

Information for Third Party Advertisers

Third Party Advertising

The Municipal Elections Act now includes rules for third party advertising that came into effect as of April 1, 2018. A third party advertisement is a message in any medium (billboard, newspaper, radio, etc.) that supports or opposes a candidate or a “yes” or “no” vote on a referendum question on the ballot. Third party in this context is a person or entity who is not a candidate.

Third party advertising is separate from any candidate’s campaign and must be done independently of candidates. Candidates are not able to direct a third party advertiser.

Third party advertising **does not include**:

- Advertisements by or under the direction of a candidate;
- Issues-based advertising during the municipal election period (with the exception of advertising that has the purpose of promoting, supporting or opposing a “yes” or “no” answer to a referendum question on the ballot);
- Advertising that does not cost money to post or broadcast, such as comments made on social media;
- Messages distributed by:
 - An individual to their employees;
 - A corporation to its shareholders, directors, members or employees; and
 - A trade union to its members or employees.

Third Party Advertisers

The following are **eligible** to register as a third party advertiser:

- An individual who is normally a resident of Ontario;
- A corporation that carries on business in Ontario; and
- A trade union that holds bargaining rights for employees in Ontario.

The following are **not eligible** to register as a third party advertiser:

- A candidate whose nomination has been filed;
- 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; and
- The Crown in right of Canada or Ontario, a municipality, or a local board.

Registration of Third Party Advertisers

Third party advertisers must register with the municipality where they want to advertise. If they want to advertise in more than one municipality, they must register in each municipality. Registration allows a third party advertiser to promote or oppose any candidate that the electors in the

municipality can vote for (Mayor, District Councillors or school board trustees) or to support or oppose a referendum question on the ballot.

Third party advertisers can register between May 1, 2018 and the close of business on Friday, October 19, 2018.

To register, an individual, corporation or trade union must file a Notice of Registration (Form 7) with the City Clerk in person or by an agent. The form must have an original signature. The form may not be scanned and submitted electronically. There is no fee for a third party advertiser to register. An agent filing the form as a representative of a corporation or trade union should have proof that they are authorized to act on behalf of the corporation or trade union.

A link to Form 7 is included in the “Guide for third party advertisers” (see Related Documents).

Advertising Requirements

All third party advertising signs must comply with the City of Kingston Election Signs By-law Number 2014-16 (see Related Documents in the Candidates section of this website for a copy of the By-law). The third party advertiser is responsible for removing the signs in accordance with the provisions of the By-law after voting day. A summary of the Election Signs By-law is also provided in the Candidates section of this website.

A third party advertiser **must** provide the following information on all of its advertisements, signs and other materials:

- The legal name of the registered third party;
- The municipality where the third party is registered; and
- A telephone number, mailing address or e-mail address where the third party can be contacted.

If ads are going to be broadcast or published (e.g. on a radio station or in a newspaper), the ad **must** contain the information required above and the third party advertiser **must** also provide the broadcaster or publisher with the following information:

- The name of the registered third party;
- The name, business address and telephone number of the individual who deals with the broadcaster or publisher under the direction of the registered third party; and
- The municipality where the third party is registered.

Advertising on Voting Day

Third party advertising is permitted until the close of voting on Voting Day. However, the Municipal Elections Act prohibits any campaign material in a voting place. The voting place includes the entire property of the building where the voting place is located including the parking lot and the adjacent streets. A third party is not permitted to have brochures, buttons, signs or any other advertising material in or adjacent to a voting place.

Advertising Campaign Period

A registered third party can only accept contributions or incur campaign expenses during their advertising campaign period. Every third party must open a bank account exclusively for the advertising campaign. The campaign period begins on the day the individual, corporation or trade union is registered as a third party advertiser and ends on December 31, 2018.

If the advertising campaign has a deficit (i.e. campaign expenses exceeded the campaign contributions) the third party can apply to extend the campaign period in order to do additional fundraising (see Campaign Deficit section below).

Campaign Finances for Third Party Advertisers

Most campaign finance rules that apply to candidates also apply to third party advertisers. Third party advertisers have spending limits and there are contribution limits for those wishing to contribute to a third party advertiser.

Campaign Contributions

Contributions are any money, goods or services that are given to a third party to use in the campaign, including money and goods that a third party contributes to their own campaign. Contributions greater than \$25 may not be made in cash. All contributions greater than \$25 must be made by cheque, money order or by a method that clearly shows where the funds come from. Third parties **must**:

- issue a receipt for every contribution received that shows who made the contribution, the date and the value of the contribution; and
- inform each of their contributors about contribution limits.

A third party can accept contributions from:

- Any person who is a resident of Ontario;
- Corporations carrying on business in Ontario; and
- Trade unions that hold bargaining rights for employees in Ontario.

The following are **not allowed to contribute** to a third party advertising campaign:

- A federal political party, constituency association, or a registered candidate in a federal election;
- A provincial political party, constituency association, or a registered candidate or leadership contestant; and
- A federal or provincial government, a municipality or a school board.

Campaign Contribution Limits

There is no limit on how much a registered third party (and, if the third party is an individual, their spouse) can contribute to their own advertising campaign.

There is a \$1,200 limit that applies to all other contributions from individuals, corporations or trade unions. This includes the value of any goods or services donated to the advertising campaign. The maximum total amount that a contributor can give to third parties registered in the same municipality is \$5,000. Any contribution must come directly from the contributor.

Campaign Expense Limits

Campaign expenses are costs incurred during the campaign. These include costs directly related to producing, distributing or publishing advertisements, as well as indirect costs (e.g. hiring someone to keep track of contributions and issue receipts). Goods and services that are contributed to the campaign are also expenses. They should be treated as if the contributor gave the third party money

and the third party went out and purchased the goods and services at fair market value – both the contribution and the expense must be recorded.

Third party advertisers can only incur expenses during their advertising campaign, except for expenses related to the preparation of an auditor's report.

The general spending limit for a third party advertising campaign is calculated based on the number of electors who are eligible to vote in the municipality where the third party is registered. The formula to calculate the spending limit is \$5,000 plus 5 cents per eligible elector to a maximum of \$25,000.

There is a separate spending limit for expenses related to the holding of parties and other expressions of appreciation after the close of voting. This spending limit is calculated as 10% of the third party's general spending limit.

Financial Statements / Auditor's Report

Third parties are responsible for filing a complete and accurate Financial Statement by **Friday, March 29, 2019 at 2:00 p.m.** (Form 8). If a third party has not filed a Financial Statement by the deadline, they may file the Financial Statement within 30 days after the deadline if they pay the municipality a \$500 late filing fee. The 30 day grace period ends at 2:00 p.m. on April 29, 2019.

If a third party's advertising campaign contributions or campaign expenses total more than \$10,000, the third party must have an auditor review their Financial Statement and provide an Auditor's Report.

A third party who extends their campaign (see Campaign Deficit below) must file their Supplementary Financial Statement by **Friday, September 27, 2019 at 2:00 p.m.**

A third party may apply to the Superior Court of Justice to extend the time for the filing of the required Financial Statement(s). The candidate must notify the City Clerk in writing of any application for a Court extension by 2:00 p.m. on the last day for filing the respective Financial Statement.

Penalty for Late Filing

If a third party has not filed a Financial Statement by the end of the 30-day grace period and did not apply for a Court extension prior to the March 29th deadline, the individual, corporation or trade union will not be eligible to register as a third party until after the 2022 municipal election.

Campaign Surplus

If at the end of the advertising campaign a third party's campaign contributions exceed their advertising expenses, their campaign will be in a surplus. After refunding contributions made by the third party (and, if the third party is an individual, their spouse), any remaining surplus **must** be paid to the City Clerk when the third party files their Financial Statement.

Campaign Deficit

If at the end of the advertising campaign a third party's advertising expenses exceed their advertising contributions, their campaign will be in a deficit. The third party may apply to extend their campaign period for up to an additional six months in order to do some additional fundraising. To extend the campaign period, the third party must file a Notice of Extension of Campaign Period (Form 6) in person with the City Clerk **on or before December 31, 2018**. The end date for the extended period will be the **earliest** of the following:

- the day the third party notifies the City Clerk in writing that they will be ending their advertising campaign and not accepting any more contributions; or
- June 30, 2019.

Third parties that extend their advertising campaign must submit two Financial Statements by the statutory deadline dates:

- Filing of Financial Statements – **Friday, March 29, 2019 at 2:00 p.m.**; and
- Filing of Supplementary Financial Statements – **Friday, September 27, 2019 at 2:00 p.m.**

Penalties

The Municipal Elections Act includes provisions for penalties for third parties for offences related to advertising campaign finances that include fines, imprisonment, ineligibility to register as a third party for the next regular election and ineligibility to run or vote in the next regular election (in the case of conviction for bribery or other corrupt practices). Please refer to the “Guide for third party advertisers” for further information with respect to the penalties that may apply if a third party is convicted of an offence.

Other Information

For more detailed information third party advertisers are encouraged to read the “Guide for third party advertisers” prepared by the Ministry of Municipal Affairs (click on the link under Related Documents). The Guide also includes links to the required forms for registration, submission of financial statements, requests for extension of campaign period, etc.

Further information may also be obtained by contacting:

John Bolognone, Returning Officer / City Clerk

613-546-4291, ext. 1247 or by e-mail at jbolognone@cityofkingston.ca

or

Janet Jaynes, Assistant Returning Officer / Deputy City Clerk

613-546-4291, ext. 1431 or by e-mail at jjaynes@cityofkingston.ca