

COMMITTEE OF THE WHOLE JUNE 23, 2009

COMPLIANCE AUDIT COMMITTEE FOR THE 2010 GENERAL MUNICIPAL ELECTION

Recommendation

The City Clerk, in consultation with the City Manager and the Commissioner of Legal and Administrative Services and City Solicitor recommends:

1. That a three-member Compliance Audit Committee be established and that all of Council's powers and functions under subsections 81(3), (4), (7), (10) and (11) of the *Municipal Elections Act, 1996*, with respect to compliance audit applications, be delegated to the Committee;
2. That the Terms of Reference for the Compliance Audit Committee set out at Appendix 'A' be approved;
3. That the City Clerk solicit interest from the professional bodies governing or representing auditors, accountants, lawyers, engineers and such other professions that impose professional standards on their members, breach of which can lead to discipline, seeking interest from individuals to become candidates for appointment to the Compliance Audit Committee;
4. That selection for membership on the Compliance Audit Committee include an evaluation of:
 - a. The individual's knowledge of the campaign financing rules of the *Municipal Elections Act, 1996*;
 - b. Proven analytical and decision-making skills;
 - c. Experience working on a committee, task force, disciplinary committee, or a similar body;
 - d. Availability and willingness to attend meetings; and
 - e. Excellent oral and written communications skills;
5. That persons who have participated as candidates in City of Vaughan elections, or who have conducted audits or provided financial advice in respect of such campaigns, be disqualified from participation on the committee;
6. That the City Clerk, the Commissioner of Legal and Administrative Services / City Solicitor, and the Integrity Commissioner form a selection committee for the purpose of recommending to Council a short list of candidates for appointment to the committee; and
7. That the necessary By-law be enacted to give effect to the foregoing.

Contribution to Sustainability

The Compliance Audit Committee will have no significant impact on the sustainability of the physical environment in the City of Vaughan.

Economic Impact

It is proposed that Members of the Compliance Audit Committee be paid a per diem of \$400, funded from the Election Reserve, with the first meetings of the Committee taking place in 2011, if necessary.

Communications Plan

A call for candidates will be distributed to professional bodies and associations. In addition, an advertisement seeking applicants will be placed in local media and on the City's web site.

The Compliance Audit Committee will submit its decisions to the City Clerk for posting on the City of Vaughan Web Site.

Purpose

The purpose of this report is to facilitate the establishment of a Compliance Audit Committee and to delegate to such Committee Council's powers and functions respecting compliance audit applications which may be made in relation to the 2010 general municipal election.

Background - Analysis and Options

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 City Clerk in writing, include the reasons for the application and be made within 90 days after the filing date for the financial statements.

The Act was amended in November 2002 to provides that a municipal council can deal with compliance audit applications itself or establish a compliance audit committee with the sole responsibility of deciding whether compliance audit applications ought to be granted or rejected, or to exercise the following bundle of powers and functions:

- (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 8, 2010).

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, and other individuals with knowledge of the campaign financing rules of the Act.

A targeted recruitment strategy is being proposed in order to solicit interest from suitable candidates. Upon approval of this report, the City Clerk will contact professional bodies governing or representing auditors, accountants, lawyers, engineers and such other professions that impose professional standards on their members, breach of which can lead to discipline, to seek interest from individuals to become candidates for appointment to the Compliance Audit Committee.

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 format closely follows the established structure of the City of Toronto Compliance Audit Committee.

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. Applicants who have participated as candidates in City of Vaughan elections, or who have held roles on the campaigns for any such candidates which involved the giving of financial advice, will not be eligible for participation on the committee.

Relationship to Vaughan Vision 2020/Strategic Plan

This report is consistent with the priorities previously set by Council, particularly with respect to the promotion of effective governance.

Regional Implications

N/A

Conclusion

Should Council wish to delegate its compliance audit authority and responsibility under section 81 of the Act to a compliance audit committee, the membership of the committee must be established before voting day, November 8, 2010. This report is being submitted at this time with the intention that recruitment can begin and appointments be made prior to the campaign period commencing.

In order to develop a list of qualified applicants, a selection committee comprised of the City Clerk, the Commissioner of Legal and Administrative Services and City Solicitor and the Integrity Commissioner will solicit interest from persons such as auditors, accountants, lawyers, engineers and the members of other professional bodies and associations. In-depth knowledge of election

financial reporting mechanisms will be a key qualification. A short list of recommended individuals will be submitted for Council's consideration through the Committee of the Whole (Closed Session).

The delegations set out in this report comply with the City's Policy on the Delegation of Powers and duties.

Attachments

Appendix 'A' – Terms of Reference

Report prepared by:

Jeffrey A. Abrams, City Clerk

Respectfully submitted,

Jeffrey A. Abrams
City Clerk

Appendix "A"

Terms of Reference

City of Vaughan 2010 General Municipal Election Compliance Audit Committee

1. Name

The name of the Committee is the "City of Vaughan 2010 General Municipal Election Compliance Audit Committee".

2. Duration

The Committee must be established before voting day (November 8, 2010) and will complete its work after dealing with all compliance audit applications received from the 2010 general municipal election. The Committee will meet as needed with meetings to be scheduled when a compliance audit application is received. The Committee may also schedule meetings as necessary to organize and plan its work.

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) engineering
- (c) legal;
- (d) professionals who in the course of their duties are required to adhere to codes or standards of their profession which may be enforced by disciplinary tribunals; 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.

5. Membership Selection

All applicants will be required to complete an application outlining their qualifications and experience. The selection committee consisting of the City Clerk, the Commissioner of Legal and Administrative Services and City Solicitor and the Integrity Commissioner will submit a short list of candidates to Council through the Committee of the Whole (Closed Session).

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. Persons who have participated as candidates in City of Vaughan elections, or who have held roles on the campaigns for any such candidates which involved the giving of financial advice, will not be eligible for participation on the committee.

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 will provide administrative support to the Committee. Members will receive remuneration of \$400 per diem for attendance at meetings to be funded from the Election Reserve. Administration costs for such items as printing and mailing will be absorbed within the City Clerk's Operating Budget.

Legal advice provided by City staff will be confined to generic issues necessary to support the workings of the committee. The committee may appoint outside counsel for the purpose of advice, as necessary, on individual applications or prosecutions.

8. Meetings

The Committee will conduct its meetings in public, subject to the need to meet in closed session for a purpose authorized by section 239 of the *Municipal Act, 2001*.

The City's web site will be used to communicate meeting notices, agendas and decisions.