

**MUNICIPAL
ELECTION**
October 24 2022



**Town of Pelham
Third Party Advertiser Guide**



Third Party Advertiser

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Duties of Registered Third Party Advertisers

Pursuant to Section 88.26 of the *Municipal Elections Act, 1996*, (the 'Act'), a registered third party shall ensure that:

- a. No contributions of money are accepted or expenses are incurred in relation to third party advertisements that appear during an election in a municipality unless one or more campaign accounts are first opened at a financial institution exclusively for the purposes of the election campaign;
- b. All contributions of money are deposited into the campaign accounts;
- c. All funds in the campaign accounts are used exclusively for the purposes of the election campaign;
- d. All payments for expenses are made from the campaign accounts;
- e. Contributions of goods or services are valued;
- f. Receipts are issued for every contribution and obtained for every expense;
- g. Records are kept of,
 - (i) The receipts issued for every contribution,
 - (ii) The value of every contribution,
 - (iii) Whether a contribution is in the form of money, goods or services, and
 - (iv) The contributor's name and address;
- h. Records are kept of every expense including the receipts obtained for each expense;
- i. Records are kept of any claim for payment of an expense that the registered third party disputes or refuses to pay;
- j. Records are kept of the gross income from a fund-raising function and the gross amount of money received at a fund-raising function by donations of \$25 or less or by the sale of goods or services for \$25 or less;
- k. Records are kept of any loan and its terms under section 88.17;
- l. The records described in clauses (g), (h), (i), (j) and (k) are retained by the registered third party for the term of office of the members of the council or local board and until their successors are elected and the newly elected council or local board is organized;
- m. Financial filings are made in accordance with sections 88.29 and 88.32;
- n. Proper direction is given to the persons who are authorized to incur expenses and accept or solicit contributions under the direction of the registered third party;
- o. A contribution of money made or received in contravention of this Act or a by-law passed under this Act is returned to the contributor as soon as possible after the registered third party becomes aware of the contravention;

- p. A contribution not returned to the contributor under clause (o) is paid to the clerk of the municipality in which the registered third party is registered;
- q. An anonymous contribution is paid to the clerk of the municipality in which the registered third party is registered; and
- r. Each contributor is informed that a contributor shall not make contributions exceeding,
 - (i) A total of \$1,200 to any one registered third party in relation to third party advertisements, and
 - (ii) A total of \$5,000 to two or more registered third parties registered in the same municipality in relation to third party advertisements. 2016, c. 15, s. 61; 2017, c. 10, Sched. 4, s. 8 (16).

Effect of Default by Registered Third Party

Section 88.27 (1) Subject to subsection (6) and in addition to any other penalty that may be imposed under this Act, an individual, corporation or trade union that is registered as a registered third party in relation to an election in a municipality is not entitled to register in relation to a subsequent election in the municipality until after the next regular election has taken place,

- a. If the registered third party fails to file a document as required under section 88.29 or 88.32 by the relevant date;
- b. If a document filed under section 88.29 shows on its face a surplus, as described in section 88.31, and the registered third party fails to pay the amount required by subsection 88.31 (4) to the clerk by the relevant date;
- c. If a document filed under section 88.29 shows on its face that the registered third party has incurred expenses exceeding what is permitted under section 88.21; or
- d. If a document filed under section 88.32 shows on its face a surplus and the registered third party fails to pay the amount required by that section by the relevant date. 2016, c. 15, s. 61.

Notice of Default

(2) In the case of a default described in subsection (1), the clerk shall notify the registered third party in writing that the default has occurred and shall make available to the public the name of the registered third party and a description of the nature of the default. 2016, c. 15, s. 61.

Application to Court

(3) The registered third party may, before the last day for filing a document under section 88.29 or 88.32, apply to the Superior Court of Justice to

extend the time for filing the document under that section and, if the court is satisfied there are mitigating circumstances justifying a later date for filing the document, the court may grant an extension for the minimum period of time necessary to enable the registered third party to file the document but the court shall not grant an extension of more than 90 days. 2016, c. 15, s. 61.

Notice to Clerk

(4) If a registered third party makes an application under subsection (3), the registered third party shall notify the clerk in writing before 2 p.m. on the last day for filing a document under section 88.29 or 88.32 that the application has been made. 2016, c. 15, s. 61.

Effect of Extension

(5) If the court grants an extension under subsection (3), the penalty set out in subsection (1) applies only if the registered third party has not filed the document before the end of the extension. 2016, c. 15, s. 61.

Cessation of Penalty

(6) The penalty set out in subsection (1) for a default described in clause (1) (a) does not take effect if, no later than 2 p.m. on the day that is 30 days after the applicable day for filing the document, the registered third party files the relevant document as required under section 88.29 or 88.32 and pays the clerk a late filing fee of \$500. 2016, c. 15, s. 61.

Late Filing Fee

(7) The late filing fee is the property of the municipality. 2016, c. 15, s. 61.

Financial Statements, Etc. of Registered Third Parties

Section 88.29 (1) On or before 2 p.m. on the filing date, a registered third party shall file with the clerk of the municipality in which he, she or it registered a financial statement and auditor's report, each in the prescribed form, reflecting the registered third party's campaign finances in relation to third party advertisements,

- a. In the case of a regular election, as of December 31 in the year of the election; and
- b. In the case of a by-election, as of the 45th day after voting day. 2016, c. 15, s. 61.

Error in Financial Statement

(2) If an error is identified in a filed financial statement, the registered third party may withdraw the statement and, at the same time, file a corrected

financial statement and auditor's report on or before the applicable filing date under section 88.30. 2016, c. 15, s. 61.

Supplementary Financial Statement and Auditor's Report

(3) If the campaign period for the registered third party in relation to an election in the municipality continues during all or part of the supplementary reporting period, the registered third party shall, before 2 p.m. on the supplementary filing date, file a supplementary financial statement and auditor's report for the supplementary reporting period. 2016, c. 15, s. 61.

Supplementary Report

(4) A supplementary financial statement or auditor's report shall include all the information contained in the initial statement or report filed under subsection (1), updated to reflect the changes to the registered third party's campaign finances during the supplementary reporting period. 2016, c. 15, s. 61.

Auditor

(5) An auditor's report shall be prepared by an auditor licensed under the Public Accounting Act, 2004. 2016, c. 15, s. 61.

Exception re Auditor's Report

(6) No auditor's report is required if the total contributions received and total expenses incurred in the registered third party's campaign in relation to third party advertisements during an election in the municipality up to the end of the relevant period are each equal to or less than \$10,000. 2016, c. 15, s. 61.

Notice from Clerk, Before Filing Date

(7) At least 30 days before the filing date, the clerk shall give notice of the filing requirements of this section and the penalties set out in subsections 88.27 (1) and 92 (4) to every registered third party that registered in the municipality. 2016, c. 15, s. 61.

Same, Before Supplementary Filing Date

(8) At least 30 days before the supplementary filing date, the clerk shall give notice of the filing requirements of this section and the penalties set out in subsections 88.27 (1) and 92 (4) to every registered third party that gave notice to the clerk under paragraph 4 of section 88.28. 2016, c. 15, s. 61.

Electronic Filing

(9) The clerk may provide for electronic filing under this section and may establish conditions and limits with respect to electronic filing. 2016, c. 15, s. 61.

Documents Filed After Filing Date

(10) If the documents required to be filed under this section are not filed by 2 p.m. on the day that is 30 days after the applicable day for filing the documents, the clerk shall accept the documents only for the purpose of making the documents available under subsection 88 (9.1). 2016, c. 15, s. 61.

Report by Clerk

(11) As soon as possible after April 30 in the year following a regular election or 75 days after voting day in a by-election, the clerk shall make available to the public on a website or in another electronic format a list of all registered third parties for the election along with an indication of whether each has filed a financial statement and auditor's report under subsection (1). 2016, c. 15, s. 61.

Return of Surplus for Subsequent Expenses

Section 88.32 This section applies if all of the following circumstances exist:

1. A candidate or registered third party has paid a surplus to the clerk under subsection 88.31 (4).
2. The candidate's election campaign period has ended under paragraph 2, 3 or 4 of subsection 88.24 (1) or the registered third party's campaign period has ended under paragraph 2 or 3 of section 88.28.
3. It is no longer possible to recommence the campaign period under paragraph 5 of subsection 88.24 (1) or paragraph 4 of section 88.28.
4. The candidate or registered third party subsequently incurs expenses relating to a compliance audit. 2016, c. 15, s. 62.

Return of Surplus

(2) If the candidate or registered third party notifies the clerk in writing that he, she or it is incurring subsequent expenses relating to a compliance audit, the clerk shall return the amount of the surplus, with interest, to the candidate or registered third party. 2016, c. 15, s. 62.

Effect of Return of Surplus

(3) If the surplus is returned to the candidate or registered third party, he, she or it is permitted to incur expenses relating to a compliance audit but no other expenses may be incurred. 2016, c. 15, s. 62.

Reporting Periods

(4) The first reporting period of the candidate or registered third party under this section begins on the day after the surplus is returned and ends 90 days

later, and each successive period of 90 days is a further reporting period. 2016, c. 15, s. 62.

Financial Statements

(5) For each reporting period, the candidate or registered third party shall file with the clerk a financial statement in the prescribed form reflecting the expenses of the candidate or registered third party for the reporting period, and the financial statement must be filed no later than 2 p.m. on the 10th day after the end of the reporting period. 2016, c. 15, s. 62.

Final Financial Statement

(6) If, during a reporting period, the amount of surplus is reduced to zero or any remaining surplus is no longer required by the candidate or registered third party for expenses relating to a compliance audit, the candidate or registered third party shall file a final financial statement. 2016, c. 15, s. 62.

Repayment of Remaining Surplus

(7) If the final financial statement indicates that there is any remaining surplus, the candidate or registered third party shall pay the remaining surplus to the clerk when the financial statement is filed. 2016, c. 15, s. 62.

Remaining Surplus Held in Trust by Clerk

(8) The clerk shall hold the amount of the remaining surplus in trust for the candidate or registered third party. 2016, c. 15, s. 62.

Release of Amount if another Compliance Audit

(9) If, after the candidate or registered third party pays the remaining surplus to the clerk, another compliance audit commences, subsections (2) to (8) apply, with necessary modifications, with respect to the subsequent compliance audit. 2016, c. 15, s. 62.

Amount to become Property of Municipality of Local Board

(10) The amount of the remaining surplus becomes the property of the municipality or the local board, as the case may be, when the compliance audit is finally determined and the period for commencing any other compliance audit has expired. 2016, c. 15, s. 62.

Offences by Registered Third Party – Exceptions

Exception, Action in Good Faith

(5) However, if the presiding judge finds that the registered third party, acting in good faith, committed the offence inadvertently or because of an error in judgment, the penalty described in subsection 88.27 (1) does not apply. 2016, c. 15, s. 68 (2).

(6) If the expenses incurred by or under the direction of a registered third party exceed the amount determined under section 88.21, the registered third party is liable to a fine equal to the excess, in addition to any other penalty provided for in the Act. 2016, c. 15, s. 68 (2).

Note: It is recommended that you familiarize yourself with all pertinent sections of the Act for compliance with every aspect of your election campaign.