




CITY OF HAMILTON
CORPORATE SERVICES DEPARTMENT
City Clerk's Office

TO:	Mayor and Members General Issues Committee
COMMITTEE DATE:	May 04, 2022
SUBJECT/REPORT NO:	Establishment of the 2022-2026 Election Compliance Audit Committee (FCS22037) (City Wide)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Andrea Holland (905) 546-2424 Ext. 5409
SUBMITTED BY:	Andrea Holland City Clerk
SIGNATURE:	

RECOMMENDATION

- (a) That the Terms of Reference for the 2022-2026 Election Compliance Audit Committee, attached as Appendix "A" to Report FCS22037, be approved;
- (b) That the authority to appoint the Members of the Election Compliance Audit Committee be delegated to the City Clerk, City Auditor and General Manager of Corporate Services, or their designates;
- (c) That the Compensation Framework for the 2022-2026 Election Compliance Audit Committee be in the amount of \$250 per member per committee meeting and/or training session, without an annual retainer, inclusive of all parking and mileage fees, to be funded through the Election Reserve Account 112206;
- (d) That, subject to the approval the Compensation Framework for the 2022-2026 Election Compliance Audit, the selection of the Members of the Election Compliance Audit Committee be exempt from the City of Hamilton Policy respecting the Appointment of Citizens to the City's Agencies, Boards, Commissions Advisory (Volunteer) Committees and Sub-Committees Policy; and,
- (e) That, subject to the approval of the Compensation Framework for the 2022-2026 Election Compliance Audit Committee, the Election Compliance Audit Committee - Selection Committee, be disbanded.

OUR Vision: To be the best place to raise a child and age successfully.

OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

EXECUTIVE SUMMARY

All Municipal Elections are governed by the *Municipal Elections Act, 1996* (MEA). The MEA provides rules for the administration of elections, addressing areas such as voter and candidate eligibility, rules surrounding third party advertising, methods of voting, campaign and campaign finance rules, questions on the ballot, legislative dates in the election cycle, including the length of the campaign period, calculation of campaign spending limits and Voting Day. The MEA also sets out the roles and responsibilities of the City Council, City Clerk, school boards, electors, candidates and third-party advertisers, and provides provisions with respect to compliance, enforcement and penalties.

This report serves to provide an update to General Issues Committee and Council Members on the obligations under the *Municipal Elections Act, 1996* (the “MEA”) to establish the Election Compliance Audit Committee (the “ECAC”) for the 2022-2026 term of Council and to provide recommendations on changes to the selection and appointment of Members to the ECAC and the Terms of Reference for the ECAC.

Alternatives for Consideration – Not Applicable

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial:

All budget for the compensation of ECAC Members will be provided through the Election Reserve Account 112206. Staff have reviewed other municipalities’ compensation schedules and are recommending the following compensation framework below for the 2022-2026 Committee Term:

- \$250 per committee meeting and/or training session, without an annual retainer. This compensation would include all parking and mileage fees. Food and beverages would still be provided at all meetings.

Staff are unable to determine the total cost of compensation for the ECAC as it is determined by the number of meetings, number of applications for a compliance audit filed and the number of reports that may need to be considered as a result of the City Clerk’s mandatory review of contributions in regular elections and any potential by-elections. However, to provide some context, the previous ECAC for the 2018-2022 term met twice (2) and the 2014-2018 term met six (6) times. With most meetings deliberating on more than one complaint.

Legal:

Any legal support required for the committee will be organized in consultation with the City's Legal and Risk Management Services Division and may be provided by either internal or external legal resources. Any external legal resources will be funded through the Election Reserve Account 112206.

Staffing:

The ECAC meetings will be supported through existing staff complement in the Office of the City Clerk.

HISTORICAL BACKGROUND

In 2018, the City Clerk, City Solicitor, General Manager of Finance and Corporate Services and City Auditor were appointed to the Election Compliance Audit Committee - Selection Committee (the "Selection Committee") by Council to administer the interviewing and selection of members, with appointments occurring at Council. All candidate information and interviews were held in closed session by the Selection Committee. The agenda from the meeting can be found on the City's website - [Election Compliance Audit Committee – Selection Committee](#).

5 members of the public were appointed to sit on the 2018-2022 ECAC and met to deliberate on election finance compliance complaints. All past meetings and decisions from 2015 to 2019 can be found on the [ECAC](#) webpages, within the Archived pages for the Municipal Elections.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

The role of the City Clerk in the administration of Municipal Elections is provided for in the MEA and in addition to adhering these provisions, the City Clerk has a duty to prepare for and conduct the election in a manner consistent with the principles of the legislation. While not defined in the MEA, the courts have established these principles as follows:

1. Secrecy and confidentiality of the voting process is paramount;
2. The election shall be fair and must not favour one candidate over another;
3. The election shall be accessible to voters;
4. Integrity of the process shall be maintained throughout the election;

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5. Proper majority vote decides the election, which is achieved by ensuring, so far as is reasonable possible, that valid votes be counted, and invalid votes be rejected; and
6. Voters and candidates shall be treated fairly and consistently.

Section 12 of the MEA allows the City Clerk to provide for any matter or procedure that is not otherwise provided for in an Act or regulation, and that in the City Clerk's opinion, is "necessary or desirable" for conducting the election. For transparency, procedures for the election will be posted to the City's website – www.hamilton.ca/elections.

In accordance with Section 88.37 of the MEA, Council must establish an ECAC before October 1 of an election year and the term of office for the ECAC and its Members is the same as the term of office of the Council, commencing on Tuesday, November 15, 2022 and ending on Saturday, November 14, 2026.

The ECAC is an independent, quasi-judicial body whose responsibilities and powers are outlined in the MEA and the ECAC Terms of Reference and whose proceedings are governed by the *Statutory Powers Procedure Act, 1990* and the Procedures of the ECAC. The ECAC is not a Local Board. Staff are recommending revisions to the existing Terms of Reference for the ECAC as attached as Appendix A to this report. The current version is posted on the city's website and has been attached for reference as Appendix B to this report.

Staff have added specific references from the MEA where processes and timelines are mandatory under the MEA. The membership of the ECAC, which was amended in 2018, has also been revised.

Under section 88.37(2) of the MEA, the ECAC must be composed of not fewer than three and not more than seven Members and cannot include:

- employees or officers of the municipality or local board;
- members of the council or local board;
- candidates in the election for which the committee is established; or
- persons who are registered third parties in the municipality in the election for which the committee is established.

Recruitment will continue to be targeted towards relevant organizations and professional bodies such as the Chartered Professional Accountants of Ontario, the Association of Municipal Managers, Clerks and Treasurers of Ontario, and the Law Society of Upper Canada. Recruitment for the ECAC in the past has been successful and the City has not had a challenge in recruiting qualified candidates

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Under section 88.37 (6) of the MEA, it is the role of the Clerk to establish administrative practices and procedures for the ECAC and to carry out any other duties required under the MEA to implement the ECAC's decisions.

Pursuant to section 88.37(7) of the MEA all costs in relation to the ECAC's operation and activities must be covered by the Council.

In addition to the costs associated with ECAC Members, the City also pays for external legal counsel (assigned to the committee to assist Members in carrying out their quasi-judicial duties), the services of an independent auditor (to conduct the compliance audits) as required, and an independent prosecutor (to review the case and decide whether to proceed with prosecution), as required.

RELEVANT CONSULTATION

Staff completed a best practice review of other Municipalities and held discussions with Members of the Municipal Elections Working Group to better understand how other organizations are administering their ECACs.

ANALYSIS AND RATIONALE FOR RECOMMENDATION

Election Compliance Audit Committee - Selection Committee (Selection Committee)

Under the MEA and Terms of Reference, Appendix A to Report FCS22037, The ECAC is required to consider and render a decision on applications for compliance audits and reports from an auditor within 30 days of receipt. Following a best practice review of other municipalities, staff concluded that there is a common practice of delegating the authority to staff to select and appoint the members of the ECAC. This would provide staff with the flexibility to appoint additional members, should vacancies occur in between Council meetings dates (there are no Council meetings scheduled for October 2022 and 5 of the 12 months in 2023 have 1 Council meeting scheduled instead of 2) and potentially decrease impacts on the ECAC meetings dates and the processing of applications. This new process would also remove any perceived conflict between Members of the ECAC and current Members of Council who may find themselves appearing before the ECAC.

Staff would continue to conduct interviews to ascertain the applicants' knowledge of such matters as municipal campaign finance rules under the MEA, accounting principles and the principles of procedural fairness. All appointments would be posted on the City's ECAC webpages and a Communications Update will be circulated to Members of Council, posted on the City's website and added to the Council agenda as per process.

Upon Council's approval of the delegation within this report, staff will post the positions and initiate interviews ahead of the summer months.

New Compensation Framework

Staff investigated compensation frameworks for surrounding municipalities and discovered that the majority of municipalities provide a meeting stipend and at times an annual retainer for each Committee Member. In the past, the City of Hamilton has only provided parking fees, mileage and food and beverage at meetings. Staff feel that in order to attract and retain qualified persons to participate on the Committee that a compensation similar to other municipalities is in order. The following information was gathered by staff through area Clerks:

- Windsor - \$250 per meeting, no retainer
- Sudbury - \$200 per meeting, no retainer
- Brampton - currently \$175 per meeting, no retainer
- Waterloo Region - \$200 per meeting, no retainer
- Town of Petawawa – volunteers only.
- Halton Regional Municipalities - \$400 retainer and \$200 per meeting
- Kingston - was \$200 per meeting last election, upping it to \$225 for 2022.
- Markham - retainer of \$400, \$350 per diem plus mileage.
- Ottawa - \$600 annual retainer, \$175/hour up to a maximum of \$1250/day
- Toronto - Public members: \$1,500 annually, plus full-day per diem of \$600 and half-day remuneration (3.5 hours or less) of \$400 for hearings, business meetings and training sessions.
 - Chair: \$2,500 annually, plus full-day per diem of \$600 and half-day remuneration (3.5 hours or less) of \$400 for hearings, business meetings and training sessions.
 - \$2,500 annual stipend for Chair / 12 = \$208.32 a month
 - \$1,500 annual stipend for public members / 12 = \$125 a month x 2 public members = \$250 a month
 - Total payments equal \$458.32 a month

Training Program For the ECAC

Staff will be providing all successful appointees with training on quasi-judicial procedures, corporate policies, the Terms of Reference and Procedures for the ECAC and their obligations under the MEA and with other applicable Legislation.

ALTERNATIVES FOR CONSIDERATION

Not Applicable

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

Community Engagement and Participation

Hamilton has an open, transparent and accessible approach to City government that engages with and empowers all citizens to be involved in their community

Our People and Performance

Hamiltonians have a high level of trust and confidence in their City government.

APPENDICES AND SCHEDULES ATTACHED

Appendix A – Election Compliance Audit Committee 2022-2026 – Terms of Reference

Appendix B – Election compliance Audit Committee 2018-2022– Terms of Reference

Appendix C - *Municipal Elections Act*, 1996 – Compliance Audits and Reviews of Contributions (Excerpt)