

June 10, 2014

**CORPORATE SERVICES – LEGISLATIVE SERVICES
REPORT – 2014-02**

TO: Mayor Van Bynen and Members of Council
ORIGIN: Andrew Brouwer, Director, Legislative Services/Town Clerk
SUBJECT: Municipal Election Compliance Audit Committee

RECOMMENDATIONS

THAT Corporate Services Report – Legislative Services 2014-02 dated June 10, 2014 regarding “Municipal Election Compliance Audit Committee” be received and the following be adopted:

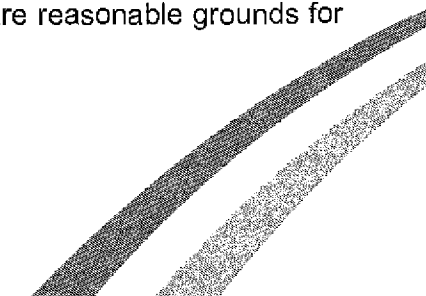
- 1. THAT Council adopt the terms of reference for the Municipal Election Compliance Audit Committee (attached as Appendix “A”);**
- 2. AND THAT Council appoint the individuals identified in Confidential Corporate Services – Legislative Services Report 2014-02 as the roster from which the Municipal Election Compliance Audit Committee is constituted if required;**
- 3. AND THAT the Clerk be delegated the authority to establish, in response to any compliance audit applications received, panels of three (3) persons from the Council-approved roster of individuals to serve as the Municipal Election Compliance Audit Committee.**

COMMENTS

The *Municipal Elections Act, 1996* (the Act) requires that all municipal councils in Ontario appoint an arms-length, independent compliance audit committee (Committee) for municipal council candidates by October 1 in an election year. Each respective school board establishes their own Committee for school board candidates.

If an elector has reasonable grounds that a candidate has contravened the Act with respect to municipal election campaign finances, he or she may request a compliance audit.

The Committee:

- Reviews the application for a compliance audit and determines if there are reasonable grounds for a compliance audit to be undertaken;
 - Appoints an auditor to undertake the compliance audit;
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- Reviews the compliance audit and determines if the compliance audit appears to reveal a contravention of the Act with respect to campaign finances;
- If the Committee agrees the compliance audit does not appear to reveal a contravention of the Act respecting campaign finances, the Committee determines if there were reasonable grounds to submit the application for a compliance audit (if the Committee determines there were no reasonable grounds, the municipality *may* recover the costs associated with the compliance audit from the applicant); and,
- If the Committee agrees the compliance audit appears to contravene the Act with respect to campaign finances, the Committee *may* commence legal proceedings, independent of the Town. The Committee takes into consideration the public interest when determining if such legal proceedings should be considered.

The Committee plays an important role in supporting a positive public perception of the fair application of rules respecting election contributions and expenses.

The Act requires that the Committee be composed of a minimum of three (3) and a maximum of seven (7) members who cannot be a member of council or a candidate in the municipal election for which the Committee is established.

In the 2010 municipal election, the Town of Newmarket appointed the citizen members of the Town's Audit Committee to serve as its Committee. There were no compliance audit requests considered by the Town's Committee following the 2010 municipal election.

Like Newmarket, in the 2010 municipal election, the cities of Markham and Vaughan recruited and appointed their own Committee. The remaining York Region municipalities undertook a joint recruitment and training effort and appointed a roster of individuals, a minimum of three (3) of whom could be selected by the Clerk of the applicable municipality to constitute a Committee if required.

This municipal election year, all York Region municipalities participated in a joint Committee recruitment effort to increase the pool of qualified candidates and reduce advertising costs, which were shared. In addition to advertisements in local newspapers, notices were placed in the Law Society of Upper Canada's Ontario Reports and on the websites of the Certified Professional Accountants of Ontario and Certified General Accountants of Ontario for a period of approximately one month.

Applications were reviewed by York Region Clerks, new applicants were interviewed and a slate of candidates who could be appointed as a roster was determined. In terms of skills and experience, preference was given to applicants with a professional background in accounting, auditing, law, election administration, or public administration. Applicants were also required to demonstrate an understanding of municipal campaign finance requirements, possess analytical, decision-making and effective communication skills and have experience working with or as a member of a government board, task force or quasi-judicial body. Consideration was also given to individuals who were previously appointed to and had experience serving on a Committee.

Finally, applicants must not be a candidate or have committed to providing professional advice for any candidate in the 2014 municipal election in any York Region municipality.

As outlined in the terms of reference for the Municipal Election Compliance Audit Committee (attached as Appendix "A"), it is proposed that Council adopt a roster of individuals and that the Clerk be delegated the authority to select three (3) individuals to constitute the Committee if required, based on their availability and balance of professional backgrounds, wherever possible.

All individuals on the Council-approved roster will be required to attend an orientation program, to be coordinated jointly by the York Region Clerks representatives from the Ministry of Municipal Affairs and Housing.

Subject to their consent, Council has the option of appointing the citizen members of the Town's Audit Committee as it had in 2010 or commencing a separate recruitment effort. These options would present logistical and time contract challenges for the Clerk, given that Council is required to establish a Committee by October 1, 2014.

BUSINESS PLAN AND STRATEGIC PLAN LINKAGES

This initiative supports the Town's Vision, Mission and Community Strategic Plan goal of being well-equipped and managed by implementing policies and processes that reflect sound and accountable governance and fiscal responsibility in achieving service excellence.

HUMAN RESOURCE CONSIDERATIONS

There are no human resource considerations associated with this report.

BUDGET IMPACT

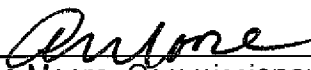
It is proposed that each member of the Council-approved roster be paid an annual retainer of \$400 and a per diem rate of \$350 per member plus mileage for attendance at required meetings, to be funded from the election reserve. The annual retainer is intended to cover costs associated with reviewing relevant legislation, case law and professional articles for educational purposes. The Act requires that the municipality assume any costs associated with the operation of the Committee, including any audits and prosecutions that might be authorized by the Committee. Such costs will be addressed during the 2015 budget deliberations.

CONTACT

For more information on this report, contact Andrew Brouwer, Director, Legislative Services/Town Clerk (ext. 2211, abrouwer@newmarket.ca).



Andrew Brouwer, Director, Legislative Services/
Town Clerk



Anita Moore, Commissioner of Corporate Services

Appendix "A"
Town of Newmarket
Municipal Election Compliance Audit Committee - Terms of Reference

MANDATE

The powers and functions of the Town of Committee are set out in Section 81 of the *Municipal Elections Act, 1996* (the Act) as follows:

1. Within 30 days of receipt of an application requesting a compliance audit, the Committee shall consider the compliance audit application and decide whether it should be granted or rejected;
2. If the application is granted, the Committee shall appoint an auditor to conduct a compliance audit of the candidate's election campaign finances;
3. The Committee will review the auditor's report within 30 days of receipt and decide whether legal proceedings should be commenced; and
4. If the auditor's report indicates that there were no apparent contraventions and if there appears there were no reasonable grounds for the application, the Committee shall advise Council accordingly.

ELIGIBILITY, APPLICATION & APPOINTMENT

Members of Council, staff or candidates running for any office in the 2014 municipal election are not eligible to apply. Should an applicant or appointee accept employment with any of the member municipalities or register as a candidate for any office, his or her application or appointment will be terminated.

All applicants and appointees must agree in writing that they will not work for or provide advice or services to any candidate running for office within York Region.

All applicants will be required to complete and submit an application form and/or resume outlining their qualifications and experience to the Clerk or his or her designate.

The Clerk shall review all applications and recommend a roster of individuals for appointment by Council. The Clerk's recommendations shall be based on the applicant's skills and experiences and ability to effectively perform the mandate of the Committee as outlined in the Act, these terms of reference and the Committee's own procedures and processes.

CONSTITUTING THE COMMITTEE

When a municipality is in receipt of an appeal, the Clerk shall contact three (3) individuals on Council-appointed roster to constitute the Committee based on their availability and balance of professional backgrounds, wherever possible.

TERM

The term of the Council-appointed roster of individuals is co-terminus with the 2014-2018 term of Council.

CHAIR

The Committee shall select one of its members to act as a Chair at the first meeting.

PROPOSED MEETING SCHEDULE

The Council-appointed roster shall meet for an orientation to their responsibilities, to be coordinated by the Clerk.

When a compliance audit application is received, the Committee shall meet as required with meetings to be scheduled by the Clerk, in consultation with the Chair if selected.

MEETINGS

The Clerk shall recommend and the Committee shall adopt such meeting procedures and processes as required by the Act.

Meetings of the Committee shall be conducted in accordance with the open meeting requirements of the provisions in the *Municipal Act, 2001*. The Town's website (www.newmarket.ca) will be utilized to communicate meeting notices and agendas.

STAFFING AND FUNDING

Staff from the applicable member municipality shall provide administrative support to the Committee. The member municipality requiring the services of the Committee shall be responsible for all associated expenses in accordance with the Act.

RECORDS

The records emanating from meetings of the Committee shall be retained and in accordance with the Town's Records Retention By-law.