

Consolidated Clause in Administration Committee Report 4, which was considered by City Council on June 27, 28 and 29, 2006.

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**Establishment of a Compliance Audit Committee
for the 2006 Municipal Election**

City Council on June 27, 28 and 29, 2006, adopted this Clause without amendment.

The Administration Committee recommends that City Council adopt the staff recommendations in the Recommendations Section of the report (May 10, 2006) from the City Clerk.

Purpose:

To report on the establishment of a compliance audit committee for the 2006 municipal election.

Financial Implications and Impact Statement:

Should Council choose to establish a compliance audit committee, minimal additional funding will be required. While it is difficult for staff to provide an exact estimate of the number of compliance audit applications that might be received, based on past experience it is estimated that the remuneration costs would be approximately \$5,000 for a three member committee. Funding for this purpose is available in the Election Reserve and, if required, would be paid out during 2007 and 2008.

The Deputy City Manager and Chief Financial Officer has reviewed this report and concurs with the financial implications.

Recommendations:

It is recommended that:

- (1) Council establish a compliance audit committee composed of three members and delegate all of Council's powers and functions under subsections 81(3), (4), (7), (10) and (11) of the *Municipal Elections Act, 1996* in respect of compliance audit applications;
- (2) the City Clerk solicit interest from auditors, accountants, lawyers, academics and other individuals with knowledge of the campaign financing rules of the *Municipal Elections Act, 1996* and submit a listing of appointees for Council's consideration through the Administration Committee following the selection process set out in Appendix "C";

- (3) in accordance with Council's recent decision on remuneration, citizen appointees to the committee receive a \$350 per diem for attendance at meetings; and
- (4) the appropriate City Officials be authorized and directed to take the necessary action to give effect thereto.

Background:

At its meeting of July 22, 23 and 24, 2003, Council adopted, with amendments, Clause 2 of Report 7 of the Administration Committee to establish a compliance audit committee for the 2003 municipal election. As that committee's term has now expired, a new committee is required should Council choose to establish a compliance audit committee for the 2006 municipal election.

At its meeting of January 31, February 1 and 2, 2006, Council adopted, with amendments, Clause 2 of Report 1 of Policy and Finance Committee to provide that citizen appointees to a compliance audit committee would receive a \$350 per diem.

Comments:

Under the provisions of the *Municipal Elections Act, 1996* (the *Act*), an eligible elector who believes on reasonable grounds that a candidate has contravened a provision of the *Act* relating to election campaign finances, may apply for a compliance audit of the candidate's election campaign finances. The application must be made to the Clerk in writing, include the reasons for the application and be made within 90 days after the filing date for the financial statements. (The relevant provisions of the *Act* are attached as Appendix "A".)

Since the 1997 election, six compliance audit requests have been received by the City Clerk as detailed in Table 1.

Table 1: Compliance Audit Requests

Election	Number of Requests Received	Decision
1997	1	Council approved the request, appointed an auditor and commenced legal action against the candidate for violations of the election finance provisions of the <i>Act</i> .
2000	4	Council denied all four applications.
2003	1	The compliance audit committee denied the application.

After dealing with the compliance audit applications from the 2000 municipal election, Council requested the Minister of Municipal Affairs and Housing to amend the *Act* to permit a municipal council to establish an arms-length committee to make decisions on compliance audit applications. This was in response to Council's desire to remove itself from the decision-making process on compliance audit applications.

In accordance with Council's request, the *Act* was amended in November 2002 to provide that Council could deal with compliance audit applications itself or establish a compliance audit committee and:

1. either delegate its powers and functions to only consider the compliance audit application and decide whether it should be granted or rejected; or
2. delegate all its powers and functions with respect to compliance audits:
 - (a) consider a compliance audit application received from an elector and decide whether it should be granted or rejected;
 - (b) if the application is granted, appoint an auditor;
 - (c) receive the auditor's report;
 - (d) consider the auditor's report and decide whether legal proceedings should be commenced; and
 - (e) recover the costs of conducting the audit from the applicant if there were no apparent contraventions and if there appears to be no reasonable grounds for having made the application.

This committee cannot include Council Members or City staff and must be established prior to voting day (November 13, 2006).

Establishment of a compliance audit committee for the 2006 election would continue to meet Council's stated desire after the 2000 election to remove itself from the decision-making process on compliance audit applications.

Compliance Audit Committee Composition:

Compliance audit committee members must possess an in-depth knowledge of the campaign financing rules of the *Act*. If not, they will not be in a position to reach an independent decision on the merits of the application and may look to City staff for guidance. This would put staff in a conflict situation, particularly if the application concerned a Member of Council.

As the committee will operate as a quasi-judicial committee, prior experience on a committee, task force or tribunal would also be an asset from a meeting management perspective.

Ideally, the committee's composition would include auditors, accountants, lawyers, academics specializing in campaign finance activities (such as political science professors) and other individuals with knowledge of the campaign financing rules of the *Act*.

Staff made preliminary inquiries with both the Institute of Chartered Accountants of Ontario and Elections Ontario to determine the organizations' interest in directly serving as the City's compliance audit committee. The Institute declined, stating this was not a service they would consider providing. Elections Ontario also declined, citing workload pressures and lack of available resources to undertake this function.

Conducting a general public call for applications from members of the public may not attract individuals with the necessary skill set. In addition, the length of time necessary to undertake a public application process, with no guarantee of attracting sufficient knowledgeable applicants, could mean that the City Clerk would not have a list of recommended applicants for Council's consideration for its last meeting prior to voting day (September 25, 2006).

In staff's opinion, a targeted outreach strategy would be more effective, designed to reach those individuals who possess the requisite skills and knowledge. Accordingly, the City Clerk's Office, in consultation with the Auditor General, has developed selection criteria (as contained in the Terms of Reference attached as Appendix "B") and a selection process (attached as Appendix "C"). Under this strategy, organizations such as the Institute of Chartered Accountants of Ontario, the Law Society of Upper Canada and colleges and universities in Toronto would be approached to solicit interest from their members or faculty for Council's consideration.

A similar approach was used in part for the membership selection of the Toronto Election Finance Review Task Force in 2003 and resulted in a number of knowledgeable, qualified individuals being appointed to the Task Force.

A decision on a compliance audit application must be made within 30 days of the receipt of the application. Given all the logistics that must be completed within this 30 day period, such as notifying and scheduling the committee members, providing adequate notice to the parties and the public, having the decision prepared and circulated to all committee members for review and signature, staff are recommending that Council appoint three individuals to the committee. A limited committee membership will ensure that the process can be completed in the 30 days. The 2003 compliance audit committee had three members which worked well given the strict time frames established in the *Act*.

To avoid a conflict of interest, care must be taken that any auditors or accountants appointed to the compliance audit committee do not audit or prepare the financial statements of any candidate running for office on City Council. Accordingly, it is staff's recommendation that any auditor or accountant appointed to the committee would have to agree in writing to not undertake the audits or preparation of the financial statements of any candidates seeking election to City Council. Failure to adhere to this requirement would result in the individual being removed from the committee

Staff did consider the possibility of appointing more than three members to the compliance audit committee to allow for an auditor or accountant to excuse themselves from considering an application if they had been involved in the audit or preparation of the financial statements. However, to avoid any perception of possible influence, it is staff's opinion that a total prohibition would be more appropriate.

Conclusions:

Should Council still wish to remove itself from the decision-making process and delegate its authority, in whole or in part, to a compliance audit committee, the membership of the committee must be established by the last meeting of Council scheduled for September 25, 2006.

In order to develop a list of qualified applicants, it is recommended the City Clerk undertake the selection process set out in Appendix "C" to target auditors, accountants, lawyers, academics and other individuals with an in-depth knowledge of the campaign financing rules of the *Municipal Elections Act, 1996*. This process has been developed in consultation with the Auditor General.

A listing of recommended individuals will be submitted for Council's consideration through the Administration Committee.

Contact:

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Appendix "A"

Section 81 of the *Municipal Elections Act, 1996*

Compliance audit

81.(1) An elector who is entitled to vote in an election and believes on reasonable grounds that a candidate has contravened a provision of this Act relating to election campaign finances may apply for a compliance audit of the candidate's election campaign finances.

Requirements

(2) The application shall be made to the clerk of the municipality or the secretary of the local board for which the candidate was nominated for office, within 90 days after the later of the filing date, the candidate's last supplementary filing date, if any, or the end of the candidate's extension for filing granted under subsection 80 (6), if any; it shall be in writing and shall set out the reasons for the elector's belief.

Decision

(3) Within 30 days after receiving the application, the council or local board, as the case may be, shall consider the application and decide whether it should be granted or rejected.

Delegation to committee

(3.1) A council or local board may, before voting day in an election, establish a committee and delegate its powers and functions under subsection (3) alone or under subsections (3), (4), (7), (10) and (11) with respect to applications received under subsection (2) and the

council or local board, as the case may be, shall pay all costs in relation to the operation and activities of the committee.

Powers and limitations

- (3.2) A committee established under subsection (3.1),
- (a) shall exercise the powers and duties delegated to it under that subsection with respect to all applications received under subsection (2) in relation to the election for which it is established; and
 - (b) shall not include employees or officers of the municipality or local board, as the case may be, or members of the council or local board, as the case may be.

Appeal

- (3.3) The decision of the council or local board under subsection (3) and of a committee under subsection (3) pursuant to a delegation under subsection (3.1) may be appealed to the Ontario Court of Justice within 15 days after the decision is made and the court may make any decision the council, local board or committee could have made.

Appointment of auditor

- (4) If it is decided to grant the application under subsection (3), the appropriate council or local board shall, by resolution, appoint an auditor to conduct a compliance audit of the candidate's election campaign finances.

Licensed auditor

- (5) Only an auditor who is licensed under the *Public Accounting Act* may be appointed under subsection (4).

Duty of auditor

- (6) An auditor appointed under subsection (4) shall promptly conduct an audit of the candidate's election campaign finances to determine whether he or she has complied with the provisions of this Act relating to election campaign finances and prepare a report outlining any apparent contravention by the candidate.

Who receives report

- (7) The auditor shall submit the report to,
- (a) the candidate;
 - (b) the council or local board;
 - (c) the clerk with whom the candidate filed his or her nomination; and
 - (d) the applicant.

Powers of auditor

- (8) For the purpose of the audit, the auditor,
- (a) is entitled to have access, at all reasonable hours, to all relevant books, papers, documents or things of the candidate and of the municipality or local board; and
 - (b) has the powers of a commission under Part II of the Public Inquiries Act, which Part applies to the audit as if it were an inquiry under that Act.

Costs

- (9) The municipality or local board shall pay the auditor's costs of performing the audit.

Consideration of report, legal proceeding

- (10) The council or local board shall consider the report within 30 days after receiving it and may commence a legal proceeding against the candidate for any apparent contravention of a provision of this Act relating to election campaign finances.

Recovery

- (11) If the report indicates that there was no apparent contravention and the council or local board finds that there were no reasonable grounds for the application, the council or local board is entitled to recover the auditor's costs from the applicant.

Immunity

- (12) No action or other proceeding for damages shall be instituted against an auditor appointed under this section for any act done in good faith in the execution or intended execution of the audit or for any alleged neglect or default in its execution in good faith.

Appendix "B"

Terms of Reference for the Toronto 2006 Election Compliance Audit Committee

1. Name

The name of the Committee is the "Toronto 2006 Election Compliance Audit Committee".

2. Duration

The Committee must be established before voting day (November 13, 2006) and will complete its work after dealing with all compliance audit applications received from the 2006 election. (The last date for filing a compliance audit application with the City Clerk is May 29, 2008.) The Task Force will meet as needed with meetings to be scheduled when a compliance audit application is received.

3. Mandate

The powers and functions of the Committee are set out in subsections 81(3), (4), (7), (10) and (11) of the *Municipal Elections Act, 1996*. The Committee will be required to:

- (a) consider a compliance audit application received by an elector and decide whether it should be granted or rejected;
- (b) if the application is granted, appoint an auditor;
- (c) receive the auditor's report;

- (d) consider the auditor's report and decide whether legal proceedings should be commenced; and
- (e) recover the costs of conducting the compliance audit from the applicant if there were no apparent contraventions and if there appears to be no reasonable grounds for having made the application.

4. Membership

The Committee will be composed of three (3) members, with membership drawn from the following stakeholder groups:

- (a) accounting and audit – accountants or auditors with experience in preparing or auditing the financial statements of municipal candidates;
- (b) academic – college or university professors with expertise in political science or local government administration;
- (c) legal; and
- (d) other individuals with knowledge of the campaign financing rules of the *Municipal Elections Act, 1996*.

Members of Council and City staff are not eligible to be appointed to the Committee pursuant to clause 81(3.2)(b) of the *Municipal Elections Act, 1996*.

5. Membership Selection

The City Clerk will contact the Institute of Chartered Accountants of Ontario, the Law Society of Upper Canada, York University, Ryerson University and the University of Toronto to solicit interest from their members or faculty to sit on the Committee. Information will also be placed on the *Get Involved* section of the City's web site.

All applicants will be required to complete an application form outlining their qualifications and experience. If necessary, due to the volume of applications received, City staff will interview applicants who meet the selection criteria and prepare a short list for Council's consideration through the Administration Committee.

The selection process will be based upon clearly understood and equitable criteria. Members will be selected on the basis of the following:

- (a) demonstrated knowledge and understanding of municipal election campaign financing rules;
- (b) proven analytical and decision-making skills;
- (c) experience working on a committee, task force or similar setting;
- (d) availability and willingness to attend meetings;
- (e) excellent oral and written communication skills;

To avoid a conflict of interest, any auditor or accountant appointed to the committee must agree in writing to not undertake the audits or preparation of the financial statements of any candidates seeking election to City Council. Failure to adhere to this requirement will result in the individual being removed from the committee.

All Members are subject to approval by Toronto City Council.

6. Chair

The Committee members will select a Chair from amongst its members at its first meeting.

7. Staffing and Funding

Staff from the City Clerk's Office (Elections and Registry Services) will provide administrative support to the Committee. Members will receive remuneration of \$350 per diem for attendance at meetings to be funded from the Election Reserve Fund. Administration costs for such items as printing and mailing will be absorbed with the City Clerk's Operating Budget.

8. Meetings

All meetings of the Committee will be open to the public and the City's web site will be used to communicate the meeting notices and agendas.

Appendix "C"

Selection Process for the Toronto 2006 Election Compliance Audit Committee

1. The City Clerk will place information, including the terms of reference and an application form, on the *Find a CA Volunteer* section of the Institute of Chartered Accountants of Ontario web site. This is a free service and the posting remains on the site for six weeks. Should this posting provide an insufficient response, Institute staff have suggested the information could also be placed on the *Career Connection* section which costs \$175.00 plus taxes for a four week posting.
2. The City Clerk will write to the Law Society of Upper Canada requesting that it circulate the information on the opportunity to be appointed to the Toronto 2006 Election Compliance Audit Committee to its members. In addition, the City Clerk will write directly to those lawyers identified on the Law Society's web site as "certified specialists" in municipal law, excluding any lawyers working directly for a municipality.

3. The City Clerk will write to York University, Ryerson University and the University of Toronto requesting they circulate the information on the opportunity to be appointed to the Toronto 2006 Election Compliance Audit Committee to their political science faculty.
4. The terms of reference for the Toronto 2006 Election Compliance Audit Committee and the application form will be posted on the *Get Involved* section of the City's web site.
5. All applicants will be required to complete an application form outlining their qualifications and experience.
6. If necessary, due to the volume of applications received, City staff will interview applicants who meet the selection criteria and prepare a short list for Council's consideration through the Administration Committee.