

Candidate and Third-Party Advertiser Information Session 2022 Municipal Election

April 28, 2022

Disclaimer

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- 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 <https://www.ontario.ca/laws>.
- Since local facts and circumstances vary, users should obtain their own legal and professional advice when specific issues arise.
- Please note that some terms referred to on the following slides may not be terms from the *Municipal Elections Act, 1996* but are terms that are commonly referred to in the context of municipal elections and are provided for general information and ease of understanding only.

Overview

- Eligibility rules
- Nomination process
- Campaign finances
- Compliance audit
- Voters' list and voting proxy
- Scrutineers
- Recounts
- Resources



Running for Municipal Office



Municipal Office Eligibility/Ineligibility

Eligible	✓ A resident, owner or tenant of land in the municipality or the spouse of such 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
Ineligible	✗ 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

School Board Trustee – Eligibility/Ineligibility

Eligibility	Ineligible
✓ a resident within the jurisdiction of the board ✓ eligible to vote for school board election ✓ 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)	✗ 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

Third-Party Advertiser – Eligibility/Ineligibility

Eligible	✓ an individual ✓ a corporation ✓ a trade union
Ineligible	✗ a candidate whose nomination has been filed under section 33 ✗ a federal political party registered under the Canada Elections Act 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 filed beginning on May 1, 2022.
- Nomination day is August 19, 2022 (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 (August 22, 2022).



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.
- Municipal clerks may choose to permit municipal election candidates (for municipal council and school board trustee) and third-party advertisers to file nomination and registration paperwork electronically (e.g. without having to attend the clerk's office in person)



Nomination Process: 25 Signature Requirement



- The nomination for an office on council must be endorsed by at least 25 persons using Form 2 - endorsement of nomination form.
- Persons endorsing a nomination must be eligible to vote in an election for an office within the municipality if a regular election 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 run for only 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 filing fee would need to be topped up to \$200
- If one or both 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 registers in the local municipality with the clerk responsible for conducting the election.
- Third parties may advertise in support of or opposition to any candidate being elected by voters in that municipality, but are not required to declare support for or against a candidate or question on the ballot when they register to be a third-party candidate.
- To advertise regarding questions on the ballot will require registration as a third-party advertiser.
- For the 2022 regular election, the registration cannot be filed earlier than May 1, 2022 and cannot be filed later than Friday, October 21, 2022, during the clerk's office hours.

Registration of third-party Advertisers (Cont'd)

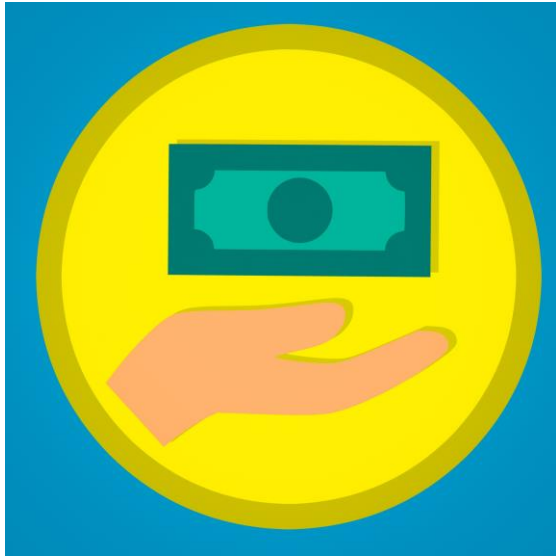
- third-party advertisers may end their campaign by filing a written withdrawal with the clerk at any time prior to the end of the registration period for third-party advertisers.
- third-party advertisers who become candidates automatically end their advertising campaigns when they file their nomination.

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 must establish rules and procedures regarding 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 hold bargaining rights for employees in Ontario and corporations that carry on business in Ontario.
- 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)

- Candidates and third-party advertisers cannot accept contributions from:

- ✗ a federal political party, constituency association or registered candidate in a federal election
- ✗ a provincial political party, constituency association or 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 and address of the contributor and the amount and date of the contribution.
- No anonymous contributions except for pass the hat collections (limited to \$25).

Contribution Limits

- 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 Limits

- There is 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 the contributions reported on the financial statement.



Borrowing



- Loans can only be borrowed from a bank or other recognized lending institution in Ontario and must be directed into the 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 a registered third-party advertiser 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)



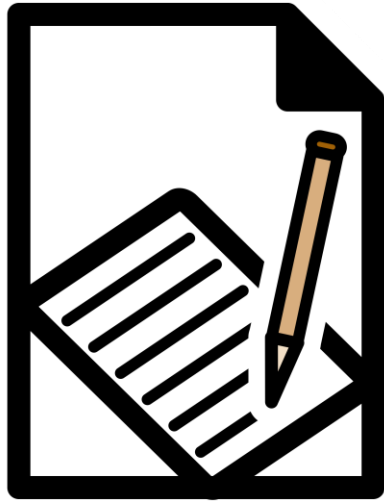
- A campaign expense includes:
 - ✓ any expense incurred for goods and services in relation to an election
 - ✓ the replacement value of any goods held in inventory from a previous election
 - ✓ the equivalent value of any contribution of goods and services for use in whole or in part

Spending Limits

- Ontario Regulation 101/97
- General Spending Limit:
 - Head of council: \$7500 + 85 cents per elector
 - All other offices: \$5000 + 85 cents per elector
- Spending Limit for Parties, etc.
 - 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 Limits (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 2018 voters' list
 - amount based on the 2022 voters' lists which will be provided by September 25
- The higher of the two amounts is the spending limit.

Expenses Not Subject to The Spending Limits

- 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 Limits

- 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
- O. Reg. 101/97 provides 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 of the Act).
- 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, 2026, when 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 period during which third-party advertisements can appear is May 1, 2022 until the close of voting on voting day on October 24, 2022.



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 31, 2023.
- If a candidate or third-party advertiser feels that they will not meet the deadline, they may apply to the courts for an extension prior to the March 31, 2023 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 after voting day until January 3rd, 2023 (adjusted from December 31st as it falls on a Saturday).
- third-party advertisers can close their campaign and file their financial statement after early withdrawal or at any time after voting day and January 3rd, 2023.
- Clerks are required to make public by April 30, 2023 (or within 90 days of a by-election) 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.

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 the 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.
- Members of the 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. 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 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 compliance audit committee.
- 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 can 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 legal proceedings.



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	Candidate	Trade Union or Corporation
• Maximum fine of \$25,000 • Up to six months imprisonment • Ineligibility to run in the next general election or, if convicted of a corrupt practice, to vote in next general election	• Penalties for an individual, plus • fine for excess campaign expenses • forfeiture of office if offence committed knowingly	• Maximum fine of \$50,000

Voters' List

- The preliminary list of electors, as corrected by the clerk, becomes the voters' list on September 1, 2022.
- 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, 2022.
- 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

Key Date	Activity
May 1, 2022	Opening of nominations/registration as third-party advertiser
August 19, 2022	Nomination Day
October 21, 2022	Last day for third-party advertisers to register
October 24, 2022	Voting day
January 3, 2023	Candidate and Third-party advertiser campaign periods end
March 31, 2023	Campaign financial statement filing deadline

Resources

- Legislation
 - [*Municipal Elections Act, 1996*](#)
 - [*Municipal Act, 2001*](#)
 - [*Municipal Conflict of Interest Act*](#)
 - [*Education Act*](#)
- [MMAH Municipal Elections Resources](#)
- [Municipal World](#)
- [Municipal Councillor's Guide](#)



Questions



Ministry of Municipal Affairs and Housing
Municipal Services Office - West

Caitlin Reddick
Municipal Advisor
Caitlin.Reddick@ontario.ca