



**STAFF REPORT
ACTION REQUIRED
with Confidential Attachment**

**Proposed Amendment to Settlement of a Compliance
Audit Payment related to the 2006 Election**

Date:	September 16, 2013
To:	City Council
From:	City Manager
Wards:	
Reason for Confidential Information:	This report is about litigation or potential litigation that affects the City or one of its agencies, boards and commissions.
Reference Number:	

SUMMARY

At its meeting of February 7 and 8, 2011, City Council considered the City Solicitor's report on the Court of Appeal Decision on Payment of Legal Expenses for Compliance Audits. Council adopted the recommendations of external counsel to seek recovery from Giorgio Mammoliti and Adrian Heaps providing a reasonable indulgence of two years for them to comply.

At its meeting of June 6, 7 and 8, 2012, City Council approved Minutes of Settlement with Giorgio Mammoliti.

At its meeting of June 11, 12 and 13, 2013, City Council approved Minutes of Settlement with Adrian Heaps.

At its meeting of July 16, 17, 18 and 18, 2013, City Council deferred Notice of Motion MM37.1 to its meeting of October 8 and 9, 2013. The proposed Notice of Motion directs the City Manager to negotiate with Giorgio Mammoliti to adjust his Minutes of Settlement to reflect a reimbursement reasonably proportionate to that being paid by Adrian Heaps including payment within 30 days of the execution of the revised Minutes of Settlement.

At the request of Mr. Mammoliti, negotiations have been held and resulted in proposed revised Minutes of Settlement which require Council approval.

RECOMMENDATIONS

The City Manager recommends that:

1. Council adopt the recommendations set out in the confidential attachment;
2. Council authorize the release of the confidential recommendations upon adoption; and
3. Council authorize the release of the confidential Minutes of Settlement in Appendix 1 except for the quantum of the payments in accordance with paragraph 9 of the Minutes of Settlement once they have been signed and the balance of the confidential attachment 1 remain confidential in its entirety due to litigation privilege.

Financial Impact

The financial impact is set out in the confidential attachment.

DECISION HISTORY

At its meeting of September 24 and 25, 2008, City Council decided to reimburse Councillors Heaps and Mammoliti for legal expenses incurred in relation to compliance audit applications brought against them

<http://www.toronto.ca/legdocs/mmis/2008/cc/decisions/2008-09-24-cc24-dd.pdf>
(Items EX23.4 and EX23.5 respectively)

At its meeting of August 25, 26 and 27, 2010 City Council adopted the following:

1. City Council instruct the City Solicitor and Counsel to continue the Motion for leave to appeal.
2. City Council enact a by-law in the form of the bill attached to the motion by Mayor David Miller.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2010.EX46.3>

At its meeting of February 7 and 8, 2011 City Council adopted the following:

1. City Council repeal City By-law No. 1080-2010 being the grant by-law adopted by Council on August 26, 2010.

2. City Council adopt the recommendation of external counsel contained in Attachment 2 to seek recovery of \$74,402.00 from Giorgio Mammoliti and \$64,757.70 from Adrian Heaps providing a reasonable indulgence of two years for them to comply.

<http://www.toronto.ca/legdocs/mmis/2011/cc/bgrd/backgroundfile-35603.pdf>

At its meeting of June 6, 7 and 8, 2012 City Council adopted the following:

1. City Council adopt the recommendations set out in Confidential Attachment 1 to the report (May 23, 2012) from the City Manager.
2. City Council authorize the release of the confidential recommendations contained in Confidential Attachment 1 to the report (May 23, 2012) from the City Manager.
3. City Council authorize the release of the Confidential Minutes of Settlement in Appendix 1 once they have been signed and the balance of the Confidential Attachment 1 to the report (May 23, 2012) from the City Manager remain confidential in its entirety due to litigation privilege.

The following Confidential Recommendations contained in Confidential Attachment 1 to the report (May 23, 2012) from the City Manager, were adopted by City Council and are now public:

1. Council approve the Minutes of Settlement attached as Appendix 1.
2. The City Manager be authorized to execute the Minutes of Settlement on behalf of the City.

The Confidential Minutes of Settlement in Appendix 1 to Confidential Attachment 1 to the report (May 23, 2012) from the City Manager are now public and can be accessed under Background Information (City Council).

The balance of Confidential Attachment 1 to the report (May 23, 2012) from the City Manager remains confidential in its entirety in accordance with the provisions of the City of Toronto Act, 2006, as it relates to litigation or potential litigation, including matters before administrative tribunals, affecting the municipality or local board.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2012.CC24.6>

At its meeting of June 11, 12 and 13, 2013, City Council adopted the following:

1. City Council adopt the recommendations set out in Confidential Attachment 1 to the report (June 7, 2013) from the City Solicitor.

2. City Council authorize the release of the confidential recommendations in Confidential Attachment 1 to the report (June 7, 2013) from the City Solicitor.
3. City Council authorize the release of the Confidential Minutes of Settlement in Appendix 1 to the report (June 7, 2013) from the City Solicitor except for the quantum of the repayment in accordance with paragraph 8 of the Minutes of Settlement once they have been signed and City Council direct that the balance of Confidential Attachment 1 to the report (June 7, 2013) from the City Solicitor remain confidential in its entirety due to litigation privilege.

The following Confidential Recommendations in Confidential Attachment 1 to the report (June 7, 2013) from the City Solicitor were adopted by City Council and are now public:

1. City Council approve the draft Minutes of Settlement attached as Appendix 1.
2. City Council authorize the City Solicitor to execute the Minutes of Settlement on behalf of the City.

The balance of Confidential Attachment 1 to the report (June 7, 2013) from the City Solicitor remains confidential in accordance with the provisions of the City of Toronto Act, 2006, as it pertains to litigation or potential litigation that affects the City or one of its agencies, boards and commissions and is subject to solicitor-client privilege.

The Confidential Minutes of Settlement in Appendix 1 to the report (June 7, 2013) from the City Solicitor remain confidential at this time in accordance with the provisions of the City of Toronto Act, 2006 as they pertain to litigation or potential litigation that affects the City or one of its agencies, boards and commissions and relates to solicitor-client privilege. The Confidential Minutes of Settlement in Appendix 1 to the report (June 7, 2013) from the City Solicitor, except for the quantum of the repayment in accordance with paragraph 8 of the Minutes of Settlement, will be made public once they have been signed.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.CC36.4>

At its meeting of July 16, 17, 18 and 19, 2013, City Council deferred Notice of Motion MM37.1 to its meeting of October 8 and 9, 2013.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.MM37.1>

ISSUE BACKGROUND

An application for judicial review of City Council's jurisdiction to make certain payments described above was brought to the Divisional Court and heard on May 17, 2010. On July 19, 2010 the Divisional Court released its decision quashing a City by-law to the extent that the by-law permitted the payment of councillor legal expenses for compliance audits and upheld a Council decision to pay a council member's legal expenses in relation

to a defamation action. Council at its meeting of August 25, 26 and 27, 2010 instructed the City's external counsel to continue a motion for leave to appeal the decision of the Divisional Court and also adopted a by-law granting funds to Councillors Heaps and Mammoliti.

The Court of Appeal in a decision dated December 24, 2010 refused the City's application for leave to appeal. At its meeting on February 7 and 8, 2011 City Council recommended that recovery be sought from Giorgio Mammoliti and Adrian Heaps as recommended by the City's external counsel.

COMMENTS

Subsequent to Council's decision, efforts were made to recover the monies. At that time it was confirmed that Mr. Mammoliti was paid \$52,081.37 on account of legal and appraisal services related to his 2006 compliance audit. In addition, the City grossed up income taxes in the amount of \$43,218.50 directly to Canada Revenue Agency (CRA) to make Mr. Mammoliti whole. These are the correct figures rather than the \$74,402.00 referred to in earlier reports.

This matter was resolved by Council approving Minutes of Settlement. Mr. Mammoliti has made a payment in accordance with the approved settlement.

Subsequent to these events, Council approved Minutes of Settlement with Adrian Heaps on more favourable terms than those agreed to with Mr. Mammoliti. Notice of Motion MM37.1 recognizes this and proposes that Mr. Mammoliti's Minutes of Settlement be revised to reflect a reimbursement reasonably proportionate to that being paid by Mr. Heaps.

At the request of Mr. Mammoliti, further negotiations have been held resulting in the proposed revised resolution set out in the confidential attachment.

CONTACT

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SIGNATURE

Joseph P. Pennachetti, City Manager

ATTACHMENTS

Confidential Attachment 1 – Confidential Information