



Hamilton

CITY OF HAMILTON

APPLICATION FOR ELECTION COMPLIANCE AUDIT¹

Applicant Information:

First Name: Craig Last Name: Burley

Mailing Address: 20 Hughson St. South #203, Hamilton, ON

E-mail Address: craig@craigburley.com Phone Number: 905 296 3378

Identify the address and type of property that qualifies you as an elector in Hamilton:

222 Haddon Ave. South, Hamilton, L8N 2A1 (personal residence)

Requesting Compliance Audit of Election Campaign Finances of:

Name of Candidate: John Vail

Candidate for office of: Mayor ☐ Councillor ☒ Registered Third Party ☐

Date of election for the office: October 22, 2018

I, the undersigned applicant:

- 1) am an elector as defined under Section 17(2) of the *Municipal Elections Act, 1996*, namely a person who:
 - (a) resides in Hamilton or is the owner or tenant of land there, or the spouse of such owner or tenant;
 - (b) is a Canadian citizen;
 - (c) is at least 18 years old; and
 - (d) is not prohibited from voting under Section 17(3)² or otherwise by law.
- 2) have reasonable grounds for believing that the candidate or Registered Third Party has contravened the *Municipal Elections Act, 1996* relating to the candidate's or Registered Third Party election campaign finances.

Which sections of the *Municipal Elections Act, 1996* relating to election campaign finances do you believe have been contravened?

88.9.1(1)

What are the reasonable grounds for your belief? (Attach supporting documentation, if any)

Please see the attached letter.

I, Craig Burley, being an eligible elector in the City of Hamilton, believe the facts and information submitted above to be true, and I request a compliance audit of the candidate's or the Registered Third Party's election campaign finances.

2019-06-27

Date


Signature of Applicant

This form contains information collected and maintained specifically for the purpose of creating a record available to the general public and may be inspected by any person at the Clerk's office at a time when the office is open. (Section 88(5) of the *Municipal Elections Act, 1996*).

¹Section 88.33(3) and 88.35(3) of the *Municipal Elections Act, 1996*:

The application must be made within 90 days after the latest of,

- (a) the filing date under section 88.30;
- (b) the candidate's supplementary filing date, if any, under section 88.30;
- (c) the filing date for the final financial statement under section 88.30; or
- (d) the date on which the candidate's extension, if any, under subsection 88.23(6) and 88.27(3) expires.

²Section 17(3) of the *Municipal Elections Act, 1996*:

The following are prohibited from voting:

- 1. A person who is serving a sentence of imprisonment in a penal or correctional institution.
- 2. A corporation.
- 3. A person acting as executor or trustee or in any other representative capacity, except as a voting proxy in accordance with section 44.
- 4. A person who was convicted of the corrupt practice described in subsection 90 (3), if voting day in the current election is less than five years after voting day in the election in respect of which he or she was convicted.



Craig Burley, Barrister and Solicitor
20 Hughson Street South, Suite 203, Hamilton ON, L8N 2A1
(905) 296-3378

Compliance Audit Committee
City of Hamilton
71 Main St. W.
Hamilton, Ontario

June 27, 2019

Dear Committee,

I am writing to you in support of my application for an Election Compliance Audit in respect of John Vail's campaign for Ward 2 Councillor for the election on October 22, 2018.

I believe Mr. Vail has likely contravened subsection 88.9.1(1) of the *Municipal Elections Act* (the "Act") related to contributions by the candidate and his spouse in excess of the prescribed limit.

The prescribed limit in respect of the Ward 2 Council election was \$8,971.40.

Mr. Vail's self-reported self-financed amount was \$8,315.57 under his attached Form 4.

However, Mr. Vail reported a value of \$0 for election signs repurposed from a prior provincial election campaign, at Table 4 on page 6. I noted Mr. Vail used these signs, from his race with the Progressive Conservative Party of Ontario, in the campaign. They were cut down so as to hide the PCPO branding, but were unquestionably those same signs and they stated "VOTE JOHN VAIL".

A value of zero cannot be an appropriate valuation of those signs.

The value of goods and services donated to a campaign, for the purposes of the Act, is not their value in present condition. Value is determined by 88.15(5)(b) of the Act:

(5) The value of goods and services provided as a contribution is,

(a) if the contributor is in the business of supplying these goods and services, the lowest amount the contributor charges the general public in the same market area for similar goods and services provided at or about the same time;

(b) if the contributor is not in the business of supplying these goods and services, the lowest amount a business providing similar goods or services charges the general public for them in the same market area at or about the same time. 2016, c. 15, s. 53 (3).

I believe that a sign order from a commercial sign company for similar signs in similar volume would



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be unlikely to be fulfilled for less than \$655.84, and therefore I believe that Mr. Vail exceeded his contribution limit under section 88.9.1 of the Act.

I request a compliance audit on whether Mr. Vail has exceeded the 88.9.1 limit, and to determine whether there were any other violations of the Act in relation to the donation and use of these signs.

Please contact me at craig@craigburley.com to discuss any details of this request that require clarification.

With thanks and regards for your service to the City,

Craig Burley
Barrister and Solicitor

encl. *John Vail, Form 4, 2018 Municipal Election*

**Financial Statement - Auditor's Report
Candidate - Form 4**

Municipal Elections Act, 1996 (Section 88.25)

Instructions

All candidates must complete Boxes A and B. Candidates who receive contributions or incur expenses must complete Boxes C, D, Schedule 1 and Schedule 2 as appropriate. Candidates who receive contributions or incur expenses in excess of \$10,000 must also attach an Auditor's Report.

All surplus funds (after any refund to the candidate or their spouse) shall be paid immediately over to the clerk who is responsible for the conduct of the election.

For the campaign period from (day candidate filed nomination)

YYYY	MM	DD
2018	07	25

 to

YYYY	MM	DD
2018	12	31

☐ Initial filing reflecting finances to December 31 (or 45 days after voting day in a by-election)

☐ Supplementary filing including finances after December 31 (or 45 days after voting day in a by-election)

Box A: Name of Candidate and Office

Candidate's name as shown on the ballot

Last Name or Single Name

VAIL

Given Name(s)

JOHN

Office for which the candidate sought election

HAMILTON CITY COUNCIL

Ward name or no. (if any)

2

Municipality

HAMILTON

Spending Limit - General

\$ 21878.45

Spending Limit - Parties and Other Expressions of Appreciation

\$

☐ I did not accept any contributions or incur any expenses. (Complete Boxes A and B only)

Box B: Declaration

I, JOHN VAIL, declare that to the best of my knowledge and belief that these financial statements and attached supporting schedules are true and correct.

Signature of Candidate

Date (yyyy/mm/dd)

Date Filed (yyyy/mm/dd)

2019/04/29

Time Filed

12:53PM

Initial of Candidate or Agent (if filed in person)

Jm

Signature of Clerk or Designate

C. Heen

Box C: Statement of Campaign Income and Expenses**LOAN**

Name of bank or recognized lending institution _____

Amount borrowed \$ 0**INCOME**

Total amount of all contributions (from line 1A in Schedule 1)

+ \$

Revenue from items \$25 or less

+ \$

Sign deposit refund

+ \$

Revenue from fundraising events not deemed a contribution (from Part III of Schedule 2)

+ \$

Interest earned by campaign bank account

+ \$

Other (provide full details)

1.

+ \$

2.

+ \$

3.

+ \$

4.

+ \$

5.

+ \$

Total Campaign Income (Do not include loan)

= \$

C1**EXPENSES** (Note: include the value of contributions of goods and services)**Expenses subject to general spending limit**

Inventory from previous campaign used in this campaign (list details in Table 4 of Schedule 1)

+ \$

Advertising

+ \$

Brochures/flyers

+ \$

Signs (including sign deposit)

+ \$

Meetings hosted

+ \$

Office expenses incurred until voting day

+ \$

Phone and/or internet expenses incurred until voting day

+ \$

Salaries, benefits, honoraria, professional fees incurred until voting day

+ \$

Bank charges incurred until voting day

+ \$

Interest charged on loan until voting day

+ \$

Other (provide full details)

1.

+ \$

2.

+ \$

3.

+ \$

4.

+ \$

5.

+ \$

Total Expenses subject to general spending limit

= \$

C2**EXPENSES****Expenses subject to spending limit for parties and other expressions of appreciation**

1.

+ \$

2.

+ \$

3.

+ \$

4.

+ \$

5.

+ \$

Total Expenses subject to spending limit for parties and other expressions of appreciation

= \$

C3

*** Expenses not subject to spending limits**

Accounting and audit	+ \$	
Cost of fundraising events/activities (list details in Part IV of Schedule 2)	+ \$	
Office expenses incurred after voting day	+ \$	
Phone and/or internet expenses incurred after voting day	+ \$	
Salaries, benefits, honoraria, professional fees incurred after voting day	+ \$	
Bank charges incurred after voting day	+ \$	
Interest charged on loan after voting day	+ \$	
Expenses related to recount	+ \$	
Expenses related to controverted election	+ \$	
Expenses related to compliance audit	+ \$	
Expenses related to candidate's disability (provide full details)		
1. _____	+ \$	
2. _____	+ \$	
3. _____	+ \$	
4. _____	+ \$	
5. _____	+ \$	
Other (provide full details)		
1. _____	+ \$	
2. _____	+ \$	
3. _____	+ \$	
4. _____	+ \$	
5. _____	+ \$	
Total Expenses not subject to spending limits	= \$	C4

Total Campaign Expenses (C2 + C3 + C4) = \$ **C5**

Box D: Calculation of Surplus or Deficit

Excess (deficiency) of income over expenses (Income minus Total Expenses) (C1 – C5)	+ \$	D1
Eligible deficit carried forward by the candidate from the last election (applies to 2018 regular election only)	- \$	D2
Total (D1 – D2)	= \$	
If there is a surplus, deduct any refund of candidate's or spouse's contributions to the campaign	- \$	
Surplus (or deficit) for the campaign	= \$	D3

If line D3 shows a surplus, the amount must be paid in trust, at the time the financial statements are filed, to the municipal clerk who is responsible for the conduct of the election.

Schedule 1 - Contributions

Part I – Summary of Contributions

Contributions in money from candidate and spouse

+ \$ 8315⁵⁷

Contributions in goods and services from candidate and spouse
(include value listed in Table 3 and Table 4)

+ \$

Total value of contributions not exceeding \$100 per contributor

- Include ticket revenue, contributions in money, goods and services where the total contribution from a contributor is \$100 or less (do not include contributions from candidate or spouse).

+ \$

Total value of contributions exceeding \$100 per contributor (from line 1B on page 5; list details in Table 1 and Table 2)

- Include ticket revenue, contributions in money, goods and services where the total contribution from a contributor exceeds \$100 (do not include contributions from candidate or spouse).

+ \$

Less: Contributions returned or payable to the contributor

– \$

Contributions paid or payable to the clerk, including contributions from anonymous sources exceeding \$25

– \$

Total Amount of Contributions (record under Income in Box C)

= \$ 8315⁵⁷ 1A

Part II – Contributions exceeding \$100 per contributor – individuals other than candidate or spouse

Table 1: Monetary contributions from individuals other than candidate or spouse

Name	Full Address	Date Received	Amount Received \$	Amount \$ Returned to Contributor or Paid to Clerk
<input type="checkbox"/> Additional information is listed on separate supplementary attachment			Total	

Table 2: Contributions in goods or services from individuals other than candidate or spouse
 (Note: must also be recorded as Expenses in Box C)

Name	Full Address	Description of Goods or Services	Date Received (yyyy/mm/dd)	Value \$
<input type="checkbox"/> Additional information is listed on separate supplementary attachment				Total

Total for Part II - Contributions exceeding \$100 per contributor
 (Add totals from Table 1 and Table 2 and record the total in Part 1 - Summary of Contributions)

\$ _____ **1B**

Part III – Contributions from candidate or spouse

Table 3: Contributions in goods or services

Description of Goods or Services	Date Received (yyyy/mm/dd)	Value \$
<input type="checkbox"/> Additional information is listed on separate supplementary attachment		Total

Table 4: Inventory of campaign goods and materials from previous municipal campaign used in this campaign
 (Note: value must be recorded as a contribution from the candidate and as an expense)

Description	Date Acquired (yyyy/mm/dd)	Supplier	Quantity	Current Market Value \$
Election Signs from Provincial Campaign N	2014			0
<input type="checkbox"/> Additional information is listed on separate supplementary attachment				Total

Schedule 2 – Fundraising Events and Activities

Fundraising Event/Activity

Complete a separate schedule for each event or activity held

☐ Additional schedule(s) attached

Description of fundraising event/activity _____

Date of event/activity (yyyy/mm/dd) _____

Part I – Ticket revenue

Admission charge (per person)

(If there are a range of ticket prices, attach complete breakdown of all ticket sales)

Number of tickets sold

\$	_____	2A
X	_____	2B

Total Part I (2A X 2B) (include in Part 1 of Schedule 1)

= \$ _____

Part II – Other revenue deemed a contribution

(e.g. revenue from goods sold in excess of fair market value)

Provide details

1.	_____	+	\$	_____
2.	_____	+	\$	_____
3.	_____	+	\$	_____
4.	_____	+	\$	_____
5.	_____	+	\$	_____

Total Part II (include in Part 1 of Schedule 1)

= \$ _____

Part III – Other revenue not deemed a contribution

(e.g. contribution of \$25 or less; goods or services sold for \$25 or less)

Provide details

1.	_____	+	\$	_____
2.	_____	+	\$	_____
3.	_____	+	\$	_____
4.	_____	+	\$	_____
5.	_____	+	\$	_____

Total Part III (include under Income in Box C)

= \$ _____

Part IV – Expenses related to fundraising event or activity

Provide details

1.	_____	+	\$	_____
2.	_____	+	\$	_____
3.	_____	+	\$	_____
4.	_____	+	\$	_____
5.	_____	+	\$	_____
6.	_____	+	\$	_____
7.	_____	+	\$	_____
8.	_____	+	\$	_____

Total Part IV Expenses (include under Expenses in Box C)

= \$ _____

Auditor's Report*Municipal Elections Act, 1996 (Section 88.25)*

A candidate who has received contributions or incurred expenses in excess of \$10,000 must attach an auditor's report.

Professional Designation of Auditor

Municipality

Date (yyyy/mm/dd)

Contact Information

Last Name or Single Name

Given Name(s)

Licence Number

Address

Suite/Unit No.

Street No.

Street Name

Municipality

Province

Postal Code

Telephone No. (including area code)

Email Address

The report must be done in accordance with generally accepted auditing standards and must:

- set out the scope of the examination
- provide an opinion as to the completeness and accuracy of the financial statement and whether it is free of material misstatement

☐ Report is attached

Personal information, if any, collected on this form is obtained under the authority of sections 88.25 and 95 of the *Municipal Elections Act, 1996*. Under section 88 of the *Municipal Elections Act, 1996* (and despite anything in the *Municipal Freedom of Information and Protection of Privacy Act*) documents and materials filed with or prepared by the clerk or any other election official under the *Municipal Elections Act, 1996* are public records and, until their destruction, may be inspected by any person at the clerk's office at a time when the office is open. Campaign financial statements shall also be made available by the clerk in an electronic format free of charge upon request.