financial filing, and then later reimburse themselves their contributions from their campaign surplus prior to closing out their campaign.

To address this concern, Council could provide that candidates (or their spouses or same sex partners) who extend their campaign not be eligible to submit a rebate application until after their campaign closes.

Candidate Surpluses:

Concerns have been expressed by some Members of Council about the need for a limit on how much money candidates can raise. For example, a number of candidates raise more money through donations than they are permitted to spend. Under the *Act*, these surplus funds are turned over to the Clerk and held in trust until the candidate files a nomination for the next election. If the candidate does not file a nomination, the funds are turned over to the City's general revenues. One of the basic principles of the *Act* is that

elections be conducted in a fair and equitable manner, the fact that some candidates begin their election campaigns with a significant financial benefit could be seen as being in conflict with this basic principle.

Subsection 82(5) of the *Act* allows Council to require that any candidate surpluses automatically become the property of the City. Should Council decide to implement a contribution rebate program for the 2003 municipal election, it may wish to include this provision in the campaign contribution rebate by-law.

Conclusions:

When the provincial government introduced the legislation allowing municipalities to institute a contribution rebate program one of its principle reasons in doing so was to assist candidates in their fundraising activities thus easing the financial burden of running for municipal office. The City of Toronto has had a contribution rebate program in place since the 1997 municipal elections. In total over 45,000 contribution have been issued since that time and over \$3M has been rebated back to contributors.

This report has outlined a number of recommended changes to the contribution rebate program based on feedback from staff, candidates and Members of Council.

Should Council decided to implement such a program for the 2003 election, attached as Appendix "A" is a recommended draft by-law for the payment of campaign contribution rebates to persons who make contributions to candidates for office on Toronto City Council during the 2003 municipal election.

Contact:

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List of Attachments:

Appendix "A" – Proposed Contribution Rebate Program.

Appendix "A" - Proposed Contribution Rebate Program

To authorize the payment of rebates to individuals residing in the City of Toronto who make contributions to candidates for an office on the municipal council in the 2003 municipal election.

WHEREAS subsection 82(1) of the *Municipal Elections Act, 1996*, as amended ("the Act"), provides that a municipality may, by by-law, provide for the payment of rebates to persons who make contributions to candidates for an office on the municipal council;

The Council of the City of Toronto HEREBY ENACTS as follows:

1. The payment of rebates to individuals residing in the City of Toronto who make contributions to candidates for an office on the municipal council for the 2003 municipal election is authorized.
2. An individual residing in the City of Toronto who, during the 2003 municipal election, makes a contribution to a candidate for an office on the council of the City of Toronto may, on or after January 1, 2003, apply to the Clerk of the municipality (“the Clerk”) for a rebate.
3. Notwithstanding section 66 of the *Municipal Elections Act, 1996*,
 - (a) only a contribution of money will be eligible for a campaign contribution rebate;
 - (b) a candidate’s contribution of inventory from a prior election is not eligible for a campaign contribution rebate.
4. The application for rebate must be received by the clerk on or before 5:00 p.m., July 31, 2004, unless the candidate’s campaign period is extended under paragraph 4 or 5 of subsection 68(1) of the *Act*. If a candidate’s campaign period is extended, the application for rebate shall be made within six months after the date the receipt is issued.
5. The application for rebate shall be in the form established for that purpose by the clerk.
6. The application for rebate shall include a receipt in the form provided by the Clerk that is signed by or on behalf of the candidate.
7. A candidate for an office on the municipal council:
 - (a) shall comply with subsections 78(1) to (4) of the *Act*;
 - (b) shall include with the documents filed under subsection 78(1) or (2) of the *Act*, as the case may be, a copy of the receipt issued for the contribution and a copy of all campaign expense invoices incurred as part of the campaign.
8. A candidate for an office on the municipal council, or their spouse or same sex partner, whose campaign period is extended under paragraph 4 or 5 of subsection 68(1) of the *Act*, will not be eligible to receive a rebate application until after the candidate’s campaign closes and the final document is filed under subsection 78(2) of the *Act*.
9. The Clerk shall compare the receipt filed by the applicant and the copy filed by the candidate to ensure consistency.
10. The Clerk shall pay the applicant a rebate in accordance with sections 11 and 12 if the following conditions are met:
 - (a) The application complies with sections 4, 5 and 6;

- (b) The candidate has complied with section 7;
 - (c) The Clerk is satisfied that the receipt filed by the applicant and the copy filed by the candidate are consistent;
 - (d) The Clerk is satisfied that the candidate has filed the documents required by section 78 of the Act by the relevant filing date, and that no such document shows on its face that the candidate has incurred expenses exceeding what is permitted under section 76 of the Act;
 - (e) The Clerk is satisfied that the candidate has paid any surplus in accordance with the provisions of section 79 of the Act within the time period stipulated in that section;
 - (f) In the case of a contribution made on or before December 31, 2003, the time for an application for a compliance audit under section 81 of the Act has expired;
 - (g) In the case of a contribution made after December 31, 2003 to a candidate whose election campaign period continues beyond that date, the time for an application under section 81 of the Act has expired.
11. (1) Subject to section 12, the rebate shall be calculated as follows:
- (a) If the contribution is \$300.00 or less, the rebate is 75 per cent of the contribution;
 - (b) If the contribution is more than \$300.00 but not more than \$1,000.00, the rebate is \$225.00 plus 50 per cent of the difference between the contribution and \$300.00;
 - (c) If the contribution is more than \$1,000.00, the rebate is the lesser of:
 - (i) \$575.00 plus 33-1/3 per cent of the difference between the contribution and \$1,000.00; or
 - (ii) \$1,000.00.
- (2) Contributions of less than \$50.00 will not receive a rebate.
12. An applicant who makes contributions to more than one candidate may apply for a rebate in respect of each contribution, but is not entitled to receive total rebates amounting to more than the following maximums:
- (a) If the total of the applicant's contribution to all candidates is \$300.00 or less, the maximum is 75 per cent of that total;

- (b) If the total of the applicant's contributions to all candidates is more than \$300.00 but not more than \$1,000.00, the maximum is \$225.00 plus 50 per cent of the difference between that total and \$300.00;
- (c) If the total of the applicant's contributions to all candidates is more than \$1,000.00, the maximum is the lesser of,
 - (i) \$575.00 plus 33-1/3 per cent of the difference between that total and \$1,000.00, or
 - (ii) \$1,000.00.

13. In accordance with subsection 82(5) of the *Act*, any campaign surplus paid by a candidate to the Clerk under section 79 of the *Act* will become the property of the City of Toronto.

Mr. Greg Essensa, Director of Election Services, gave a presentation to the Administration Committee with respect to the foregoing matter.

Mr. John Adams, appeared before the Administration Committee in connection with the foregoing matter.

The following Members of Council also appeared before the Administration Committee in connection with the foregoing matter:

- Councillor Chris Korwin-Koczyński, Parkdale-High Park;
- Councillor Kyle Rae, Toronto Centre-Rosedale; and
- Councillor Michael Walker, St. Paul's.