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ELECTION COMPLIANCE AUDIT COMMITTEE 2022-2026

TERMS OF REFERENCE

MANDATE

As required by Section 88.37(1) of the *Municipal Elections Act*, 1996 (the “MEA”), the City of Hamilton has established the Election Compliance Audit Committee (the “Committee”).

The Committee is responsible for reviewing and making decisions on Applications for municipal election campaign finance compliance audits by electors and on reports from the City Clerk respecting apparent contraventions of contribution limits.

APPLICATION BY ELECTOR FOR COMPLIANCE AUDIT OF CANDIDATE’S OR REGISTERED THIRD PARTY’S ELECTION CAMPAIGN FINANCES

An application for a compliance audit by an elector shall be made to the City Clerk for the City of Hamilton and it shall be in writing and shall set out the reasons for the elector’s belief that a Candidate or Registered Third Party has contravened a provision of the MEA relating to election campaign finances. **88.33(1)(2), 88.35 (1)(2) MEA**

Elector applications to the Committee shall use a form prescribed by the City Clerk and shall be accompanied by a declaration confirming that the applicant:

- (a) is an eligible elector in the City of Hamilton; and
- (b) has reasonable grounds to believe that the Candidate or Registered Third Party referenced in the application has contravened a provision of the MEA relating to election campaign finances.

RESPONSIBILITIES

Pursuant to sections 88.33 and 88.35 of the MEA, the Committee shall be responsible for:

1. Receiving and considering applications for a compliance audit by an elector and, within 30 days of receiving the application from the City Clerk, determining whether the compliance audit should be granted or rejected; **88.33(7), 88.35(4) MEA**

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2. Prepare brief written reasons for the decision to either grant or reject the compliance audit and provide same to the Candidate or Registered Third Party, the Clerk of the municipality and the applicant; **88.33(8), 88.35(4) MEA**
3. Appointing an auditor, if a compliance audit is granted; **88.33(10), 88.35(4) MEA**
4. Receiving and considering the Auditor's report, and if the auditor's report concludes that the Candidate or Registered Third Party appears to have contravened a provision of the MEA relating to election campaign finances, within 30 days of receipt of the auditor's Report from the City Clerk, deciding whether to commence a legal proceeding against the Candidate or Registered Third Party; **88.33(17), 88.35(4) MEA** and,
5. Prepare brief written reasons for the decision whether or not to commence legal proceedings and provide same to the Candidate or Registered Third Party, the Clerk of the municipality and the applicant. **88.33(18), 88.35(4) MEA**

REPORTS FROM CITY CLERK REGARDING APPARENT CONTRAVENTIONS OF CONTRIBUTION LIMITS

The City Clerk shall prepare a report in respect of each contributor who appears to have contravened any of the contribution limits under section 88.9 or 88.13 of the MEA **88.34(1)-(6), 88.36 (1)-(4) MEA**

RESPONSIBILITIES

Pursuant to sections 88.34 and 88.36 of the MEA, the Committee shall be responsible for:

1. Receiving and considering report(s) prepared by the City Clerk identifying each contributor to a Candidate or Registered Third Party who appears to have contravened any contribution limits set out under section 88.9 or 88.13 of the MEA, and, within 30 days of receiving the report(s), deciding whether to commence a legal proceeding against a contributor for an apparent contravention of the contribution limits; **88.34(8), 88.36(5) MEA**
2. Prepare brief written reasons for the decision whether or not to commence a legal proceeding and provide same to the contributor and the Clerk of the municipality. **88.34(11), 88.36(7)**

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CORRESPONDANCE FROM CITY CLERK

With respect to receiving information related to election compliance matters, the Committee may receive:

1. Memoranda issued by the City Clerk to the Committee, including but not limited to a notice if no applications were received by the relevant application deadline, and the results of the City Clerk’s review of contributions if no over-contributions were identified. Such communications may be listed on the agenda for the following meeting of the Committee; and
2. Oral updates in open meeting, as required, in relation to matters that have been or are anticipated to be considered by the Committee during the 2022-2026 Term.

COMMITTEE MEMBERSHIP

The Committee will be comprised of five (5) Members selected by the General Manager of Corporate Service, the City Auditor and the City Clerk.

The following are not eligible to sit on the Committee:

- 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. **88.37(2) MEA**

Members must have a thorough understanding of the campaign finance rules, must be a resident of the City of Hamilton and be at least 18 years old (i.e. auditors, accountants, lawyers, etc.).

Any auditor appointed under 88.33(10), 88.35(4) cannot be a member of the Committee. To avoid perceived conflicts, any auditor or accountant appointed to the Committee must agree in writing that they have not and will not provide advice to, or prepare or audit the election financial statements of any Candidate seeking election to Council or to any Registered Third Party in the City of Hamilton during the term of the Committee. In addition, any lawyer or other legal professional appointed to the Committee must agree in writing that they have not and will not provide legal advice to

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any Candidate seeking election to Council or to any Registered Third Party or contributors to Candidates and Registered Third Parties in the City of Hamilton during the term of the Committee. All Members appointed to the Committee must agree in writing that they will not become a Candidate in the Hamilton municipal election and any by-elections during the term of Council that corresponds to the term of the Committee.

COMMITTEE MEETINGS

The Committee will meet as necessary for the purposes of reviewing an application for a compliance audit, a report from an auditor, or a report from the City Clerk with respect to contribution limits. The Committee may also meet as necessary to organize and plan its work.

Meetings of the Committee shall be open to the public, but the Committee may deliberate in private in accordance with sections 88.33(5.1), 88.34(9.1) and 88.36(6.1) of the MEA. Meeting notices and agendas will be communicated through the City’s website. Reasonable notice of the Committee meetings shall be given in accordance with section 88.33(5), 88.34(9) and 88.36(6) of the MEA.

The Chair and Vice-Chair shall be elected at the Committee’s first meeting.

Because the rules of “natural justice” require that both parties (applicant and Candidate or Registered third party) have the opportunity to fully present evidence, Members of the Committee must be present throughout a hearing.

A member of the Committee who arrives after a hearing has commenced will not be permitted to join the proceedings in progress.

ROLE OF THE CITY CLERK

In accordance with section 88.37(6) of the MEA the City Clerk of the municipality shall establish administrative practices and procedures for the Committee and shall carry out any other duties required under the MEA to implement the Committee’s decisions.

The City Clerk shall call a meeting of the Committee when an application by an elector for a Compliance Audit has been received and when the City Clerk’s report regarding apparent contraventions of contribution limits has been prepared.

Meeting dates, start times and locations shall be set by the City Clerk and posted to the City’s website.

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The City Clerk shall provide administrative support to the Committee, including the taking of minutes, the distribution of agendas and posting of materials to the City’s website.

QUORUM

Three members will be required for quorum.

TERM

Members of the Committee shall serve the same term of office as the Council that takes office following a regular municipal election. Each new Committee shall be appointed before October 1 of an election year.

APPLICABLE LEGISLATIVE AUTHORITIES AND CORPORATE POLICIES

Municipal Elections Act, 1996

BY-LAW NO. 22-019 To Establish a Code of Conduct for Local Boards (Effective 2023)

Municipal Conflict of Interest Act, 1990

Statutory Powers Procedures Act, 1990