



**CITY OF VAUGHAN
SPECIAL COUNCIL MINUTES
MAY 20, 2008**

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CITY OF VAUGHAN
SPECIAL COUNCIL MEETING

TUESDAY, MAY, 2008

MINUTES

±4:00 P.M.

Council convened in the Municipal Council Chambers in Vaughan, Ontario, at 5:20 p.m.

The following members were present:

Mayor Linda D. Jackson, Chair
Regional Councillor Joyce Frustaglio
Regional Councillor Gino Rosati
Councillor Tony Carella
Councillor Peter Meffe
Councillor Alan Shefman
Councillor Sandra Yeung Racco

113. CONFIRMATION OF AGENDA

MOVED by Councillor Carella
seconded by Councillor Shefman

THAT the agenda be confirmed.

CARRIED

114. DISCLOSURE OF INTEREST

Regional Councillor Frustaglio declared an interest with respect to Minute No. 115, APPLICATION FOR A COMPLIANCE AUDIT, 2006 MUNICIPAL ELECTION CAMPAIGN FINANCES, JOYCE FRUSTAGLIO, as the audit deals with her election campaign finances.

Mayor Jackson declared an interest with respect to Minute No. 115 APPLICATION FOR A COMPLIANCE AUDIT, 2006 MUNICIPAL ELECTION CAMPAIGN FINANCES, JOYCE FRUSTAGLIO, as she has been the subject of an audit which has similar implications.

At this point in the meeting Mayor Jackson relinquished the chair to Regional Councillor Rosati.

**115. APPLICATION FOR A COMPLIANCE AUDIT
2006 MUNICIPAL ELECTION CAMPAIGN FINANCES
JOYCE FRUSTAGLIO**

(Item 23, Committee of the Whole Report No. 27)

MOVED by Councillor Carella
seconded by Councillor Yeung Racco

That the following recommendation of the Committee of the Whole meeting of May 20, 2008, be approved:

- 1) That a Compliance Audit be undertaken on Joyce Frustaglio's 2006 Municipal Election Campaign Finances;

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- 2) That staff be requested to report back regarding who shall be retained to conduct the audit;
- 3) That the report of the Commissioner of Legal and Administrative Services and City Solicitor, dated May 5, 2008, be received;
- 4) That the confidential legal opinion from the City's external solicitor, dated May 20, 2008, be received;
- 5) That the following deputations be received:
 - a) Mr. Carlo DeFrancesca, 18 Zucchet Court, Vaughan, L4L 7M5; and
 - b) Mr. Robert J. Howe, Davies Howe Partners, 5th Floor, 99 Spadina Avenue, Toronto, M5V 3P8; and
- 6) That the following written submissions be received:
 - a) Ms. Amber Stewart, Davies Howe Partners, 5th Floor, 99 Spadina Avenue, Toronto, M5V 3P8, dated May 14 and two dated May 15, 2008; and
 - b) Mr. Raymond Plouffe, dated May 16, 2008.

CARRIED

Council, at its meeting of May 12, 2008, adopted, as amended:

That staff provide a legal opinion to the Committee of the Whole meeting of May 20, 2008; and

That a Special Council meeting be held on May 20, 2008, at +/- 4:00 p.m. to render a decision to the request for compliance audit on Joyce Frustaglio's 2006 Municipal Election Campaign Finances.

Recommendation of the Committee of the Whole Meeting of May 5, 2008:

That any additional material be provided by May 15, 2008;

That this matter be referred to the Committee of the Whole meeting of May 20, 2008;

That the deputation of Mr. Tony Miele, Tony Miele Consulting, 5343 Roanoke Court, Mississauga, L5M 5H9, be received; and

That the written submission of Mr. Robert J. Howe, Davies Howe Partners, 99 Spadina Avenue, 5th Floor, Toronto, M5V 3P8, dated May 2, 2008, be received.

Report of the Commissioner of Legal and Administrative Services and City Solicitor dated May 5, 2008.

Recommendation

The Commissioner of Legal and Administrative Services and City Solicitor recommends:

That Council consider the Application and make a decision to grant or reject the request for a Compliance Audit of the 2006 Municipal Election Campaign Finances of Joyce Frustaglio.

Economic Impact

If the Application is granted and a compliance audit ordered, the costs of the audit will be paid by the City.

If the Application is rejected, and the decision is appealed, there will be legal costs related to the appeal to Court.

Communications Plan

The Applicant will be advised of Council's decision.

Purpose

To advise Council of the Application for a Compliance Audit of the 2006 Municipal Election Campaign Finances of Joyce Frustaglio and seek Council's decision.

Background - Analysis and Options

On April 23, 2008, an Application was filed with the Deputy City Clerk for a Compliance Audit of Joyce Frustaglio's 2006 election campaign finances (Attachment 1). Pursuant to the *Municipal Elections Act, 1996* (the "Act"), subsection 81(3), Council has 30 days within which to consider the application and decide whether it should be granted or rejected.

THE JURISDICTION OF THE COUNCIL

The proceedings in question are governed by the provisions of s.81 of the Act.

Under section 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 the Act relating to election campaign finances, may apply for a compliance audit of the candidate's election campaign finances.

Under section 81(2), the application must be made within 90 days after the candidate's last supplementary filing date, in this case February 29, 2008.

Under section 81(3), the Council is required, within 30 days after receiving an application properly made, to consider the application and decide whether it should be granted or rejected.

If the Council decides to grant the application, the Council is required, by resolution, to appoint an auditor licensed under the *Public Accounting Act, 2004* to conduct a compliance audit of the candidate's election campaign finances pursuant to section 81(4) of the Act.

In such circumstances, the auditor is required by section 81(6) to conduct promptly an audit of the candidate's election campaign finances to determine whether he/she has complied with the provisions of the Act relating to election campaign finances, and prepare a report outlining any apparent contravention by the candidate.

Under section 81(8), for the purposes of the audit, the auditor is entitled to have access to all relevant books, papers, documents or things in the possession of the candidate and the City, and has the powers of a commission under Part II of the *Public Inquiries Act*.

The City is required to pay the auditor's costs of performing the audit. If the auditor's report indicates no apparent contravention of the Act, and the Council finds that there were no reasonable grounds for the application, the Council is entitled to recover the auditor's costs from the applicant, pursuant to section 81(11).

Pursuant to section 81(7), the auditor must submit the report to the candidate, the Council, the clerk and the applicant(s).

Under section 81(10), the Council is required to consider the report within 30 days after receiving it. The Council may then commence a legal proceeding against the candidate for any apparent contravention of any provision of the Act relating to election campaign finances.

SUMMARY OF SPECIFIC ALLEGATIONS OF BREACH OF THE *MUNICIPAL ELECTIONS ACT, 1996*

In general terms, the applicant alleges that candidate Joyce Frustaglio contravened various requirements of the *Municipal Elections Act, 1996*, grouped under a number of "issues" contained in the Affidavit of Raymond Plouffe and Carlo DeFrancesca (Attachment 1).

A summary of the allegations specific to this Application (refer to Attachment 1) are as follows:

Issues 1-4

The applicant alleges that candidate appears to have contravened section 69(1)(m) of the Act in accepting contributions from the same contributor, constituting an over-contribution which at the time of filing the Financial Statement, had not been returned.

Issue 5

The applicant alleges that the candidate appears to have contravened section 69(1)(m) of the Act in accepting contributions from what appears to be the same individual, constituting an over-contribution which at the time of filing the Financial Statement, had not been returned.

Issue 6

The applicant alleges that the candidate appears to have contravened sections 69(1) (m) of the Act in accepting contributions from corporations that may be associated, constituting over-contributions which at the time of filing the Financial Statement, had not been returned.

Issue 7

The applicant alleges that the candidate appears to have contravened the Act by not completing the Financial Statements and Auditors Report form properly as the addresses of each and every contributor has not been included.

Issue 8

The applicant alleges that the candidate appears to have contravened section (70)3 of the Act by accepting contributions from entities that are not legal contributors pursuant to the Act. Additionally, the applicant alleges the candidate accepted a contribution from a contributor with no last name or address provided.

Issue 9

The applicant alleges that the candidate appears to have contravened sections 66(1), 66(3), 67(1), 67(2), 69(1)(e),(f),(k), (m), (n), 70(3) and 71(m) of the Act as the candidate has not provided sufficient details to explain why the "In Kind Services" in the amount of \$9,780.00 are declared as income but not as an expense.

LEGAL AND PRACTICAL CONSIDERATIONS RELEVANT TO DECISION-MAKING BY THE COUNCIL

The provisions of section 81 of the Act impose a specific responsibility upon the City Council, as a form of tribunal functioning as a judge or arbiter over allegations against a candidate for municipal office, potentially leading to City expenditure for the retaining of an auditor, and a further possible duty to decide in such circumstances, based on the auditor's report, whether or not to initiate prosecutorial proceedings against such candidate for alleged breach of the Act.

In this role, the Council functions as a form of decision-making tribunal analogous to quasi-judicial tribunals established by or under various Provincial statutes.

In these circumstances, the Council is exercising a discretionary decision-making role, imposing requirements of fairness, impartiality and objective decision-making discretion, in the exercise of its specific duty under section 81(3) of the Act to decide, after reviewing the application for the compliance audit of a candidate's election campaign finances and supporting material, whether or not it should be granted or rejected.

If the Council decides to grant the application, this will lead to the appointment of the auditor, who will conduct the audit of the candidate's election campaign finances to determine whether he/she has complied with the provisions of the Act, and prepare a report outlining any apparent contravention, following which the Council will then be required to consider the report and decide whether or not to commence a legal proceeding against the candidate for any apparent contravention of one or more provisions of the Act relating to election campaign finances.

In exercising its discretion as to whether or not to grant the Application for a Compliance Audit of candidate Joyce Frustaglio's election campaign finances. Council should consider the following:

- Council must make its decision within 30 days after receiving an application;
- Council has no discretion to decline or defer dealing with an application, only to decide whether to grant or reject it;
- Council must base its decision upon grounds relevant to the intention of the Act;
- the intent of the Act is that the election finances of candidates for municipal office be open and documented, that candidates ensure that all possible steps be taken to ensure compliance with the Act relating to contributions and expenses, and that limitations on maximum contributions be strictly enforced;
- the purpose of s.81 is to screen out allegations of election campaign finance wrongdoing which are "frivolous, vexatious, or otherwise devoid of merit", and to ensure that applications are dealt with "expeditiously and without undue delay";
- s.81 of the Act is a "complete code" of procedure for any elector who alleges campaign finance wrongdoing by candidates;
- the principal question before Council involves consideration of whether the applicant has established reasonable grounds to believe that the candidate has contravened the Act;
- if the application reveals that the applicant has reasonable grounds to believe that the candidate has committed a contravention of the Act, an audit is the only remedy;
- reasonable grounds is not to be equated with proof beyond a reasonable doubt or a prima facie case. The appropriate standard of reasonable or credibly-based probability envisions a practical, non-technical and common sense probability as to the existence of the facts and inferences asserted.

Relationship to Vaughan Vision 2020

This report is consistent with the priorities previously set by Council.

Regional Implications

Not applicable.

Conclusion

Council is required to make a decision within 30 days of receipt with respect to the Application for a Compliance Audit on candidate Joyce Frustaglio's 2006 election campaign finances. Ms Frustaglio was advised that this report would be brought forward to the Committee of the Whole meeting of May 5th and that she may submit any additional information for consideration prior to Council making a decision on this matter. It should be noted that Council should make a decision before May 23rd.

Attachments

- Attachment 1 Affidavit (Application) of Raymond Plouffe and Carlo DeFrancesca. Note: The full document, with attachments, is available in the Clerk's Department for public view.
- Attachment 2: Financial Statement and Auditor's Report of candidate Joyce Frustaglio, filed April 2, 2007.
- Attachment 3: Financial Statement and Auditor's Report of candidate Joyce Frustaglio, filed September 4, 2007.
- Attachment 4: Financial Statement and Auditor's Report of candidate Joyce Frustaglio filed February 26, 2008.

Report prepared by:

Sybil Fernandes, Deputy City Clerk

(A copy of the attachments referred to in the foregoing have been forwarded to each Member of Council and a copy thereof is also on file in the office of the City Clerk.)

Having previously declared an interest Regional Councillor Frustaglio did not take part in the discussion or vote on the foregoing matter.

Having previously declared an interest Mayor Jackson did not take part in the discussion or vote on the foregoing matter.

116. CONFIRMING BY-LAW

MOVED by Councillor Carella
seconded by Councillor Shefman

THAT By-law Number 115-2008, being a by-law to confirm the proceedings of Council at its meeting on May 20, 2008, be read a First, Second and Third time and enacted.

CARRIED

117. ADJOURNMENT

MOVED by Councillor Carella
seconded by Councillor Shefman

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THAT the meeting adjourn at 5:24 p.m.

CARRIED

Linda D. Jackson, Mayor

Sybil Fernandes, Deputy City Clerk